

The Agreement made on the 30<sup>th</sup> day of May 2014

Between:

The Niagara Health System (the "Employer")

And

Dr. Suzanne Johnston

[Hereinafter called the "Executive"]

WHEREAS the Executive was offered, and by her signature the Executive accepts, the position of President with the Employer effective September 2, 2014;

AND WHEREAS the Employer and Executive wish to provide for the terms and conditions of employment for the position as set out in this Agreement;

NOW THEREFORE, in consideration of the mutual terms and conditions contained in the Agreement, the parties agree to the following:

**1. Effective Date**

The Agreement takes effect on September 2, 2014.

**2. Duties of Employment**

The President reports to the NHS's Board of Directors, and to the Chief Executive Officer (CEO).

The Executive will fulfill the role and discharge responsibilities as provided for in the Public Hospitals Act, the Regulations under the Public Hospitals Act, along with the By-Laws and Rules, Policies and ethical standards of the Hospital. The Executive will perform all duties and services required of an Administrator, as defined in the Public Hospitals Act, as well as the duties and services outlined in the Job Profile attached as Schedule "A" as well as those provided for in any applicable agreement in place to which the Employer is bound including, but not limited to, the Management Services Agreement with St. Joseph's Health System attached as Schedule "B".

The Executive will, throughout the term of her employment, devote her full time and attention to the business and affairs of the Employer, and shall not, without prior written consent of the CEO and the Board, undertake any other business or occupation, or become a director, officer, employee or agent of any other company, firm or individual. The Executive will request approval and receive written documentation from the Employer before she accepts any such responsibilities.

The Employer may amend the Executive's assignment, duties, and responsibilities at its sole discretion without causing termination of the Agreement.

The Executive shall be free to engage in volunteer, community service or charitable work and personal investment activities, provided that these activities do not conflict with the interests of the Employer and provided that the Executive's participation in such activities does not impair the performance of her duties and responsibilities hereunder.

The offer of employment is conditional upon a satisfactory criminal background check; medical clearance with the Occupational Health Nurse; and proof of relevant degrees, diplomas, certifications, and registrations which must be provided to Human Resources to be photocopied and maintained in the Executive's personnel file.

### **3. Executive Compensation**

The Executive Compensation Program provides the Executive with a competitive total compensation package that is made up of the following key elements; Base Salary, Pay at Risk, Executive Benefits and Pension.

#### **3.1 Base Salary**

Subject to 3.2, the Executive shall be eligible for a total salary of \$334,000.00 gross, per fiscal year, less statutory deductions, pro-rated to the date of hire. Any further increases shall be made at the absolute discretion of the Employer, subject to any legislation, regulation or directive then in effect, the Hospital's ability to pay, and to the discretion of the Board.

#### **3.2 Pay at Risk**

The Employer shall deduct a Pay at Risk amount of 7.5% of salary (i.e. \$25,050.00) at the beginning of each fiscal year, with partial years being prorated, which may be re-earned annually through the achievement of designated objectives outlined in the Hospital's Quality Improvement Plan, as required under the Excellent Care for All Act, 2010. The CEO and Board will evaluate the level of achievement of the objectives at the end of each fiscal year to determine the amount of Pay at Risk to be awarded or re-earned by the Executive. Any monies re-earned will be paid annually in a lump sum payment after the end of the fiscal year.

#### **3.3 Executive Benefits**

The Employer shall provide the Executive with group benefits for which senior management at the executive level are eligible, including any applicable changes in such benefits made from time to time. The Executive will pay the employee contribution of benefits, including contributions to the pension plan and extended health and benefits, consistent with the terms of those policies and practice for other Hospital employees.

The Employer will also provide the Executive with a Health Spending Account (HSA) of \$2,500 per year, to supplement her Executive Benefits. The HSA has no cash value, and will be pro-rated to the date of hire in the first year of this Employment Agreement. The HSA provides for a one year carry forward of the unused balance with a forfeiture of the carried forward amount should it not be used in the second year.

#### 3.4 Pension Plan

The Executive shall be entitled to participate in the Healthcare of Ontario Pension Plan (HOOPP). The Executive will pay the employee contributions to the plan, consistent with the terms of the Plan and practice for other Hospital employees.

