

THIS AGREEMENT is made effective the 1st day of December, 2007 (the "**Effective Date**") as amended on July 31st, 2013,

BETWEEN:

WINDSOR REGIONAL HOSPITAL

a corporation without share capital duly incorporated
under the laws of the Province of Ontario having its head
office at the City of Windsor, in the said Province

(the "Hospital")

-and-

DAVID M. MUSYJ

of the City of Windsor, in the Province of Ontario,

(the "CEO")

RECITALS

WHEREAS the CEO has been serving as Vice-President Corporate Services/Medical Affairs of the Hospital since March, 2000 pursuant to the terms of an employment agreement effective March 1, 2000 and addendum dated November 1, 2002;

AND WHEREAS the parties wish to set out in this Agreement the terms and conditions of employment that will govern the continuing relationship between the Hospital and the CEO from the Effective Date until the termination or expiration of 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 and all schedules attached to this agreement, all as may be supplemented or amended from time to time;
- (b) "Board" means the Board of Directors of the Hospital;

- (c) "Cause" has the meaning ascribed in section 11.5;
- (d) "Chair" means the Director elected by the Board to serve as Chair of the Board;
- (e) "Chief Executive Officer" means in addition to 'administrator' as defined in section 1 of the *Public Hospitals Act* (Ontario), the President and Chief Executive Officer of the Hospital;
- (f) "Confidential Information" has the meaning ascribed in section 13.1;
- (g) "LHIN" means Local Health Integration Network; and
- (h) "MOHLTC" means Ministry of Health and Long-Term Care.

1.2 **Entire Agreement**

This Agreement, including Schedule A, 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. 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 CHIEF EXECUTIVE OFFICER

- 2.1 The CEO agrees to serve as the Chief Executive Officer of the Hospital to the best of his ability in compliance with all applicable laws, the Hospital's By-laws, policies, procedures, rules and regulations, all as may be amended from time to time, and this Agreement.

ARTICLE 3 ACCOUNTABILITY

- 3.1 The CEO shall be directly accountable to the Board in accordance with the Hospital's by-laws and applicable policies and procedures.
- 3.2 The Board Chair shall act as the Board's central point of official communication with the CEO.
- 3.3 The CEO shall follow all lawful instructions and directions given to him by the Board.

ARTICLE 4 TERM

- 4.1 The term of this Agreement shall commence effective December 1, 2007 and shall continue until the CEO reaches age 65, unless terminated prior thereto in accordance with the provisions of ARTICLE 11 of this Agreement.

ARTICLE 5 FULL TIME AND ATTENTION

- 5.1 Except as expressly provided in section 5.2 below, the CEO shall, throughout the term of his employment, devote his full time and attention to the business and affairs of the Hospital. The CEO 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 CEO 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 Organizations").
- 5.2 (a) The CEO shall, with the Board's prior consent, be entitled to undertake activities for Other Organizations which are consistent with the CEO's responsibilities in respect of raising the profile of the Hospital and/or improving the Hospital's relationship with key stakeholders such as government (federal, provincial or municipal), University of Western Ontario and the University of Windsor, other education or research organizations, and other healthcare providers or their respective associations, provided such activities do not interfere with his ability to discharge his responsibilities to the Hospital.
- (b) The CEO's total aggregate commitment to the other organizations shall not exceed the equivalent of ten (10) business days per year without any reduction in salary.

ARTICLE 6 COMPENSATION

- 6.1 Subject to the terms and conditions of this Agreement, the CEO shall be entitled to compensation set out in Schedule "A".

ARTICLE 7 PERFORMANCE REVIEW

- 7.1 Starting in 2009, in April of each year, the Executive Committee of the Board will undertake a review of the CEO's performance, which will provide for a review of:
- (a) the CEO's progress toward achievement of Hospital objectives determined by the Board;
 - (b) the job description of the CEO as outlined in the By-laws;
 - (c) the Hospital's performance under any accountability agreement between the Hospital and the MOHLTC/LHIN;

(d) any notices, compliance directives or orders issued by the Minister responsible for MOHLTC or the LHIN pursuant to the *Commitment to the Future of Medicare Act* (Ontario) or any other similar legislation which may be enacted in the future; and

(e) other relevant matters.

7.2 The review process will also establish annual measurable performance expectations, including both short-term and long-term objectives for the CEO, as identified by the Board in cooperation with the CEO. The annual performance expectations including both short-term and long-term objectives for the CEO which will form the basis for the CEO first formal review shall be established and approved by the Board by no later than March 31, 2008.

