

EXECUTIVE EMPLOYMENT AGREEMENT

THIS AGREEMENT is effective as of May 1, 2019 (the "**Effective Date**")

BETWEEN:

THE BOARD OF GOVERNORS OF PORTAGE COLLEGE
(hereinafter referred to as the "**Board**" or the "**College**")

-and-

Nancy Broadbent, of Lac La Biche County, in the Province of Alberta
(hereinafter referred to as the "**Executive**")

(each a "**Party**" and collectively, the "**Parties**")

WHEREAS the College is a post-secondary educational institution, governed by the *Post-secondary Learning Act* (Alberta);

AND WHEREAS the Board, in accordance with the powers vested in it pursuant to the *Post-secondary Learning Act* (Alberta), wishes to appoint the Executive as President and Chief Executive Officer ("**CEO**") of the College and the Executive wishes to accept the appointment pursuant to the terms of this Agreement;

AND WHEREAS the Board is bound by certain obligations and restrictions pursuant to the provisions of the *Reform of Agencies, Boards and Commissions Compensation Act* (Alberta), the *Reform of Agencies, Boards and Commissions (Post-secondary Institutions) Compensation Regulation* (Alberta) and the Guidelines thereunder;

AND WHEREAS the Executive and the Board now wish to enter into this Agreement to set forth the rights and obligations of each of them with respect to the Executive's appointment with the Board;

NOW THEREFORE in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the Executive and the Board agree as follows:

Article 1 DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

- (a) "**Agreement**" means this executive employment agreement and any schedules attached hereto;
- (b) "**Base Salary**" means the annual base salary set out in Section 4.1;
- (c) "**Confidential Information**" means any information of a confidential nature which relates to the College, including but not limited to, trade secrets, technical information, patents, marketing strategies, sales and pricing policies, financial information, business, marketing or technical plans, programs, methods, techniques, concepts, formulas, documentation, intellectual property, research, software, industrial designs, products, technical studies and data, strategic studies, client and supplier lists, shareholder data and student and personnel information. 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 College;

- (ii) is or becomes public knowledge through no action of the Executive;
 - (iii) was independently developed by the Executive outside the scope of the Executive's employment duties to the College;
 - (iv) was disclosed by the College to another person or entity without any restriction on its use or disclosure, or
 - (v) is or becomes lawfully available to the Executive from a source other than the College;
- (d) "**Continuous Service**" means employment without any interruption in service of more than thirty (30) days, which is inclusive of the Executive's previous service with the College and other Public Agency (if applicable), provided that the Executive was not provided with any severance, termination or separation pay in respect of that previous employment;
 - (e) "**Department**" means a department of the Government or of the public service of Alberta established under the *Government Organization Act* (Alberta), a part of the public service of Alberta that is designated as a department by the Lieutenant Governor in Council for the purposes of the *Public Service Act* (Alberta), and any part of the public service of Alberta, but does not include an Office of the Legislature;
 - (f) "**Ethics Commissioner**" means Alberta's Ethics Commissioner, appointed by the Lieutenant Governor in Council;
 - (g) "**Health Benefits**" means group insurance coverage, which includes health, dental, health spending account and long-term disability;
 - (h) "**Just Cause**" means any matter that would constitute just cause for termination from employment at common law;
 - (i) "**Leave of Absence**" means a leave of absence with pay or without pay as established under the *Public Service Employment Regulation* (Alberta), and does not include administrative leave of absence;
 - (j) "**Public Agency**" means a public agency to which the *Alberta Public Agencies Governance Act* applies;
 - (k) "**Severance Payment**" has the meaning set out in Section 6.2;
 - (l) "**Severance Period**" means the period starting the day after the Termination Date and ending after the number of weeks for which the Severance Payment is payable as set out in Section 6.2;
 - (m) "**Term**" has the meaning set out in Section 2.1;
 - (n) "**Termination Date**" means the last day actively worked by the Executive under this Agreement as President and CEO and does not include any period of statutory, contractual or reasonable notice of termination of employment or any period of salary continuance or deemed employment, whether pursuant to this Agreement or at law.

Article 2 EMPLOYMENT AND TERM

- 2.1 This Agreement will be for a fixed five (5) year term commencing on **May 1, 2019** and terminating on **April 30, 2024** (the "**Expiration Date**"), unless terminated earlier in accordance with the terms of this Agreement. The Term is subject to any subsequent changes in law which may impact the

Board's ability to provide such a Term of employment to the Executive. The Term shall automatically expire on the Expiration Date, at which time the College will have no further legal obligations to the Executive other than for unpaid Base Salary and accrued vacation pay properly owing to the Executive up to and including the Expiration Date, and other than as provided by this Agreement.

