

## EMPLOYMENT AGREEMENT

THIS AGREEMENT is made as of the 3<sup>rd</sup> day of June, 2020

BETWEEN:

**Englehart and District Hospital Inc.**

(the "Employer")

- and -

**Sean Conroy**

(the "CEO")

**WHEREAS** the Englehart and District Hospital (the "Employer") and Kirkland and District Hospital ("KDH") (together, the "Hospitals") are independent corporations delivering hospital, complex continuing care, community and related health services to individuals in the District of Timiskaming, Ontario;

**AND WHEREAS** the Hospitals believe that the hospital, complex continuing care and related health services are best delivered by a collaborative system which emphasizes the elimination of unnecessary duplicate services, programs, or departments and encourages the specialization of hospital organizations and stresses collaborative recognition of the desire to maximize the utilization of the limited resources available to the Hospitals for the delivery of health care services in the District of Timiskaming;

**AND WHEREAS** the Hospitals have entered into a Joint Board Agreement to establish a Joint Board Committee (the "Joint Board") to govern and oversee the Hospitals as a coordinated system of health services with two separate legal operating services for the provision of hospital services in accordance with the *Public Hospitals Act*;

**AND WHEREAS** the Hospitals have a services arrangement for the provision of CEO services by the Employer to KDH ("**Services Arrangement**");

**AND WHEREAS** the Employer wishes to employ the CEO as the CEO of the Hospitals and the CEO wishes to provide chief executive officer services (as hereinafter defined) to the Hospitals 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 Employer agrees to employ the CEO in the position of Chief Executive Officer for the Employer and KDH and the CEO agrees to work for the Employer in such capacity, including performing the duties in compliance with applicable laws and the Hospitals' By-Laws, policies, procedures, rules, and regulations, all as may be amended from time to time, and to exercise the powers as may be assigned to him from time to time by the Employer.

## **1.2 Term of Employment**

The CEO shall be employed as CEO by the Employer effective from June 15, 2020 (the "**Commencement Date**") and continue in such employment until the termination in accordance with Article 5 of this Agreement.

## **ARTICLE 2 CEO'S COVENANTS**

### **2.1 Exclusive Service**

During the term of this Agreement, the CEO agrees to faithfully perform the assigned duties and apply his best efforts to promote the interests of the Hospitals and the healthcare industry. The CEO shall devote the whole of his working time and attention to the business affairs of the Hospitals and shall not, unless the CEO has the consent of the Joint Board, which consent will not be unreasonably withheld, engage either directly or indirectly in any other business or occupation of a permanent, temporary, or part-time nature.

### **2.2 Non-Disclosure and Confidentiality**

The CEO acknowledges that, in the course of performing and fulfilling the duties and obligations as the Chief Executive Officer, he will have access to and will be entrusted with information concerning the Employer's activities and operations which is not generally known in the healthcare industry or other industries or businesses in which the Employer participate ("**Confidential Information**"). The CEO acknowledges that the unauthorized disclosure of any Confidential Information would be detrimental to the Employer. The CEO further acknowledges and agrees that the right to maintain confidential such Confidential Information is a proprietary right that the Employer are entitled to protect.

The CEO therefore agrees not to disclose either during the term of employment or at any time after leaving the employ of the Employer any such Confidential Information to any person or use any such Confidential Information except as required in the normal course of employment by the Employer 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 Employer.

When rendering the services to KDH, the CEO will abide by this section 2.2 of this Agreement in respect of Confidential Information relating to KDH and to that end, all references to "Employer" in this section 2.2 shall apply to KDH.

### **2.3 Policies and Regulations**

The CEO agrees to be bound by and agrees to faithfully observe and abide by all the policies and regulations of the Hospitals that are in force from time to time and which are brought to his attention or of which the CEO should reasonably be aware when delivering the services to the the Hospitals.

### **2.4 The Employer's Property**

The CEO acknowledges that all items of any kind created or used by the CEO on behalf of the Employer during the course of employment with the Employer or provided by the Employer to the CEO, including but not limited to, all equipment, credit cards, books, Confidential Information or other materials, shall remain and be considered the exclusive property of the Employer at all

times and which the CEO agrees to deliver to the Employer at any time, upon reasonable request.

