

COLLABORATION AGREEMENT
BETWEEN
NIAGARA HEALTH SYSTEM
AND
ST. JOSEPH'S HEALTH SYSTEM
Made as of July 8, 2020

Schedule 5.1 Terminated on January 6, 2021

TABLE OF CONTENTS

	Page
ARTICLE 1 – INTERPRETATION.....	1
1.1 Definitions.....	1
1.2 Schedules.....	2
1.3 Interpretation.....	3
1.4 No Limitation on a Party’s Autonomy.....	3
ARTICLE 2 – PURPOSES AND GUIDING PRINCIPLES.....	3
2.1 Purposes.....	3
2.2 Guiding Governance Principles.....	3
2.3 Guiding Collaboration Principles.....	4
ARTICLE 3 – GOVERNANCE OF THE COLLABORATIONS.....	5
3.1 Joint Collaboration Management Committee.....	5
3.2 Joint Board Oversight Committee.....	5
ARTICLE 4 – COLLABORATIONS.....	5
4.1 Collaboration Framework.....	5
4.2 Approving a Collaboration.....	5
4.3 Compliance.....	6
4.4 Privacy.....	6
4.5 Transparency and Disclosure.....	6
4.6 Accessible Information.....	6
4.7 Right to Audit.....	6
ARTICLE 5 – JOINT CEO AND MANAGEMENT SERVICES COLLABORATION.....	6
5.1 Joint CEO and Management Services.....	6
ARTICLE 6 – INTELLECTUAL PROPERTY RIGHTS.....	7
6.1 Intellectual Property of a Party.....	7
6.2 Intellectual Property Developed in a Collaboration.....	7
ARTICLE 7 – CONFIDENTIALITY.....	7
7.1 Confidentiality.....	7
7.2 Disclosure to Designated Persons.....	7
7.3 Loss or Compromise of Confidentiality.....	8
7.4 Return or Destruction of Confidential Information.....	8
7.5 Public Notices and Media Releases.....	8

7.6	Joint Submissions to Government and Other Third Parties	8
ARTICLE 8 – DISPUTE RESOLUTION		8
8.1	Dispute Resolution.	8
8.2	Veto Power of Boards.	9
ARTICLE 9 – TERM AND TERMINATION		9
9.1	Term.	9
9.2	Termination.	9
9.3	Consequences of Termination.	9
9.4	Audit on Termination.	10
ARTICLE 10 — LIABILITY, INDEMNIFICATION, AND INSURANCE		10
10.1	General Limitation of Liability.....	10
10.2	Indemnification.....	10
10.3	Insurance Policies.	10
ARTICLE 11 – GENERAL		11
11.1	Further Assurances.	11
11.2	Excusable Delay.	11
11.3	Independent Contractors.	11
11.4	Notices.	11
11.5	Entire Agreement.....	12
11.6	Amendment.	12
11.7	Assignment.	12
11.8	No Waiver.....	12
11.9	Severability.....	12
11.10	Survival.....	12
11.11	Governing Laws.	13
11.12	Counterparts.....	13
SCHEDULE 3.1		1
SCHEDULE 3.2.....		1
SCHEDULE 5.1.....		3

This **COLLABORATION AGREEMENT** is made as of June , 2020 between:

NIAGARA HEALTH SYSTEM

and

ST. JOSEPH'S HEALTH SYSTEM

BACKGROUND:

- A. Niagara Health System (“**NHS**”) is a regional healthcare provider with multiple sites and a growing network of community-based services. NHS provides a wide range of inpatient and outpatient services to more than 450,000 residents across Niagara, including acute care, cancer care, cardiac care, complex care, emergency and urgent care, kidney care, long-term care, care for mental health and addictions, stroke care, and surgical care. NHS is a community-based academic centre, engaged in teaching and learning, research, innovation, and partnership.
- B. Founded in the healing mission of the Sisters of St. Joseph of Hamilton, St. Joseph’s Health System (“**SJHS**”) was established in 1991 to meet the challenges of the changing environment for delivery of health and social services and takes pride in a system-wide commitment to caring for the whole person: body, mind, and spirit. Today, it is one of the largest corporations in Canada devoted to health care. Its operating divisions and member organizations each offer services according to their strengths, from acute care, long-term care, and community care, to rehabilitation, hospice, community outreach, and mental health.
- C. The Parties have a history of collaboration (including a management services agreement for the services of a chief executive officer, and, through St. Joseph’s Healthcare Hamilton (“**SJHH**”), an agreement for the past Chief of Staff, a joint clinical program for Renal Health, and a shared Physician Chief Mental Health and Addictions), and they wish to enter into this Agreement to further advance their collaboration at the strategic, operational, program, and/or service level to improve the health and quality of health care delivery in their respective communities.

FOR VALUE RECEIVED, the Parties agree as follows:

ARTICLE 1 – INTERPRETATION

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

- (a) “**Agreement**” means this collaboration agreement, and includes each Schedule listed in Section 1.2 and all Collaboration Schedules, which form a part hereof, as amended from time to time.
- (b) “**Business Day**” means any working day, Monday to Friday inclusive, excluding statutory holidays observed in Ontario.