#### 3.5 Automobile

The Executive will receive a monthly automobile allowance of \$1,000.00 per month for business-related travel in a multi-site Hospital environment. All expenses in connection with the use of the automobile in carrying out the Executive's duties shall be paid by the Executive, including insurance, gas, maintenance and repair expenses. Consistent with other executives, the Executive will pay for her own parking.

#### 3.6 Vacation

The Executive shall be entitled to accrue and receive 6 weeks' annual paid vacation in accordance with the Employer's policies. Such vacation must be taken at a time that is mutually convenient and must be approved in advance by the CEO.

The Executive shall exercise best efforts to use her full vacation entitlement in each year. However, the Executive shall be entitled to carry forward a maximum of two weeks of vacation from one year into the following year, provided that such vacation is taken within the first six months of the following year. Any unused vacation entitlement in excess of two weeks shall be forfeited.

#### 3.7 Relocation Expenses

To facilitate the relocation of the Executive to the Niagara Region, the Employer agrees to reimburse the Executive for up to \$15,000.00 for reasonable expenses directly related to relocation or moving, with the presentation of receipts. These receipts must be submitted to the Employer for reimbursement within one year of the move/relocation.

#### **4. Annual Goals and Objectives**

The CEO and Board shall conduct an annual performance review with the Executive. The Executive's performance will be reviewed against annual goals and objectives mutually agreeable to the Board and the CEO at the beginning of the performance period. The performance review shall include any processes, requirements and consequences contained in any contract in effect to which the Employer is bound, including but not limited to, the Management Services Agreement attached hereto as Schedule "B".

#### **5. Reimbursement of Expenses**

The Executive shall be entitled to reimbursement by the Employer for reasonable expenses incurred by her in the course of her Employment in accordance with the Employer's expense policy, and shall be subject to review, at least annually, by the CEO.

#### **6. Professional Fees and Development**

The Hospital will reimburse the Executive for up to two professional associations or memberships relevant to her position, with the prior approval of the CEO.

If the Executive wishes to pursue educational and/or professional development opportunities for which she seeks financial assistance from the Employer and/or if such opportunities involve a significant time commitment, the Executive shall discuss same with the CEO. The CEO shall give reasonable consideration to such requests.

If the Executive resigns within the first eight months of completing a professional development program, she will pay back 100% of the program fees to the Hospital. If the Executive resigns between nine and eighteen months of completing a professional development program, she will pay back 50% of the program fees to the Hospital.

#### **7. Death or Disability**

##### **7.1 Death**

This Agreement terminates automatically in the event of the Executive's death.

If the Executive dies during the course of her employment, her estate will be entitled to receive any outstanding base salary, accrued vacation pay, and expense reimbursement up to the date of the Executive's death.

##### **7.2 Disability**

In the event that the Executive experiences any disability issue that is expected to limit or preclude her ability to provide active or required service, the Executive will promptly notify the Board Chair and the Chief Executive Officer. The Board, CEO and Executive will communicate in an open and candid manner to assess the impact of the disability issue on her ability to provide her services. The Executive agrees to facilitate the CEO's and Board's

access to any information relevant to assessing the impact of the disability issue or the Executive's ability to attend to her regular responsibilities. The parties will endeavor to finalize arrangements in the particular circumstances that are responsive to the interests of the Hospital and the Executive.

## **8. Voluntary Resignation**

The Executive agrees to provide the Employer with a minimum of three (3) months' written notice should she decide to voluntarily resign her position as President, which notice may be waived by the Employer at its sole discretion. In the event that the Employer waives such notice, the Employer will not be obligated to pay the Executive as of the date the notice is waived.

In the event of resignation, the Executive shall be entitled to receive a pay at risk award for the fiscal year in which the Executive's active employment ceases, pro-rated to the date of termination, based on the higher of 1) the pay at risk payment received by the Executive in the fiscal year immediately preceding the effective date of her resignation, and 2) the average pay at risk payment received by the Executive in the two completed fiscal years immediately preceding the effective date of her resignation.

## **9. Termination**

### **9.1 For Cause**

This Agreement and the Executive's employment may be terminated by the Employer without notice at any time for just cause.

In the event of such termination for cause, the Employer will pay the Executive any base salary owing to her up to and including the date of termination of employment together with accumulated vacation pay and reimbursement of any outstanding expenses incurred on behalf of the Employer to which she is entitled, and nothing more. The Executive shall not be entitled to receive any pay at risk payments for the fiscal year in which the Executive's active employment ceases.

