

CHIEF EXECUTIVE OFFICER AGREEMENT

THIS AGREEMENT is made effective the 14th day of May, 2018 (the "Effective Date"),

BETWEEN:

ST. THOMAS ELGIN GENERAL HOSPITAL

a corporation without share capital duly incorporated
under the laws of the Province of Ontario

(the "Corporation")

- and -

Robert Biron

in the Province of Ontario,

(the "Employee")

RECITALS

WHEREAS the Corporation wishes to retain the Employee and the Employee wishes to be retained by the Corporation in the capacity and upon the terms and conditions set forth in this Agreement.

FOR VALUE RECEIVED, the parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, each capitalized term shall have the meaning attributed thereto:

- (a) "Agreement" means this agreement, including its recitals, all as may be supplemented or amended from time to time;
- (b) "Board" means the Board of Governors of the Corporation;
- (c) "BPSECA" means the *Broader Public Sector Executive Compensation Act* (Ontario);
- (d) "CEO" means the President and Chief Executive Officer of the Corporation;
- (e) "Confidential Information" has the meaning ascribed in section 13.1;
- (f) "Executive Compensation Plan" or "ECP" means the prescribed executive compensation plan approved by the Board in accordance with the requirements of the *BPSECA*;

- (g) "Governors" means the persons who serve the Corporations directors, as that term is defined in the *Corporations Act* (Ontario) of the Corporation;
- (h) "Other Organization" has the meaning ascribed in section 5.1.

1.2 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties including without limitation any prior employment agreements. There are no representations, warranties, forms, conditions, undertakings or collateral agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

1.3 **Section Headings**

All paragraph headings have been inserted herein for convenience of reference only and do not form part of this Agreement.

ARTICLE 2 PRESIDENT AND CHIEF EXECUTIVE OFFICER

- 2.1 The Employee agrees to serve as the CEO of the Corporation to the best of his ability in compliance with all applicable laws, the Corporation's By-laws, policies and procedures, all as may be amended from time to time, and this Agreement.
- 2.2 The Employee agrees that the CEO's general duties and responsibilities are set out in the position description and in the By-Law either of which may be unilaterally amended from time to time by the Corporation.
- 2.3 The Employee acknowledges that to the extent that the Employee serves as Governor of the Corporation, he shall do so without additional remuneration. Notwithstanding any provision of this Agreement or any other agreement or document to the contrary, the Employee shall be deemed to have resigned as a director of the Corporation, contemporaneously with the termination or ending of his employment with the Corporation, for any reason, either voluntarily or involuntarily, and the Employee shall immediately upon request by the Corporation sign any and all documents necessary to give effect to such resignation.

ARTICLE 3 ACCOUNTABILITY

- 3.1 The Employee shall be accountable to the Board of the Corporation and reports directly to the Chair of the Board.

ARTICLE 4 TERM

- 4.1 The term of this Agreement shall commence as of the Effective Date unless terminated prior thereto in accordance with the provisions of ARTICLE 11 of this Agreement.

ARTICLE 5 FULL TIME AND ATTENTION

5.1 The Employee shall, throughout the term of his employment, devote his full time and attention to the business and affairs of the Corporation. The Employee 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 Employee shall not, 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").

ARTICLE 6 COMPENSATION

6.1 Wage Restraint Legislation

The parties agree that Article 6 is subject to any applicable wage restraint legislation and the ECP prescribed *BPSECA* executive compensation framework.

6.2 Salary

- (a) The Corporation agrees to pay the Employee a Base Salary of two hundred and forty-thousand three hundred and eighty-one dollars (\$240,381) per annum, in addition to the potential Performance Payment as set out in Section 6.4.
- (b) The Base Salary as set out in paragraph 6.2 (a) together with the Performance Pay as set out in Section 6.4 represent the 16th (sixteenth) percentile of comparator hospitals' compensation for CEOs as outlined in the Corporation's 2017/18 ECP. The Corporation intends to use best efforts to increase the maximum salary range applicable to the President and CEO in the Corporation's ECP to the 50th (fiftieth) percentile of comparator hospitals at the earliest possible date, subject to the provisions of the *BPSECA*.
- (c) The base bi-weekly salary is determined by taking the annual Base Salary and dividing by twenty-six (26).

