

## ACTING CEO SERVICES AGREEMENT

THIS AGREEMENT made this 14<sup>th</sup> day of January, 2021.

BETWEEN:

ALEXANDRA MARINE AND GENERAL HOSPITAL  
("AMGH")

-and -

SOUTH HURON HOSPITAL ASSOCIATION  
("SHHA")

**WHEREAS** the Chief Executive Officer of AMGH was providing services to SHHA;

**AND WHEREAS** the position of the Chief Executive Officer of AMGH has been vacated and an Acting Chief Executive Officer has been appointed;

**AND WHEREAS** SHHA desires to have access to and AMGH is willing to make available the AMGH Acting Chief Executive Officer to provide Acting CEO Services to SHHA;

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained herein and other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

### ARTICLE 1 - INTERPRETATION

#### 1.1 Definitions

- (a) "**Agreement**" means this Acting CEO Services Agreement and all appendices attached hereto;
- (b) "**Business Day**" means a day other than Saturday, Sunday and the following holidays: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; and Boxing Day;
- (c) "**Acting CEO Services**" has the meaning ascribed thereto in section 2.1 hereof;
- (d) "**Confidential Information**" has the meaning ascribed thereto in section 4.1 hereof;
- (e) "**ECFAA**" means the *Excellent Care for All Act, 2010* (Ontario);
- (f) "**Effective Date**" means the date first written above;
- (g) "**Event of Default**" has the meaning ascribed thereto in section 8.2 hereof;
- (h) "**Fees**" has the meaning ascribed thereto in section 6.1 hereof;
- (i) "**Indemnified Parties**" has the meaning ascribed thereto in section 9.2 hereof;
- (j) "**Losses**" has the meaning ascribed thereto in section 9.1 hereof;

- (k) “**Party**” or “**Parties**” means each or either of SHHA or AMGH, or both SHHA and AMGH, as the context may require;
- (l) “**Performance Targets**” has the meaning ascribed thereto in section 6.2 hereof;
- (m) “**Service Provider**” has the meaning ascribed thereto in section 2.1 hereof; and
- (n) “**Term**” has the meaning ascribed thereto in section 8.1 hereof.

## 1.2 Interpretation

- (a) Clause and other headings are for ease of reference only and shall not have meaning when construing this Agreement.
- (b) Any reference in this Agreement to any gender includes all genders and a reference to the singular includes the plural and vice versa.
- (c) All amounts referred to in this Agreement are denominated in Canadian dollars.

## ARTICLE 2 - SERVICES

- 2.1 As of the Effective Date, AMGH shall make available to SHHA the AMGH Acting Chief Executive Officer (the “**Service Provider**”) to deliver management services to SHHA as set out in Appendix A (the “**Acting CEO Services**”).
- 2.2 It is agreed that when rendering the Acting CEO Services to SHHA under this Agreement, the Service Provider shall at all times remain an employee of AMGH. At no time shall there be an employment or any other direct contractual relationship between the Service Provider and SHHA.
- 2.3 As a condition precedent to the Acting CEO Services, prior to the Effective Date, AMGH shall have addressed with the Service Provider to the satisfaction of AMGH the additional responsibilities of the Service Provider under this Agreement.

## ARTICLE 3 - OBLIGATIONS OF THE PARTIES

### 3.1 General

- (a) The Service Provider shall be accountable and report to SHHA for the Acting CEO Services rendered to SHHA under this Agreement in accordance with Appendix A.
- (b) Subject to the understanding that the Service Provider, as an employee of AMGH, will at all times continue to comply with applicable policies of AMGH, the Service Provider shall also be subject to and comply with the policies, procedures, guidelines, rules and regulations of SHHA while rendering services to SHHA under this Agreement.

### 3.2 AMGH Obligations

- (a) During the course of this Agreement AMGH shall continue to be responsible for providing remuneration to the Service Provider, addressing any performance concerns, and re-assigning and/or terminating the Service Provider’s employment with AMGH.

- (b) AMGH shall notify SHHA as soon as possible of any situation which affects, or may affect, the ability of SHHA to enjoy the benefit of the Service Provider that AMGH discovers or of which it becomes aware. Such situations include, but are not limited to, performance or other concerns regarding the Service Provider regardless of whether those concerns are with respect to the Service Provider's relationship with AMGH or SHHA.