- (c) “**CEO**” has the meaning ascribed to it in Schedule 5.1.
- (d) “**Collaboration**” means the Parties’ collaboration on specific strategies, initiatives, programs, and services as described in this Agreement, including the provision of the Management Services.
- (e) “**Collaboration Schedule**” means any Schedule executed by the Parties that sets out the details about a specific Collaboration, including Schedule 5.1.
- (f) “**Confidential Information**” means any information of a confidential nature concerning the business or affairs of a Party acquired as a result of the performance of this Agreement, whether or not the Party to whom the information relates specifically designates such information as confidential.
- (g) “**Connecting Care Act**” means the *Connecting Care Act*, 2019, S.O. 2019, c. 5 Sched 1, as amended from time to time.
- (h) “**Effective Date**” means the date of this Agreement.
- (i) “**Joint Board Oversight Committee**” means the committee described in Section 3.2.
- (j) “**Joint Collaboration Management Committee**” means the committee described in Section 3.1.
- (k) “**Management Services**” means the management and administration services described in Schedule 5.1.
- (l) “**NHS**” means Niagara Health System.
- (m) “**Party**” means each of NHS and SJHS, and “**Parties**” means both of them.
- (n) “**Service Accountability Agreement**” means a funding and accountability agreement entered into between a Party and its funder.
- (o) “**SJHH**” means St. Joseph’s Healthcare Hamilton, part of the SJHS.
- (p) “**SJHS**” means St. Joseph’s Health System.
- (q) “**Term**” means the initial term and any extension thereof as provided in Section 9.1.

1.2 Schedules. The following attached Schedules form part of this Agreement:

Schedule 3.1	Joint Collaboration Management Committee Terms of Reference
Schedule 3.2	Joint Board Oversight Committee Terms of Reference
Schedule 5.1	Joint CEO and Management Services Collaboration

1.3 Interpretation. In this Agreement, the use of the singular number shall include the plural and vice versa; the use of gender shall include all genders; the word “person” shall include an individual and any entity; and the word “including” or any variation thereof means including, without limitation. The headings in this Agreement are for convenience only and are not to be used to interpret this Agreement.

1.4 No Limitation on a Party’s Autonomy. Nothing in this Agreement shall derogate from a Party’s ongoing autonomy of its board of directors, or its right to provide any particular type, scope, or manner of delivery, of services in accordance with its mission and values, or to safeguard the quality of care and support provided by it, or to exercise its respective rights and meet its respective responsibilities under applicable laws and Service Accountability Agreements.

ARTICLE 2 – PURPOSES AND GUIDING PRINCIPLES

2.1 Purposes. The Parties wish to further advance their collaboration at the strategic, operational, program, and service level to improve the health and quality of healthcare delivery in their respective communities by:

- (a) permitting the sharing of the services of a joint chief executive officer and such other senior management positions as the Parties may agree upon from time to time;
- (b) enhancing the sharing of administration and support infrastructure costs so that the maximum possible portion of resources is directed to clinical care;
- (c) enhancing support for the maintenance of the highest possible standards of clinical programs and services;
- (d) enhancing support for the maintenance of a focus for clinical programs and services directed towards efficient use of available funding;
- (e) providing for coordinated joint efforts to achieve the most efficient government relations strategy to achieve the strategic goals of both Parties;
- (f) providing opportunities to, over time, consider and implement management support and clinical programs operating efficiencies to assist in the achievement of the Parties’ respective strategic directions; and
- (g) enhancing and expanding the Party’s respective academic missions of developing meaningful relations to improve patient care, teaching, and research.

2.2 Guiding Governance Principles. The Parties agree that their relationship under this Agreement shall be guided by the following principles:

- (a) each Party will maintain its separate corporate governance, and each Party’s board of directors will be responsible for the governance and management of its organization;

- (b) subject to Section 4.5, neither Party will be prevented, limited, or restricted in any manner whatsoever from seeking, considering, pursuing, or implementing collaboration or integration opportunities or initiatives with any other third party; and
- (c) in performing this Agreement, each Party will act reasonably and will recognize, acknowledge, and respect the independent identity, reputation, brand, goodwill, contributions, and accomplishments of the other Party.

2.3 Guiding Collaboration Principles. The Parties agree that their consideration, planning, development, and implementation, of each Collaboration shall be guided by the following principles:

- (a) **Commitment to Patients and to Quality:** *The delivery of the highest quality and safe patient care is core.* In keeping with the Parties' respective organizational mission, vision, and value statements, delivering care that results in the best possible outcomes for patients is paramount to all that the Parties do;
- (b) **Collaboration is Two-Way:** *Collaboration will be reciprocal where possible, recognizing the Parties' respective strengths.* The Parties will collaborate in order to identify opportunities to be more efficient and effective. The Parties' define collaboration as transparency and honesty in their working relationships. The Parties' will share information and knowledge, and promote integrity, mutual respect, and teamwork;
- (c) **Coordination, Integration, and Sustainability:** *Solutions that are coordinated and integrated will help sustain healthcare systems.* Sustainability requires the Parties to pursue partnerships with each other and with other health providers where it is appropriate. The Parties will identify opportunities to leverage critical mass in volumes, skill, and expertise, supporting economies of scale and effort where possible;
- (d) **Innovation and Excellence:** *A commitment to innovation and excellence will underpin the Parties' planning.* As organizations, the Parties face common challenges; through their joint commitment to innovation and excellence, the Parties will be creative and evidence-based; and
- (e) **Commitment to Evaluation:** *Opportunities will be assessed based on the "value add" and will be measured and evaluated for ongoing efficacy.* There are a multitude of local and provincial priorities that the Parties must focus on. The Parties will be deliberate and measured in their approach to identifying collaboration opportunities in order to demonstrate value (both in time and money) and will commit to the development and application of an evaluation framework.

ARTICLE 3 – GOVERNANCE OF THE COLLABORATIONS

- 3.1 Joint Collaboration Management Committee.** The Joint Collaboration Management Committee is established to identify, plan, develop, implement, review, and report on, each existing and future Collaboration. The composition, mandate, and processes for the Joint Collaboration Management Committee are set out in Schedule 3.1. Each Party shall assign administrative support to the Joint Collaboration Management Committee.
- 3.2 Joint Board Oversight Committee.** The Joint Board Oversight Committee is established to oversee this Agreement and each Collaboration. The composition, mandate, and processes for the Joint Board Oversight Committee are set out in Schedule 3.2. Each Party shall assign administrative support to the Joint Board Oversight Committee.

