

EMPLOYMENT AGREEMENT
(this "Agreement")

BETWEEN

THE BOARD OF GOVERNORS OF MCMASTER UNIVERSITY
(Hereinafter referred to as the "University" or the "Board");

-AND-

DR. PAUL O'BYRNE
(Hereinafter referred to as the "Dr. O'Byrne")

WHEREAS Dr. O'Byrne is currently appointed to the position of Chair, Department of Medicine;

AND WHEREAS the University has offered, and Dr. O'Byrne has accepted, an appointment to the position of Dean and Vice-President (Health Sciences) (the "Appointment");

NOW THEREFORE the University and Dr. O'Byrne (collectively hereinafter referred to as the "Parties" and each a "Party") do hereby agree as follows:

ARTICLE 1: TERM

- 1.1 The Appointment shall be for an initial term of five years, commencing on July 1, 2016, and expiring on June 30, 2021 (the "Term"), renewable on successful completion and upon mutual written agreement of the Parties.
- 1.2 Dr. O'Byrne may at any time, at his discretion and without providing any reasons for doing so, terminate the Appointment prior to the expiry of its Term by giving the President a minimum of six months' written notice of his intention to do so. The University may, at its sole discretion, accept Dr. O'Byrne's termination of the Appointment by paying him a lump sum payment equivalent to the applicable notice provided by Dr. O'Byrne, less applicable statutory deductions, remittances, and withholdings. If the University decides to allow Dr. O'Byrne to work during part of the applicable notice provided by Dr. O'Byrne, the University may, at its sole discretion, pay the balance of the applicable notice period by way of a lump sum payment.
- 1.3 The University may, at any time, at its discretion and without providing any reason for doing so, terminate the Appointment prior to the expiry of its Term without cause by providing six months written notification to Dr. O'Byrne, or at the University's sole option, pay in lieu thereof, calculated on the basis of the Salary paid to Dr. O'Byrne at the time of termination.
- 1.4 If the University elects to provide pay in lieu of notice referenced in Article 1.3 in the form of a lump sum, then continued participation in all premium based benefit plans will continue only for the applicable period of notice of termination as set forth in the *Employment Standards Act, 2000* (the "ESA"), save and except short and long term disability, which will cease effective on the date of termination.

- 1.5 If the University elects to provide pay in lieu of notice referenced in Article 1.3 in the form of salary continuance, then:
- a) for the applicable period, Dr. O'Byrne will continue to participate in all premium based benefit plans on the same terms and conditions applicable as at the date of termination, save and except short and long term disability coverage, which will cease on the date of termination; and,
 - b) subject to his election to receive any benefits thereunder, the University will maintain Dr. O'Byrne's participation in the Pension Plan until the date on which the salary continuation payments pursuant to Article 1.3 cease;
- 1.6 It is understood and agreed that any payment made by the University pursuant to Articles 1.4 or 1.5 will be in lieu of notice of termination and will be inclusive of any entitlement Dr. O'Byrne may otherwise have to wages, salary, benefits, bonuses, overtime pay, vacation pay, vacation, holiday pay, holidays, and all termination pay and severance pay, whether arising pursuant to the Ontario *Employment Standards Act*, at common law or by this Agreement.
- 1.7 The University may terminate the Appointment for cause, which includes any reasons permitted under common law or for reason(s) of dishonesty, including without limitation fiscal or academic dishonesty, negligence or Dr. O'Byrne's willful failure to perform his duties as Dean and Vice-President (Health Sciences), all as determined in good faith by the University, in which case, no further compensation or benefits as defined in this Agreement shall be payable to Dr. O'Byrne and no notice, monies in lieu thereof, or research/administrative leave will be due to Dr. O'Byrne.
- 1.8 The Parties agree that, should Dr. O'Byrne become disabled such that he is incapable of performing the duties of Dean and Vice-President (Health Sciences) for one year, the Appointment shall be deemed to have been terminated. Dr. O'Byrne acknowledges that, in such circumstances, accommodation in the position of Dean and Vice-President (Health Sciences) is not possible for the purposes of the Ontario *Human Rights Code*, R.S.O. 1990, c. H. 19. Dr. O'Byrne further acknowledges and agrees that if the Appointment is terminated under this Article 1.8, Dr. O'Byrne is not entitled to the payments specified in Article 1.3. The University acknowledges and agrees that if the Appointment is terminated under this Article 1.8, Dr. O'Byrne will nevertheless maintain his academic appointment, subject to the policies and procedures established by the University from time to time related to tenured faculty members.
- 1.9 It is agreed that, if the Appointment is terminated prior to the expiry of its Term, Dr. O'Byrne will be entitled to resume the position of full Professor in the Department of Medicine, with tenure on terms that are specified in Articles, 3.11 3.12 and 3.13. The termination of the Appointment, whether for cause or not, shall not result in the termination of Dr. O'Byrne's academic appointment, which may only be terminated in accordance with the policies and procedures established by the University from time to time for termination of tenured faculty members.

