



EMPLOYMENT AGREEMENT

THIS AGREEMENT made as of the 5th day of March, 2018

BETWEEN:

UNIVERSITY HEALTH NETWORK, a corporation without share capital under *University Health Network Act, 1997*

(Hereinafter called the “Hospital”)

- And -

Kevin Paul Douglas Smith

(Hereinafter called “Smith”)

WHEREAS the Hospital has requested Smith to accept employment with the Hospital as its President and Chief Executive Officer, upon the terms and conditions hereinafter set forth, and Smith hereby accepts such employment;

NOW THEREFORE WITNESSETH that in consideration of the promises and the mutual covenants contained herein, the parties hereto agree as follows:

1. EMPLOYMENT, TERM, POSITION AND DUTIES

1.01 Position

Smith shall serve as President and Chief Executive Officer of the Hospital and, at no additional remuneration, shall serve as a Trustee (ex officio) of the Hospital and as a director or officer of such affiliates of the Hospital as the Hospital’s Board of Trustees (the “Board”) may from time to time reasonably request.

1.02 Term

- (a) Subject to earlier termination in accordance with section 1.03 or Article 4 of this Agreement, the employment of Smith by the Hospital shall be for a term (the "Term") commencing on May 22, 2018 and continuing until May 22, 2023 at which date his employment shall terminate unless continued for an additional term by mutual agreement in writing.
- (b) It is understood and agreed that the Hospital shall give not less than 12 months notice in writing in the event that it decides not to renew Smith's employment at the end of the Term, provided, however, that no notice shall be required in the event that Smith is offered and declines to accept an offer to renew his contract on terms at least as favorable as those contained in this Agreement as of that date.
- (c) In the event that the Hospital gives notice of its intent not to renew prior to May 22, 2023 but less than 12 months prior to the end of the Term than the Term shall be extended by an amount equivalent to any shortfall. For example if notice of non-renewal is given on January 1, 2023, then the Term shall be extended until December 31, 2023.

1.03 Resignation

Nothing in this Agreement shall prohibit Smith from resigning from the Hospital at any time on not less than 180 days notice to the Hospital provided that the Hospital may in its sole discretion waive any notice in excess of that required by the *Employment Standards Act* and, upon such resignation taking effect, Smith's employment shall terminate and neither party hereto shall have any rights or obligations hereunder, except:

- (a) Pension entitlements accrued and vested as of the effective date of his resignation;
- (b) Unpaid wages and vacation pay as of the effective date of his resignation;
- (c) Any entitlement to continuance of disability benefits in respect of a disability, which commenced prior to the effective date of his resignation.

1.04 Duties

Smith shall serve as the President and Chief Executive Officer of the Hospital and shall have supervision and control over, and responsibility for, the general management and operation of the Hospital, subject to the authority of the Board. All employees of the Hospital shall report directly or indirectly to Smith and Smith shall report to the Board. Smith shall have all responsibility and perform such duties as are regularly and customarily performed by the chief executive officer of a corporation and may delegate such of the same as he may see fit to other officers or employees of the Hospital. Smith

shall also have such other responsibilities and shall perform such other duties consonant with his position as President of the Hospital and that may be reasonably assigned to him by the Board.

2. OBLIGATIONS

2.01 Full Time and Efforts

Subject to vacations provided for in section 3.08, Smith shall during the Term, devote his full time, efforts and attention to the fulfillment of the duties and responsibilities of his positions with the Hospital.

2.02 Confidentiality

Smith recognizes and understands that in the performance of his employment, duties and responsibilities as provided by this Agreement, he will become knowledgeable with respect to a wide variety of non-public information concerning the business, operations and management of the Hospital. Smith agrees that, except with the consent of the Chair of the Board, he will maintain all such non-public information in strict confidence and shall not disclose in any manner whatsoever, in whole or in part, and shall not use, directly or indirectly, such information otherwise than in the interests of the Hospital, its management and operation.