- 2.2 The Board will advise the Executive at least twelve (12) months in advance of the Expiration Date of whether the Board intends to negotiate a new agreement with the Executive, governing the appointment of the Executive as President and CEO of the College subsequent to the expiry of the Term. In the event the Parties successfully negotiate and execute a mutually agreed-upon agreement which complies with all applicable laws, the Executive's appointment as President and CEO shall be governed by the terms and conditions of the new agreement upon the expiry of the Term. For clarity, regardless of whether the Parties successfully negotiate and execute a new agreement, this Agreement shall automatically expire on the Expiration Date.
- 2.3 The College agrees to employ the Executive as President and CEO on a full-time basis. The Executive agrees to accept such employment in accordance with the express terms, duties, and obligations set forth in this Agreement. The Executive agrees to perform the Executive's duties until such time as the Executive's employment is terminated in accordance with the terms of this Agreement.
- 2.4 This Agreement may be amended by mutual agreement of the Parties in writing, subject to all applicable laws. In the event the Parties execute a mutually agreed-upon amended agreement which complies with all applicable laws, the Executive's appointment as President and CEO shall be governed by the terms and conditions of the new amended agreement.

Article 3 DUTIES

- 3.1 During the Term, the Executive shall devote the Executive's full time and attention to the business and affairs of the College and shall use the Executive's best efforts to promote the interests of the College. During the Executive's appointment as President and CEO under this Agreement, the Executive shall not be involved or engaged in any other appointment, business, undertaking or employment (including self-employment), unless prior written approval is received from the Board and the Ethics Commissioner and provided that the Executive complies with any conditions imposed by the Ethics Commissioner in such written approval. Except as disclosed in the attached **Appendix "A"**, the Executive is not involved in any appointment, business, undertaking or employment.
- 3.2 During the Term, the Executive shall provide leadership in implementing the Mission, Values and Beliefs, and Vision of the College, and shall serve as an ambassador of the College.
- 3.3 The College, in consultation with the Executive, shall establish the Person and Position Profile, Goals and Annual objectives for the office of President and CEO.
- 3.4 The Executive shall faithfully and diligently perform such duties and exercise such powers related to the office of President and CEO in accordance with the *Post-secondary Learning Act* (Alberta) and as may be assigned or specified from time to time by the Board, so long as such duties and powers are as customarily done by a President and CEO in an educational institution of similar size and stature to the College. The Executive shall fulfill the accountabilities of the role of President and CEO to a high standard of professional competence.
- 3.5 The College shall conduct an annual evaluation of the President based on the evaluation criteria approved by the College.
- 3.6 The Executive shall be bound by and shall faithfully observe all applicable laws and regulations and the rules, regulations and policies of the College as they may be amended or created from

time to time, including but not limited to the Conflict of Interest Policy and the Code of Conduct Policy.

- 3.7 The Executive must conduct herself impartially at all times and avoid real and apparent conflicts of interest, and make all necessary and applicable disclosures mandated by the *Conflicts of Interest Act* (Alberta) and as contained in the College's Code of Conflict Policy as promulgated, and as amended from time to time; including disclosure of real and apparent conflicts of interest, and financial disclosure relating to assets, liabilities, investments, holdings and other interests of the Executive, the Executive's spouse or adult interdependent partner, minor children or any corporation controlled by the Executive, the Executive's spouse or adult interdependent partner.
- 3.8 The Executive reports directly to the Board, and the Executive's authority shall at all times remain subject to the authority of the Board.