ARTICLE 2: DUTIES

- 2.1 Dr. O'Byrne shall faithfully, effectively and satisfactorily perform all of the duties and acts that are usual or necessary in carrying out the Office of the Dean and Vice-President (Health Sciences), including those which may be required by the *McMaster University Act, 1976* and those described in the attached Schedule "A" hereto (the Policy entitled: "Dean and Vice-President of Health Sciences Terms of Reference"), which Schedule is incorporated into, and forms part of, this Agreement.
- 2.2 Subject to the approval of the Senate and the Board of Governors, the duties and responsibilities as defined in the attached "Schedule A" may be amended from time to time by the University as it deems necessary.
- 2.3 The University recognizes that Dr. O'Byrne is a practicing clinician and is entitled to continue as such during the Term.
- 2.4 Each contract year, Dr. O'Byrne shall develop and implement annual performance objectives in addition to the normally expected duties of the position. These annual performance objectives will form the basis of the annual salary review referenced in Article 3.2. Annual performance objectives shall be subject to review by, and agreement of, the President.

ARTICLE 3: REMUNERATION AND CONDITIONS OF EMPLOYMENT

Salary

- 3.1 Dr. O'Byrne's gross annual base salary for the contract year commencing on July 1, 2016 shall be Three Hundred and Ninety Thousand Dollars less all applicable tax withholdings and other statutory deductions (the "Salary").
- 3.2 Dr. O'Byrne's Salary shall be subject to annual review on or before July 1 of each contract year. It is acknowledged that Dr. O'Byrne's Salary is subject to any applicable compensation restraint legislation that may be in place.

P/VP Plan

- 3.3 In addition to the Salary, Dr. O'Byrne will be eligible to participate in the Performance/Variable Pay Plan (the "P/VP Plan").
- 3.4 While the specific terms of Dr. O'Byrne's P/VP Plan shall be determined and communicated to him by the President on an annual basis, the Parties understand and agree as follows:
 - a) that Dr. O'Byrne will be eligible to earn an annual P/VP Plan payment of up to 10% of his Salary;
 - b) that the compensation paid to Dr. O'Byrne under the P/VP Plan shall not be pensionable earnings and shall be subject to all applicable statutory deductions and remittances;

- c) annual P/V/P payments will become payable to Dr. O'Byrne, without interest, not later than the first pay deposit following the date the P/V/P payment is approved and after July 1 of the applicable year.

Vacation

- 3.5 Dr. O'Byrne shall be entitled to an annual paid vacation leave of six weeks in accordance with the University's policies and practices, free of administrative and academic responsibilities, and to specified holidays generally observed by University faculty and staff. It is understood that Dr. O'Byrne's Salary is inclusive of the pay for such vacation and holiday leave.

Benefits

- 3.6 All other matters relative to benefits and insurance and to the employment relationship between the Parties shall be provided on similar terms and conditions afforded to other members of the University's SAAO Group, concomitant with Dr. O'Byrne's position and salary, subject to the University's right to amend such terms and conditions from time to time in its sole discretion.

Retirement Plans

- 3.7 Dr. O'Byrne shall continue to participate in the *Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College, 2000* as amended from time to time (the "Pension Plan").

Vehicle Allowance

- 3.8 In order to conduct his duties on behalf of the University, Dr. O'Byrne will be provided with a bi-weekly vehicle allowance, which amounts to Nine Thousand Six Hundred Dollars per annum. Dr. O'Byrne understands that he will not be entitled to reimbursement for any expenses related to his use of his vehicle for University business purposes within the area covered by the City of Hamilton and the City of Burlington. Reimbursement for travel outside this specified area will be compensated at the University's current per kilometer rate.

