

## EMPLOYMENT AGREEMENT

THIS AGREEMENT is made as of the 30 day of August, 2018

BETWEEN:

**BRANT COMMUNITY HEALTHCARE SYSTEM**

(the "Hospital")

- and -

**DAVID MCNEIL**

(the "CEO")

**WHEREAS** the Lieutenant Governor in Council appointed Bonnie Adamson as Supervisor ("Supervisor") of the Hospital;

**AND WHEREAS** the Supervisor exercises all the powers of the Board of Directors ("Board") of the Hospital pursuant to an order-in-council dated August 31, 2017;

**AND WHEREAS** the parties wish to enter into an employment relationship;

**AND WHEREAS** the parties hereto have agreed that the employment of the CEO will be based upon the terms and conditions set out in this Agreement;

**NOW THEREFORE IN CONSIDERATION** of the mutual premises, agreements and covenants contained in this Agreement, the parties agree as follows:

### **ARTICLE 1 EMPLOYMENT**

#### **1.1 Agreement to Employ**

Subject to the terms and conditions of this Agreement, the Hospital agrees to employ the CEO in the position of president and chief executive officer, and the CEO agrees to work for the Hospital in such capacity; to perform the duties in compliance with applicable laws, including without limitation, the duties of Administrator as that term is defined in *Public Hospitals Act* (Ontario) to the Hospital, the Hospital's By-Law, policies, procedures, rules and regulations, all as may be amended from time to time, and this Agreement; and, to exercise the powers as may be assigned to the CEO from time to time by the Board.

#### **1.2 Term of Employment**

The CEO shall be employed by the Hospital effective from October 1<sup>st</sup>, 2018 or such other date as the parties may mutually agree upon (hereinafter referred to as the "Commencement Date").

### **ARTICLE 2 CEO COVENANTS**



## **2.1 Accountability**

The CEO shall be accountable to the Board and reports directly to the Chair of the Board

## **2.2 Full Time And Attention**

- (a) The CEO shall, throughout the term of his employment, devote his full time and attention to the business and affairs of the Hospital. The CEO acknowledges that this position will include the carrying out of the duties in the evenings and weekends, as may be required from time to time, in addition to regular business hours. The CEO shall not during his employment, without the prior written consent of the Board, undertake any other business or occupation or become a director, officer, employee, partner or agent of any other corporation, partnership, firm or person ("Other Organization").
- (b) The CEO acknowledges that to the extent that the CEO serves as director of the Hospital, he shall do so without additional remuneration. Notwithstanding any provision of this Agreement or any other agreement or document to the contrary, the CEO shall be deemed to have resigned as a director of the Hospital, contemporaneously with the termination or ending of his employment with the Hospital, for any reason, either voluntarily or involuntarily, and the CEO shall immediately upon request by the Hospital sign any and all documents necessary to give effect to such resignation.

## **2.3 Non-Disclosure and Confidentiality**

- (a) The CEO acknowledges that, in the course of performing and fulfilling the duties and obligations as the president and chief executive officer, he will have access to and will be entrusted with information concerning the Hospital activities and operations which is not generally known in the healthcare industry or other industries or businesses in which the Hospital participates ("Confidential Information"). The CEO acknowledges that the unauthorized disclosure of any Confidential Information would be detrimental to the Hospital. The CEO further acknowledges and agrees that the right to maintain confidential such Confidential Information is a proprietary right that the Hospital is entitled to protect.
- (b) The CEO therefore agrees not to disclose either during the term of employment or at any time after leaving the employ of the Hospital any such Confidential Information to any person or use any such Confidential Information except as required in the normal course of employment by the Hospital or as required by law. The CEO shall not be prohibited by this non-disclosure provision from using personal skills and knowledge developed prior to and during his employment with the Hospital.

## **2.4 Hospital's Property**

The CEO acknowledges that all items of any kind created or used by the CEO on behalf of the Hospital during the course of employment with the Hospital or provided by the Hospital to the CEO, including but not limited to, all written materials, manual, software, processes, equipment, credit cards, books, Confidential Information or other materials,





shall remain and be considered the exclusive property of the Hospital at all times and which the CEO agrees to deliver to the Hospital at any time, upon reasonable request.

The CEO will be responsible for taking all reasonable precautions to safeguard any of the Hospital information and property (i.e. laptop computer, cell phone, blackberry) that may be in the CEO's possession.

### **ARTICLE 3 COMPENSATION AND EXPENSES**

#### **3.1 Wage Restraint Legislation**

The parties agree that Article 3 is subject to any applicable wage restraint legislation.

#### **3.2 Annual Base Salary**

The Hospital agrees to pay the CEO an annual base salary of three hundred and forty-two thousand dollars (\$342,000) for a full time 1 FTE commitment subject to the usual deduction and payable in arrears on a bi-weekly basis.