3. COMPENSATION

3.01 Base Salary

Smith shall be compensated by the Hospital at a rate per annum (“Base Salary”) that will be \$650,000. Unless prohibited by legislation, the Board shall determine an amount not less than the prior year’s base salary, each year thereafter, following annual reviews by the Human Resources Committee with Smith, in recognition of his performance and contribution to the Hospital. Smith’s Base Salary shall be payable in substantially equal bi-monthly installments in arrears, subject to such payroll withholding and other deductions as may be required by law.

3.02 Pay for Performance

Smith shall be eligible in respect of each fiscal year during the Term to participate in an annual variable pay plan in respect of services performed by him as President and Chief Executive Officer of the Hospital during such year in such amount as the Human Resources Committee of the Board may approve at its discretion after comparing actual performance during the year against criteria to be determined by the Human Resources Committee of the Board. The amount will be to a maximum of 30% of Base Salary.

3.03 Pension

Smith shall be a member of and participate in the Hospitals of Ontario Pension Plan (“HOOPP”) and the Hospital shall contribute to HOOPP on behalf of Smith the amount required thereunder to fund benefits for employees of the Hospital. Subject to the terms of the Supplementary Executive Retirement Agreement attached as Appendix “A”, Smith shall also be entitled to supplementary pension benefits under the Hospital’s Supplementary Executive Retirement Program (“SERP”). In the event that Smith’s employment is terminated without cause he shall continue to accrue credited service for the purpose of determining what position, if any, of the SERP benefit has vested until his last day of employment, expiration of notice, or such further period as the Employment Standards Act may require, if any.

3.04 Life Insurance

If Smith dies prior to the termination of his employment hereunder and prior to attaining age 65, the Hospital shall pay or cause to be paid to Smith’s spouse or other beneficiary designated by him in an amount equal to three times his annual base salary plus variable component to a maximum of \$2M.

3.05 Permanent Disability

- (a) If Smith suffers an illness, injury, accident or other physical or mental incapacity which results in his inability to perform the normal services of his occupation with the Hospital, the Hospital shall pay or cause to be paid to Smith, in accordance with the Hospital’s Long Term Disability Benefit Plan (“the Plan”), a long term disability benefit (“LTDB”) equal to 75% of his Base Salary at that time commencing when he qualifies under such plan.
- (b) Such LTDB will be subject to an annual cost of living adjustment equal to the increase, if any, in the Bank of Canada’s Consumer Price Index for Canada (Total CPI) for the relevant year, subject to a maximum annual increase of 6%.
- (c) The LTDB shall be payable to Smith to age 65, or until he ceases to qualify under the Plan for such benefit, whichever comes first.
- (d) The LTDB entitlement shall be subject to such terms and conditions as are set out in the Plan including, without limitation, those provisions:
 - a. Requiring the provision of medical information to the administrator to determine whether Smith is or remains disabled within the meaning of the Plan; and
 - b. Dealing with the effect of any other sources of income on the entitlement to LTDB or the quantum thereof;
 - c. Defining disability.

- (e) It is understood and agreed that it is the intention of the parties that Smith's entitlement to HOOPP benefits following his retirement shall be calculated as if he had received during such portion of the remaining period of his employment that he was in receipt of LTDB, payment at a level equivalent to 100% of his Base Salary at the time he qualified for the LTDB (the "Unreduced Base Salary") rather than such lesser rate as he received under the Plan. The Hospital shall therefore cause to be paid to Smith in each year he is entitled to HOOPP benefits an adjusting payment representing the shortfall, if any, between his actual HOOPP benefit payment during that year and the amount the payment would have been had it been calculated using the Unreduced Base Salary.

3.06 Other Benefits

Smith shall be entitled to participate in all other employee, insurance and other benefit plans or programs in effect for executive and key management employees of the Hospital to the extent of and in accordance with the rules and agreements governing them, so long as they are in effect.

3.07 Expenses

The Hospital shall reimburse Smith for reasonable expenses incurred by him in the performance of his duties and responsibilities hereunder in accordance with the Hospital policy. The Hospital shall pay to Smith during the term, a car allowance of \$700 per month.

