

MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT made as of this 11th day of January, 2014.

Between:

Niagara Health System (“NHS”)

a not-for-profit corporation incorporated under the laws of the Province of Ontario

- and -

St. Joseph’s Health System (“SJHS”)

a not-for-profit corporation incorporated under the laws of the Province of Ontario

WHEREAS SJHS has operating divisions that include an academic health sciences centre, public hospitals and operating divisions that offer services from long term care, community care, rehabilitation, hospice, community outreach and mental health;

WHEREAS NHS is a public hospital operating on multiple sites in the Niagara region; and

WHEREAS SJHS and NHS desire to enter into this agreement to provide for SJHS to provide management and administration services to NHS to assist NHS in managing the operations of NHS;

NOW THEREFORE in consideration of the mutual covenants contained herein it is agreed as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement, unless the context otherwise requires, each capitalized term shall have the meaning set forth below:

“**Affiliate(s)**” has the meaning ascribed thereto in the *Not-for-Profit Corporations Act* (Ontario);

“**Agreement**” means this management services agreement and all instruments supplemental to or in amendment to this Agreement;

“**Arbitrations Act**” means the *Arbitrations Act*, R.S.O. 1991, c17 and the regulations made under it, as amended;

“**Board of Directors**” and “**Board**” each means the board of directors of NHS or SJHS, as the case may be;

“**Business Day**” means a day other than a Saturday, a Sunday or any other day that is treated as a statutory holiday in the Province of Ontario;

“**By-laws**” means any by-law of NHS or SJHS from time to time in force and effect;

“**CEO of SJHS**” means the chief executive officer of SJHS from time to time;

“**clinical programs**” means, individually or collectively, patient care program or programs;

“**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;

“**Corporations Act**” means the *Corporations Act* (Ontario), as amended from time to time and including regulations made thereunto and any statute that replaces the *Corporations Act*;

“**Director**” means a director of NHS, and/or SJHS, as applicable, duly appointed or elected in accordance with their respective By-laws;

“**Evaluation Report**” means the written report prepared pursuant to section 4.3;

“**HAPS**” means the Hospital’s Annual Planning Submission, required to be submitted to the LHIN;

“**Hospital**” means NHS and all related facilities and institutions operated by NHS;

“**LHIN**” means the Hamilton Niagara Haldimand Brant Local Health Integration Network;

“**NHS President**” means the person appointed pursuant to Article 5 of this Agreement to have those responsibilities and discharge those duties specifically provided in this Agreement and as assigned by the Board of NHS from time to time;

“**Operating Plan**” means the annual operating plan prepared by the NHS President and approved by the NHS Board;

“**Parties**” means NHS and SJHS, collectively, and “**Party**” means any one of them;

“**Person**” includes an individual, partnership, corporation, trust, or unincorporated organization, a government agency or political subdivision thereof, a regulatory body or agency or any combination of the foregoing;

“**policy**” means the overall plan embracing general principles, goals, acceptable procedures, terms of reference, values and mission statements to achieve approved objectives;

“**Proceeding**” means an action, suit or other proceeding, whether civil, criminal, administrative or investigative, and whether threatened, pending or completed;

“**service(s)**” means, individually or collectively, hospital support service or services; and

“**Term**” means the initial term and any renewal term as referred to in section 13.1.

- 1.2** **Extended Meanings.** Words expressed in the singular include the plural and vice-versa and words in one gender include all genders.

ARTICLE 2 PRINCIPLES AND PURPOSES

- 2.1** **Purposes of NHS.** The Parties acknowledge that the purposes of NHS entering into this Agreement with SJHS are to achieve the following:

- (a) to ensure stability of staffing principally in the role of the NHS President and in management and administration areas;
- (b) to permit the sharing of infrastructure (administrative and support) costs so that the maximum possible portion of resources are directed to clinical care;
- (c) to support the maintenance of the highest possible standards of clinical programs and services;
- (d) to support the maintenance of a focus for clinical programs and services directed towards efficient use of available funding;
- (e) to provide opportunities to, over time, consider and implement management support and clinical programs operating efficiencies to assist in the achievement of the strategic directions of the NHS; and
- (f) to enhance and expand the academic mission of the NHS to position NHS to maintain accreditation with the Canadian Council on Health Services Accreditation.