6.3 Annual Salary Increases

Annual salary increases will be based upon the Employee's performance as determined by the Board based on the results of the Employee's performance evaluation set out in ARTICLE 7, the Corporation's financial resources, the applicable wage restraint legislation and the ECP.

6.4 Performance Payment

- (a) In accordance with the *Excellent Care for All Act*, 2010 and any other applicable legislation, the Employee may be eligible to receive an additional amount of up to 5% of the Employee's then current base gross annual salary as performance pay (the "Performance Pay").
- (b) Half of this potential Performance Pay (i.e., 2.5% of the Employee's then current base gross annual salary) will be paid to the Employee at such time as it has been

determined that targets have been achieved. If such targets are not achieved, this half of the Performance Pay will not be paid to the Employee. The remaining portion of the Performance Pay (being 2.5% of the Employee's then current base gross annual salary) shall be paid to the Employee over the course of the year in anticipation of at least partial targets being met; provided, however, that such amount shall remain at-risk and if the targets are not achieved, then the amount of Performance Pay actually paid to the Employee over the course of the year may be withheld from the Employee's gross annual base salary in the following fiscal year at the discretion of the Board of Governors and on a schedule to be determined by the Board of Governors in consultation with the Employee.

ARTICLE 7 PERFORMANCE REVIEW

7.1 The Employee shall identify and recommend the CEO's annual and long-term goals and objectives which shall be reviewed by and approved by the Board of Governors. The Board of Governors shall conduct a performance evaluation of the Employee in the first quarter of each fiscal year, to determine the extent to which the Employee has been successful in achieving the goals and objectives set for the preceding fiscal year. The first performance evaluation shall occur after the first full fiscal year that the Employee has been in office.

ARTICLE 8 VACATION ENTITLEMENT

8.1 In each full year of employment, the Employee under this Agreement shall be entitled to 7 (seven) weeks (thirty-five days) paid vacation to be taken at a time mutually agreeable to the Employee and the Board Chair. Any unused portion of the annual vacation entitlement must be used by the end of the following calendar year or it shall be forfeited unless otherwise agreed by the Board Chair in writing; therefore the maximum number of available vacation days at any time shall be 70 (seventy) days. On the Effective Date of this Agreement all of the Employee's annual vacation entitlement for the first year of employment (being seven (7) weeks vacation) shall be made available in the Employee's available vacation bank. On the anniversary of the Effective Date of the Agreement and each subsequent anniversary of the Effective Date of the Agreement, all of the vacation entitlement for such year shall be made available in the Employee's annual vacation bank as of such date.

ARTICLE 9 EMPLOYEE BENEFIT PLANS

9.1 The Employee shall be entitled to participate in the benefit plans made available by the Corporation to its full-time senior administrative personnel, including HOOPP, dental, group life insurance and extended health care plan.

As of the date of this Agreement, the executive compensation benefits include the following:

- i) Extended Health Care, Hospitalization, and Dental benefits consistent with STEGH's non-union plan.
- ii) Executive Health Care Spending Account of 1% of annual salary per calendar year.

iii) Paid sick leave and Short Term Disability coverage in accordance with the STEGH non-union plan.

iv) Long Term Disability which provides 65% of monthly earnings if service is less than 20 years, 70% of monthly earnings if service is greater than 20 years and 75% of monthly earnings if service is greater than 30 years. Qualifying period is 30 weeks.

v) Basic Group Life and Basic Accidental Death and Dismemberment insurance coverage of 2X annual salary.