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

The CEO acknowledges that all items of any kind created or used by the CEO on behalf of KDH during the course of employment with the Employer or provided by KDH to the CEO, including but not limited to, all equipment, credit cards, books, Confidential Information or other materials, shall remain and be considered the exclusive property of KDH at all times and which the CEO agrees to deliver to KDH at any time, upon reasonable request.

The CEO will be responsible for taking all reasonable precautions to safeguard any of KDH information and property (i.e. laptop computer, smartphone) 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 and/or prescribed compensation framework.

#### **3.2 Base Salary**

- (a) The pay range for the CEO position is \$200,000 to \$240,000 ("**Pay Range**"). The Pay Range is divided into the following grids:

Grid 1: \$200,000

Grid 2: \$210,000

Grid 3: \$220,000

Grid 4: \$230,000

Grid 5: \$240,000

The Parties agree that every five (5) years, the Board shall review the grid to ensure that it reflects fair compensation for the CEO's salary base.

- (b) The Employer agrees to pay the CEO a base salary of two hundred and ten thousand dollars (\$210,000) per annum (Grid 2).
- (c) After twelve (12) months of employment as the CEO or completion of the executive coaching program as required by the Employer, whichever occurs later, the CEO's base salary shall be increased to two hundred and twenty thousand dollars (\$220,000) per annum (Grid 3).
- (d) The CEO acknowledges that the base salary includes the delivery of services to both Hospitals.

### 3.3 Annual Salary Increases

Annual salary increases beyond the CEO's salary referred to in Section 3.2(b) and (c), will be based upon the CEO's performance, the Hospitals' financial resources, the dictates of any applicable legislation, and will be consistent with generally accepted compensation practices. Any proposed increase in the CEO's base salary will consider the assessment of the CEO's performance by the Joint Board consistent with the current policy and will be consistent with the pay grids set out in paragraph 3.2(a) above.

It is acknowledged that under the current applicable wage restraint legislation and/or prescribed compensation framework, the maximum annual salary that the CEO can earn under the pay grid is \$230,000.

### 3.4 Performance Payment

- (a) The CEO may be eligible to earn a performance payment of up to five percent (5%) of the annual base salary as a performance incentive.<sup>1</sup>
- (b) The determination of whether a performance payment is paid shall be made by the Joint Board and in recognition of the CEO's achievement of the strategic goals, objectives, and operational targets set annually by the Joint Board. These strategic goals, objectives and operational targets shall be linked to the following factors:
  - (i) Achievement of articulated government priorities;
  - (ii) Successful attainment of performance improvement targets within the Hospitals' Quality Improvement Plan;
  - (iii) Attainment of other goals and objectives and operational targets established by the Joint Board; and
  - (iv) Such other factors as the Joint Board may agree from time to time.

The performance payment, if any, will be determined by the Joint Board and paid by the Employer for each fiscal year on or before June 30th of the following year, after the data for the expired fiscal year necessary to review the strategic goals, objectives and operational targets is available.

- (c) The Joint Board's decision to deduct or pay a performance incentive payment pursuant to Article 3.4 does not result in an adjustment to the future base salary payable to the CEO.
- (d) The performance incentive compensation will be included in the CEO's Healthcare of Ontario Pension Plan ("HOOPP") pensionable earnings if permitted under the terms of the Plan.

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<sup>1</sup> The parties acknowledge that performance pay is required by the *Excellent Health Care for All Act, 2010* and that the maximum performance envelope available to provide performance pay to the CEO and all of the Employer's executives is prescribed at this time by Ontario Regulation 406/18 of the *Broader Public Sector Executive Compensation Act, 2014* and is subject to any other legislative or regulatory requirements and/or restrictions.

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

- (a) The Employer shall reimburse the CEO for all reasonable travel and other out-of-pocket expenses actually and properly incurred by him on behalf of the Employer in accordance with applicable Employer policies and procedures.
- (b) The CEO shall be reimbursed for, or the Employer shall pay, up to two (2) annual professional membership fees in order to maintain active membership in Professional Associations which are relevant to the position held.