- 2.2** **Purposes of SJHS.** The Parties acknowledge that the purposes of SJHS entering into this Agreement with NHS are to achieve the following:

- (a) to permit the sharing of infrastructure (administrative and support) costs so that the maximum possible portion of resources are directed to clinical care;
- (b) to support the maintenance of the highest possible standards of clinical programs and services;
- (c) to support the maintenance of a focus for clinical programs and services directed towards efficient use of available funding; and

- (d) to achieve its academic mission of developing meaningful relationships to improve patient care, teaching and research.

2.3 Underlying Principles. The Parties acknowledge and agree that NHS shall maintain its separate governance and that the Board of NHS is responsible for the governance and management of NHS. NHS has entered into this Agreement for the purposes of engaging SJHS to assist in the management and administration of NHS and implementation of the strategic directions of NHS.

ARTICLE 3 SERVICES

3.1 Services. NHS engages SJHS, and SJHS agrees, to provide management and administration services (“**Services**”) to NHS in accordance with the terms and conditions of this Agreement.

3.2 Scope of Services. The Services to be provided to NHS shall primarily be the duties and responsibilities normally assigned to the chief executive officer of a public hospital subject to the terms and conditions of this Agreement.

ARTICLE 4 STANDARDS AND AUTHORITY, EVALUATION REPORT

4.1 Standards of Performance. SJHS shall provide the Services in accordance with the NHS strategic plan, the *Public Hospitals Act*, any other governing legislation or regulation, By-laws, rules, policies and procedures of NHS, any direction as may be issued from time to time by the Board of NHS, and the standards of practice generally recognized, approved and followed in Ontario hospitals of similar rating and standing to NHS having regard to existing federal and provincial legislation and standards established by the Canadian Council on Health Services Accreditation and SJHS will incorporate quality assurance and quality control programs in such a manner that would support NHS to maintain such accreditation.

4.2 Scope of Authority.

- (a) All contracts, agreements and costs not included in the approved Operating Plan, which are to be binding on NHS and which are not terminable by NHS without liability upon giving no more than ninety (90) days’ notice, or, in any event, involving liability on the part of NHS in excess of an unbudgeted amount as stipulated in NHS policy 090-010-005A, will require the prior consent of the NHS Board or such other individual or committee as may be designated by the NHS Board.
- (b) All shared services or programs, contracts or obligations entered into between SJHS and NHS for integration of management, administrative, support or clinical services, unless authorized by Board approved policies of NHS and SJHS shall require approval by resolution of the Boards of Directors of NHS and SJHS. For greater certainty, the Parties acknowledge and agree that SJHS cannot create or

enter into any binding obligations of any kind or nature on behalf of NHS with SJHS or any of its Affiliates without the approval of both Boards of Directors.

- (c) Any and all unapproved services performed by SJHS in an emergency situation, as determined by SJHS, acting reasonably, shall be subject to written notification to the Chair of the Board of Directors of NHS by SJHS. SJHS agrees to make all reasonable attempts to contact the Chair of the NHS Board prior to taking any action referred to in this subsection 4.2(c).
- (d) Notwithstanding anything herein to the contrary, and in addition to any other approval that may be required by applicable legislation, the prior approval of the NHS Board shall be required for any of the following:
 - (i) the sale or transfer of any assets of NHS, which individually or cumulatively exceeds the amount as stipulated in NHS policy 090-010-005A;
 - (ii) the taking or instituting of proceedings for the winding-up, reorganization or dissolution of NHS;
 - (iii) the sale, lease, exchange or other disposition of all or substantially all of the assets or undertakings of NHS;
 - (iv) the provision of financial assistance, whether by loan, guarantee or otherwise to any Person whatsoever;
 - (v) the mortgaging, pledging, charging or otherwise encumbering any of the assets of NHS; and
 - (vi) the sale or transfer of any assets of NHS to SJHS or any of its Affiliates including a sale within the limits of subsection 4.2(d)(i),
- (e) The NHS President shall be responsible for preparing a draft HAPS and a draft Operating Plan for each fiscal year for approval of the NHS Board, in order to allow the NHS Board an opportunity to review and comment on and consider for approval the HAPS prior to its submission to the LHIN. The Operating Plan shall also be prepared in accordance with a time table approved by the NHS Board.
- (f) The NHS service accountability agreement with the LHIN shall be approved by the NHS Board and signed by the NHS Board Chair and the NHS President, or other authorized signing officers on behalf of NHS.