9.2 The Employee acknowledges that some employee benefit plans may include compulsory employee participation and employee contributions at levels determined by the Corporation. The Corporation regularly reviews the employee benefit plans, as well as its insurance carriers, and accordingly, reserves the right to amend or discontinue the employee benefit plans and change its insurance carriers where deemed appropriate and without further notice to the Employee.

ARTICLE 10 EXPENSES

10.1 It is understood and agreed that the Employee will incur expenses in connection with his employment duties under this Agreement. The Corporation will reimburse the Employee for any reasonable and substantiated expenses provided such expenses were incurred in accordance with established Corporation policy and as approved by the Board.

10.2 Subject to Section 10.6, the Corporation shall reimburse the Employee for moving expenses of up to \$20,000 (twenty thousand dollars) to relocate to the area defined within the boundaries of the City of St. Thomas, Elgin County and the City of London to commence employment with the Corporation. Allowable moving expenses to be reimbursed shall be defined within the *Income Tax Act* and its regulations.

10.3 The Employee shall be reimbursed for, or the Corporation shall pay, the Employee's annual professional membership fees up to \$5,000 (five thousand dollars) per annum in order to maintain active membership in the following professional associations: Chartered Professional Accountants of Ontario, American Institute of CPAs, Canadian College of Health Leaders, and Institute of Corporate Directors, or such other professional associations as may be agreed to by the CEO and the Board Chair from time to time.

10.4 The Employee shall receive an automobile allowance of \$1,200 (twelve hundred dollars) per month as a taxable benefit and shall be subject to regular payroll remittances. The automobile allowance covers all operating expenses pertaining to the automobile, including insurance, maintenance costs, repairs, and gasoline expenses.

10.5 The Employee shall be provided with reasonable time off for attendance at professional development programs which are relevant to the duties and responsibilities of the Employee as contemplated herein. The Corporation shall also reimburse the Employee for tuition, registration and other reasonable costs associated with his attendance at these professional development programs. Time off for attendance at and expenses relating to professional development programs are subject to approval in accordance with application Corporation policies and procedures.

- 10.6 The parties acknowledge and agree that notwithstanding anything to the contrary herein, all expenses referred to in this Article 10 shall be consistent with the Corporation's established policy on expenses, and the Employee shall provide the Corporation with vouchers, receipts, statements and other requested documentation in respect of all such expenses on request.

ARTICLE 11 TERMINATION

- 11.1 (a) The Employee may terminate his employment pursuant to this Agreement voluntarily at any time by giving not less than ninety (90) days' notice in writing to the Corporation.
- (b) The Corporation may with written notice waive notice in whole or in part but shall be required to continue providing the Employee both his salary and benefits for the full ninety (90) days.
- 11.2 This Agreement and the Employee's employment with the Corporation may be terminated, without the Corporation being obligated to provide the Employee with advance notice of termination or pay in lieu of such notice, whether under contract, statute, common law or otherwise if:
- (a) the Employee retires;
- (b) the commencement of long-term disability of the Employee as set out in Section 11.4 of this Agreement.
- (c) the Employee's employment is terminated for cause;
- (d) the Employee dies.

The Employee or the Employee's estate will not be entitled to receive any further compensation or benefits pursuant to the terms of this Agreement other than those which have accrued up to the date of the Employee's death and those death benefits which may be payable in accordance with applicable insurance policies.

- 11.3 This Agreement may be terminated by the Corporation, in its absolute discretion, for any reason by giving the Employee:
- (a) 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 at the election of the Employee on paying to the Employee the equivalent lump sum payment in lieu of such notice or combination of notice and payment in lieu. The payment in lieu or lump sum, as the case may be, includes the Base Salary as set out in Section 6.2. The Employee may also be eligible to receive the at-risk Performance Pay as set out in Section 6.4 which will only be paid to the Employee at such time as it has been determined that targets have been achieved.