Termination for cause includes, but is not limited to, the following:

- (a) A continuing failure of the Executive to observe and perform her obligations hereunder, which continuing failure is materially detrimental to the fulfillment of the Executive's role at the Hospital, after receiving at least thirty (30) days' written notice of such failure from the Hospital, provided that the Executive has not, within such thirty (30) day period, taken steps to commence rectifying the situation in a manner satisfactory to the Hospital;
- (b) A failure to rectify performance deficiencies as provided for in Articles 5.7 and 5.8 of the Management Services Agreement, attached as Schedule "B", during its duration.

- (c) Any actions or conduct of the Executive, past or future, which come to the attention of the Hospital and for which it can be reasonably perceived as lessening, negatively impacting or damaging the reputation of the Hospital by maintaining the Executive in her position.

## 9.2 Without Cause

- (a) The Employer shall have the right to terminate this Agreement and the Executive's employment hereunder at any time without just cause by providing the Executive with written notice to that effect and the Employer shall, at the same time and, subject to 9(2)(b), do the following:
- Salary continuance equal to 9 months' annual earnings (i.e. Base Salary less Pay at Risk), plus an additional 1 month of annual earnings for each year of completed service served with the Employer, up to a maximum of 18 months' annual earnings (i.e. the "Severance Period").
  - A pay-out of the "Pay at Risk" portion of compensation during the Severance Period, based on the average Pay at Risk paid out in the previous two completed fiscal years immediately preceding her termination. If the Executive is terminated Without Cause in her first fiscal year of Employment, then no pay at risk will be paid out. If the Executive is terminated within the first two years of employment, the Pay at Risk will be equal to the Pay at Risk paid out in the previous fiscal year.
  - Continuation of medical and dental benefits only on the same basis prior to termination throughout the Severance Period.
  - Reimbursement for expenses under the Health Spending Account during the Severance Period.
  - Continuation of pension contributions throughout the Severance Period on the same basis as prior to termination.
  - Vacation will not accrue during the Severance Period.
  - Short-term sick benefits, long term disability benefits and life insurance are not included in the severance package, but shall end 8 weeks following the date of termination.
- (b) In the event of termination without cause, the Executive acknowledges that she is obligated to make reasonable efforts to secure comparable alternate employment or earn business income. In the event the Executive secures comparable alternate employment or earns business income prior to the end of the salary and benefit continuation period referred to above, the salary and benefit continuation will cease effective the date the Executive commences said alternate employment or commences earning business income. The Employer shall then pay to the Executive a lump sum amount equivalent to 50% of the outstanding salary payments owed to the date that the salary and benefit continuation period expires. Pay at risk will not be included in the calculation of the lump sum payment. Such lump sum shall be subject to applicable statutory deductions. However, in no event shall the Executive receive less than her

statutory notice and, if applicable, severance pay entitlement under the *Employment Standards Act, 2000*.

- (c) In consideration of the foregoing payment and benefits continuance, the Executive fully releases and forever discharges the Employer, its agents, servants, successors and assigns of and from any and all actions, claims and demands howsoever arising in respect of the employment of the Executive and in respect of the Employment Agreement. The Executive further acknowledges that the foregoing payments and benefit continuance are in full and complete satisfaction of her entitlement to reasonable notice at common law or under any applicable statute. The Executive will be asked to sign the attached Release found as Schedule "C".

If there are any disputes on Termination as to the interpretation of this clause, the parties agree to refer the matter to mediation, prior to any litigation.

### 9.3 Circumstances not constituting termination of employment/constructive dismissal for the purposes of 9.2

- (a) Closure of Site Not Constructive Dismissal: The Executive agrees that her employment will not be constructively terminated should the resources within her scope of authority be diminished by full or partial closure of one or more of the Employer's sites, provided that:
- The fundamental character of the Employer as an acute care hospital does not change;
  - She remains the Executive or equivalent; and
  - There is no resulting decrease to the Executive's compensation or benefits.
- (b) Regional Health Care: The Executive agrees that should there be an actual or proposed restructuring of the public hospital sector in the region within which the Employer operates, such that when and if the restructuring takes effect, the operations of the Employer will become governed by, or controlled or owned by, another entity, the Executive will, if requested by the Employer, or on her own initiative, put herself forward as a candidate for appointment as the senior staff official of the entity and will not treat the said restructuring as constructive dismissal or dismissal without just cause provided she is appointed to a position with the new entity which is the Executive's position or equivalent and provided there is no resulting decrease to compensation and benefits.