ARTICLE 4 – COLLABORATIONS

- 4.1 Collaboration Framework.** The Parties enter into this Agreement to establish a mechanism for collaboration. This Agreement shall govern each Collaboration (including the Parties' existing collaborations), unless the terms of a Collaboration Schedule provide otherwise. The Parties shall each designate and maintain an individual from each Party, who shall act as the Point of Contact and Accountability Lead for the implementation of Collaborations.
- 4.2 Approving a Collaboration.** Each Collaboration shall be determined and implemented as follows:
- (a) The Joint Collaboration Management Committee shall identify an opportunity for Collaboration.
 - (b) The Joint Collaboration Management Committee shall develop a plan for each Collaboration, which shall:
 - (i) reflect the purposes and guiding principles set out in Article 2; and
 - (ii) set out specific responsibilities and deliverables, expected benefits, potential risks, the budget and sharing of costs and other resources, evaluation process and criteria, reporting, human resources, third-party approvals, privacy and data sharing, intellectual property, dispute resolution if the provisions of Article 8 are not to apply, term and termination provisions, consequences of termination, indemnification and insurance requirements, and other relevant terms and conditions, as applicable, for the specific Collaboration.
 - (c) For a Collaboration falling within the existing delegated scope of authority for the CEO, the President of NH and the President of SJHH, the Joint Collaboration Management Committee must approve a plan before the Collaboration is implemented. A Collaboration falling outside such delegated scopes of authority shall be approved by the board of directors of each Party after considering the recommendation of the Joint Board Oversight Committee.

- (d) Following approval, the Joint Collaboration Management Committee shall determine if a Collaboration Schedule is required and, if required, the Joint Collaboration Management Committee shall develop a Collaboration Schedule consistent with the approved plan setting out the matters described in Section 4.2(b)(ii).
- (e) All Collaboration Schedules shall be mutually agreed upon and executed by the Parties in accordance with their respective delegation of authority policy.

4.3 Compliance. Before implementing a specific Collaboration and during the Term, each Party shall ensure that its participation in the Collaboration complies with any applicable laws, industry and professional standards, and its own constating documents and policies.

4.4 Privacy. In carrying out its obligations under this Agreement, each Party shall comply with the *Personal Health Information Protection Act, 2004* and the *Freedom of Information and Protection of Privacy Act*.

4.5 Transparency and Disclosure. The Parties shall engage in on-going communication so that they may realize the benefits of this Agreement. If a Party becomes aware of any fact or circumstance that may impede a Party's ability to perform its obligations under this Agreement or a Collaboration Schedule, it will, as soon as reasonably possible, notify the Joint Collaboration Management Committee and the other Party of the nature of such fact or circumstance and its actual or anticipated impact so that the Parties, through the Joint Collaboration Management Committee, may consider how to remedy, mitigate, or otherwise address the fact or circumstance.

4.6 Accessible Information. Each Party shall retain all of its books and records and other documentation made in connection with a Collaboration in accordance with its own record retention policies. Each Party shall make all documents and other information related to each Collaboration accessible to the other Party, and its representatives, as required in order to enable each Party to meet all of its legislated reporting requirements.

4.7 Right to Audit. On request, the Parties shall share financial information, including audited financial statements, as is appropriate or desirable to assist in understanding any cost sharing component and performance of this Agreement. All accounts and records of expenditures and commitments made by a Party in connection with a Collaboration shall at all times during the Term and for a period of seven years thereafter be open to audit, inspection, and examination by the authorized representatives of the other Party, which may make copies and take extracts thereof. Each Party shall provide all facilities for such audits and inspections and shall furnish all such information as the representatives of the other Party may from time to time require with respect to such accounts and records.

ARTICLE 5 – JOINT CEO AND MANAGEMENT SERVICES COLLABORATION

Schedule 5.1 Terminated on January 6, 2021

5.1 Joint CEO and Management Services. The Parties agree to the sharing of the services of a joint CEO and such other senior management positions as the Parties may agree upon from time to time, in accordance with the terms and conditions of Schedule 5.1.

ARTICLE 6 – INTELLECTUAL PROPERTY RIGHTS

- 6.1 Intellectual Property of a Party.** Ownership of intellectual property existing as of the Effective Date or developed or acquired after the Effective Date by a Party solely for use by that Party is not affected by this Agreement, and neither Party shall have any claims to or rights in any intellectual property of the other Party, except as may otherwise be expressly provided in a Collaboration Schedule or other separate written agreement between the Parties.
- 6.2 Intellectual Property Developed in a Collaboration.** Intellectual property (if any) developed under a Collaboration Schedule shall be dealt with in accordance with the intellectual property provisions of that Collaboration Schedule.

ARTICLE 7 – CONFIDENTIALITY

- 7.1 Confidentiality.** Each Party shall use reasonable efforts to prevent disclosure to others of the Confidential Information of the other Party, except as follows:
- (a) with the prior written consent of the other Party;
 - (b) to the extent that such Confidential Information was known to a Party prior to receipt of it from the other Party, and such knowledge is documented;
 - (c) to the extent that such Confidential Information was public knowledge at the time received by the other Party, or later became public knowledge through no fault of the receiving Party;
 - (d) to the extent that such Confidential Information was lawfully obtained in good faith from a third party lawfully in possession of it and entitled to disclose it;
 - (e) to the extent that disclosure is necessary to meet applicable laws, or governmental or public authority directives or other requirements; or
 - (f) as permitted under the terms of this Agreement and in the spirit of purposes and guiding principles of the Parties.
- 7.2 Disclosure to Designated Persons.** A Party may disclose such of the Confidential Information of the other Party to such of their respective employees, officers, directors, agents, attorneys, authorized representatives and advisors (“**Representatives**”) as require access to the Confidential Information for the purposes of this Agreement only, provided that the Parties shall only disclose such of the Confidential Information as needs to be disclosed to a Representative for such purposes, and provided that each such Representative agrees to keep the Confidential Information confidential pursuant to the terms of the Agreement. Each Party is responsible for the undertakings of its Representatives to keep the Confidential Information confidential hereunder.