- (b) Payment for any outstanding vacation pay (both accrued and available) and reimbursement for any expenses incurred on the Corporation business or to be paid hereunder up to and including the date of termination of employment.
- (c) Payment for executive outplacement counselling services to a maximum of \$8,000 (eight thousand dollars) upon receipt of appropriate invoices from the Employee.
- (d) During the Notice Period, the Employee shall have a positive obligation to mitigate the amounts payable by the Corporation under this section by taking reasonable steps to find alternative employment ("Alternative Employment"). Alternative Employment means other full-time employment appropriate and consistent with the Employee's training and skills and for which yields annualized gross income equal to or greater than 70% (seventy percent) of the Employee's last salary. Notwithstanding anything to the contrary herein, if the Employee secures Alternative Employment at any point during the Notice Period, the Corporation shall pay the Employee an amount equal to 50% of the remaining payments during the Notice Period which have not yet been paid to the Employee which shall be full and final satisfaction of all amounts owing to the Employee. The Corporation reserves the right to exercise reasonable, good faith discretion in determining the extent to which work may be considered to be Alternative Employment for purposes of these provisions.
- (e) Coverage under the life insurance, short term sick plan as well as long term disability insurance will continue for the minimum period of notice required under the *Employment Standards Act, 2000* (as amended) (the "Employment Standards Act"). If the Employee did not elect to receive a lump sum payment, then the Employee shall continue to receive the other benefits made available by the Corporation to its full-time senior administrative personnel, to the extent permitted by the relevant plan text, for the duration of the Notice Period, but shall cease on the date the Employee obtained Alternative Employment. In no case shall the foregoing benefits cease sooner than the minimum period of notice required under the Employment Standards Act.
- (f) The payments under this Section 11.3 include all entitlement to either notice or pay in lieu of notice and severance pay under the Employment Standards Act.

11.4 This Agreement shall be terminated upon the commencement of long-term disability of the Employee. The Parties agree that the commencement of long-term disability of the Employee will result in the Employee no longer being able to perform the essential duties and requirements of the position, that no accommodation short of undue hardship will be possible and that it will result in a frustration of this Agreement.

- (a) In the event that this Agreement is terminated upon the commencement of long-term disability of the Employee, the Corporation will pay to the Employee six (6) months base salary, inclusive of the Employee's entitlement to termination pay under the Employment Standards Act, if any, and the Employee's benefits shall continue for the minimum period of notice required under the Employment Standards Act.

- (b) The commencement of long-term disability will be determined by the provider of the disability insurance in accordance with the applicable long-term disability plan.
 - (c) The Employee agrees to accept the payments set out in paragraph 11.4(a) as full, final and complete settlement of any and all amounts owing to the Employee by the Corporation as a result of the frustration of this Agreement.
- 11.5 The Employee agrees to accept the pay-in-lieu of notice set out in section 11.3 or 11.4, as applicable, in full and final settlement of all amounts owing to him by the Corporation, including any payment in lieu of notice of termination, entitlement of the Employee under any applicable statute, including the Employment Standards Act, and any rights that the Employee may have at common law or otherwise, and the Employee waives any claim to any other future payment or benefits from the Corporation.
- 11.6 Upon termination of this Agreement for any reason, the Employee acknowledges that all items of any kind created or used by him pursuant to his employment or furnished by the Corporation to him including, but not limited to, any equipment, books, records, credit cards, reports, files, external data storage devices, manuals, literature, Confidential Information, or other materials shall remain and be considered the exclusive property of the Corporation at all times, and shall be surrendered to the Board of the Corporation, in good condition, promptly without being requested to do so.

Notwithstanding the foregoing at retirement, mutually agreed resignation and/or termination without cause, the Employee will be entitled to ownership of the home computer, software and printer provided to the Employee by the Corporation for his use at home.