Article 4 COMPENSATION AND BENEFITS

- 4.1 **Base Salary:** The College will pay the Executive a gross annual base salary in the amount of \$204,400.00 Canadian Dollars, less any withholdings required by applicable law, paid in twenty-four (24) semi-monthly payments, in accordance with the College's payroll practices and procedures. The Executive's Base Salary thereafter may be subject to change giving consideration to successful performance appraisal and increases will be made at the sole discretion of the Board, and subject to applicable laws.
- 4.2 **Health Benefits:** The Executive shall be entitled to participate in Health Benefits commensurate with the Executive's position, provided that the total annual cost to the College of all Health Benefits shall not exceed 5% of the Executive's Base Salary. All Health Benefits provided by the College to the Executive shall be done in accordance with the formal plan documents or policies of the insurance carriers, and any issues with respect to entitlement or payment of Health Benefits shall be governed by the terms of such documents or policies establishing the benefit in issue. The College reserves the right to change, substitute and delete benefits from time to time, so long as such change, substitution or deletion does not materially or detrimentally affect any right, protection or benefit to which the Executive is entitled, and that any resulting benefit shall be substantially similar to the benefits to which the Executive is entitled hereunder.
- 4.3 **Pensions:** The Executive shall participate in the Management Employees Pension Plan established by the *Public Sector Pension Plans Act* (Alberta), with all deductions being shared by the College and the President as stipulated for all management employees.
- 4.4 **Vacation:** The Executive is entitled to annual vacation leave, pay in lieu of vacation leave, or any combination of vacation leave and pay in lieu of vacation leave in an amount not exceeding forty (40) days per year, earned at a rate of three and one-third (3.33) days per month. Upon termination of this Agreement or the expiry of the Term, the Executive shall be entitled to any accrued vacation pay properly owing to the Executive up to a maximum of forty (40) days. In scheduling vacation time, the Executive will have regard to the College's operations and the reasonable direction of the Board. The Executive may not carry forward unused vacation time, except with the prior written approval of the Board in the form of a vacation plan.
- 4.5 **General Leave Days:** The Executive shall be eligible for paid illness leave in accordance with the College's illness and special leave policy, as it may be created or amended from time to time by the College in its sole discretion.

- 4.6 **Leave of Absence With or Without Pay:** The Executive shall not be entitled to a leave of absence with or without pay, unless prior written approval is received from the Board, subject to all applicable laws.
- 4.7 **Paid Holidays:** The Executive shall be eligible for paid holidays in accordance with the College's paid holiday policy, as it may be created or amended from time to time by the College, in its sole discretion.
- 4.8 **Vehicle:** The College fleet of vehicles will be made available for the Executive to book as required, using the same process as all other employees of the College. No vehicle allowance shall be made available to the Executive, other than the regular reimbursement of expenses as outlined in 4.9.
- 4.9 **Reimbursement of Expenses:** The College shall reimburse the Executive for travel and other expenses actually and reasonably incurred in the performance of the Executive's duties on behalf of the College, in accordance with the College's expense policies and procedures, which in no circumstance shall be greater than what is set out in the *Travel, Meal and Hospitality Expense Directive* (Treasury Board Directive #1/2015), as amended from time to time.
- 4.10 **Additional Benefit:** The College shall not provide the Executive with any benefit that is not expressly authorized under the applicable law.

Article 5 CONFIDENTIAL INFORMATION

- 5.1 At all times during the Term of this Agreement and after the Termination Date the Executive will keep strictly confidential all Confidential Information and shall not disclose the Confidential Information to any unauthorized persons, except with the express consent of the Board, or otherwise as required by law. The provisions of this Article 5 shall survive the termination or expiration of this Agreement.
- 5.2 The Executive recognizes and understands that in performing the Executive's duties and responsibilities as President and CEO of the College, the Executive will occupy a position of trust and confidence and as a fiduciary, pursuant to which the Executive has and will develop and acquire wide experience and knowledge with respect to the business carried on by the College and the manner in which such business is conducted. It is the expressed intent and agreement of the Executive and of the College that such knowledge and experience shall be used solely and exclusively in the furtherance of the business interests of the College and not in any manner detrimental to the College. The Executive therefore agrees that, so long as the Executive is employed by the College pursuant to this Agreement, the Executive shall not engage in any practice or business that competes, directly or indirectly, with the business of the College. The Executive further agrees that the Executive's fiduciary duties shall survive the termination of the Executive's employment for any reason.
- 5.3 The Executive further acknowledges and agrees that the benefits and payments provided for pursuant to this Agreement constitute good, valuable and sufficient consideration for the Executive's agreement to the terms of this Agreement, including the restrictions set out in this Article 5. The Executive hereby freely agrees that all restrictions contained in this Article 5 are reasonable, valid and necessary protections of the College's proprietary interests and hereby waives any and all defences to the strict enforcement thereof by the College.
- 5.4 The Parties acknowledge and agree that the College would suffer irreparable injury in the event of any breach by the Executive of the obligations under this Article 5. Accordingly, the Executive hereby acknowledges and agrees that damages would be an inadequate remedy at law in connection with the breach and that the College is therefore entitled, in addition to any action for damages, to temporary and permanent injunctive relief enjoining and restraining the Executive from any such breach.