### 3.3 SHHA Obligations

- (a) SHHA shall determine, in its sole discretion, the manner in which the Service Provider will be used by SHHA to provide the Acting CEO Services as set out in Appendix A, provided that such use is within the scope of the Service Provider's professional qualifications, and in accordance with all applicable federal, provincial and local statutes, rules, regulations and professional requirements.
- (b) SHHA shall provide input into performance review of the Service Provider, if and when requested by AMGH.
- (c) If, during the course of this Agreement, SHHA becomes aware of actions or omissions relevant to the activities of the Service Provider, SHHA shall promptly notify AMGH and provide reasonable particulars of such occurrence.

## ARTICLE 4 - PRIVACY AND CONFIDENTIALITY

- 4.1 Each Party hereto acknowledges that, during the term of this Agreement, each Party may be required from time to time to disclose to the other Party certain materials, information and data relating to such Party's business, which may include personal information or personal health information (all of which is hereinafter referred to as "**Confidential Information**"). Each Party hereto acknowledges that the other's Confidential Information, other than that which is publicly known, is confidential and proprietary information and constitutes trade secrets. Each Party agrees to exercise the same degree of care of the other Party's Confidential Information that it does with its own Confidential Information and to confine knowledge of Confidential Information only to its employees and agents who require such knowledge for use in the ordinary course and scope of their employment or agency. The Parties hereto shall not, during the Term of this Agreement or thereafter, use, disclose, divulge or make available each other's Confidential Information to any third party either directly or indirectly in any manner whatsoever without the prior written consent of the other Party.
- 4.2 Each Party shall strictly comply with the requirements of all relevant privacy and confidentiality legislation.
- 4.3 Any work product created by the Service Provider while providing the Acting CEO Services to SHHA under this Agreement are owned by SHHA, for whom the work product was created. Where the Service Provider is acting on behalf of both Parties hereto contemporaneously, or where it cannot be determined for whom the Service Provider created any particular work, such work shall be jointly owned by the Parties, who may use such work for their own respective benefit without restriction.
- 4.4 The obligations in this Article 4 shall survive the termination or expiration of this Agreement.

## ARTICLE 5 - CONFLICT OF INTEREST

- 5.1 In the event that a conflict of interest or perceived conflict of interest arises as between AMGH and SHHA as a result of or in relation to the Service Provider's delivery of the Acting CEO Services under this Agreement, the Service Provider shall be obliged to promptly disclose and refer the matter for determination by the Boards of Directors of AMGH and SHHA.

## ARTICLE 6 - FEES AND PAYMENT

- 6.1 Subject to section 6.2, SHHA shall pay to AMGH the fees and payments set out in Appendix B (the "**Fees**"). AMGH shall issue an invoice to SHHA for the Fees on a monthly basis. All Fees due to AMGH from SHHA shall be paid by SHHA within thirty (30) days of receipt of the invoice.
- 6.2 In accordance with ECFAA, AMGH shall hold back a percentage of the compensation paid by AMGH to the Service Provider who, when rendering the Acting CEO Services, is an "executive" as defined under ECFAA, subject to the achievement of the performance targets as determined by SHHA (the "**Performance Targets**"). In the event that the Performance Targets are achieved at the end of SHHA's fiscal year (being April 1-March 31), SHHA shall direct and authorize AMGH to remit that holdback to the Service Provider.

## ARTICLE 7 - RESTRAINT OF ENGAGEMENT

- 7.1 SHHA shall not engage the services of the Service Provider as either employee or independent contractor of SHHA during the term of the Service Provider's employment with AMGH, without the express written consent of AMGH.