7.3 Based on the performance review, the Executive Committee will make recommendations to the Board in respect of any adjustments to the CEO's compensation in accordance with applicable Hospital policies. The salary shall also be reviewed every year by the Board. This annual review shall occur at a time period agreed by the CEO and the Board for the express purpose of considering the appropriateness of other salary or benefit increases (including annual cost of living adjustment, if any.) Such salary or benefit increases, if any, shall be effective as of April 1st of the calendar year.

ARTICLE 8 VACATION ENTITLEMENT

8.1 Service to the Hospital by the CEO under this Agreement will produce vacation entitlement of five (5) weeks during each calendar year. In general, carry-over of an unused portion of vacation entitlement from one calendar year to the next is discouraged, but carry-over may be permitted under special circumstances with the prior written consent of the Board.

ARTICLE 9 EMPLOYEE BENEFIT PLANS

9.1 The CEO shall be entitled to participate in the benefit plans made available by the Hospital to its full-time senior administrative personnel.

9.2 The CEO acknowledges that some employee benefit plans may include compulsory employee participation and employee contributions at levels determined by the Hospital. The Hospital 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 CEO.

ARTICLE 10 EXPENSES

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

the Chair the Board. For clarity, expenses incurred by the CEO in undertaking activities for Other Organizations pursuant to section 5.2(a) shall not be reimbursed by the Hospital.

ARTICLE 11 TERMINATION

- 11.1 (a) The CEO may terminate his employment pursuant to this Agreement voluntarily at any time by giving not less than one hundred and twenty (120) days' notice in writing to the Hospital.
- (b) The Hospital may with written notice waive notice in whole or in part but shall be required to continue providing the CEO both his salary and benefits for the full one hundred and twenty (120) days.
- (c) The CEO agrees to accept the pay-in-lieu of notice set out in section 11.3 in full and final settlement of all amounts owing to him by the Hospital, including any payment in lieu of notice of termination, entitlement of the CEO under any applicable statute and any rights that the CEO may have at common law, and the CEO waives any claim to any other payment or benefits from the Hospital.
- 11.2 This Agreement and the CEO's employment with the Hospital may be terminated, without the Hospital being obligated to provide the CEO with advance notice of termination or pay in lieu of such notice, whether under contract, statute, common law or otherwise if:
- (a) the CEO retires;
- (b) the CEO is unable to perform substantially all of the CEO's employment related duties for a period of more than either three (3) consecutive months, or six (6) months in the aggregate during any twelve (12) month period. Failure by the Hospital to strictly rely upon this provision in any given instance or instances, shall not in any way constitute a waiver of the Hospital's rights as stated herein;
- (c) the CEO's employment is terminated for Cause as that term is defined in section 11.5;
- (d) the CEO dies.

The CEO or the CEO'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 CEO's death and those death benefits which may be payable in accordance with applicable insurance policies.

- 11.3 (a) The Hospital may terminate the employment of the CEO pursuant to this Agreement without cause at any time during the term of this Agreement by providing continuation of both salary and benefits for a 15 month period

plus 1 additional month per year of service by the CEO as the CEO to a maximum of a 24 month period.

- (b) The CEO can elect within ten (10) business days of such notice whether he wishes the payments to be paid as a salary continuance or a lump sum payment. The payments under this paragraph (b) include all entitlement to either notice or pay in lieu of notice and severance pay under the *Employment Standards Act* (Ontario). In the event the minimum statutory requirements as at the date of termination provide for right or benefit that is greater than that provided for in this Agreement, such statutory requirements will replace the payments contemplated under this Agreement.

11.4 The CEO agrees to accept the pay-in-lieu of notice as set out in section 11.3 above in full and final settlement of all amounts owing to him by the Hospital on termination, including any payment in lieu of notice of termination, entitlement of the CEO under any applicable statute and any rights that the CEO may have at common law, and the CEO waives any claim to any other payment or benefits from the Hospital.

