

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made as of the 1st day of April, 2020.

B E T W E E N:

PETERBOROUGH REGIONAL HEALTH CENTRE

(hereinafter referred to as the "Employer")

OF THE FIRST PART

- and -

Mr. Sean Martin

(hereinafter referred to as the "Employee")

OF THE SECOND PART

WHEREAS the Employer has created the position of Associate Vice President effective April 1, 2020;

AND WHEREAS the Employer wishes to employ the Employee and the Employee wishes to be employed by the Employer and upon the terms set forth in this Agreement;

THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein the parties agree as follows:

1. **EMPLOYMENT**

- a) The Employee is employed as an Associate Vice President.
- b) The Employee is employed on a full-time basis for the Employer and it is understood that the hours of work involved will vary and may be irregular. The Employee acknowledges that this clause constitutes agreement to work such hours.
- c) The Employee agrees to carry out all lawful instructions given to the Employee by the Employer.
- d) The Employee agrees to observe all policies of the Employer as the Employer may in its absolute discretion create from time to time and to perform all services associated with the position herein.
- e) The Employee agrees that during the currency of this Agreement, the Employee shall devote the Employee's full-time and skill to the duties and responsibilities contemplated herein and shall not be engaged in any

other employment in any other capacity or any other activity that interferes with the provision of the services contemplated herein or that is for the benefit of any person, corporation or enterprise whose business interests are either competitive or in conflict with those of the Employer. Requested participation of the Employee in an external project or other undertaking, deemed advantageous to the Employer and the Employee's professional development, is subject to the President and CEO's approval.

2. **CONFIDENTIALITY AND NON-DISCLOSURE**

- a) The Employee acknowledges that during his employment with the Employer, he will acquire access to confidential information. "Confidential Information" includes, but is not limited to, information pertaining to finances, patients, employees, and supplier information, including personal health information under the *Personal Health Information Protection Act, 2004*, computer programs, private business activities, organizational plans and strategies, marketing information or plans, procedures, systems, and practices, negotiations of contracts, and any other information which in good faith and good conscience ought to be treated as confidential related to the Employer and either of their patients, patient families, employees or contractors.
- b) During his employment and thereafter, the Employee shall:
 - (i) Maintain the strictest confidence and secrecy of all Confidential Information;
 - (ii) Take all reasonable precautions to prevent the unauthorized disclosure and dissemination of Confidential Information;
 - (iii) Not use Confidential Information for his own benefit or for the benefit of any other person; and
 - (iv) Not disclose to any other person or entity any Confidential Information at any time, either orally or in writing, or otherwise, in any manner, directly or indirectly, unless and until such Confidential Information has ceased to be confidential.
- c) The Employee shall not (either during his employment or any time thereafter) disclose any information relating to the private or confidential affairs of the Employer to any person other than for the purposes of the Employer or as required by law.
- d) The obligations in this Agreement in respect of Confidential Information also apply to personal health information under the *Personal Health Information Protection Act, 2004*, and in the event of any conflict, the higher standard will apply. The Employee shall comply with all relevant requirements such as the *Freedom of Information and Protection of Privacy Act, 2004*, and any other

applicable legislation and regulations thereunder with respect to the confidentiality of medical or hospital records.

- e) All Confidential Information and property of the Employer shall be promptly returned upon request by the Employer, and upon termination of this Agreement.

3. **TERM of EMPLOYMENT**

This Agreement will commence effective April 1, 2020 and continue until employment comes to an end as contemplated in section 8 of this agreement.

4. **SALARY AND BENEFITS**

- a) The Employee's compensation, benefits, and any other remuneration is subject to and may be amended pursuant to all current and future applicable legislation and directives, including but not limited to the *Excellent Care for all Act, 2010*, the *Broader Public Sector Accountability Act, 2010*, the *Broader Public Sector Executive Compensation Act, 2014*, and any compensation frameworks established or created pursuant to the *Broader Public Sector Executive Compensation Act, 2014* and O. Reg. 406/18 thereunder.
- b) For all services rendered by the Employee in the course of the employment hereunder, the Employee shall receive a gross annual salary of \$ 215,000 (subject to statutory withholdings and deductions). The said salary is to be paid at such times and in such fashion as is in keeping with the ordinary practices and policies of the Employer. Such salary shall be reviewed periodically by the Employer and, subject to section 4(a) of this Agreement, may be increased from time to time by the Employer as the Employer may in its absolute discretion decide without the necessity of an amendment hereto.
- c) As a member of the Executive Team the Employee is required to have a percentage of his compensation tied to the improvement targets which are linked to the annual Quality Improvement Plan for the Health Centre as required under the *Excellent Care for All Act 2010*. The performance pay formula will be set at the start of each fiscal year.
- d) The Employee shall be entitled to participate in such additional health and dental benefits as are enjoyed from time to time generally by employees in accordance with the established practices and policies of the Employer as the Employer may in its absolute discretion create or amend from time to time. In this regard, the Employee acknowledges having received a copy of the benefit documentation in force as of the date hereof.
- e) The Employee will participate in HOOPP.

