

## EMPLOYMENT AGREEMENT

**BETWEEN:**

**Bruyère Continuing Care**

**(the "Hospital")**

**AND**

**Dr. Jay Mercer**

**(the "Executive")**

**WHEREAS** the Hospital wishes to retain the services of the Executive as Vice-President, Quality, Innovation and Diagnostic Services and the Executive wishes to accept the position as Vice-President, Quality, Innovation and Diagnostic Services;

**NOW THEREFORE**, the parties agree as follows:

### **1. Term of Agreement**

This Agreement shall be effective as of December 1, 2020 (the "Effective Date"). Employment under this Agreement shall continue unless and until terminated by either party as provided in this Agreement.

### **2. Interpretation**

- (a) All words in this Agreement importing the singular number include the plural, and vice versa. All words importing gender include the masculine, feminine, and neuter genders.
- (b) The word "including", when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope.
- (c) A reference to a statute includes all regulations made thereunder, all amendments to the statute or regulations in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulations.
- (d) A reference to "approval", "authorization", or "consent" means written approval, authorization or consent.

### **3. Definitions**

- (a) "**Base Salary**" means the amount paid to the Executive annually by the Hospital pursuant this Agreement;
- (b) "**Benefits**" means those amounts or entitlements provided, or paid for, by the Hospital in respect of the Executive as outlined in Appendix "B", all of which are subject to the terms of the applicable benefit plan;
- (c) "**Board**" means the Board of Directors for the time being of the Hospital including any duly appointed committee thereof.

- (d) **"Confidential Information"** means any information of a confidential nature which relates to the business of the Hospital and its affiliates, including, without being limited to, the following:
- i. trade secrets, technical information, financial information, business, programs, methods, techniques, concepts, formulae, documentation, intellectual property, software, industrial designs, products and personnel information; and
  - ii. any knowledge of a confidential nature obtained by the Executive during the employment with the Hospital;

Notwithstanding the foregoing, Confidential Information shall not include any information which:

- i. was in the possession of or known to the Executive, without any obligation to keep it confidential, before it was disclosed to the Executive by the Hospital;
  - ii. is or becomes public knowledge by disclosure by the Hospital;
  - iii. is or becomes public knowledge through no fault of the Executive;
  - iv. is independently developed by the Executive outside the scope of the engagement duties to the Hospital;
  - v. is disclosed by the Hospital to another person without any restriction on its use or disclosure; or
  - vi. is or becomes lawfully available to the Executive from a source other than the Hospital;
- (e) **"Remuneration"** means the Base Salary and other amounts the Executive is entitled to receive pursuant to this Agreement;

#### 4. **Duties**

Beginning on the Effective Date, the Hospital shall employ the Executive in the position of Vice-President, Quality, Innovation and Diagnostic Services, and the Executive accepts such employment with the Hospital in such capacity subject to the terms and conditions hereof. As Vice-President, Quality, Innovation and Diagnostic Services, the Executive shall be responsible to the President and Chief Executive Officer of the Hospital and further shall be responsible for taking such action as the President and Chief Executive Officer considers necessary to ensure compliance with the bylaws of the Hospital and with applicable legislation including the Public Hospitals Act and The Long Term Care Statute Law Amendment Act and their associated Regulations.

#### 5. **Binding Authority**

The Executive in performing duties hereunder is acting as an Executive of the Hospital. Nevertheless, the Executive shall not have the authority to represent having any right, power or authority to create any contract or obligation, either expressed or implied, on behalf of, in the name of, or binding upon, the Hospital unless such authority is expressly provided to the Executive herein, or otherwise.

#### 6. **Employment Relationship**

- (a) The duties and responsibilities of the Executive shall include those duties and responsibilities as set out in the job description for the position of Vice-President,

Quality, Innovation and Diagnostic Services and as may from time to time be designated by the President and Chief Executive Officer. However, during the course of employment, the Executive's duties and responsibilities may be changed by Hospital in its sole discretion, within the education and experience of the Executive and the general scope of work that the Executive was originally hired to do. Any such change shall not constitute constructive dismissal of the Executive, and this Agreement will be deemed to be amended accordingly and all remaining terms and conditions shall continue in full force and effect.