### **3.6 Mileage Reimbursement**

The CEO shall be eligible for reimbursement for mileage expenses in accordance with the applicable Policy as may be amended from time to time.

### **3.7 Benefits, Pension and Vacation**

The CEO shall participate in any and all plans providing benefits of the Employer including but not limited to: group life insurance, extended health care and dental benefits, short term and long term disability benefits; and any and all other similar or comparable benefits available to senior management employees of the Employer. All plans and benefits shall commence for the CEO on the Commencement Date. The CEO shall be eligible for participation in the Healthcare of Ontario Pension Plan (HOOPP) on the same basis as available to senior management employees of the Employer.

The CEO shall be entitled to six (6) weeks' vacation consistent with the Employer 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 Joint Board Chair. Unused vacation may not be carried over into a subsequent year without the Joint Board Chair's prior written approval.

## **ARTICLE 4 PERFORMANCE EVALUATION**

### **4.1 Performance Evaluation Process**

The process of the CEO's performance evaluation will be established by the Joint Board. The system may include a 360-degree process in which individuals knowledgeable of the CEO's performance may participate in the evaluation. Annual strategic goals, objectives and operational targets will be set with the CEO. Performance evaluation will be conducted annually.

### **4.2 Professional Development**

The CEO will have access to up to seven thousand five hundred dollars (\$7,500) annually to be used for professional development including the costs of registration, travel, and accommodation for such activities. Participation in such activities will be discussed with the Board Chairs and approved prior to registration and original copies of all invoices will be required for reimbursement.

**ARTICLE 5  
TERMINATION OF EMPLOYMENT**

**5.1 Resignation by CEO**

The CEO may resign from his position at any time provided that the CEO gives the Employer three (3) months' notice in writing. Upon receipt of notice of resignation the Employer may, in its sole discretion, waive or abridge the notice period. Should the Employer waive or abridge the notice period, then the CEO will be paid as if he had worked during the waived or abridged period.

**5.2 Termination of Employment by the Employer for Cause**

The Employer 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.

**5.3 Termination without Cause by the Employer**

- (a) The Employer may terminate the employment of the CEO pursuant to this Agreement without Cause at any time during the term of this Agreement by providing twelve (12) months' notice of termination (the "**Notice Period**"). At the Employer's sole discretion, the Employer may instead provide a lump sum payment for the Notice Period in lieu of notice of termination or a combination of notice of termination and payment in lieu of such notice for the Notice Period.
- (b) In the event that the Notice Period entitlement is triggered, if the CEO obtains Alternate Employment at any time before the expiry of Notice Period, the Employer will immediately stop payments under Article 5.3(a) above and pay the CEO instead a lump sum amount equal to:
  - (i) the balance remaining, if any, for the ESA Notice Period (defined in Article 5.3(c));
  - (ii) the balance remaining, if any, for ESA Severance (defined in Article 5.3(c)); and
  - (iii) fifty percent (50%) of the remaining payments in excess of those required for the ESA Notice Period and ESA Severance that the CEO would have been paid under Article 5.3(a) if the CEO had not obtained other employment.

For the purposes of this section and section 5.3(d), "Alternate Employment" shall be defined as employment or self-employment wherein the Employee earns, over a four-week period, an amount equivalent to at least eighty percent (80%) of the income that the Employee would have earned in a four-week period under the Agreement.

- (c) The payments under this Article 5.3 include all entitlements to either notice of termination or pay in lieu of such notice ("ESA Notice Period") and severance pay ("ESA Severance") under the *Employment Standards Act, 2000* ("ESA"). The payments under Article 5.3(a) that exceed the notice of termination and/or

payments required under the ESA are conditional upon the CEO signing a full and final release in a form acceptable to the Employer. In the event that the minimum statutory requirements under the ESA as at the date of termination provide for a right(s) and/or benefit(s) that is greater than that provided for in this Agreement, such statutory requirements will replace the payments contemplated under Article 5.3(a) this Agreement.