4.3 Performance Management. The Parties agree that the performance of SJHS in providing Services to NHS in accordance with the objectives set forth in the Operating Plan, and the results from operating under the Operating Plan compared to the strategic plan, purposes and principles as set out in Article 2, the standards of performance in section 4.1 and as such other criteria as may be developed by the NHS Board from time

to time, shall be reviewed and evaluated annually by NHS. An Evaluation Report shall be prepared by NHS and submitted to SJHS for SJHS's comments.

- 4.4 **Banking.** SJHS acknowledges and agrees that it shall not be authorized to draw upon NHS's bank accounts. The NHS President shall be given signing authority for NHS's bank accounts in accordance with NHS's By-laws and policies. SJHS further acknowledges and agrees that all monies, billings and collections on behalf of NHS shall be in the name of and for the account of NHS. Any monies and/or payments received by SJHS relating to NHS shall immediately be deposited in NHS's bank accounts designated by the NHS Board. It shall be the duty of SJHS to direct any third party who is liable for any payment of monies of any kind whatsoever to pay the same to NHS as NHS may direct.

ARTICLE 5 NHS PRESIDENT

- 5.1 **Appointment of NHS President.** The Board of NHS shall appoint a president (the "NHS President") in accordance with the process set out in section 5.2 who shall be the administrator of NHS as that term is defined in the *Public Hospitals Act* and the chief executive officer of NHS as defined in the *Commitment to the Future of Medicare Act*.
- 5.2 **Appointment Process.** Without limiting the nature, manner or scope of any search process, the Board of NHS shall receive the joint recommendation of the Chair of the Board of NHS and the CEO of SJHS with respect to a candidate suitable to be appointed NHS President. NHS shall only consider for appointment as NHS President a candidate or candidates recommended jointly by the Chair of the Board of NHS and the CEO of SJHS. If the Parties cannot agree on a suitable candidate it shall be an Event of Default.
- 5.3 **NHS President - Delegation.** Once appointed, the NHS President is hereby delegated SJHS's responsibilities to perform the Services contemplated by this Agreement in accordance with the terms and conditions of this Agreement on a day-to-day basis, subject to section 5.4.
- 5.4 **Role of CEO of SJHS.** The Board of NHS shall designate the CEO of SJHS as the chief executive officer of NHS with the responsibilities as set out in this section 5.4. SJHS shall be responsible for and shall instruct the CEO of SJHS to ensure performance of the duties of SJHS under this Agreement and, in particular, shall:
- (a) Ensure that short, medium and long-range strategic planning is conducted for NHS and oversee and monitor implementation of NHS strategic directions;
 - (b) Oversee and direct the NHS President, once appointed, to:
 - (i) ensure that the NHS staff, programs and services provide quality patient centred care in a caring and attentive environment characterized by compassion, professionalism and respect;

- (ii) ensure that NHS's practices, activities and decisions are undertaken prudently, legally, and in an equitable and reasonable manner congruent with commonly accepted business practices and professional ethics;
 - (iii) ensure that NHS's assets are protected, adequately maintained and not unnecessarily risked;
 - (iv) ensure NHS's Board-stated priorities are reflected in the allocation of resources;
 - (v) ensure budgeting is based on generally accepted financial planning practices that balance expenditures in any fiscal year against expected revenues and ensure successful achievement of the HAPS; and
 - (vi) promote a healthy work environment for staff and volunteers that is consistent with NHS's values of compassion, professionalism and respect.
- (c) Assist in identifying a suitable individual to be recommended as the NHS President as outlined in section 5.2;
 - (d) Act as supervisor, counsel and mentor to the NHS President;
 - (e) Participate in the annual evaluation process of the NHS President;
 - (f) Participate in representations of and by NHS to government and regulatory authorities;
 - (g) Attend NHS Board and committee meetings as requested by the NHS Board; and
 - (h) Together with the NHS President, identify opportunities for integration in accordance with the provisions of Article 6.