11.5 As used in this ARTICLE 11, the term "cause" shall be deemed to mean:

- (a) The CEO's breach of a material term of this Agreement; or
- (b) Any reason which would entitle the Hospital at law to terminate the services of the CEO without either notice or pay in lieu of notice, including, without limitation, serious misconduct, habitual neglect of duty, incompetence, or conduct incompatible with his duties, or conduct prejudicial to the Hospital's business, or wilful disobedience to the Hospital's orders in a matter of substance; or
- (c) Any conduct by the CEO which calls into question the CEO's integrity or the integrity of the Hospital or that tends to bring discredit to the Hospital, including but not limited to conduct involving dishonesty or conduct that calls into question the trustworthiness or moral character of the CEO such as a criminal conviction; or
- (d) The theft by the CEO of any funds or property of the Hospital; or
- (e) An attempt by the CEO to obtain any personal advantage from any transaction in which the CEO has an interest which is adverse to the interest of the Hospital, unless the CEO shall have first obtained the consent of the Board of the Hospital in writing; or
- (f) Wilful neglect of the duties assigned to the CEO pursuant to the provisions of this Agreement, including compliance with applicable legislation, including the *Public Hospitals Act* (Ontario) and the *Commitment to the Future of Medicare Act* (Ontario); or

- (g) If the CEO becomes insolvent and unable to pay his debts in full, or files an assignment in bankruptcy or is adjudicated a bankrupt.
- 11.6 (a) It is understood that, if termination occurs pursuant to sections 11.1 or 11.3, all benefits shall terminate at the end of the month of termination.
- (b) 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 Hospital to him including, but not limited to, any motor vehicles, 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 Hospital at all times, and shall be surrendered to the Board of the Hospital, in good condition, promptly without being requested to do so.
- 11.7 The CEO hereby acknowledges and agrees that he will not be constructively dismissed in the event of a government mandated restructuring of the healthcare system that results in the Hospital's operations being assumed by a regional health authority, a local health integration network or other organization provided the restructuring does not materially affect the CEO's responsibilities to administer the operations of the Hospital as the most senior employee on site (e.g. may be a site administrator) and there is no decrease in the CEO's salary or benefits.
- 11.8 For greater certainty, it is understood and agreed that the rights of the Hospital to terminate the CEO can only be exercised by resolution of the Board.

ARTICLE 12 LIABILITY INSURANCE

- 12.1 The Hospital shall insure the CEO under its general liability policy both during and after the term of his employment, for all acts done by the CEO in good faith and in the execution of his office as Chief Executive Officer, throughout the term of his employment, including where the CEO is specifically named in a lawsuit launched by a patient, member of the Medical Staff, or any other party where the Hospital is a co-defendant.

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 Hospital acquired by the CEO 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, patients or their health records, any product, device, equipment or machine, or employees. For greater certainty, Confidential Information shall not include:

- (i) 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
 - (ii) information and facts that become available to the CEO on a non-confidential basis from a source other than the Hospital.
- 13.2 All Confidential Information of the Hospital, whether it is developed by the CEO during his period of employment or by others employed or physicians or engaged by or associated with the Hospital, is the exclusive property of the Hospital and shall at all times be regarded, treated and protected as such.
- 13.3 The CEO 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 Hospital) at any time during or subsequent to his period of employment without first obtaining the consent of the Chair, and the CEO 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 CEO's employment by the Hospital for any reason, or of receipt by the CEO of a written request from the Hospital, the CEO shall promptly deliver to the Hospital all property belonging to the Hospital, including without limitation all Confidential Information (in whatever form) that is in the CEO's possession or under the CEO's control.
- 13.5 Nothing in this section precludes the CEO 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 Hospital, and to the extent possible in the circumstances, the Hospital is afforded an opportunity to dispute the requirement.
- 13.6 The contents of this Agreement shall not be disclosed by the CEO to anyone, except to the Board, to the CEO's own financial and legal advisors, or as required by law, regulation, governmental body, or court order. Requests for further disclosure will be made to the Chair for consideration.
- 13.7 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 CEO will not, either while employed with the Hospital or for a period of 15 months plus 1 additional month per year of service by the CEO as the CEO to a maximum of a 24 month period subsequent to the CEO's termination of employment for any reason, without the Hospital'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 Hospital 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 CEO and the Hospital 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 Hospital, 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 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 Hospital:

1995 Lens Avenue
Windsor ON N8W 1L9

Attention: Chair, Board of Directors

Notices to CEO:

6920 6th Concession North
Amherstburg, Ontario N9V2Y9

Attention: David M Musyj, Chief Executive Officer

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 Hospital to the CEO or for the benefit of the CEO shall be less applicable withholdings and deductions.