(b) The Executive shall:

- i. faithfully, diligently, and professionally perform such duties and exercise such powers in relation to the Hospital's business as are consistent with the position and as may from time to time be assigned to or vested in the Executive by the Hospital;
- ii. in the discharge of such duties and in the exercise of such powers observe, obey, and comply with all lawful resolutions, regulations, policies, and directions from time to time made, given by, or under the authority of the Hospital;
- iii. in the discharge of the Executive's duties, observe, obey, and comply with the Executive's fiduciary duty to the Hospital, as well as the duty of loyalty, fidelity, and allegiance to act at all times in the best interests of the Hospital and to do no act and to make no statement, oral or written, which would injure the Hospital's business, its interests or its reputation;
- iv. not enter into any commitment or incur any obligation on behalf of the Hospital in excess of any authority granted by the Board.

(c) Nothing in this Agreement shall preclude the Executive from

- i. serving on the boards of directors of a reasonable number of trade associations, and/or charitable organizations;
- ii. engaging in charitable activities and community affairs;

Provided that such activities do not materially interfere with the proper performance of the Executive's duties and responsibilities under this Agreement.

**7. Remuneration**

- (a) For the services hereunder, the Hospital shall pay the Executive a Base Salary of \$198,000 per year. The Executive's Base Salary shall be paid in accordance with the normal payroll practices of the Hospital and shall be subject to such deductions and withholdings as are required by law.
- (b) Subject to the attainment of the Improvement Initiatives set out in the Hospital's Quality Improvement Plan, the Executive's Base Salary may be subject to an annual bonus of up to four (4%) percent on April 1<sup>st</sup> of each year, beginning on April 1, 2021.
- (c) At the discretion of the President and Chief Executive Officer, following an assessment of the Executive's performance related to the attainment of the objectives set out in the Hospital's Strategic Plan, the Executive may be awarded a performance bonus of up to 10% of the Executive's Base Salary.
- (d) To be eligible to receive any bonus, the Executive must still be actively employed by the Hospital on the payment date and the Executive must not have, at the payment date,

either given or received notice of termination of employment for any reason whatsoever.

- (e) The Executive shall be entitled to be reimbursed in accordance with the policies of the Hospital, as adopted and amended from time to time, for all reasonable and necessary expenses incurred in connection with the performance of duties of employment hereunder, provided the Executive shall as a condition of such reimbursement, submit verification of the nature and amount of such expenses in accordance with the reimbursement policies from time to time adopted by the Hospital.
- (f) The Executive shall be entitled to the Benefits and such other benefits and plans as are made available by the Hospital for its Executives, in accordance with the terms thereof.

**8. Termination of this Agreement**

- (a) This Agreement and the Executive's employment by the Hospital hereunder may be terminated:
  - i) by mutual agreement of the Executive and the Hospital;
  - ii) by the Hospital for cause;
  - iii) by the Hospital without cause upon written notification to the Executive which shall be effective upon the giving of such notification.
  - iv) upon the death of the Executive, and;
  - v) by the Executive at any time upon sixty (60) days' notice to the Hospital.
- (b) Upon termination of this Agreement, the Executive shall at once deliver or cause to be delivered to the Hospital all books, documents, laptop, electronic data or other property belonging to the Hospital or for which the Hospital is liable to others, which are in the possession, charge, control or custody of the Executive.

**9. Termination for Cause**

The Hospital may terminate the Executive's employment for just cause, without notice and without any payment whatsoever, save and except as may be minimally required by the Ontario Employment Standards Act, 2000 (the "ESA"), as amended from time to time. The Executive will receive payment for hours of work completed as of the date of termination. For greater certainty, if the Executive's employment is terminated for just cause pursuant to this paragraph but the facts constituting just cause do not amount to an act, conduct or action that would disentitle the Executive to notice or payment-in-lieu of notice and/or severance pay (if applicable) under the ESA, as amended from time to time, the Executive will be provided with notice or payment-in-lieu of notice and/or severance pay (if applicable) under the Employment Standards Act, as amended from time to time.