5.5 NHS President Reporting. The NHS President shall report to and be responsible to the NHS Board and the CEO of SJHS for implementing the NHS strategic plan, operating and capital plan, for the day to day operations of the sites of NHS in a manner consistent with policies established by the NHS Board and for the responsibilities delegated to the NHS President under section 5.3. The NHS President shall be a member of SJHS Executive Team.

5.6 Shared Staff Reporting. The reporting relationship for staff engaged in duties primarily at NHS will be to the NHS President in respect of such duties.

5.7 Review of Appointment.

- (a) The performance of the NHS President will be reviewed on an annual basis by the NHS Board in consultation with the CEO of SJHS in accordance with a process

agreeable to each of the Board of Directors of NHS, the CEO of SJHS and the NHS President.

- (b) If either the Board of NHS or the CEO of SJHS, acting reasonably, is of the opinion that there are performance deficiencies, the holder of that opinion shall submit a written report outlining such deficiencies to the other as appropriate (the “**Report**”). The CEO of SJHS shall thereafter prepare and submit recommendations setting out a course of action to correct the deficiencies (which may include a recommendation to terminate the NHS President) to be approved by the NHS Board (the “**Recommendations**”).
- (c) Upon approval of the Recommendations by the NHS Board, NHS and SJHS shall take all steps necessary to implement the approved Recommendations.
- (d) It shall be deemed to be an Event of Default if the Parties are unable to agree on the Recommendations.

5.8 In the event that the Parties agree on the Recommendations but the NHS President performance deficiencies identified in the Report are not rectified to the satisfaction of NHS and the CEO of SJHS following a reasonable period of time to allow for implementation of the Recommendations, the employment of the NHS President may be terminated by NHS on the mutual agreement of NHS and the CEO of SJHS. In such an event, the NHS Board of Directors shall appoint an interim NHS President in accordance with the process set out in sections 5.1 and 5.2.

5.9 CEO of SJHS

- (a) In the event there is a search process during the Term for the position of CEO of SJHS, the NHS Board Chair or his or her designate will be invited to participate as a voting member of the search committee.
- (b) The Board of NHS shall be invited to and is entitled to participate in the annual performance evaluation of the CEO of SJHS.

ARTICLE 6 FUTURE INTEGRATION OPPORTUNITIES

6.1 Future Integration. SJHS and NHS hereby acknowledge that this Agreement provides an opportunity to identify and implement management and support services integration and clinical program integration in order to create operating efficiencies and growth opportunities.

6.2 Process for Future Integration. The following shall apply to decisions to implement integration of management and support services and clinical programs:

- (a) SJHS and NHS shall mutually identify from time to time opportunities for the integration of management and support services and clinical programs;

- (b) Notification to the LHIN may be required as determined by LHIN guidelines at the relevant time;
- (c) The clinical programs may include programs being transferred from SJHS to NHS and from NHS to SJHS having due regard to quality, effectiveness and efficiency;
- (d) The NHS President shall only have the authority to approve management and support service integration in accordance with policies established by the NHS Board from time to time provided; that any management or support service integration where the annual expenses of the shared service borne by NHS are in excess of the amount as stipulated in NHS policy 090-010-005A, shall require prior approval by the NHS Board;
- (e) The Board of NHS and Board of SJHS shall each approve any determination as to whether a clinical service or program shall be moved from NHS to SJHS or SJHS to NHS, as the case may be; and
- (f) Each integration implemented between NHS and SJHS shall be subject to a written memorandum of understanding which shall include, without limitation, all costs, expected benefits and evaluation process and criteria in connection with the integration.

6.3 Integration Reporting. Quarterly or as otherwise directed by the Board of NHS, the NHS President, in consultation with the CEO of SJHS, shall prepare a report (the “**Integration Report**”) for presentation to the Board of NHS which Integration Report shall include, with particularity, the following:

- (a) Identification of opportunities for integration;
- (b) Proposals for implementation of identified integration opportunities, including objectives, resources required, costs and efficiencies and synergies to be achieved;
- (c) An evaluation of previously approved and implemented integration activities; and
- (d) Such other matters as may be requested by the Board of NHS.

ARTICLE 7 FEES

7.1 Compensation for Services. NHS shall pay SJHS a mutually agreed fee for the Services being provided in accordance with the terms and conditions of this Agreement.