- 11.7 The Employee agrees that on his resignation from employment, or on his termination of employment, irrespective of the time, manner or cause, he shall immediately resign all offices held, including directorships, in the Corporation, or any other entity related to the Corporation and save as provided in this Agreement, the Employee shall not be entitled to receive any additional severance payment or compensation for loss of office or otherwise in the event his resignations are accepted by the Corporation.

ARTICLE 12 LIABILITY INSURANCE

- 12.1 The Corporation shall insure the Employee under its general liability policy both during and after the term of his employment, for all acts done by the Employee in good faith and in the execution of his office as CEO, throughout the term of his employment.

ARTICLE 13 OWNERSHIP OF INFORMATION AND NON DISCLOSURE

- 13.1 "Confidential Information" includes, without limitation, information and facts relating to the operation and affairs of the Corporation acquired by the Employee in the course of his employment, including information and facts relating to present and contemplated services, future plans, processes, procedures, suppliers, capital projects, financial information of all kinds, government relations strategies, patents or their health records, any product, device,

equipment or machine, or employees. For greater certainty, Confidential Information shall not include:

- (a) information and facts that are available to the public or in the public domain at the time of such disclosure or use, without breach of this Agreement; or
- (b) information and facts that become available to the Employee on a non-confidential basis from a source other than the Corporation.

- 13.2 All Confidential Information of the Corporation, whether it is developed by the Employee during his period of employment or by others employed or physicians or engaged by or associated with the Corporation, is the exclusive property of the Corporation and shall at all times be regarded, treated and protected as such.
- 13.3 The Employee shall not disclose Confidential Information to any person or use any Confidential Information (other than as necessary in carrying out his duties on behalf of the Corporation) at any time during or subsequent to his period of employment without first obtaining the consent of the Chair, and the Employee shall take all reasonable precautions to prevent inadvertent disclosure of any such Confidential Information.
- 13.4 Within five (5) days after the termination of the Employee's employment by the Corporation for any reason, or of receipt by the Employee of a written request from the Corporation, the Employee shall promptly deliver to the Corporation all property belonging to the Corporation, including without limitation all Confidential Information (in whatever form) that is in the Employee's possession or under the Employee's control.
- 13.5 Nothing in this section precludes the Employee from disclosing Confidential Information at any time if disclosure of such Confidential Information is required by any law, regulation, governmental body, or authority or by court order, provided that before disclosure is made, notice of the requirement is provided to the Corporation, and to the extent possible in the circumstances, the Corporation is afforded an opportunity to dispute the requirement.
- 13.6 The parties will agree in advance upon any appropriate press releases to announce the execution or termination of this Agreement.

ARTICLE 14 NON-SOLICITATION/NON-DISPARAGEMENT

- 14.1 The Employee will not, either while employed with the Corporation or subsequent to the Employee's termination of employment for any reason for a period equivalent to the Employee's then current notice period, without the Corporation's express written consent, either as an individual, or in conjunction with any other person, firm, corporation, or other entity, whether acting as a principal, agent, employee, consultant, or in any capacity whatsoever solicit, attempt to solicit, or communicate in any way with any employees or physicians of the Corporation for the purpose of having such employees or physician employed or in any way engaged by another healthcare organization, person, firm, corporation, or other entity.

14.2 The Employee and the Corporation covenant and agree that neither party shall engage in any pattern of conduct that involves the making or publishing of written or oral statements or remarks (including, without limitation, the repetition or distribution of derogatory rumours, allegations, negative reports or comments) which are disparaging, deleterious or damaging to the integrity, reputation or goodwill of the other party, which in the case of the Corporation, includes Board, officers, employees, physicians and/or patients.

ARTICLE 15 GENERAL PROVISIONS

15.1 Binding Effect and Non-Assignment

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators and successors, but shall not be capable of assignment by either party without the previous written consent of the other party thereto.