- f) The Employer will provide the Employee with any and all office equipment reasonably necessary to perform the duties contemplated herein. The Employer shall also reimburse the Employee for all legitimate business expenses including travel expenses which are approved by the Employer and which are incurred by the Employee in the performance of the services contemplated herein. The Employee shall provide the Employer with vouchers, receipts, statements and any other requested documentation in respect of all such expenses.

5. **VACATION**

In each full year of employment, the Employee shall be entitled to six (6) weeks' paid vacation to be taken at a time mutually agreeable to the Employee and the President and CEO. It is understood that vacation entitlement may not be accumulated but must, with respect to any completed year, be taken within the twelve (12) months following the end of such year unless otherwise approved by the President and CEO.

6. **MEMBERSHIP FEES**

The Employer shall pay the cost of the Employee's professional membership fees in up to two (2) health care leaders or professional associations.

7. **PROFESSIONAL DEVELOPMENT ACTIVITY**

The Employer will pay for the Employee's registration and travel expenses associated with reasonable ongoing professional development activity up to \$5000/annum. For all such expenses, the Employee shall furnish to the Employer statements and vouchers as and when required by the Employer.

8. **TERMINATION OF EMPLOYMENT BY EMPLOYER**

Notwithstanding anything herein contained to the contrary, this Agreement may be terminated in the following manner:

a) **Termination for Cause**

The Employer shall be entitled to terminate this Agreement at any time and without notice, or payment in lieu thereof, if the conduct of the Employee is such as to constitute just cause for summary dismissal under the common law and the *Employment Standards Act, 2000* as amended from time to time, or applicable successor legislation (the "ESA"). The parties agree that unless otherwise required by the ESA, just cause shall include the wilful refusal or failure of the Employee to perform the duties and responsibilities established under this Agreement, or any other cause deemed sufficient in law or in any other circumstances in which no notice or payment in lieu thereof is required by law.

b) **Termination on Notice**

- (i) The Employer shall be entitled to terminate this Agreement at any other time without just cause by providing the Employee with twelve (12) months' notice or base salary and incentive compensation (if any) in lieu of notice plus an additional one month's notice or base salary and incentive compensation in lieu of notice for each year of completed service with the Employer from April 9, 2013 to a maximum of eighteen (18) months' notice or base salary and incentive compensation (if any) in lieu of notice (the "Notice Period"). Incentive compensation (if any) in lieu of notice shall be determined with respect to the prior year's incentive compensation, if any. The payments under this section shall be paid by way of a compensation continuance with all applicable deductions and withholdings, including those set out in section 8(b)(ii) of this Agreement, except that any severance pay required by the *ESA* will be provided to the Executive in a lump sum, less applicable deductions.
- (ii) In addition to the foregoing, the Employer shall provide the following during the Notice Period:
 - a. pay the Employee's vacation entitlement accrued up to the date of termination and through the minimum notice period prescribed by the *Employment Standards Act, 2000*;
 - b. continue the Employee's health and insurance benefits coverage for the length of the Notice Period insofar as such benefits may be continued under the contractual arrangements between the Employer and its insurance carriers;
 - c. continue payment for the Employer's portion of HOOPP contributions; however, the Employee shall remain responsible for any employee contributions during the Notice Period and the Employer shall withhold and remit the Employee portion of any contributions necessary to continue the benefits and pension during the Notice Period.
- (iii) Notwithstanding paragraphs (i) and (ii), the Employer may at its sole discretion pay to the Employee at the time of termination, or at any time after the notice of termination has been issued, a lump sum payment equivalent to the total of:
 - a. salary and incentive compensation (if any) for the unexpired portion of the Notice Period;
 - b. any remaining entitlement to vacation pay accrued up to the date of termination and through the minimum notice period prescribed by the *Employment Standards Act, 2000*;