The Parties acknowledge and agree that the fee to be paid to SJHS by NHS shall be agreed annually, in advance, and shall be determined pursuant to the following principles:

- (a) a fair and reasonable allocation of the costs shall be determined by the Parties, acting reasonably, which shall include direct costs of providing the Services, including salary and employees benefits, which includes without limitation,

vacation, statutory holidays, sick-time, pension, Canada Pension Plan, Unemployment Insurance Compensation, dental and health benefits;

- (b) the direct costs of all shared positions shall be allocated on a proportionate basis with reference to time spent and such allocation shall be agreed and set out in a memorandum of understanding referred to in subsection 6.2(f);
- (c) in the event of the termination of the employment of any shared positions, a proportional share of all costs associated with such termination shall be calculated based on a time spent and years of service with each Party;
- (d) no profit component shall be added to the costs;
- (e) where costs are calculated on the basis of a cost sharing formulae the formulae shall be reviewed and approved by the Parties; and
- (f) at the request of either Party, the Parties will in good faith negotiate and agree to any mid-year adjustments to reflect changes in the scope of Services provided during the year.

7.2 Fees. The Parties agree that, until the NHS President has commenced performing services, as provided for by this Agreement, NHS shall pay SJHS a mutually agreed fee, as provided in section 7.1, for the time and services of the CEO of SJHS as well as the time and services of the SJHS Executive Team members, and other members of SJHS management. Once the NHS President has begun to perform such services, the Parties shall mutually agree on a reduced fee to be paid to SJHS. This reduced fee shall be in addition to any mutually agreed amounts referred to in subsection 7.1(b) for other shared positions and to the compensation for the NHS President which shall be directly paid by NHS.

7.3 Payment. NHS shall pay the agreed fees to SJHS on a quarterly basis during the Term, based on agreed amounts. SJHS shall invoice NHS on a quarterly basis for the services performed, and monies expended, under this Agreement. The invoice shall be in sufficient detail to satisfy NHS, acting reasonably. Such invoices shall be due and payable on receipt by NHS.

7.4 Sharing Information. On request, the Parties shall share financial information, including audited financial statements, as is appropriate or desirable to assist in understanding the cost sharing component and performance of this Agreement.

7.5 Cost Sharing Review. At any time and from time to time, either Party may elect, upon fifteen (15) days written notice to the other Party, to cause an independent firm of chartered accountants, whom the Parties have mutually agreed upon, within seven (7) days, to conduct an independent audit and review of the cost sharing allocations to date, along with a review of the methodology being used to determine the allocation of shared costs between the Parties. Should the Parties disagree as to the firm of chartered accountants, the choice shall be determined by the process for dispute resolution as set out in Article 14.

The firm of chartered accountants shall prepare a written report to be presented to the Parties within ninety (90) days. The conclusions of the report shall be implemented by SJHS unless either Party is in disagreement. If a Party is in disagreement with the conclusions of the report, the Parties shall resolve such dispute pursuant to the process for dispute resolution as set out in Article 14.

The Parties shall share the cost of such independent review, to a maximum sum of TEN THOUSAND (\$10,000.00) DOLLARS of total costs incurred in a twelve month period, during the Term. Any residual costs above the said amount shall be paid by the Party who initiated the review. A Party wishing to have more than one review during any twelve (12) month period during the Term shall be solely responsible for the costs thereof.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of SJHS. SJHS covenants, represents and warrants to NHS that, as of the date hereof:

- (a) **Good Standing.** SJHS is a corporation, duly organized, validly existing and in good standing under the laws of the Province of Ontario and has all requisite power and authority to operate its assets, facilities and hospitals and to carry on its operations as now conducted.
- (c) **Bankruptcy, etc.** No bankruptcy, insolvency or receivership proceedings have been instituted or are pending against SJHS and SJHS is able to satisfy its liabilities as they become due.
- (d) **Authority to Execute and Perform Agreement.** SJHS has all requisite power, authority and approval required to enter into, execute and deliver this Agreement and to perform fully its obligations hereunder.
- (e) **Due Authorization Enforceability.** SJHS has taken all actions necessary to authorize it to enter into and perform its obligations under this Agreement, and this Agreement is the legal, valid and binding obligation of SJHS, enforceable against SJHS in accordance with its terms.