- 7.3 Loss or Compromise of Confidentiality.** If a Party discovers any loss or compromise of the Confidential Information of the other Party, it will notify the other Party promptly and cooperate with it to mitigate the loss or compromise.
- 7.4 Return or Destruction of Confidential Information.** Upon request, each Party shall return or destroy (with certification to the other Party) all Confidential Information of the other Party that it is not required to retain by applicable laws or other requirement. However, each Party may, at its option, retain one copy of the Confidential Information in its files for archival purposes subject always to the obligations of confidentiality under this Agreement. Each Party may use the Confidential Information of the other Party to exercise its rights and protect its interests under this Agreement, and otherwise, as required by applicable laws.
- 7.5 Public Notices and Media Releases.** All notices to third parties and all other publicity concerning the matters contemplated by this Agreement or a Collaboration shall be jointly planned and co-ordinated by the Parties, through the Joint Collaboration Management Committee, and no Party shall act unilaterally in this regard without the prior approval of the other Party, through the Joint Collaboration Management Committee (such approval not to be unreasonably withheld or delayed), except where required to do so by applicable laws or the requirements of any government or governmental or regulatory authority of competent jurisdiction.
- 7.6 Joint Submissions to Government and Other Third Parties.** The Parties shall use reasonable efforts to co-operate in preparing joint submissions to government bodies or other third parties that relate to the matters contemplated by this Agreement or a specific Collaboration.

ARTICLE 8 – DISPUTE RESOLUTION

8.1 Dispute Resolution.

- (a) The Parties shall use their best efforts to avoid issues and disputes by clearly articulating expectations, establishing clear lines of communication, and respecting each other's interests.
- (b) The Parties shall use their best efforts to resolve any issues and disputes that might arise in a collaborative manner through informal discussion and resolution. To facilitate and encourage this informal resolution process, the Parties shall use their best efforts to jointly develop a written statement describing the facts and events leading to the issue or dispute and listing potential options for its resolution.
- (c) If, having made reasonable efforts to resolve the issue or dispute at the level at which it first arose, the issue or dispute remains unresolved, a Party shall refer it to the Joint Collaboration Management Committee, which shall, acting in good faith, work to resolve the issue or dispute in an amicable and constructive manner.
- (d) If, having made reasonable efforts to resolve the issue or dispute at the Joint Collaboration Management Committee level, the issue or dispute remains

unresolved, the Joint Collaboration Management Committee shall refer it to the Joint Board Oversight Committee, which shall, acting in good faith, work to resolve the issue or dispute in an amicable and constructive manner.

- (e) If, having made reasonable efforts to resolve the issue or dispute at the Joint Board Oversight Committee level, the issue or dispute remains unresolved, the Joint Board Oversight Committee may appoint a mutually agreed upon third-party mediator if it reasonably believes that such a mediator can assist in reaching a resolution. Each Party shall pay its own costs of mediation. The costs of the mediator shall be split equally between the Parties.
- (f) If the mediator determines that a resolution is not achievable, or if the Joint Board Oversight Committee does not reasonably believe that a mediation would be successful and it cannot resolve the issue or dispute, each Party shall refer it to its own board of directors. Following referral to the boards and their consideration of the issue or dispute, a Party may terminate this Agreement or the applicable Collaboration Schedule in accordance with Article 9.

8.2 Veto Power of Boards. For greater certainty and notwithstanding any of the other terms of this Agreement, each Party's board of directors has authority to determine matters that it has exclusive authority to determine and that will not be delegated to its Joint Collaboration Management Committee representatives.

ARTICLE 9 – TERM AND TERMINATION

9.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect for a period of five years (“**Term**”), unless extended by the Parties' mutual written agreement or terminated earlier in accordance with the provisions of this Agreement.

9.2 Termination. The Parties may, by mutual written agreement, terminate this Agreement or a Collaboration Schedule at any time. A Party may terminate this Agreement or a Collaboration Schedule at any time and for any reason upon the provision of a sufficiently reasonable period of notice (which shall not be less than 90 days', or such longer or shorter period as agreed by the Parties) to provide for the safe and orderly disengagement of the then existing Collaborations and interrelationships. A Collaboration Schedule may provide for other or further termination provisions, which shall prevail over the terms of this Agreement for that Collaboration. A Party shall provide notice under this Section to the other Party and to the Joint Collaboration Management Committee.

9.3 Consequences of Termination. Expiry or termination of this Agreement shall not automatically constitute termination of any Collaboration Schedule. Expiry or termination of one Collaboration Schedule shall not automatically constitute termination of this Agreement or any other Collaboration Schedule. Upon expiry or termination of this Agreement or a Collaboration Schedule, the Parties shall work with the Joint Collaboration Management Committee to ensure an orderly transition of any services or functions impacted by such expiry or termination such that there is no interruption to care or adverse impact on patients.

- 9.4 Audit on Termination.** Upon expiry or termination of this Agreement, a Party may, if at such time it determines that such action is desirable, employ a firm of chartered accountants to make a report based on a complete and final audit of the books, records, and accounts kept by the Parties as provided in this Agreement, and all final adjustments between and among the Parties shall be made on the basis of such report. If the Parties disagree on the choice of a firm of chartered accountants, the matter will be submitted to the dispute resolution provisions of this Agreement. The costs of such final audit shall be shared equally by the Parties.