#### **3.3 Annual Base Salary Increases**

The salary of the CEO shall be reviewed by the Hospital in accordance with applicable hospital policy (as it exists from time to time), taking into account, the results of the CEO's annual performance review for the previous year, the approved executive compensation plan and any applicable wage restraint legislation or related government guidelines.

#### **3.4 Performance Payment**

The CEO is eligible to earn a performance payment of up to 3.0% of his then base annual salary.

#### **3.5 Business Expenses and Reimbursement**

The Hospital shall reimburse the CEO for all reasonable travel and other out-of-pocket expenses actually and properly incurred, as evidenced by original third party receipts, on behalf of the Hospital in accordance with applicable Hospital policies and procedures. Any single expense item in excess of five hundred dollars (\$500) must be approved in advance by the Supervisor or, in the event that there is no Supervisor, by the Chair of the Board.

#### **3.6 Benefits**

The Hospital agrees to pay for, and provide to the CEO, the following:

- (a) Participation in the Hospital's group employee benefit plans as described in the Executive Group, Your Group Benefits booklet in accordance with the terms of such plans and arrangements. The Hospital reserves the right to reasonably amend the plans at any time with reasonable notice to the CEO, provided that the resulting plans are substantially similar to the current plans. It is understood that

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the Hospital's sole liability is to pay the cost of premiums or other costs which the Hospital has agreed to undertake and that the Hospital does not assume the role of insurer.

- (b) Participation in the Hospitals of Ontario Pension Plan ("HOOPP"), in accordance with its terms and conditions (as may be amended from time to time).
- (c) Reasonable expenses to support the CEO's ongoing development and education as approved by the approved from time to time by the Chair of the Board. The CEO, agrees to participate in and complete such educational training as may be required to maintain his competency.
- (d) Professional membership fees incurred in not more than three (3) professional organizations that are reasonable and approved in advance from time to time by the Chair of the Board.
- (e) The Hospital shall provide the CEO, with an annual Healthcare Spending Account of three thousand five hundred dollars (\$3,500).
- (f) The Hospital shall provide the CEO with a monthly automobile allowance of eight hundred dollars (\$800).
- (g) The Hospital shall provide the CEO with a corporate portable computer, a home printer, and a cellular phone (and related data access and service plans).

### **3.7 Vacation**

The CEO, shall be entitled to six (6) weeks vacation consistent with the Hospital policy in each service year during the term of this Agreement. The CEO shall take vacation at a time or times mutually agreeable to the CEO and the Chair of the Board. Unused vacation may not be carried over into a subsequent year unless approved by the Chair of the Board.

## **ARTICLE 4 PERFORMANCE EVALUATION**

### **4.1 Annual Performance Evaluation Process**

The annual performance evaluation process is set out in the Board Governance Manual as may be amended from time to time.

## **ARTICLE 5 TERMINATION OF EMPLOYMENT**

### **5.1 Resignation**

The CEO may resign from his position at any time provided the CEO gives the Hospital three (3) months' notice, in writing. Upon receipt of notice of resignation the Hospital may, at its sole discretion, waive or abridge the notice period. Should the Hospital waive or abridge the notice period, then the CEO will be paid and will continue to participate in





the benefit plans, if permissible under such plans, as if he had worked during the three (3) months' notice period.

## 5.2 Termination of Employment by the Hospital for Cause

The Hospital may terminate this Agreement at any time for Cause by written communication, without payment of any compensation, either by way of anticipated compensation or damages of any kind except for any compensation or other amount accrued or earned to date of termination. "Cause", for the purpose of this Agreement, shall be as established by the laws of the Province of Ontario and at common law.

## 5.3 Termination without Cause by the Hospital

- (a) (i) In the absent of cause, this Agreement may be terminated by the Hospital, in its absolute discretion, for any reason and at any time by giving the CEO prior notice in writing equal to twelve (12) months, plus one (1) additional month for each full year of service up to a maximum of eighteen (18) months' notice in total (the "Notice Period") or on paying to the CEO the equivalent lump sum payment ("Severance Payment") in lieu of such notice, or combination of notice and payment in lieu. During the Notice Period, the CEO shall have a positive obligation to mitigate the amounts payable by the Hospital under this Section by taking all reasonable steps to find reasonable employment (including consulting and contract work).
- (ii) (A) **Benefits.** Subject to the terms and conditions of the applicable plan policies, the Hospital shall continue the CEO's extended health care, semi-private, travel and dental benefit coverage during the Notice Period. The CEO's short term disability and long-term disability coverage will end in accordance with the notice period required in the *Employment Standards Act* (Ontario) ("ESA").
- (B) **Pension.** The CEO will continue to be eligible to participate in HOOPP during the Notice Period.
- (C) **Vacation Pay.** The CEO will be paid eligible accrued but unused vacation pay owing as of the separation date. No further vacation credits shall accrue beyond the separation date.
- (D) **Health Spending Account.** Eligibility for the Health Spending Accounting will be terminated as of the separation date.
- (E) **Outplacement Counselling.** If the termination of employment is pursuant to this Section 5.3(a), the Hospital will provide career outplacement counseling to a maximum value of eight thousand dollars (\$8,000).