8.2 Representations and Warranties of NHS. NHS covenants, represents and warrants to SJHS that, as of the date hereof:

- (a) **Good Standing.** NHS is a corporation, duly organized, validly existing and in good standing under the laws of the Province of Ontario and has all requisite power and authority to operate its assets, facilities and hospitals and to carry on its operations as now conducted.
- (b) **Bankruptcy, etc.** No bankruptcy, insolvency or receivership proceedings have been instituted or are pending against NHS and NHS is able to satisfy its liabilities as they become due.

- (c) **Authority to Execute and Perform Agreement.** NHS has all requisite power, authority and approval required to enter into, execute and deliver this Agreement and to perform fully its obligations hereunder.
- (d) **Due Authorization Enforceability.** NHS has taken all actions necessary to authorize it to enter into and perform its obligations under this Agreement, and this Agreement is the legal, valid and binding obligation of NHS, enforceable against NHS in accordance with its terms.

ARTICLE 9 RECORDS

- 9.1 **Records.** The Parties shall at all times maintain appropriate books of account and records with respect to the performance of this Agreement, all transactions entered into pursuant to this Agreement, and the performance of the Services being provided pursuant to the terms and conditions of this Agreement.
- 9.2 **Access.** The Parties shall at all reasonable times during the Term and for a period of seven years thereafter permit the other Party or its designated agents reasonable access to books and records relating to this Agreement.

ARTICLE 10 LIMITED LIABILITY, INDEMNIFICATION, 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 Agreement or by law and does not constitute breach of this Agreement, wilful misconduct, or reckless disregard of duties. If any part of this section 10.1 shall, for any reason and to any extent, be invalid or unenforceable, this section 10.1 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 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 Agreement or by law, except for acts which constitute breach of this Agreement, wilful misconduct, or reckless disregard of duties.

10.3 SJHS's Comprehensive General Liability Insurance.

SJHS shall, at its expense, maintain comprehensive general liability insurance, until midnight on the last day of the Term, against claims for bodily injury, death or property damage or loss arising out of the Services being provided hereunder and naming NHS and its Indemnified Persons as additional insureds, but only with respect to liability arising from this Agreement, to any amount of not less than TWENTY MILLION DOLLARS (\$20,000,000.00) in respect of any one accident or occurrence. Any and all policies of such insurance shall be for the mutual benefit of SJHS and NHS and shall include coverage providing for cross liability and severability of interest.

10.4 NHS Insurance. NHS shall, at its expense:

- (a) insure and keep insured NHS's lands and buildings in accordance with policy terms and conditions of a standard "all risks" policy against fire and all other peril from time to time customarily included in policies applicable to similar properties and effective in Ontario by prudent owner; and
- (b) maintain comprehensive general liability insurance, until midnight on the last day of the Term, against claims for bodily injury, death or property damage or loss arising out of all of its operations, naming SJHS and its Indemnified Persons as additional insureds, but only with respect to liability arising from this Agreement, to any amount of not less than TWENTY MILLION DOLLARS (\$20,000,000.00) in respect of any one accident or occurrence. Any and all policies of such insurance shall be for the mutual benefit of NHS and SJHS and shall include coverage providing for cross liability and severability of interest.

**ARTICLE 11
CONFIDENTIALITY**

11.1 Confidential Information and Duty Not to Disclose. The Parties shall use reasonable efforts to prevent disclosure to others of Confidential Information, except as follows:

- (a) with 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; or

- (e) to the extent that disclosure is necessary to meet governmental laws, regulations or requirements or permitted under the terms of this Agreement.

11.2 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 of the Parties is responsible for the undertakings of their respective Representatives to keep the Confidential Information confidential hereunder.

ARTICLE 12

PUBLIC NOTICES, PRESS RELEASES AND JOINT SUBMISSIONS

12.1 Public Notices and Press Releases. All notices to third parties and all other publicity concerning the matters contemplated by this Agreement shall be jointly planned and coordinated by the Parties and no Party shall act unilaterally in this regard without the prior approval of the other Party (such approval not to be unreasonably withheld), except where required to do so by law or by the applicable regulations or policies of any provincial, federal or other regulatory agency of competent jurisdiction.

12.2 Joint Submissions to Government Local Health Integration Networks and Third Parties. The Parties agree to use all reasonable efforts to co-operate in the preparing of joint submissions to government bodies or third parties, particularly with respect to matters in the best interest of the Parties and which relate to this Agreement. If the Parties are unable to agree to a joint submission, the Parties acknowledge and agree that their submission shall not, directly or indirectly, make any recommendation or references which relate to the other Party.