ARTICLE 10 — LIABILITY, INDEMNIFICATION, AND INSURANCE

- 10.1 General Limitation of Liability.** Notwithstanding anything to the contrary stated herein, a Party (the “first Party”) shall not be liable, responsible, or accountable in damages or otherwise to the other Party or any of such other Party’s officers, directors, employees, agents, attorneys, and authorized representatives and permitted successors and assigns for any errors in judgment, for any act performed by such first Party, or for any omission or failure to act by such first Party, if the performance of such act or such omission or failure is done in good faith, is not demonstrably outside the scope of the authority conferred upon such first Party by this Collaboration Agreement or by law and does not constitute breach of this Collaboration Agreement, wilful misconduct, or reckless disregard of duties. If any part of this Section shall, for any reason and to any extent, be invalid or unenforceable, this Section shall be construed to exculpate the foregoing first Party to the fullest extent permitted by the law. The Parties agree that neither shall be liable to the other for any claim of economic loss howsoever arising.
- 10.2 Indemnification.** Each Party shall indemnify and hold harmless the other Party and such Party’s respective officers, directors, employees, agents, attorneys, and authorized representatives and permitted successors and assigns (collectively the “**Indemnified Persons**”) from and against any and all cost, liabilities, and expenses reasonably incurred by any such Indemnified Persons in connection with any proceeding in which any such Indemnified Persons may be involved or with which any such Indemnified Person may be threatened, with respect to or arising out of any act performed by the Indemnified Person or any omission or failure to act if the performance of the act or the omission or failure was done in good faith and within the scope of the authority conferred upon the Indemnified Person by this Collaboration Agreement or by law, except for acts which constitute breach of this Collaboration Agreement, wilful misconduct, or reckless disregard of duties.
- 10.3 Insurance Policies.** Each Party shall maintain the insurance required by their Service Accountability Agreements. Each Party shall name the other Party as an additional insured in its insurance policies with respect to liability arising from this Collaboration Agreement. Any and all such policies of insurance of the Parties shall be for the mutual benefit of the Parties and shall include coverage providing for cross liability and severability of interest.

ARTICLE 11 – GENERAL

- 11.1 Further Assurances.** Each Party shall perform such acts and execute such further documents as are within its power to perform and execute, and as another Party may from time to time reasonably request, to effect the purposes of this Agreement.
- 11.2 Excusable Delay.** Where a Party is delayed in performing or observing a covenant or obligation hereunder, which is to be performed or observed by a specified date or within a particular time by reason of excusable delay, the date or period of time by or within which such Party is to perform or observe such covenant or obligation will be extended by a period of time equal to the duration of the delay. As used herein, “excusable delay” means any delay in the performance or observance by any Party of any obligation of such Party hereunder which occurs as a consequence of or attributable to any circumstance which is beyond the reasonable control of such Party and which is not caused by any default or act of commission or omission of such Party and is not avoidable by the exercise of reasonable effort or foresight by such Party (excluding financial inability), but including without limiting the generality of the foregoing, epidemics, pandemics, strikes, or labour or industrial disturbances, civil disturbances, acts, orders, legislation, regulations or directives of any governmental or other public authorities, acts of public enemies, war, riots, sabotage, blockades, embargoes, shortages of materials and suppliers, shortages of labour, lightning, earthquakes, fire, storms, hurricanes, floods, wash-outs, explosions, acts of God and delays caused by any other party.
- 11.3 Independent Contractors.** The relationship between the Parties under this Agreement is that of independent contractors. This Agreement is not intended to create a partnership, joint venture, agency, or employment relationship between the Parties. No Party shall have the power or authority to bind the other Party or to assume or create any obligation or responsibility, expressed or implied, on the other Party’s behalf or in its name, nor shall it hold itself out to any third party as a partner, joint venturer, agent, or employee of the other Party. Each Party shall be responsible and liable for its own employees, agents, and subcontractors, unless otherwise agreed to by the Parties in a Collaboration Schedule.
- 11.4 Notices.** Where, in this Agreement, a Party is required to give or make a notice or other communication, it shall be in writing and is effective if sent by any means, including electronic means, addressed to the Party for whom it is intended at the address mentioned below, and any such communication shall be deemed to have been received if by registered mail, when the postal receipt is acknowledged by the receiving Party, if by electronic means, one Business Day after having been sent and if by mail, three Business Days after being mailed. The address of a Party may be changed by notice in the manner set out in this provision.

If to SJHS:

St. Joseph's Health System
50 Charlton Avenue East
Hamilton, ON L8N 4A6
Fax: 905.521.6067
Attn : Board Chair
Email : anne.anderson@utoronto.ca

With a copy to :
President and CEO
Email: tstewart@stjosham.on.ca

If to NHS:

Niagara Health System
1200 Fourth Avenue
St. Catharines ON L2S 0A9
Fax: 905.323.3800
Attn: Board Chair
Email: balexander@cogeco.ca

With a copy to:
President
Email: Lynn.Guerriero@niagarahealth.on.ca

- 11.5 Entire Agreement.** With respect to its subject matter, this Agreement and the Collaboration Schedules contain the entire understanding of the Parties and supersede and replaces all previous agreements, promises, proposals, representations, understandings, and negotiations, whether written or oral, between the Parties respecting their subject matter.
- 11.6 Amendment.** This Agreement may be amended only by written agreement signed by the Parties. If a change in law or a directive from the Minister of Health or other governmental or public authority necessitates a change in this Agreement or in the manner of performing this Agreement, the Parties shall work cooperatively to amend this Agreement to accommodate such change. A Collaboration Schedule may be amended in accordance with its provisions without an Agreement amendment.
- 11.7 Assignment.** Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party. This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.
- 11.8 No Waiver.** No waiver of any provision of this Agreement is binding unless it is in writing and signed by the Party entitled to grant the waiver. No failure to exercise and no delay in exercising any right or remedy under this Agreement shall be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of that provision.
- 11.9 Severability.** Each provision contained in this Agreement is distinct and severable, and any declaration by a court of competent jurisdiction of the invalidity or unenforceability of any provision or part of a provision shall not affect the validity or enforceability of any other provision of this Agreement; provided that the essential benefits of this Agreement will still be realized by each of the Parties.
- 11.10 Survival.** The provisions of this Agreement which by their own terms take effect on expiry or termination of this Agreement or which by their nature survive expiry or termination of this Agreement (such as provisions relating to privacy, confidentiality, consequences upon expiry or termination), shall continue in full force and effect and survive such expiry or termination.