3.08 Vacation

Smith shall be entitled in each calendar year to paid vacations aggregating six weeks to be taken at such time or times as Smith may select and as the Chair of the Board may reasonably approve having regard to the business, affairs and operations of the Hospital and its affiliates. If in any calendar year of the Term, Smith is employed for only part of such year, such vacation entitlement shall be pro rated as though it were accruing from day to day. Any portion of such vacation period that is not taken in any calendar year shall not be added to the vacation period for any subsequent calendar year or years, without written consent of the Board Chair.

3.09 Relocation Expenses

The Hospital shall reimburse Smith for reasonable moving expenses including, house search trip, moving of furniture, and temporary rental accommodation up to a maximum of 3 months.

4. TERMINATION

Termination for Cause

4.01 Notwithstanding anything in this Agreement to the contrary, the Hospital may terminate the employment of Smith hereunder for cause by giving written notice to Smith of its intention to terminate this Agreement on the date specified in such notice. Effective the date specified in such notice, Smith shall have no further rights hereunder except:

- i. Pension entitlement accrued and vested as of the effective date of his termination;
- ii. Unpaid wages and vacation pay as of the effective date of termination.

If Termination Initiated after the Expiry of the Term

4.02 In the event that Smith is permitted to continue working beyond the end of the Term, then in the absence of a further agreement in writing between the parties, the Hospital may terminate Smith's employment without cause on 12 months' notice or on continuation of Base Salary in lieu of all or any portion of such notice, or on such notice or payment as the Employment Standards Act may require, whichever is greater.

- i. In such a case the employer shall continue all group insurance and HOOPP contributions until the last day of active employment or for such further period as the *Employment Standards Act* may require.
- ii. Thereafter, and subject to Smith's insurability, the Hospital shall continue HOOPP contributions and the benefits coverage set out in paragraph 4.03 (e), and credit for vesting for purposes of the SERP,
 1. For the unexpired portion of the 12 month notice period; or
 2. The end of the month in which he commences employment with another employer that provides reasonably comparable benefits to its senior executives;

whichever shall first occur.

If Termination Initiated Prior to the Expiry of the Term

4.03 The Hospital may terminate Smith's employment without cause at any time during the Term, by giving written notice to him of its intention to terminate this Agreement on the date specified in such notice in which event, subject to the last paragraph of this section, the following shall apply:

- (a) The Hospital shall pay to Smith an amount equal to unpaid vacation pay together with the greater of:
 - i. Such payment in respect of notice and severance as the *Employment Standards Act* may require, if any; or

- ii. The lesser of:
 - 1. Continuation of Base Salary for 24 months at the rate applicable as at the effective date of termination, or
 - 2. Continuation of Base Salary for the unexpired portion of the Term, at the rate applicable as at the effective date of termination.

- (b) The Hospital shall continue all group insurance coverage and HOOPP contributions until the last day of active employment and for such further period, if any, as the *Employment Standards Act* may require:

- (c) Thereafter, and subject to Smith's insurability the Hospital shall continue HOOPP contributions, the benefits coverage set out in paragraph (e) and credit for vesting for purposes of the SERP,
 - i. For the unexpired portion of the Term; or
 - ii. For 24 months following the termination of Smith's employment;
 - or
 - iii. Until the end of the month in which he commences employment with another employer that provides reasonably comparable benefits to its senior executives;

whichever shall first occur.

- (d) The benefits to be continued under paragraph (c) consist of employee life, medical, extended health and dental insurance coverage and group insurance coverage under benefit plans and programs then in effect for executive and key management employees of the Hospital and the Hospital shall provide such benefits or, at its option, shall purchase substantially comparable benefits outside its existing plans and programs.

- (e) Except as set out in this Article the Hospital shall not be obliged to continue any other payments or coverage and, without limiting the generality of the forgoing, shall not be obliged to continue short and long term disability coverage, supplemental accidental death or dismemberment insurance.