15.8 **Recitals**

The CEO and the Hospital 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 Hospital, the CEO consents to the Hospital collecting, using and disclosing the CEO's personal information to establish, manage, terminate and/or otherwise to administer the employment relationship, including, but not limited to:

- (a) ensuring that the CEO is properly remunerated for his services to the Hospital which may include disclosure to third party payroll providers;

- (b) administering and/or facilitating the provision of any benefits to which the CEO is or may become entitled, including benefits coverage, pension plan and incentive plans; this shall include the disclosure of the CEO's personal information to the Hospital's third party service providers and administrators;
- (c) ensuring that the Hospital is able to comply with any regulatory, reporting and withholding requirements relating to the CEO's employment;
- (d) performance and promotion;
- (e) monitoring the CEO's access to and use of the Hospital's electronic media services in order to ensure that the use of such services is in compliance with the Hospital's policies and procedures and is not in violation of any applicable laws; and
- (f) complying with the Hospital's obligations to report improper or illegal conduct by any director, officer, executive or agent of the Hospital under any applicable health, criminal or other law.

15.11 **Independent Legal Advice**

The CEO confirms that, prior to the execution of this Agreement, he had a full and complete opportunity to obtain independent legal advice and representation and that he has either done so or has freely chosen not to obtain such advice.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the Effective Date.

WINDSOR REGIONAL HOSPITAL

Per: _____
 Brian L. Chillman
 Chair of the Board

Per: _____
 Michael Ray
 Vice-Chair of the Board

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

SIGNED, SEALED &
 DELIVERED
 In the presence of:

} _____
David M. Musyj

SCHEDULE A
COMPENSATION OF CEO

1.0 Subject to the terms and conditions of the Agreement and Amending Agreement, the CEO shall be entitled to the compensation and benefits set out below:

1.1 Base Salary:

\$420,000 per annum less CEO contributions to Hospital pension and benefit plans.

(a) (i) On an annual basis, subject to the compliance with the *Broader Public Sector Accountability Act* (Ontario), the Board at its sole discretion, may deduct an at risk amount of up to five percent (5%) of the Base Salary and convert such at risk amount to a performance payment which the CEO may earn based on the provisions set out in paragraph 1.1(b) below.

(ii) Following the expiry of the current wage restraint legislation restrictions on salary increases, the base salary shall be reviewed every year by the Board. This annual review shall occur at a time period agreed by the CEO and the Chair for the express purpose of considering the appropriateness of annual salary or benefit increases. Such salary increases, if any, shall be effective as of April 1st of the calendar year.

(b) Performance Incentive

(i) As determined by the Board in accordance with paragraph (a) above, the CEO may be eligible to earn a performance payment of up to five percent (5%) of his annual base salary as a performance incentive. This performance incentive compensation will be included in the CEO's Healthcare of Ontario Pension Plan ("HOOP") pensionable earnings if permitted under the terms of the Plan.

(ii) The determination of whether a performance incentive is paid shall be made by the Board and in recognition of the CEO's achievement of the strategic goals, objectives and operational targets set annually by the Board.

(iii) The Performance Incentive, if any, will be determined by the Board and paid by the Hospital for each fiscal year only after

all of the data for the expired fiscal year necessary to review the goals, objectives and targets is available.

- (iv) The parties acknowledge that the payment of the performance incentive payments may be subject to legislative guidelines.

(c) No Base Salary Adjustment

The Board's decision to deduct or pay a performance incentive payment pursuant to paragraph (b) above, as may be applicable, does not result in an adjustment to the future base salary payable to the CEO.

- 1.2 **Automobile:** The Hospital will pay the CEO a monthly car allowance of \$850.00, subject to annual review by the Board after the CEO's annual performance review, which allowance is intended to be used to purchase or lease a vehicle and all related expenses, (repair, maintenance, fuel, and insurance etc.). Any mileage reimbursement from outside organizations (e.g. OHA) will be remitted to the Hospital. No additional monies will be provided by the Hospital with respect to vehicle costs.
- 1.3 **Professional Memberships:** Professional membership fees in up to three professional organizations that are reasonable and approved in advance by the Chair (i.e. Michigan Bar Association, Canadian Bar Association and the Law Society of Upper Canada), shall be paid directly by the Hospital on behalf of the CEO, subject to annual review by the Board after the CEO's annual performance review.
- 2.0 The auditors shall determine the amount, if any, the CEO's T4 will include in respect of any of the monies or benefits received under the Automobile, Perquisite Account or Professional Memberships categories