## ARTICLE 8 - TERM AND TERMINATION

- 8.1 This Agreement shall be effective as of the Effective Date and shall continue for six (6) months (the "**Term**"), unless earlier terminated in accordance with the terms herein. This Agreement may be extended on the mutual written agreement of the Parties.
- 8.2 This Agreement shall terminate:
- (a) in the event that AMGH terminates the Service Provider for any reason. Nothing in this Agreement shall require AMGH to retain the Service Provider in its employment for any period of time and AMGH shall be free to terminate the Service Provider at any time during the Term in its sole discretion. AMGH undertakes to notify SHHA of its decision to terminate the Service Provider in advance of any such termination;
  - (b) in the event and on such date that the Service Provider ceases services as the Acting Chief Executive Officer of AMGH for any reason including passing away or becoming permanently or substantially incapacitated to the effect that the Service Provider can no longer fulfil the role, AMGH undertakes to notify SHHA of the change in status or intended change in status of the Service Provider as soon as AMGH becomes aware;
  - (c) in the event that either Party provides not less than thirty (30) days prior written notice to the other Party;

- (d) upon the occurrence of an Event of Default, without fault or liability, if the defaulting Party does not cure the Event of Default within ten (10) Business Days of receipt of notice of the default. Each of the following shall constitute an “**Event of Default**” for purposes of this Agreement:
- (i) non-compliance with any obligation hereunder;
  - (ii) non-payment of any amounts due and payable under this Agreement;
  - (iii) if in AMGH's opinion, acting reasonably, SHHA causes, directly or indirectly, any material interference with AMGH's contractual, employment, professional or other relationships with AMGH employees;
  - (iv) if SHHA or AMGH, as the case may be, becomes bankrupt or insolvent or files or has filed against it a petition in bankruptcy or makes a general assignment for the benefit of creditors or a receiver or trustee is appointed for its business or properties; and
  - (v) if SHHA or AMGH, as the case may be, attempts to assign or transfer this Agreement in violation of the provisions hereof; or
- (e) on written notice or effective as of the date provided in any notice or direction received from any governmental body, if any governmental body legally objects to this Agreement and/or the Acting CEO Services, whether or not such objection is grounded in any present or future legislation, regulation or governmental policy.

## ARTICLE 9 – INDEMNIFICATION AND INSURANCE

- 9.1 SHHA shall indemnify AMGH, its directors, officers, employees or contractors from and against any and all losses, payments, damages, claims, penalties, liabilities or expenses (including reasonable legal fees and disbursements) (“**Losses**”) resulting from any liability, claim or cause of action of any kind relating to the actions or inactions of the Service Provider when rendering the Acting CEO Services to SHHA under this Agreement.
- 9.2 Each Party shall indemnify, defend and hold harmless the other party and their respective employees, elected officers, agents and representatives (“**Indemnified Parties**”) from and against all claims, actions, demands, suits, liabilities, losses, expenses, costs or damages of every nature and kind whatsoever which any of the Indemnified Parties may have or suffer, arising out of any breach by the indemnifying Party of its obligations under this Agreement.
- 9.3 Throughout the Term of this Agreement, the Parties shall maintain comprehensive general liability insurance, including personal injury and property damage insurance, and error or omission insurance in amounts acceptable to the other Party and responsive to each Party's indemnification obligations set out herein. Either Party, if requested, shall provide to the other Party a policy endorsement certifying insurance provided by the insurer giving evidence of such insurance.
- 9.4 Notwithstanding anything to the contrary, in the event that AMGH terminates the employment of the Service Provider, all costs associated with such termination, including, but not limited to, all termination and severance obligations owed to the

Service Provider under statute, contract, common law or otherwise, will be borne solely by AMGH and will not be shared between the Parties.

- 9.5 The obligations in this Article 9 shall survive the termination or expiration of this Agreement.

**ARTICLE 10 - NOTICES**

- 10.1 Except where otherwise provided herein, any notice, request, approval or other communication required or permitted hereunder shall be in writing and shall be made or given by personal delivery, by registered mail or by facsimile addressed to the respective parties as follows:

In the case of AMGH to:

Alexandra Marine and General Hospital  
120 Napier Street  
Goderich, ON N7A 1W5

Attention: Chair, Board of Directors  
Fax Number: 519-524-8504

In the case of SHHA to:

South Huron Hospital Association  
24 Huron Street West  
Exeter, ON N0M 1S2

Attention: Chair, Board of Directors  
Fax Number: 519-235-3405

Any such notice given by personal delivery shall be deemed to be received on the date of delivery, any notice given by registered mail shall be deemed received on the 5<sup>th</sup> Business Day following the date of mailing and any notice given by facsimile transmission shall be deemed received on the date of transmission, provided such day is a Business Day and, if not, on the first Business Day thereafter.