**Article 6
TERMINATION**

- 6.1 **Termination for Just Cause:** The College may immediately terminate this Agreement and the Executive's employment under this Agreement at any time for Just Cause, without notice, pay, or any further obligation to the Executive except where otherwise stated in this Agreement and except for any accrued Base Salary, accrued benefits and accrued vacation. The College will provide the Executive with written notice of immediate termination, which notice shall set out the particulars of the Just Cause.
- 6.2 **Termination without Just Cause:** The College may terminate the Executive's employment under this Agreement at any time during the Term without Just Cause. In the case of termination without Just Cause, the Executive will be entitled to the following Severance Payment:
- (a) Four (4) weeks' Base Salary per year of Continuous Service, to a maximum of fifty-two (52) weeks' Base Salary; and
 - (b) Payment in an amount equal to the cost to the College for four (4) weeks of benefits per year of Continuous Service, to a maximum of 16% of the amount in Section 6.2(a).
- 6.3 **Claw-back:** The Executive hereby acknowledges and agrees that should the Executive become employed with either the Alberta Crown or a Public Agency during the Severance Period, the Executive shall repay the College a portion of the Severance Payment equal to the amount of salary, before mandatory statutory deductions and benefits, earned in respect of the Executive's new employment during the Severance Period, to the maximum of the full Severance Payment, before mandatory statutory deductions.
- 6.4 **Resignation by the Executive:** The Executive may terminate this Agreement and the Executive's employment with the College by providing six (6) months' prior written notice to the College (the "**Resignation Notice Period**"). The Executive will receive the Executive's Base Salary, benefits and other entitlements provided for in this Agreement during the Resignation Notice Period, but shall not be entitled to any of the payments provided by Section 6.2. Upon receipt of such notice of resignation from the Executive, the College may either require the Executive to continue to perform the Executive's duties until the end of the Resignation Notice Period, or the College may in its sole discretion terminate the Executive at any time after receipt of the notice, without additional compensation or obligation to the Executive, except for the amount of Base Salary which otherwise would have been payable to the Executive through the remainder of the Resignation Notice Period.

**Article 7
POST-TERMINATION RESTRICTIONS**

- 7.1 Unless the Executive receives a waiver or reduction of the applicable restricted period from the Ethics Commissioner, the Executive shall not:
- (a) for a period of 12 months from the Termination Date, lobby any public office holder as defined in the *Lobbyists Act* (Alberta);
 - (b) for a period of 12 months from the Termination Date, act on a commercial basis or make representations on the Executive's own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the Executive, while in the position of President and CEO, directly acted for or advised a Department or Public Agency involved in the matter;
 - (c) for a period of 12 months from the last day the Executive had a direct and significant official dealing with a Department or Public Agency during the Term, make representations with respect to a contract or benefit from that Department or Public Agency;

- (d) for a period of 12 months from the last day the Executive had a direct and significant official dealing with a Department or Public Agency during the Term, solicit or accept on the Executive's own behalf a contract or benefit from that Department or Public Agency; and
- (e) for a period of 12 months from the last day the Executive had a direct and significant official dealing with an individual, organization, board of directors or equivalent body of an organization during the Term, accept employment with that individual or organization or an appointment to the board of directors or equivalent body.

Article 8 PROPERTY RIGHTS

- 8.1 The Executive acknowledges and confirms that the College shall be entitled to own and control all proprietary technology, and financial, operating, and training ideas, processes, and materials, including works of expression and all copyrights in such works, that are developed, created or conceived by the Executive during the course of this Agreement (collectively referred to as "**Contract Developments**"), to the extent that such Contract Developments relate to the College's current or potential business or undertakings or if such Contract Developments were in any part undertaken in connection with this Agreement or with College supplied software or equipment or on the premises of the College or its customers or contractors. The Executive agrees that all copyrightable materials generated or developed under this Agreement, including computer programs and documentation, shall be owned exclusively by the College. Accordingly, the Executive hereby agrees to disclose, deliver, and assign all moral and legal rights associated with such patentable inventions, discoveries, and improvements, trade secrets, and all works subject to copyright, and further agrees to execute all documents, patent applications, and arrangements necessary to further document such ownership and/or assignment and to take whatever other steps may be needed to give the College the full benefit of them.
- 8.2 The Executive acknowledges and agrees that pursuant to the terms of this Agreement, that to the extent the Executive acquires corporate property of the College, it shall remain the exclusive property of the College. Upon termination of the Executive's employment under this Agreement for any reason, the Executive shall immediately return to the College all of its property (including all College documents, records, files, computer disks and equipment), together with any copies or reproductions thereof, which may have come into the Executive's possession during the course of or pursuant to this Agreement, and shall delete or destroy all computer files on the Executive's personal computer which may contain any Confidential Information belonging to the College.