- (f) The Hospital shall, following the termination of Smith's employment hereunder and upon his written request, to the extent permitted to do so by the terms thereof, transfer ownership of any life and long term disability insurance contracts that have been arranged in conjunction with sections 3.04 and 3.05 of this Agreement to Smith personally or to a subsequent employer of Smith.

- (g) Nothing in this clause shall be construed as limiting the Hospital's right to terminate any benefit plan or program at any time or from time to time.

5. MISCELLANEOUS

5.01 Binding Agreement

This Agreement shall be binding on the parties hereto and their respective successors in interest, but subject as hereinafter provided, shall not be assignable by either party. The Hospital shall be entitled to assign this Agreement to any continuing or successor hospital or other entity resulting from any amalgamation or merger of the Hospital with one or more other hospitals. This Agreement and all rights of Smith hereunder shall ensure to the benefit of and be enforceable by Smith's heirs, executors, administrators or other legal personal representatives. If, at any time during the Term, the Hospital enters into an amalgamation or merger approved by the Board with one or more other hospitals and the successor entity fails, within 60 days of the amalgamation or merger, to assume and agree to perform this Agreement in the place and stead of the Hospital or to substitute therefore a substantially comparable agreement, in either case with Smith holding the position of President and Chief Executive Officer of the successor entity, such failure shall constitute a termination of Smith's employment hereunder and he shall, in the event that he elects not to take a position with the successor, be entitled to all benefits normally accruing to him in the event of the termination of his employment, including those set forth in sections 4.03 and 3.03 of this Agreement. In the event of a significant change in the Hospital's governing structure which results in a material adverse change in the terms and conditions of Smith's employment, Smith shall be entitled to treat himself as constructively dismissed.

5.02 Notices

Any notice or other communication required or permitted to be given or made hereunder shall be in writing and shall be well and sufficiently given or made if:

- (a) Enclosed in a sealed envelope and delivered in person to the party hereto to whom it is addressed (or in the case of the Hospital to a receptionist or Executive Vice President, Human Resources on the first floor of the Fraser Elliott Building, (not being Smith) at the relevant address set forth below, or
- (b) In the case of the Hospital, sent to it by facsimile transmission or other means of electronic communication that produces a paper record;

and if to the Hospital addressed to it at:

190 Elizabeth Street
 Toronto, Ontario
 M5G 2C4
 Facsimile No.: (416) 340-3179
 Attention: Chair of the Board of Trustees

and if to Smith addressed to him at:

Any notice or other communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery in the case of Smith and, in the case of the Hospital, if delivered, on the day of delivery or sending by facsimile transmission that produces a paper record (provided such delivery or sending occurred during normal business hours on a business day and, if not, then on the first business day thereafter). Either party hereto may change his or its address for notice by notice to the other party hereto given in the manner aforesaid.

5.03 Modification and Waiver

No provision of this Agreement may be modified or amended unless such modification or amendment is authorized by the Board and is agreed to in writing by Smith and the Hospital. Any waiver of, or consent to departure from, any of the terms or provisions of this Agreement shall be effective only if in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of either party hereto to exercise, and no delay in single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right hereunder.

5.04 Acknowledgment

Smith acknowledges and agrees that the payments contemplated in Section 4.02 and 4.03 hereof are inclusive of his entitlement, if any, to payment in lieu of notice and/or severance pay under applicable employment standards or other legislation.

5.05 Survival of Obligations

Subject to the provisions of Section 1.03 and 4.01, the obligations of the parties hereto pursuant to Sections 2.02, 3.03, 3.05, 4.02, 4.03 and Article 5 of this Agreement shall survive the termination of Smith employment hereunder.

5.06 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

5.07 Time of Essence

Time shall be of the essence of this Agreement.

5.08 Headings

The headings contained herein are for convenience of reference only and shall not in any way effect the construction or interpretation of this Agreement.

5.09 Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or a part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the 5th day of March, 2018.

UNIVERSITY HEALTH NETWORK

Witness

Brian Porter
Chair
UHN Board of Trustees

Witness

Kevin P.D Smith