- (b)
  - (i) The CEO agrees to accept the payments as set out in Section 5.3(a) in full and final settlement of all amounts owing to him by the Hospital on termination, including any payment in lieu of notice of termination, entitlement of the CEO under any applicable statute including the ESA and any rights that the CEO may have at common law, and the CEO waives any claim to any other or future payment or benefits from the Hospital. For greater certainty, in the event the CEO is paid a Severance Payment, all benefits including HOOPP shall end on the date of the receipt of the Severance Payment.
  - (ii) The payments that exceed the payments required under the ESA are conditional upon the CEO signing a full and final release reflecting the content of this Section 5.3. In the event the minimum statutory requirements as at the date of termination provide for a right or benefit that is greater than that provided for in this Agreement, such statutory requirements will replace the payments contemplated under this Agreement.

#### **5.4 Return of Hospital Property**

Upon termination of this Agreement for any reason, the CEO acknowledges that all items of any kind created or used by him pursuant to his employment or furnished by the Hospital to him including, but not limited to, all written materials, procedures, policies, manuals, software, processes, equipment, books, records, credit cards, reports, files, diskettes, manuals, literature, Confidential Information, or other materials shall remain and be considered the exclusive property of the Hospital, as applicable, at all times, and shall be surrendered to the Hospital, in good condition (subject to normal wear and tear), promptly without being requested to do so.

#### **5.5 Restructuring**

The CEO hereby acknowledges and agrees that he will not be deemed dismissed, constructively or otherwise, in the event of a government-mandated restructuring of the health care system that results in the Hospital's operations being assumed by a regional health authority, a local health integration network or other organization, provided the restructuring does not materially affect the CEO's responsibilities to administer the operations of the Hospital's facilities as the most senior employee on site (i.e., perhaps as a site administrator) and there is no decrease in the CEO's compensation.

#### **5.6 Death**

This Agreement shall end without notice upon the death of the CEO. In the event of death, any outstanding salary, performance payments and eligible expenses and allowances will be paid out to the Estate of the CEO.

#### **5.7 Disability**

This Agreement shall terminate in the event that the CEO is absent from the performance of his duties and unable to perform them for a continuous period of at least one (1) year, and the Hospital has reviewed the CEO's circumstances and determined that there is no





reasonable likelihood that he will return to his position in the near future, or that his needs cannot be accommodated by the Hospital such that he could return to his position. In such an event, the Hospital shall, notwithstanding any other provisions contained in this Agreement, have no obligation to make payments to the CEO for notice or severance, other than amounts and entitlements owing for notice or severance under the ESA, if applicable.

#### **5.8 Confidentiality**

The parties agree that, if at any time in the future a dispute arises in relation to the termination of the CEO's employment, any settlement of the dispute and all negotiations leading up to the settlement will remain confidential. The parties agree not to disclose the terms and conditions of any such settlement to any other party except their legal and financial advisors, or as required by law, and in the case of the CEO, disclosure to the CEO's partner or immediate family is also permitted.

### **ARTICLE 6 INSURANCE AND INDEMNIFICATION**

#### **6.1 Liability Insurance**

The Hospital shall insure the CEO under their general liability policy both during and after the term of his employment, for all acts done by the CEO in good faith and in the execution of his office as president and chief executive officer, throughout the term of his employment, including where the CEO is specifically named in a lawsuit launched by a patient, employee, member of the medical staff, or any other person.

#### **6.2 Indemnification**

The Hospital will provide the CEO with the same indemnification protection that it provides to its volunteer Directors to the fullest extent permitted by law.

### **ARTICLE 7 GENERAL PROVISIONS**

#### **7.1 Binding Agreement**

This Agreement constitutes the entire agreement between the parties and all promises, representations, understandings, arrangements and prior agreements are merged into and superseded by this Agreement. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express or implied, between the parties other than as expressly set forth in this Agreement.

#### **7.2 Sections and Headings**

The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.

#### **7.3 Amendments and Waivers**



This Agreement may be amended by mutual agreement in writing of the Hospital and the CEO, and no amendment to this Agreement shall be valid or binding unless in writing and executed by both parties to this Agreement. No waiver of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver.