## **10. Confidentiality**

The Executive shall not, either during the term of her engagement or any time thereafter, disclose to any person, firm or corporation, any information concerning the business or affairs of the Hospital which the Executive may have acquired in the course of, or incidental to, her relationship with the Hospital other than as required by law.

Upon termination of employment with the Employer, the Executive will deliver to the Employer any and all devices, records, data, notes, reports, proposals, client lists, correspondence, materials, equipment, or other documents or property belonging to the Employer or its clients or related affiliates/association, etc., which may have come into the Executive's possession during the course of employment.

## **11. Return of Hospital Property**

All Hospital equipment including computer equipment, phone, smart phone, credit card, manuals, documents, papers and other records in the Executive's possession (either in electronic or physical form) will be returned to the Hospital immediately after termination or expiry of the Agreement.

## **12. Non-Solicitation**

The Executive agrees for a period to coincide with the Severance Period, as defined in Paragraph 9, from the effective date of termination of employment, she shall not solicit or entice, or attempt to solicit or entice, any of the Executives of the Niagara Health System to enter into the employment of, or service with, any other employer.

## **13. Reasonableness of Restrictions**

The Executive acknowledges and agrees that the breach of paragraphs 10 and 12 will cause irreparable damage to the Employer, and that upon any such breach, the Employer shall be entitled to equitable relief from a court of competent jurisdiction, including injunctive relief and specific performance, without the necessity of proving actual damages, and shall be further entitled to an accounting of all earnings, profits or other benefits acquired by the Employee as a result of such breach, and to any other remedy now or hereafter provided at law for such breach.

The Executive further agrees that the covenants contained in paragraphs 10 and 12 shall survive the termination of this Agreement and the employment relationship with the Employer.

## **14. Entire Agreement and Amendments**

The Agreement and its Schedules constitute the entire agreement between the parties pertaining to the Executive's employment and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties. No



amendment to this Agreement shall be valid unless made in writing and signed by both parties.

**15. Severability**

In the event that any provision or part of a provision of this Agreement shall be deemed void, invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions or parts of the provision shall remain valid and enforceable.

**16. Notices**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be delivered personally or by registered mail, and shall be deemed to have been given on the earlier of receipt or the fifth day after mailing by registered mail, addressed to the Executive at her last residential address known to the Employer, and addressed to the Employer at its head office to the attention of the Chair of the Board of Directors.

**17. Governing Law and Attornment**


The validity, interpretation construction and performance of the Agreement shall be governed by the laws of the Province of Ontario, and each of the parties to the Agreement hereby irrevocably attorns to the jurisdiction of the courts of Ontario.

The Executive confirms that prior to the execution of the Agreement she had a full and complete opportunity to obtain independent legal advice and representation and that she has either done so or has declined to do so. In the event that the Executive declines to obtain independent legal advice and representation prior to the execution of this Agreement, she hereby covenants, promises and agrees not to raise as a defense to any action to enforce this Agreement or seek remedy pursuant to the Agreement, such lack of independent legal advice or representation.

IN WITNESS OF THE FOREGOING, the parties hereto have executed the Agreement dated at NIAGARA FALLS on the 27<sup>th</sup> day of May, 2014.

**THE NIAGARA HEALTH SYSTEM**

**THE EXECUTIVE**

Name:   
Dr. Barry Wright  
Title: Chair, Board of Directors

Name:   
Dr. Suzanne Johnston

THE HOSPITAL  
Name:   
Dr. Kevin Smith  
Title: Chief Executive Officer

**SIGNED, SEALED AND DELIVERED**  
In the presence of   
Witness

- Schedule A – President Job Profile
- Schedule B – Management Services Agreement with SJHS
- Schedule C - Release

## **SCHEDULE "A" – PRESIDENT JOB PROFILE**

### **Position Objective**

Reporting to the Board of Directors and the CEO of SJHS, the President of the NHS has responsibility for the overall operational and financial management of the organization with duties circumscribed by the Hospital's By-Laws, the Management Services Agreement with SJHS and applicable provincial legislation.