Article 9 INDEMNITY

- 9.1 The College agrees to indemnify and save the Executive harmless from and against all costs, including legal costs on a solicitor and client basis, charges and expenses, including any amount paid to settle any action or satisfy any judgment, reasonably incurred by the Executive in respect of any civil, criminal, or administrative action or proceeding to which the Executive is made a party by reason of having been an officer of the College if:
- (a) the Executive acted honestly and in good faith with a view to the best interests of the College; and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Executive had reasonable grounds for believing that the Executive's conduct was lawful.

Article 10 PRIVACY

- 10.1 The Executive acknowledges and agrees that the Executive will take all necessary steps to protect

and maintain personal information of the employees, students or consultants of the College obtained in the course of the Executive's employment with the College. The Executive shall at all times comply, and shall assist the College to comply, with all applicable privacy laws.

- 10.2 The Executive acknowledges and agrees that the disclosure of the Executive's personal information may be required as part of: (i) the ongoing operation of the College, (ii) as required by law or regulatory agencies, (iii) for the purposes of requesting for approval of a policy; (iv) as part of the College's audit process, (v) as part of a potential business or commercial transaction, or (vi) as part of the College's management of the employment relationship (together, the "**Personal Information Disclosure**"), and the Executive hereby grants consent as may be required by applicable privacy laws to the Personal Information Disclosure.

Article 11 GENERAL

- 11.1 This Agreement and any other agreements expressly incorporated by reference herein, constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede and replace any and all prior agreements, undertakings, representations or negotiations pertaining to the subject matter of this Agreement. The Parties agree that they have not relied upon any verbal statements, representations, warranties or undertakings in order to enter into this Agreement.
- 11.2 This Agreement may not be modified in any respect except in writing duly executed by the Parties, and no modification or amendment of any term, provision, or condition of this Agreement will be binding or enforced unless executed in writing by them.
- 11.3 No waiver of this Agreement shall be binding unless it is in writing signed by the Parties hereto. No waiver of a breach hereof shall be deemed to constitute a waiver of a future breach, whether of a similar or dissimilar nature.
- 11.4 If any provision of this Agreement is determined to be invalid and unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provisions or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.
- 11.5 The recitals form part of and are deemed to be incorporated into this Agreement.
- 11.6 This Agreement will enure to and be binding upon the College and its successors and the Executive and the Executive's legal representatives. This Agreement may not be assigned by the Parties except with the expressed consent of both Parties.
- 11.7 The terms of this Agreement shall supersede the terms of any other agreement, plan, policy or practice of the College where such other plans, policies or practices differ from the terms of this Agreement. To the extent such plans, policies or practices are not amended by this Agreement, the terms of such plans, policies and practices shall apply to the Executive's employment with the College. If this Agreement conflicts with any entitlement under any other agreement, plan, policy or practice of the College, or the Indemnity, then the provisions of this Agreement will govern.
- 11.8 This Agreement will be governed in accordance with the laws of the Province of Alberta and the laws of Canada. Alberta shall be the sole and proper forum with respect to any suits brought with respect to this Agreement and the Parties hereby attorn to the jurisdiction of the Courts of the Province of Alberta.
- 11.9 Any demand, notice or other communication ("**Notice**") to be given in connection with this Agreement will be given in writing by personal delivery, by registered mail, facsimile or other

electronic transmission addressed to the recipient as follows:

To the Executive:



To the College:

Portage College
9531 94 Avenue
Lac la Biche, AB T0A 2C0
Attention: Board of Governors

or such other address as may be designated by Notice given by either Party to the other. Any Notice given by personal delivery will be conclusively deemed to have been given on the day of actual delivery, and, if given by registered mail, on the third day, other than a Saturday, Sunday or statutory holiday in the Province of Alberta, following the deposit in the mail and, if sent by facsimile or other electronic transmission, on the day of transmittal.

- 11.10 The Executive acknowledges that the Executive has had the time and opportunity to obtain independent legal advice with respect to the execution of this Agreement, and that the Executive has read, understands and agrees with all of the terms and conditions contained in this Agreement.
- 11.11 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile or other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.
- 11.12 Notwithstanding the termination of the appointment of the Executive for any reason whatsoever and with or without Just Cause, or as at the expiration of the Term, the provisions of Articles 5, 7, 8, 9 and 11 shall continue in full force and effect.

IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the Effective Date.

**THE BOARD OF GOVERNORS OF PORTAGE
COLLEGE**

Per: 

Randolph Benson
Chair, Board of Governors

WITNESS



THE EXECUTIVE



Nancy Broadbent

WITNESS



APPENDIX "A" – CURRENT INVOLVEMENTS