11.11 Governing Laws. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario. The courts of the Province of Ontario shall have jurisdiction to entertain any action arising under this Agreement.

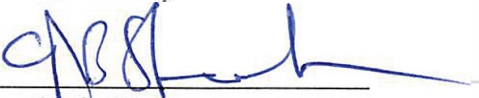
11.12 Counterparts. The Parties may execute this Agreement by facsimile or scanned email copy and in counterparts. When each Party has executed and delivered a copy of an identical counterpart to the other Party, then all counterparts taken together shall constitute a single agreement.

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The Parties have executed this Agreement.

ST. JOSEPH'S HEALTH SYSTEM

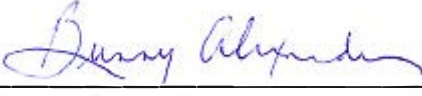
By: 
Name: Sister Anne Anderson
Title: Board Chair

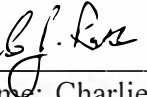
By: 
Name: Chris Sherk
Title: Board Vice-Chair


By: 

Name: Dr. Thomas E. Stewart
Title: President and CEO

NIAGARA HEALTH SYSTEM

By: 
Name: Bunny Alexander
Title: Board Chair

By: 
Name: Charlie Rate
Title: Board Vice-Chair

By: 
Name: Lynn Guerriero
Title: President

SCHEDULE 3.1

JOINT COLLABORATION MANAGEMENT COMMITTEE TERMS OF REFERENCE

Joint Collaboration Management Committee – Terms of Reference	
Capitalized terms used throughout these Terms of Reference have the meaning ascribed to them in the Collaboration Agreement to which these Terms of Reference are a Schedule.	
Mandate	<p>The Joint Collaboration Management Committee is the forum for the Parties to identify, plan, develop, implement, review, and report on, each existing and future Collaboration.</p> <p>The Joint Collaboration Management Committee shall:</p> <ul style="list-style-type: none">• identify areas of Collaboration, including a supporting business case/impact analysis;• develop guidelines for the allocation and use of resources for each Collaboration, including human resources, capital, and facilities;• develop key quality and financial performance indicators to be tracked and reported for each Collaboration;• develop best practice, innovation, quality improvement, risk allocation and mitigation and corrective actions in respect of Collaborations, taking into consideration an ethical framework;• develop, recommend, and implement the joint communications strategy;• have overall responsibility to ensure implementation of all aspects of each Collaboration;• provide regular reports on progress and any attendant risks to the joint CEO and the Joint Board Oversight Committee, and provide recommendations on how to mitigate any risks identified, for a Collaboration;• discuss compliance with, and recommend amendments to, these Terms of Reference, the Collaboration Agreement, or a Collaboration Schedule; and• perform the roles assigned to the Joint Collaboration Management Committee under the Collaboration Agreement.
Subcommittees	<p>The Joint Collaboration Management Committee may establish one or more subcommittees, or program or service task force(s) to assist it in fulfilling its role. The Joint Collaboration Management Committee shall determine the mandate and composition of any such subcommittee, or program or service task force.</p>

Joint Collaboration Management Committee – Terms of Reference	
Membership	<p>The members of the Joint Collaboration Management Committee shall consist of:</p> <ul style="list-style-type: none"> • the joint CEO; • the President of NHS (Co-Chair); • the President of SJHH (Co-Chair); and • an equal number of representatives from each Party, as determined from year to year based on the strategic priorities for each year and as determined by the joint CEO and Co-Chairs. <p>The Joint Collaboration Management Committee members may delegate their responsibilities to a designate who shall attend and participate on their behalf.</p>
Administrative Support	<p>Each Party will assign administrative support to support the work of the Joint Collaboration Management Committee as provided in Section 3.1 of the Collaboration Agreement.</p>
Co-Chairs	<p>The Joint Collaboration Management Committee will be co-chaired by the President of NHS and the President of SJHH. The Co-Chairs shall alternate the meeting chair responsibilities. Both Co-Chairs participate in deliberations and decision-making by the Joint Collaboration Management Committee.</p>
Meetings	<p>The Joint Collaboration Management Committee will meet at least quarterly and at the call of the Co-Chairs or of two members.</p> <p>The acting Co-Chair may determine the meeting procedures. Agendas will be sent in advance and indicate if decisions are known to be required.</p> <p>Members may invite other senior management from their own organizations to attend meetings.</p> <p>Meetings may be by any available technology.</p>
Quorum	<p>Quorum will be a majority of the members from each Party present in person or electronically.</p> <p>If a member is not able to attend, the member may (but is not required to):</p> <ul style="list-style-type: none"> • send a designate for that meeting, who shall be included in determining quorum and may vote; or • consent to the meeting proceeding in the member’s absence by so informing the acting Co-Chair, in which case the member shall be deemed to have consented to any decisions made at the meeting for which prior notice was given. <p>If quorum is not present, the members present may meet only for discussion purposes.</p>

Joint Collaboration Management Committee – Terms of Reference	
Decisions	<p>Unless otherwise provided in these Terms of Reference, in the Collaboration Agreement, or in a decision framework adopted by unanimous agreement of the Joint Collaboration Management Committee, decisions will be made by consensus.</p> <p>Consensus means that each Joint Collaboration Management Committee member is prepared to recommend the decision (if applicable) or to support the decision (i.e., they can live with it, even if they do not fully agree with it).</p> <p>If consensus cannot be reached, the Joint Collaboration Management Committee shall resort to the dispute resolution provisions in Sections 8.1(d) to 8.1(f) of the Collaboration Agreement.</p>
Minutes	<p>Meeting minutes will document deliberations and recommendations. Discussion during meetings shall be open, frank, and free-flowing, and while contents of minutes will be shared, they will not include attribution of individual contributions made by members.</p>
Accountability and Reporting	<p>Each Party will delegate a scope of authority to its respective Joint Collaboration Management Committee members. Each member must act within the scope of authority delegated to the member by their respective Party.</p> <p>The Joint Collaboration Management Committee shall report, and be accountable, to the joint CEO and the Joint Board Oversight Committee.</p>
Amendment	<p>These Terms of Reference shall be amended only with the written agreement of the Parties.</p>

REVIEWED:

These Terms of Reference will be reviewed annually by the Joint Collaboration Management Committee. The Joint Collaboration Management Committee shall report the results of its review to the Joint Board Oversight Committee which will make any recommendation for changes in these Terms of Reference to the Governance Committee of each Party for further recommendation to and approval by the board of each Party.