Research Amount

- 3.9 In each contract year of this Agreement, the University will provide Dr. O'Byrne with an amount for research to be used in the pursuit of his scholarly activities, to a maximum amount of Fifty Thousand Dollars per annum. The Parties agree that all reimbursements made to Dr. O'Byrne for this amount shall be supported by proper documentation evidencing his expense(s). The Parties further agree that any unused balance of this research amount may be carried forward from one year to the next, provided that the total amount of the carry forward does not exceed Fifty Thousand Dollars and that the total balance in the research account does not exceed One Hundred Thousand Dollars in any single contract year. In the event that there is an unused balance of this research amount because of the expiry or termination of the Appointment, Dr. O'Byrne shall be entitled to use the remaining balance in pursuit of his scholarly activities for a period of up to two years after the date of the expiry or termination of the Appointment provided that he maintains his academic appointment in

the Department of Medicine during this period. Dr. O'Byrne further agrees that if he purchases any assets with the research amount, upon the expiry or termination of the Appointment, such assets are the property of the University.

Use of University Property

3.10 Dr. O'Byrne acknowledges and agrees that while he may utilize University property - such as laptops, BlackBerries, or cell-phones – during the course of his duties, such property will remain the property of the University during and after the term of his employment.

Return to Faculty Position

3.11 The University agrees that upon the expiry of the Term as Dean and Vice-President (Health Sciences) or upon the termination of the Appointment in accordance with Article 1, Dr. O'Byrne will be entitled to return to his academic appointment in the Department of Medicine, so long as the reasons for the termination of the Appointment do not also constitute "adequate cause" for the termination of tenured faculty members in accordance with the policies and procedures established by the University from time to time.

3.12 Upon returning to his academic appointment pursuant to Articles 1.9 and 3.11, Dr. O'Byrne's salary for his academic appointment will be the equivalent to the average of the highest four salaries paid to tenured faculty in the Faculty of Health Sciences for the academic year in which he resumes his academic appointment, excluding any administrative salaries or stipends.

3.13 All pertinent rules, regulations, policies, and procedures governing faculty members as established from time to time will be applicable to Dr. O'Byrne's academic appointment. Dr. O'Byrne's academic appointment may only be terminated in accordance with the policies and procedures established by the University from time to time for termination of tenured faculty members.

Research/Administrative Leave

3.14 Dr. O'Byrne will be eligible for administrative leave in accordance with the University's *Administrative Leave Policy*. The timing of any such leave and any relevant terms will be subject to approval by the President. No personal financial compensation will be available for any leave not taken.

ARTICLE 4: EXPENSES

General Expenses

4.1 Dr. O'Byrne shall be reimbursed, in accordance with the University's policies, for reasonable and necessary expenses incurred in connection with the fulfillment of his role as Dean and Vice-President (Health Sciences). Without restricting the generality of the foregoing, such expenses shall be deemed to include travel on University-related business, and the entertainment of visitors to the University, faculty, students, staff, and alumni. Whether such entertainment occurs on or outside of University property, such expenditures shall include the costs of food, drink, catering services and cleaning. Such expenses are subject to final approval of the President.

- 4.2 Dr. O'Byrne agrees that if he has any questions about whether the expenses that he will incur will be approved by the President, Dr. O'Byrne shall seek the approval of the President before he incurs such expenses. If Dr. O'Byrne fails to seek such approval, and the President determines that the expenses did not fall within the scope of the University's policies or this Agreement, the President shall not approve, and Dr. O'Byrne shall not receive reimbursement for, such expenses.

Travel Expenses

- 4.3 Reimbursement for Dr. O'Byrne's travel expenses for trips that are in excess of one week outside of Canada is subject to prior written approval of the President. Dr. O'Byrne undertakes to provide the President with reasonable notice of such proposed expenses.
- 4.4 It is understood that there are certain occasions, including long distance business-related trips by road and business-related social activities, where Dr. O'Byrne should utilize taxis or limousines in lieu of driving.

Gifts

- 4.5 If Dr. O'Byrne receives a gift with a value of two hundred dollars or more and if the gift was given to Dr. O'Byrne in his capacity as a representative of McMaster University, including any gift given while Dr. O'Byrne was traveling on University business or receiving visitors to the University, then Dr. O'Byrne will disclose to the President the nature of the gift; its approximate commercial value; the circumstances under which the gift was given to him; and whether the gift was received by him as a representative of McMaster or in his individual capacity. A gift that was received by Dr. O'Byrne as a representative of McMaster University shall be disposed of in a manner agreed to in writing by the President.