ARTICLE 13

TERM AND TERMINATION, WITHDRAWAL PROCESS, AUDIT

13.1 Term and Renewal. Subject to the rights of early termination as herein set out, the initial term of this Agreement shall be for thirty-six (36) months and shall commence on the day the Minister of Health and Long Term Care withdraws the appointment of the Supervisor of NHS under section 9 of the *Public Hospitals Act*. The initial term shall be automatically renewed for a further term of two (2) years unless at least six (6) months prior to the expiry of the initial term one Party gives the other notice that it does not wish the Agreement to be renewed.

13.2 Termination by Agreement. This Agreement may be terminated by the mutual written consent of the Parties at any time whatsoever without any notice being required.

13.3 Termination by Reasonable Notice. At any time after the expiry of the initial term, this Agreement may be terminated by either Party upon six (6) months’ written notice to the other Party, or such other mutually agreed notice period.

13.4 Default. The following events (hereinafter each referred to as an “Event of Default”) shall constitute default of this Agreement:

- (a) failure of either Party to pay the other Party any undisputed invoiced amount that becomes due under this Agreement for a period of sixty (60) days after the amount becomes due and is demanded, provided that written notice is given;
- (b) on application of a creditor, entry of an order or judgment by a court of competent jurisdiction adjudicating either Party bankrupt or insolvent, approving a petition for reorganization, or appointing a receiver, trustee, or liquidator of all or a substantial portion of a Party’s assets, when such order continues in effect for any period of fifteen (15) consecutive days and precludes a Party’s continued operation;
- (c) failure of either Party to perform or fulfill any material covenant, obligation or condition set forth in this Agreement, when such failure continues for a period of thirty (30) days after receipt of written notice, specifying with particularity, the condition, act, omission or course of conduct asserted to constitute such material breach, including, an unfavourable Evaluation Report, in the case of SJHS; and
- (d) the events described in sections 5.2 and 5.7(d), as Events of Default, namely, the Parties being unable to agree to the appointment of an NHS President and/or the Parties being unable to agree on the Recommendations to correct any deficiencies relating to the performance of the NHS President.

13.5 Termination. This Agreement may be terminated upon thirty (30) days’ written notice or such other period as may be agreed to by the Parties, by the non-defaulting Party following an Event of Default, which Event of Default is either not cured or is not in the process of being cured to the satisfaction of the non-defaulting Party within thirty (30) days following the date of notice. The non-defaulting Party’s right to terminate this Agreement upon an Event of Default is inserted for the sole benefit of the non-defaulting Party and the Parties acknowledge that the non-defaulting Party may waive its rights in whole or in part at any time. Notice of termination shall be also provided to the LHIN.

On termination of this Agreement, each Party shall promptly pay to the other any unpaid sums due under this Agreement including a Party’s proportion of any applicable severance costs associated with the termination of any of the integrated management, support or clinical management staff that were hired or assigned to provide services to NHS under this Agreement. Both Parties agree to attempt to use all traditional management approaches to minimize severance costs including retirement buyouts, reassigning staff etc.

The rights granted pursuant to this Article 13 are in addition to any other rights or remedies for breach of contract available to the non-defaulting Party at law or in equity.

13.6 Process of Returning Management Functions Upon Termination. In the event of any termination of this Agreement, the NHS President (or if the termination of this Agreement is in connection with the NHS President’s performance, the CEO of SJHS)

shall have the responsibility of recommending to the Parties, as soon as possible but, in any event, not later than ninety (90) days prior to the date of the termination, a proposal with respect to the manner in which the relationship can be equitably severed, assets, services and programs reallocated and the Parties reimbursed for costs.

If the Parties are unable to agree to a plan for the withdrawal of each from this Agreement, the withdrawal plan shall be determined by the process for dispute resolution as set out in Article 14.

13.7 Audit on Termination. On termination of this Agreement, either 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 herein, and all final adjustments between the Parties shall be made on the basis of such report. Should the Parties disagree as to the choice of a firm of chartered accountants, the choice shall be determined by the process for dispute resolution as set out in Article 14. The costs of such final audit shall be shared equally by the Parties.