Date of Last Review: ●, 2020

SCHEDULE 3.2

JOINT BOARD OVERSIGHT COMMITTEE TERMS OF REFERENCE

Joint Board Oversight Committee – Terms of Reference	
Capitalized terms used throughout these Terms of Reference have the meaning ascribed to them in the Collaboration Agreement to which these Terms of Reference are a Schedule.	
Mandate	<p>The role of the Joint Board Oversight Committee is to oversee the implementation and effectiveness of the Collaboration Agreement and each Collaboration.</p> <p>The Joint Board Oversight Committee shall be entitled to receive, if requested, full and complete supporting information and advice from the Joint Collaboration Management Committee with respect to any Collaboration or opportunity for collaboration.</p>
Membership	<p>The Joint Board Oversight Committee shall consist of:</p> <ul style="list-style-type: none">• the Chair of the Governance Committee of each Party, as ex officio voting members;• up to four directors from each Party’s board of directors, as voting members (with equal numbers from each Party); and• the Co-Chairs of the Joint Collaboration Management Committee and the joint CEO, as non-voting members. <p>In the case of SJHS, “directors” includes trustees from the board of its SJHH division.</p>
Co-Chairs	<p>The Joint Board Oversight Committee will be co-chaired by a voting member from each Party, as determined by each Party. The Co-Chairs shall alternate the meeting chair responsibilities. Both Co-Chairs participate in deliberations and decision-making by the Joint Board Oversight Committee.</p>
Meetings	<p>The Joint Board Oversight Committee will meet at least three times each year to receive reports from the Joint Collaboration Management Committee on the implementation and effectiveness of the Agreement and, in particular, on the Collaborations, and to review and discuss same. The Joint Board Oversight Committee will also meet at the call of a Co-Chair.</p> <p>The acting Co-Chair may determine the meeting procedures. Agendas will be sent in advance and indicate if decisions are known to be required.</p> <p>Guests may attend a meeting upon consent of a majority of the Joint Board Oversight Committee members participating in the meeting.</p> <p>Meetings may be by any available technology.</p>

Joint Board Oversight Committee – Terms of Reference	
Quorum	<p>Quorum will be a majority of the voting members from each of the Parties, present in person or electronically.</p> <p>If quorum is not present, the members present may meet only for discussion purposes.</p>
Decisions	<p>Unless otherwise provided in these Terms of Reference, in the Collaboration Agreement, or in a decision framework adopted by unanimous agreement of the Joint Board Oversight Committee, decisions will be made by consensus.</p> <p>Consensus means that each Joint Board Oversight Committee member is prepared to recommend the decision (if applicable) or to support the decision (i.e., they can live with it, even if they do not fully agree with it).</p> <p>If consensus cannot be reached, the Joint Board Oversight Committee shall resort to the dispute resolution provisions in Sections 8.1(e) and (f) of the Collaboration Agreement.</p>
Minutes	<p>Meeting minutes will document deliberations. Discussion during meetings shall be open, frank, and free-flowing, and while contents of minutes will be shared, they will not include attribution of individual contributions made by members.</p>
Policies	<p>The Joint Board Oversight Committee may adopt policies and procedures to support the work of the Joint Board Oversight Committee.</p>
Accountability and Reporting	<p>The Joint Board Oversight Committee shall report and be accountable to the Governance Committees of the Parties’ boards of directors.</p>
Amendment	<p>These Terms of Reference shall be amended only with the written agreement of the Parties.</p>

REVIEWED:

These Terms of Reference will be reviewed annually by the Joint Board Oversight Committee which will make any recommendation for changes in these Terms of Reference to the Governance Committee of each Party for further recommendation to and approval by the board of each Party.

Date of Last Review: ●, 2020

SCHEDULE 5.1

JOINT CEO AND MANAGEMENT SERVICES COLLABORATION

GENERAL

1. **Definitions.** All capitalized terms used in this Collaboration Schedule but not defined in it shall have the meaning given to them in the Collaboration Agreement between the Parties. In addition, in this Collaboration Schedule:
 - (a) **“Management Services”** means the CEO and such other senior management services as the Parties may agree upon from time to time, in accordance with this Collaboration Schedule.
 - (b) **“NHS Board”** means NHS’ board of directors.
 - (c) **“CEO”** means the joint chief executive officer of SJHS and NHS as provided in this Collaboration Schedule.
 - (d) **“President”** means NHS’s president, fulfilled by NHS’s employee, who shall be NHS’s administrator as defined in the *Public Hospitals Act*.
2. **Termination of Management Services Agreement.** The Management Services Agreement entered into between the Parties as of January 11, 2014, as extended, is hereby terminated from and after the date hereof, and is replaced by this Collaboration Schedule.