Service Contracts

- 4.6 Dr. O'Byrne agrees to submit any existing or proposed employment or service contract, including renewals and amendments, involving the University and his spouse or family members to the Human Resources Committee of the Board of Governors for review and approval, amendment or rejection.

ARTICLE 5: SOURCE DEDUCTIONS

- 5.1 Dr. O'Byrne's Salary and other amounts owing under this Agreement including, for greater certainty, any amounts owing under Article 1, and any other taxable benefits, such as the vehicle allowance, shall be subject to applicable statutory deductions, reimbursements and withholdings in respect of income tax, Canada Pension Plan, employment insurance or other amounts as required by law and payment by the University of such amounts to the appropriate governmental authority shall constitute payment of such amounts to Dr. O'Byrne for the purposes of determining his entitlements under this Agreement.

ARTICLE 6: MISCELLANEOUS

- 6.1 All notices hereunder shall be in writing and served by email, facsimile or overnight courier to the addresses shown below. Either Party may change its address by written notice to the other party.

If to the University:
President and Vice-Chancellor
McMaster University
Gilmour Hall Room 238
Hamilton, ON L8S 4L8
Facsimile: 905-522-3391
Email: president@mcmaster.ca

If to Dr. O'Byrne:
Dean and Vice-President (Health Sciences)
McMaster University
Health Sciences Centre Room 2E1
Hamilton, ON L8N 3Z5
Email: obyrne@mcmaster.ca

- 6.2 This Agreement constitutes the sole agreement remaining in effect between them and, apart from this Agreement, all other agreements, whether written or oral, express or implied, which may have existed between the Parties are hereby superseded and terminated. As such, the Parties agree that upon execution of this Agreement by each of them, it shall have an Effective Date of July 1, 2016.
- 6.3 Dr. O'Byrne acknowledges and agrees that the University is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, C. F. 31, and that the details of this Agreement may be made public to all of the University's stakeholders and members of the general public.
- 6.4 This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada, as applicable, as they exist on the date on which this Agreement has been executed by both Parties.
- 6.5 If any provisions of this Agreement become, or are deemed to be, invalid, illegal or unenforceable, such provision shall be deemed amended to conform to applicable law so as to be valid and enforceable or, if it cannot be amended without materially altering the intention of the Parties, it shall be stricken and the remainder of the Agreement shall remain in full force and effect.
- 6.6 No failure on the part of either Party to exercise, and no delay in exercising, any right, remedy, or power under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy or power preclude any other or further exercise of any other right, remedy, or power under this Agreement. No waiver shall be valid unless it is in writing and signed by the Party to be bound thereby.
- 6.7 The language used in this Agreement shall be deemed to be the language chosen by the Parties. Further, the words used in this Agreement shall be deemed to be the words chosen by the Parties to express their mutual intent and this Agreement shall be interpreted without regard to any presumption or other rule requiring interpretation of this Agreement more strongly against the Party who caused it to be drafted.
- 6.8 All headings used in the text of this Agreement are for ease of reference only, and the Parties specifically agree that such headings shall not be used for purposes of interpretation of this Agreement.
- 6.9 The University hereby confirms that the person executing this Agreement on its behalf is authorized to bind the University.
- 6.10 Dr. O'Byrne acknowledges and agrees that he has been given the opportunity to obtain independent legal advice in connection with the execution of this Agreement. Further, Dr.

O'Byrne acknowledges and agrees that he has executed this Agreement voluntarily and with full knowledge of, and in agreement with, all of its terms and provisions.

6.11 This Agreement shall be executed by the Parties on the dates, and at the places specified below, and, shall be executed in 4 original copies of 2 counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the University has caused this Agreement to be executed on its behalf, in the City of _____, Ontario, on this _____ day of _____, 2015.

MCMASTER UNIVERSITY

Per:

Dr. Patrick Deane
President & Vice-Chancellor
McMaster University

Witness: _____
Signature

Printed Name

Per:

Ms. Jagoda Pike, Chair,
Board of Governors
McMaster University

Witness: _____
Signature

Printed Name

IN WITNESS WHEREOF Dr. Paul O'Byrne has executed this Agreement in the City of Hamilton, Ontario, on this _____ day of _____, 2015.

Dr. Paul O'Byrne

Witness: _____
Signature

Printed Name