#### **7.4 Severability**

Should any provision of this Agreement become invalid, illegal or unenforceable, it shall be considered separate from the Agreement and the remaining provisions shall remain in force and binding upon the parties as though such provisions had not been included.

In the event of any conflict between the provisions of this Agreement and the requirements of the ESA, the requirements of the ESA shall govern.

#### **7.5 Governing Law**

This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the Province of Ontario.

#### **7.6 Enurement**

The CEO may not assign, pledge or encumber the CEO's interest in this Agreement nor assign any of the rights or duties of the CEO under this Agreement without the prior written consent of the Hospital. This Agreement shall be binding on and enure to the benefit of the successors and assigns of the Hospital and the heirs, executors, personal legal representatives and permitted assigns of the CEO.

#### **7.7 Dispute Resolution**

- (a) The Parties shall endeavour to resolve any differences of opinion that may arise between them with respect to the provisions of this Agreement by negotiation between themselves personally or with the assistance of their solicitors. Unless, in the opinion of either party, acting reasonably, the matter in dispute is of such a significant nature as to warrant it being addressed otherwise, neither party shall commence any public proceedings until such negotiations have failed to produce a resolution. In furtherance of the provisions of this Section, both Parties agree to make themselves available on short notice and to negotiate promptly, and in good faith, any matter either party may wish to negotiate.
- (b) The Parties agree that no report of anything said or of any admission or communication made in the course of such negotiations shall be used as evidence or shall otherwise be admissible in any legal proceeding, except with the consent, in writing, of all Parties.
- (c) If, in the opinion of either party, acting reasonably, it is unlikely to expect the matter in dispute as between the Parties to be resolved by continued negotiations, or if the matter is of such a significant nature as to warrant it being addressed





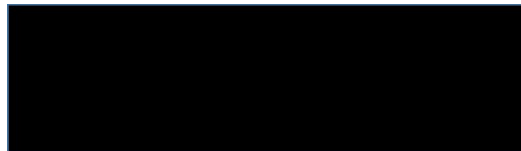
otherwise, the matter in dispute shall be submitted to and shall be subjected to arbitration pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).

- (d) The party desiring arbitration shall nominate one (1) arbitrator and shall notify the other party of such nomination in writing. Within ten (10) days after receiving such notice, the other party may agree to the one (1) nominated arbitrator. Failing such agreement, the arbitration shall be conducted by a panel of three (3) arbitrators, one (1) of whom shall be appointed by the Hospital, one (1) by the CEO, and the third (3<sup>rd</sup>) (who shall be the chair of the arbitration panel) by agreement of the other two (2). If the latter two (2) arbitrators are unable to agree in the selection of such chair, the chair shall be designated by a judge of the Ontario Superior Court of Justice upon an application by either party.
- (e) The arbitration shall take place in a location determined by the Hospital within one hundred and fifty (150) kilometres from the Hospital. The decision of the arbitrator or arbitration panel (as the case may be), in writing, shall be binding upon the Parties both in respect of procedure and the conduct of the Parties during the proceedings and the final and binding determination of the issues, without recourse to appeal. The arbitrator or arbitration panel (as the case may be) shall, after hearing any evidence and representations that the Parties may submit, make their decision and reduce the same to writing and deliver one (1) copy to each of the Parties.
- (f) The expenses of the arbitral tribunal shall be paid as to eighty percent (80%) by the Hospital and as to twenty percent (20%) by the CEO subject only to the following: in the event that there are three (3) arbitrators, the costs of the one (1) arbitrator appointed by the Hospital shall be paid as to one hundred percent (100%) by the Hospital and the costs of the one (1) arbitrator appointed by the CEO shall be paid as to one hundred percent (100%) by the CEO.

## 7.8 Notices

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and may be given by personal delivery or by registered mail addressed to the recipient as follows:

To the CEO:



To Hospital at: 200 Terrace Hill Street  
Brantford, ON N3R 1G9  
Attention: Board Chair

or to such other addresses or individuals as may be designated by notice by either party to the other. Any communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery and, if made or given by registered mail, on the fifth day, other than a Saturday, Sunday or statutory holiday in Ontario following deposit in the mail. If the party giving any communication knows or ought reasonably to

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know of any difficulties with the postal system which might affect the delivery of mail, any such communication shall not be mailed but shall be given by personal delivery.

**7.9 Counterpart**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument. Delivery by facsimile or email of any executed counterpart of this Agreement shall be equally as effective as delivery of a manually executed counterpart thereof.

**IN WITNESS WHEREOF** the parties execute this Agreement as of the day, month and year first written above.

**BRANT COMMUNITY HEALTHCARE SYSTEM**

By: \_\_\_\_\_

Name: Bonnie Adamson

Title: Supervisor

\_\_\_\_\_  
David McNeil

*August 30, 2018*