JOINT CEO AND MANAGEMENT SERVICES

3. **Joint CEO.** The Parties confirm their agreement that the same individual will be the chief executive officer of SJHS and of NHS, subject to the provisions of this Collaboration Schedule.
4. **Duties of the Joint CEO.** As the chief executive officer of NHS, the CEO shall have the duties and perform the responsibilities as set out in this Collaboration Schedule.
5. **SJHS Management Services.** SJHS shall provide the Management Services (which shall include the services of the CEO) to NHS in accordance with the requirements of this Collaboration Schedule and the *Public Hospitals Act*, any other governing laws, NHS’s strategic plan, by-laws, rules, policies, and procedures, any direction issued by the NHS Board, and the standards of practice generally recognized, approved, and followed in Ontario hospitals of similar rating and standing to NHS having regard to applicable laws and standards.
6. **Management Services Evaluation.** NHS shall annually review:
 - (a) SJHS’s performance of the Management Services; and
 - (b) any individual’s provision of the Management Services,

in accordance with the standards of performance, annual performance goals, and such other criteria as may be developed by the NHS Board.

7. **Vacancies - CEO.** If there is a vacancy in the CEO position, NHS shall have the same voting representation as St. Joseph's Healthcare Hamilton in the selection of the successor for the position. Additionally, the NHS Board may request, at its discretion, that any proposed appointee to fill such vacancy be ratified by the NHS Board only in respect of the appointee filling the position of CEO of NHS. If the NHS Board does not ratify the appointment, the Parties shall, within 60 days, review, evaluate, and determine the basis or terms upon which any existing Collaborations and/or potential collaboration opportunities will be identified, planned, developed, or undertaken under the Agreement.
8. **Vacancies – Other Positions.** If there is a vacancy in any other joint senior management position associated with the Management Services (other than the CEO), the Parties shall agree on a process to be used to fill the vacancy.

MANAGEMENT SERVICES – Joint CEO

9. **Joint CEO Services.** As chief executive officer of NHS, the CEO shall be responsible to:
 - (a) develop an annual performance plan, inclusive of goals that align to NHS's strategy and the NHS Board's priorities;
 - (b) provide regular reports to the NHS Board on progress towards goal achievement;
 - (c) provide input to the NHS Board to assist the NHS Board in performing its oversight role in relation to the President, including recruitment, termination, succession planning, performance management, and compensation;
 - (d) provide feedback to the President on executive team recruitment, succession planning, performance, and compensation;
 - (e) provide advice to the President on NHS's organizational structure at the executive level;
 - (f) engage with senior government officials such as the Premier, Cabinet Ministers, and Deputy Minister of Health on behalf of NHS regarding significant NHS initiatives. The President will be engaged and included in meetings and discussions;
 - (g) identify transformational initiatives in healthcare to benefit the community in Niagara; analyze opportunities with the President for recommendation to the NHS Board, including collaboration opportunities with the SJHS and other healthcare providers;

- (h) advance NHS's academic mission by enhancing academic relationships and research opportunities; and
- (i) provide leadership for the Parties' Collaborations.

PRESIDENT ROLE AND RESPONSIBILITIES

10. **President Responsibilities.** In addition to the duties of the President of NHS assigned by the NHS Board, the President shall be responsible for:

- (a) **Strategic Planning:** The strategic planning process; identification of short and long-term strategies for a healthier Niagara for input from the CEO and for engagement and discussion with the NHS Board. Monitoring performance indicators to ensure NHS is achieving its objectives.
- (b) **Management of the Executive Team:** Selection, termination, performance management, succession planning, and compensation.
- (c) **Budget Planning and Management:** Resource allocation, monitoring performance and identifying savings initiatives. Savings initiatives or revenue generating ideas with significant community impact will be discussed with the CEO before presenting to the NHS Board.
- (d) **Operations and Service Delivery:** NHS staff, programs, and services to provide accessible, timely, high quality, patient-centred care with a view to improving the health status of the population of Niagara. Collaborate with other healthcare organizations to deliver integrated care and services, working with SJHS, the Niagara Ontario Health Team and other local partners. Provide input into Terms of Reference for, and co-chair, the Joint Collaboration Management Committee. Developing reports and providing analysis for initiatives identified.
- (e) **Organizational culture change and engagement.**
- (f) **Government and community relations:** Advocate on behalf of NHS with Ministry officials, local MPPs, MPs and other regional partners to engage and garner support for NHS initiatives Participate in CEO meetings/discussions with Provincial government (Premier, Cabinet Ministers and Deputy Minister of Health).
- (g) **Acting as the face of NHS,** representing NHS externally to the community, media, and other organizations in a manner that engenders support, trust and collaboration.

SHARED RESPONSIBILITIES

11. **Shared Responsibilities.** The CEO and President shall together be responsible for:

- (a) **Board support:** working together to set annual priorities, which are reflected in the NHS Board's meeting agendas; participate in NHS Board pre-meetings;

- (b) Academic, research and innovation: advancing NHS's academic relationships with McMaster University's Michael G. DeGroot Medical School (CEO); and Niagara Regional Campus of McMaster University, Brock University, and Niagara College (President). Identify and facilitate research opportunities with partners; and innovative opportunities/solutions to improve access, experience, care or to drive efficiencies; and
- (c) Fundraising: supporting the work of the NHS Foundation, including donor relation activities as requested.

OTHER GENERAL PROVISIONS

- 12. **Staff Reporting.** The reporting relationship for staff engaged in duties primarily at NHS will be exclusively to the President in respect of such duties. The reporting relationship for staff engaged in duties primarily at SJHS will be exclusively to the CEO in respect of such duties.

FEES

- 13. **Fees.** The Parties shall, from time to time, agree upon a fair and reasonable allocation between them of costs related to or associated with the positions of the CEO and the other senior management positions that may be established by the Parties from time to time. Until otherwise agreed by the Parties, the Parties have agreed on an allocation of costs to NHS of \$140,000 annually to be paid by NHS to SJHS in respect of the CEO. For greater certainty, SJHS shall be the employer of the CEO and as such shall be solely responsible for all compensation obligations to the CEO including salary, benefits, source deductions and severance.
- 14. **Payment.** NHS shall pay the agreed fees to SJHS on a quarterly basis upon receipt of an invoice. The invoice shall be in sufficient detail to satisfy NHS.

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