The President, in consultation with the CEO, must attend to both the internal and external dimensions of the role, by discharging these responsibilities:

### **Key Responsibilities**

The President, under the direction of the Board and CEO, will work in partnership with the Chief of Staff/EVP, Medical to realize the Board's vision, guided by our three strategic goals:

- Great patient experience
- Engaged staff, physicians and volunteers
- Financial sustainability
  
- Establish a positive, accountable and collegial working relationship with the Board of Directors, characterized by, candour, transparency, decisive leadership and open communication, to develop short and long-term strategies for the organization that fulfill NHS's vision and mandate. The President, together with the CEO, shall also provide leadership support to the Board in the discharge of its responsibilities and ensure that the Board is informed and supported in its work.
  
- Be an agent of positive change to drive the NHS forward to achieve its goals. In particular, the President will ensure a patient-centred, quality care culture within the organization. Quality and patient safety will be elevated, and outcomes improved, in a caring and attentive environment characterized by compassion, professionalism and respect.
  
- The President shall ensure that the profile of delivery resources is optimally configured in the Niagara Region, attending to the imperative of clinical quality, patient access and resource availability.
  
- The President will foster a quality culture in the organization.
  
- The President shall ensure that the organization's practices, activities and decisions are undertaken prudently and in an equitable and reasonable manner congruent with commonly accepted business practices and professional ethics. The President shall ensure that assets are protected, adequately maintained and not unnecessarily risked.

- The President shall ensure Board-stated priorities are reflected in the allocation of resources.
- The President shall ensure budgeting is based on generally accepted financial planning practices that balance expenditures in any fiscal year against expected revenues. The successful annual achievement of the Hospital Annual Planning Submission (HAPS) is recognized as a pre-requisite to the fulfillment of this principle.
- The President shall actively and visibly support the work of the One Foundation affiliated with the NHS, ensuring that giving opportunities are optimized and that donors receive grateful stewardship in both the cultivation and disposition of their donations.
- The President shall promote a healthy work environment for staff, physicians and volunteers that is consistent with the Hospital's values of compassion, professionalism and respect.
- The President shall represent the Hospital externally to the community, government, media and other organizations and agencies in a manner that engenders support, trust and collaboration.

### **Internal Hospital Environment**

- Ensure that the organizational structure and resources (organizational, human, information, financial) are aligned with NHS's Mission, Vision, Values and strategic goals. Very specifically, ensure structures and systems are in place for the NHS to provide high quality patient care to their constituents and foster a culture that puts the patient in the forefront of all decisions.
- Ensure that NHS's efficient and effective operations are optimized with a soundly conceived organizational structure populated by highly capable and accountable leaders.
- Ensure that Quality, Safety and Risk Management are priorities of the organization informing resource allocation decisions and set the tone for best practice and continuous quality improvement, recognizing innovation, excellence and creativity.
- Champion, in a fiscally prudent manner, the ongoing renewal of facilities and implementation of new technologies conducive to the provision of exemplary patient-centered care.
- Provide clear and decisive leadership, congruent with the intended direction established by

the Board, sustaining and enhancing the System's excellence.

- Continue to build solid relationships with physicians, promoting and fortifying the program model of service delivery. Ensure physician and program alignment with the new Strategic Plan being developed by the Board.
- Establish a visible and approachable presence within the NHS, fostering strong relationships with all levels of management, front line staff and unions.

### **External Environment**

- Foster a mutually satisfactory, collaborative, productive, and respectful relationship with the Hamilton Niagara Haldimand Brant Local Health Integration Network (HNHB LHIN) and the Ministry of Health and Long-Term Care.
- Build and maintain effective relationships with peers, communities, government, academic institutions and other key stakeholders to collaborate on key issues/decisions that impact on care and service delivery.
- Advance NHS' academic relationships with McMaster University's Michael G. DeGroot Medical School, Brock University, and Niagara College.
- Represent the NHS to the community, government, media, and other related organizations, agencies and associations utilizing effective communications and public relations techniques, and based on a commitment to transparency.
- Collaborate actively with the other health care organizations in the HNHB LHIN, and those in neighbouring LHINs, ensuring that the aggregate clinical profile is strong, rationalized to underscore the respective areas of clinical focus upheld by each provider organization, and to ensure the communities served have access to care on a timely, accessible basis; and
- Champion systems integration and linkages with the community and other health care partners (locally and provincially), with a view to improving the health status of the populations touched by the work of the NHS.