**10. Termination on Notice or Payment in Lieu of Notice**

- (a) For the purposes of this Agreement, the Notice Period shall be twelve (12) months plus one (1) month for each completed year of service to a maximum of eighteen (18) months.
- (b) Notwithstanding the provision of paragraph (a), the Notice Period shall be eighteen (18) months in the event that, following an amalgamation, restructuring, integration or any other reorganization affecting the Hospital, the Executive is made to report to another Executive who has not been appointed by the Board of Directors of the Hospital.

- (c) In the event that the Executive's employment hereunder is terminated by payment in lieu of notice, the Hospital shall:
- i) pay the Executive's vacation entitlement accrued prior to termination plus the amount of vacation pay accrued during the period of notice to which the Executive is entitled under the *Employment Standards Act*;
  - ii) pay to the Executive for the length of the Notice Period an amount equal to the Base Salary at the date of termination;
  - iii) continue the Benefits for the length of the Notice Period insofar as such benefits may be continued under the contractual arrangements between the Hospital and its insurance carriers. The Benefits continuation shall cease at such time as the Executive commences alternate employment with comparable benefits but, under no circumstances will the Benefits continuation cease before expiry of the period of notice to which the Executive is entitled under the *Employment Standards Act*;
  - iv) continue payment for the length of the Notice Period the Hospital's portion of pension contributions, such payment to cease at such time as the Executive commences alternate employment with a Health Care of Ontario Pension Plan participating employer.
- (d) The Hospital will, if requested by the Executive, pay to the Executive 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:
- i) base Salary for the length of the Notice Period, or the unexpired portion hereof, as well as the vacation entitlement accrued prior to termination and during the period of notice to which the Executive is entitled under the *Employment Standards Act*;
  - ii) the cost to the Hospital of continuation of the Executive's Benefits for the length of the Notice Period or the unexpired portion thereof;
  - iii) the cost to the Hospital of payment of the Hospital's portion of the pension contributions for the length of the Notice Period or the unexpired portion thereof.
- (e) The Executive hereby acknowledges that the payments in paragraph (a) or (b) are reasonable and that they satisfy all claims, whether at common law or under the *Employment Standards Act*, which the Executive may have for wrongful dismissal, severance pay, termination pay or other damages arising from the termination of employment.

**11. Termination by Executive**

This Agreement and the employment of the Executive hereunder may be terminated at any time by the Executive giving to the Hospital sixty (60) days' written notice. The Hospital may waive the resignation notice period in whole or in part at any time by providing payment of sixty (60) days' pay calculated on the basis of the Base Salary at the date of the provision of notice of resignation.

**12. Executive's Covenants**

**(a) Service**

The Executive shall devote the whole of the Executive's time, attention and ability to the business of the Hospital or to the business of any other person or organization as authorized by

the Hospital and shall well and faithfully serve the Hospital and shall use best efforts to promote the interests of the Hospital. The Executive shall not, without the prior written approval of the President and Chief Executive Officer, engage in any activity which interferes with the obligations hereunder, whether or not such activity is pursued for gain, profit or other pecuniary advantage.

**(b) Rules and Regulations**

The Executive shall be bound by and shall faithfully observe and abide by all the rules and regulations of the Hospital from time to time.

**(c) Confidential Information**

The Executive shall not, without the approval of the President and Chief Executive Officer, disclose or use, directly or indirectly, any Confidential Information of the Hospital to the detriment of the Hospital.

**13. Clauses Surviving Termination of Agreement**

The Executive agrees that the Covenants contained in this Agreement are of the essence of this Agreement; that each of such Covenants is reasonable and necessary to protect and preserve the interests and properties of the Hospital and the business of the Hospital; that irreparable loss and damage will be suffered by the Hospital should the Executive breach any of such Covenants; that each of such Covenants is separate, distinct and severable not only from the other of such Covenants but also from the other remaining provisions of this Agreement; that the unenforceability of any such Covenant shall not affect the validity or enforceability of any other such Covenant or any other provision or provisions of this Agreement; and that, in addition to other remedies available to it, the Hospital shall be entitled to both temporary and permanent injunctions to prevent a breach or contemplated breach by the Executive of any of such Covenants.