- c. the cost to the Employer of continuation of the Employee's health and insurance benefits for the unexpired portion of the Notice Period provided that benefits will not be discontinued prior to the end of the minimum ESA notice period;
 - d. the cost to the Employer of payment of the Employer's portion of the pension contributions for the unexpired portion of the Notice Period provided that the pension contributions will not be discontinued prior to the end of the minimum ESA notice period.
- (iv) The Employee hereby acknowledges that the payments in paragraph (i) and (ii) or (iii) are inclusive of and in complete satisfaction of any notice to which the Employee is entitled to at common law or under the *Employment Standards Act, 2000*. In the event that the Employee is entitled to a greater entitlement under the *Employment Standards Act, 2000*, that greater entitlement shall prevail and the Employee's entitlements shall be increased only to the extent necessary to satisfy such greater entitlement.
 - (v) The Employee agrees to execute a full and final release and indemnity in exchange for the payments provided for herein.

c) **Termination by the Employee**

This Agreement and the employment of the Employee hereunder may be terminated at any time by the Employee giving to the Employer ninety (90) calendar days' notice of resignation in writing. Upon receipt of such notice, the Employer, in its sole discretion, may, by notice in writing, waive the notice of resignation period in whole or in part by specifying an earlier termination date; however, in such an event, the Employee shall be paid the outstanding portion of annual salary for such waived period. All other entitlements, including coverage under the Employer's health and insurance plans and pension plan participation, shall cease as of the earlier termination date, except as required by the *ESA*.

d) **Termination by Mutual Agreement**

This Agreement and the employment of the Employee hereunder may be terminated by mutual agreement of the parties hereto in writing, in which event the Employee shall continue to accrue and receive the Employee's annual salary and benefits through to the date of termination specified in such mutual agreement.

e) **Termination by Death**

This Agreement and the employment of the Employee hereunder shall be automatically terminated by the death of the Employee, with no further obligations. All compensation to the Employee shall cease at the Employee's death.

9. OWNERSHIP OF PROPERTY

- a) The Employee agrees that during the term of his employment with the Employer and thereafter any and all equipment, devices or other property provided to the Employee by the Employer shall remain the property of the Employer. The foregoing shall include all property (whether in electronic or hard copy form) including without limitation computers, peripherals, software, cellular phones, keys, door passes and any other equipment.
- b) Upon termination of this Agreement, the Employee shall immediately return to the Employer any and all of the foregoing property and shall return to the Employer any other property which has been leased or rented by the Employer for use by the Employee.
- c) The Employee agrees that upon termination of this Agreement the Employee shall take all reasonable steps required by the Employer to assist in the orderly transfer of the information, documentation and other property of the Employer in the possession of the Employee.

10. 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 Employee: at his home address

To the Employer: One Hospital Drive, Peterborough, ON, K9J 7C6

11. ENTIRE AGREEMENT

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the employment of the Employee and any and all previous agreements and representations, written or oral, express or implied, between the parties hereto or on their behalf, relating to the employment of the Employee by the Employer are hereby terminated and cancelled and each of the parties hereto hereby releases and forever discharges the other of and from all manner of actions, causes of action, claims and demands whatsoever under or in respect of any such prior agreements and representations. Except as provided herein, no amendment or variation of any of the provisions of this Agreement shall be valid unless made in writing and signed by each of the parties hereto.

12. **SEVERABILITY AND EMPLOYMENT STANDARDS**

In the event that any provision herein or part thereof shall be deemed void, invalid, illegal or unenforceable by a court or other lawful authority of competent jurisdiction, this Agreement shall continue in force with respect to the enforceable provisions and all rights accrued under the enforceable provisions shall survive any such declaration, and any non-enforceable provision shall, to the extent permitted by law, be replaced by a provision which, being valid, comes closest to the intention underlying the invalid, illegal or unenforceable provision. All covenants, provisions and restrictions in this agreement shall be interpreted in accordance with the *ESA*, and if a greater entitlement is provided for under the *ESA* than as set out in any covenant, provision or restriction of this agreement, that greater entitlement shall prevail, the Employee's entitlements shall be increased only to the extent necessary to satisfy such greater entitlement, and the Employer will provide such greater entitlement.

13. **GOVERNING LAW**

This Agreement shall be construed in accordance with the law of the Province of Ontario and the federal laws of Canada applicable therein.

14. **NO WAIVER**

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall a waiver by either party of the breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

15. **ENUREMENT**

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

16. **INDEPENDENT LEGAL ADVICE**

The Employee acknowledges that she has read and understands this Agreement and acknowledges that she has had the opportunity to obtain independent legal advice with respect to it. Further, it is confirmed by the Employee that this Agreement has been entered into freely, voluntarily and without duress.

IN WITNESS WHEREOF the parties hereto executed this Agreement as of the ____ day of January, 2020.

For Peterborough Regional Health Centre




Witness



Dr. Peter McLaughlin M.D. FRCP(P)
President and CEO



Witness



Mr. Sean Martin