15.2 Notice Provisions

Any notice to be given under this Agreement shall be in writing and shall be personally delivered or sent by registered mail or email to the following address or such other address as either party may from time to time designate to the other by notice given in accordance with this section:

Notices to the Corporation:

St. Thomas Elgin Hospital
189 Elm Street
St. Thomas, Ontario, Canada N5R 5C4

Attention: Board Chair

Notices to the Employee:

Robert Biron

Email: robert.biron@sympatico.ca

15.3 Severability

If any covenant or provision of this Agreement is determined to be void or unenforceable in whole or in part by any court, such determination shall not affect or impair the validity of any other covenant or provision of this Agreement, which shall remain in full force and effect as if the void or unenforceable covenant or provision had not been made part of this Agreement.

15.4 Waiver

No waiver by either party of any breach of any provisions herein shall constitute a waiver of the provision except with respect to the particular breach giving rise to the waiver.

15.5 **Governing Law**

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

15.6 **Currency**

All dollar amounts set forth or referred to in this Agreement refer to Canadian currency.

15.7 **Withholding**

All payments made by the Corporation to the Employee or for the benefit of the Employee shall be less applicable withholdings and deductions.

15.8 **Recitals**

The Employee and the Corporation acknowledge and agree that the provisions contained in the preamble or recitals section of this Agreement form part of this Agreement and may be relied upon by either Party when interpreting this Agreement.

15.9 **Interpretation**

The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and the Agreement shall be interpreted without regard to any presumption or other rule requiring interpretation of the Agreement more strongly against the Party causing it to be drafted.

15.10 **Privacy Consent**

By accepting employment with the Corporation, the Employee consents to the Corporation collecting, using and disclosing the Employee's personal information to establish, manage, terminate and/or otherwise to administer the employment relationship, including, but not limited to:

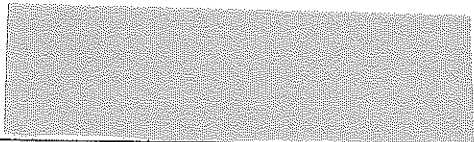
- (a) ensuring that the Employee is properly remunerated for his services to the Corporation which may include disclosure to third party payroll providers;
- (b) administering and/or facilitating the provision of any benefits to which the Employee is or may become entitled, including benefits coverage, pension plan and incentive plans; this shall include the disclosure of the Employee's personal information to the Corporation's third party service providers and administrators;
- (c) ensuring that the Corporation is able to comply with any regulatory, reporting and withholding requirements relating to the Employee's employment;
- (d) performance and promotion;
- (e) monitoring the Employee's access to and use of the Corporation's electronic media services in order to ensure that the use of such services is in compliance with the

Corporation's policies and procedures and is not in violation of any applicable laws; and

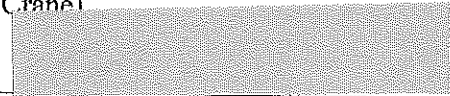
- (f) complying with the Corporation's obligations to report improper or illegal conduct by any director, officer, executive or agent of the Corporation under any applicable health, criminal or other law.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the Effective Date. *April 10/18*

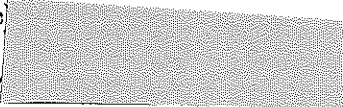
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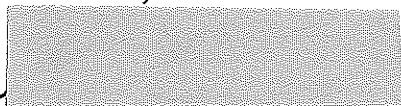
By: 

Authorized Signing Officer (Cathy Crane)

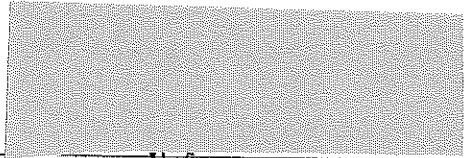
By: 

Authorized Signing Officer (Signature, Cathy Crane)

Witness: 
(Printed Name)

Witness: 
(Signature)

I have read, understand and accept the terms and conditions of this Agreement.


ROBERT BIRON