**14. Assignment; Governing Law**

- (a) This Agreement may be assigned by the Hospital and any successor to its business and shall enure to the benefit of any such assignee. Neither this Agreement nor any rights of the Executive hereunder may be assigned by the Executive.
- (b) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

**15. Previous Agreements**

Any and all previous agreements, written or oral, between the parties hereto or on their behalf relating to the employment of the Executive by the Hospital are hereby terminated and cancelled.

**16. Entire Agreement**

This Agreement sets forth the entire agreement between the parties hereto pertaining to the subject matter hereof. The parties acknowledge that there are no collateral agreements, representations, warranties, arrangements, understandings or otherwise, written or oral, pertaining to the subject matter hereof.

**17. Notice**

Should any notice, request, demand or other communication be required to be given hereunder, it shall be made in writing and shall be deemed to have been fully given if

personally delivered, or if mailed by Canada Post, certified or registered, postage prepaid, to the parties at the following addresses (or at such other addresses as shall be given in writing by any party to the other party hereto):

If to the Executive, addressed to:

Dr. Jay Mercer  
Vice-President, Quality, Innovation and Diagnostic Services  
Bruyère Continuing Care  
43 Bruyère Street  
Ottawa, ON K1N 5C8

If to the Hospital, addressed to:

Mr. Guy Chartrand  
President & Chief Executive Officer  
Bruyère Continuing Care  
43 Bruyère Street  
Ottawa, ON K1N 5C8

Any notice given by mailing shall be deemed to have been received on the third business day (excluding Saturday, Sunday and statutory holidays) following the date of mailing and any notice given by personal delivery shall be deemed to have been received at the time of delivery.
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**18. Amendments and Waivers**

No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both of the parties hereto. 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.

**19. Interpretation of Agreement**

- (a) Any issues arising out of the application, interpretation or administration of this agreement shall be determined by final and binding arbitration pursuant to the Arbitration Act, 1991 if such dispute resolution process is mutually agreed upon at the time by the Executive and the Hospital. The arbitrator shall be appointed in accordance with the Arbitration Act 1991, and the arbitrator shall have the power to award compensation, or damages in case of breach of the terms of his Agreement. However, the Arbitrator shall not have the power to order reinstatement of the Executive nor shall he/she have the power to amend, or alter in any way the terms of this Agreement.
- (b) Prior to referral of any issue to arbitration, the parties shall participate in a mediation regarding the issue. The mediator shall be chosen by agreement of each party. The mediator's fees and expenses shall be shared equally by the parties.

IN WITNESS WHEREOF this Agreement has been executed by the parties this 23<sup>rd</sup> day of June, 2021.

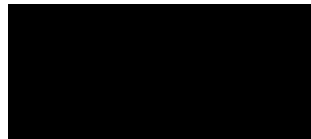
SIGNED, SEALED AND DELIVERED  
in the presence of



Dr. Jay Mercer



Guy Chartrand



Witness



## Appendix A

1. Car Allowance:

The Executive shall be paid a car allowance of five hundred dollars (\$500.00) per month. This amount may, at the discretion of the Executive, be included as pensionable earnings. The Executive may not seek reimbursement for any expense related to the use of his vehicle, including, but not limited to mileage allowance, insurance, etc.

2. The Executive is provided with cost-plus insurance, providing coverage for items not covered by group insurance plans, in the amount of two thousand five hundred (\$2,500.00) dollars per year, cumulative to a maximum of five thousand dollars (\$5,000.00).
3. The Executive and the Hospital shall contribute to the Hospitals of Ontario Pension Plan, according to the terms of the Plan.
4. The Executive shall be provided with parking at all facilities operated by the Hospital.
5. The Executive shall be provided, at no cost or expense to himself, with a computer or laptop for use at home, and a smartphone.
6. The Executive shall be entitled to six (6) weeks paid vacation per year.
7. Annual vacation entitlements must be taken during the vacation year during which it is earned. Under exceptional circumstances and upon written request, a maximum of seventy-five (75) hours vacation may be carried over into the following vacation year.