**ARTICLE 11 - GENERAL**

- 11.1 The legal relationship between the Parties shall be that of independent contractors, and not one of joint venture, joint enterprise, partnership or agency. Neither Party shall gain, by virtue of this Agreement, authority to enter into any agreement or to assume or incur any obligation or responsibility for, or on behalf of, or in the name of, the other Party.
- 11.2 No Party may assign this Agreement without the prior written consent of the other Party.
- 11.3 This Agreement, including any Appendices hereto, may not be amended or modified in any respect except by written instrument signed by both Parties.
- 11.4 This Agreement shall be construed strictly in accordance with the laws of the Province of Ontario, Canada, to the exclusion of the laws of any other forum and without regard to the jurisdiction in which any action, claim or proceeding in respect of this Agreement may be instituted.
- 11.5 Each of the provisions contained in this Agreement is distinct and severable. Any declaration by a court of competent jurisdiction of the invalidity or unenforceability of any provision or part of a provision will not affect the validity or enforceability of any other provision of this Agreement.
- 11.6 The failure of either Party to insist upon strict performance of any terms and conditions or to exercise any of its rights set out in this Agreement shall not constitute a waiver of these rights, and these rights shall continue in full force and effect.

11.7 This Agreement constitutes the entire agreement between AMGH and SHHA with respect to its subject matter and supersedes all previous agreements, communications and understandings, whether oral or written, between the Parties. Each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or warranty or other undertaking not fully reflected in the terms of this Agreement.

11.8 This Agreement may be executed by the Parties hereto in separate counterparts or duplicates each of which when so executed and delivered shall be an original, but all such counterparts or duplicates shall together constitute one and the same instrument.

**IN WITNESS WHEREOF** this Agreement has been executed by the Parties hereto as of the date first above written.

**ALEXANDRA MARINE AND  
GENERAL HOSPITAL**

Per: 

Name: Allan Ball

Title: Board Chair

Per: 

Name: **PAMELA SOMERS**

Title: **BOARD TREASURER**

I/We have the authority to bind the corporation

**SOUTH HURON HOSPITAL  
ASSOCIATION**

Per: 

Name: Karen Brown

Title: Board Chair

Per: 

Name: Nancy Peter

Title: Board Vice-Chair

I/We have the authority to bind the corporation

## **APPENDIX A**

### **CEO SERVICES**

1. Act in the capacity of President and CEO for SHHA, and in doing so, meeting any and all legislated rules, regulations and requirements;
2. Attend and report at SHHA Board of Governors meetings;
3. Act as SHHA President and CEO with responsibility for any/all operational day-to-day decisions;
4. Act as SHHA President and CEO with respect to matters associated with the public, the SHHA's patients and media, as required;
5. Publically represent SHHA in good faith and integrity;
6. Represent SHHA matters with Ontario Health West, the Province of Ontario and peer organizations;
7. Guide and mentor the Senior Leadership / Management staff of SHHA; and
8. Act as SHHA President and CEO in a manner that facilitates the provision of highest quality patient care possible, and doing so within a fiscally prudent manner.



**APPENDIX B**

**FEES AND PAYMENTS**

SHHA shall pay to AMGH a monthly fee of \$4,500.00 for the Acting CEO Services.

Any expenses that the Service Provider incurs in the course of the performance of the Acting CEO Services to SHHA shall be reimbursed by SHHA to the Service Provider in accordance with SHHA policy and in accordance with applicable legislation that may be in effect from time to time respecting business expenses in the public sector. Where a discrepancy exists between SHHA policy and legislation, the legislation shall take precedent.

It is understood that the Service Provider shall bear any expenses associated with travel to the SHHA site in the course of their day-to-day work responsibilities, as described in Appendix A.

SHHA shall only make direct payments to the Services Provider for business expenses incurred in accordance with this Appendix B. All other remuneration of the Services Provider shall be the responsibility of AMGH, in accordance with section 3.2(a) of this Agreement.