- (d) It is understood that if termination occurs pursuant to Article 5.3, all disability benefits and vacation accruals shall terminate on the last day of employment, or at the end of the ESA Notice Period as required by the ESA, whichever is later. Any other benefits, including life insurance, health, dental, and pension, will continue for the ESA Notice Period as required by the ESA (even if the CEO finds other employment during the Notice Period) and, to the extent permitted under the terms and conditions of the applicable benefits plan and pension plan, until the expiry of the Notice Period. If the CEO obtains Alternate Employment at any time before the expiry of Notice Period, all benefits that were to be continued under this Article 5.3(d) for the balance of the Notice Period shall cease immediately, except those benefits that are required to be continued for the ESA Notice Period.
- (e) 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 Employer to him including, but not limited to, all 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 Employer at all times, and shall be surrendered to the Employer in good condition, promptly without being requested to do so.
- (f) The CEO hereby acknowledges and agrees that he will not be deemed dismissed, constructively or otherwise, in the event of an amalgamation of the Employer with another hospital(s) or a government-mandated restructuring of the health care system that results in the Employer's operations being assumed by a regional health authority, a local health integration network, or other organization, provided that the restructuring does not materially affect the CEO's responsibilities to administer the operations of the Employer'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 salary or benefits.
- (g) The CEO acknowledges that the notice and payment described above are in complete satisfaction of any and all rights to notice, pay in lieu of notice, severance pay, benefits, and any other claim that the CEO would have otherwise at common law or under any statute. Upon receipt of the entitlements under this Article 5.3(a)-(d) the CEO acknowledges that he will not have any claim against the Employer, its employees, agents, and officers, in any way related to his hiring, employment with, or the termination of his employment by the Employer.

#### **5.4 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.

## **ARTICLE 6 DISABILITY**

### **6.1 Disability**

- (a) If the CEO becomes eligible for long term disability benefits under the Employer's general disability policy, this Agreement shall be deemed frustrated at the discretion of the Employer, and in such event the Employer 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 owing for notice of termination and severance pay under the *Employment Standards Act, 2000*.
- (b) Payment of long term disability benefits will be determined only by the insurer's definition of disability and the Employer shall have no liability with respect to long term disability benefits.
- (c) The CEO agrees to accept his entitlement for notice and severance pursuant to Article 6.1(a) above as full and final settlement of all amounts owing to him by the Employer for notice of termination and severance pay in the event that this Agreement is frustrated as outlined in Article 6.1(a).

## **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. This Agreement revokes and supersedes any prior agreement between the CEO and the Employer or a legacy institution respecting the employment of the CEO.

### **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 Employer 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, shall be limited to the specific breach waived.



#### **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 invalid, illegal, or unenforceable provision had not been included.

#### **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 Employer. This Agreement shall be binding on and enure to the benefit of the successors and assigns of the Employer 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 arbitrator and shall notify the other party of such nomination in writing. Such other party shall, within ten (10) days after receiving such notice, nominate an arbitrator, and the two arbitrators shall select a chair of the arbitral tribunal to act jointly with them. If the arbitrators shall be unable to agree in the selection of such chairman, the chair shall be designated by a judge of the Ontario Superior Court of Justice of the District of Timiskaming upon an application by either party.

- (e) The arbitration shall take place in a location determined by the Employer. The decision of the arbitrators and chair or any two of them, 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 arbitrators and the chair shall, after hearing any evidence and representations that the Parties may submit, make their decision and reduce the same to writing and deliver one copy to each of the Parties.
- (f) If either party receiving the notice of the nomination of any arbitrator by the party desiring arbitration fails within the said ten (10) days to nominate an arbitrator, the arbitrator nominated by the party desiring arbitration may proceed alone to determine the dispute in such manner and at such time as the arbitrator shall think fit and the arbitrator's decision shall, subject to the provisions hereof, be binding upon the Parties.
- (g) Notwithstanding the foregoing, any arbitration may be carried out by a single arbitrator if the Parties so agree, in which event the provisions of this Section shall apply with necessary changes.
- (h) The arbitrator(s) shall determine the allocation of solicitor costs and the cost of the arbitration between the Parties.

#### **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 EDH:                   **Attention: Sean Conroy**  
                                  **61-5th Street**  
                                  **Englehart, ON**  
                                  **P0J 1H0**  
                                  **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 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.

***[signature page follows]***