13.8 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, 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.

ARTICLE 14 MEDIATION, ARBITRATION, BOARD VETO

14.1 Informal Resolution. The Parties will use their best efforts to resolve all issues and disputes through informal discussion and resolution. To facilitate and encourage this informal resolution process, the Parties will jointly develop a written issue statement. The issue statement will describe the facts and events leading to the issue or dispute and will list potential options for its resolution. The respective Board Chairs and Vice-Chairs of NHS and SJHS shall meet to resolve the matter. If the matter remains unresolved then either Party may refer the matter to the process in sections 14.2 and 14.3 of this Agreement.

14.2 Mediation. Subject to the rights conferred on the Parties by section 13.5, in the event that a dispute relating to this Agreement or its implementation arises that cannot be resolved by informal resolution, the Parties agree to use the services of a mediator, which may involve the LHIN, to attempt to resolve their differences and failing agreement on the procedure to be followed, the mediation shall be conducted in accordance with the “Rules of Procedure for the Conduct of Mediations” of the ADR Institute of Ontario, Inc. or its successor body.

14.3 Arbitration.

- (a) Subject to the rights conferred on the Parties by section 13.5, if any dispute shall occur between the Parties relating to this Agreement that cannot be resolved by informal resolution between the Parties and cannot be resolved through mediation, such dispute shall be resolved by arbitration.
- (b) Such arbitration shall be conducted by a single arbitrator appointed by agreement between the Parties or, in default of agreement, appointed by a Judge of the Ontario Superior Court of Justice, upon the application of either of the Parties.
- (c) The procedure to be followed shall be agreed by the Parties or, in default of agreement, determined by the arbitrator.
- (d) The arbitration shall proceed in accordance with the provisions of the Arbitrations Act (Ontario). The arbitrator shall have the power to proceed with the arbitration and to deliver his award notwithstanding the default by any Party in respect of any procedural order made by the arbitrator.
- (e) The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom other than with respect to the jurisdiction of the arbitrator or a matter of law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction, if applicable.

14.4 Sequence of Dispute Resolution Process. For greater certainty, any dispute arising in connection with this Agreement shall require the Parties to use the informal process in section 14.1 first and, if such process is unsuccessful, to then use the mediation process in section 14.2 and only if such mediation process is also unsuccessful to proceed to arbitration in section 14.3 and the Parties shall use no other process to resolve a dispute related to this Agreement, including without limitation court action, other than the processes in 14.1, 14.2 and 14.3.

14.5 Veto Power of Boards. For greater certainty, each of the Parties has:

- (a) a complete power of veto over any dispute or disagreement which relates to matters of its own policy; and
- (b) complete authority to determine matters which each Party has exclusive authority to determine and cannot by its By-laws or applicable legislation be delegated.

The determination as to whether a matter in dispute is an issue of policy, is within the sole discretion of each of the Parties to determine, acting reasonably.

ARTICLE 15 NOTICE

15.1 **Notice.** Any notice, direction or other instrument given under this Agreement shall be in writing and shall be sufficiently given if delivered personally, or transmitted by electronic mail:

(a) in the case of a notice to NHS, at:

Niagara Health System
1200 Fourth Avenue
St. Catharines ON L2S 0A9
Attention: Board Chair

(b) In the case of a notice to SJHS, at:

St. Joseph's Health System
Room M146
50 Charlton Avenue East
Hamilton ON L8N 4A6
Attention: Office of the CEO

Any such notice, direction or other instrument, if delivered personally, shall be deemed to have been given and received on the date on which it was received at such address, or, if sent by electronic mail, shall be deemed to have been given and received on the date of its transmission provided that if such day is not a Business Day or if it is received after 4:00 p.m. on the date of its transmission, then it shall be deemed to have been given and received at the opening of business in the office of the recipient on the first Business Day next following transmission thereof.

ARTICLE 16 GENERAL

16.1 **Assignment.** Neither this Agreement nor any rights or obligations under this Agreement shall be assignable by either Party without the prior written consent of the other Party, such consent may be unreasonably withheld.

16.2 **Further Assurances.** Each Party agrees that upon the written request of the other Party, it will do all such acts and execute all such further documents, agreements, assignments, transfers and the like, and will cause the doing of all such acts and will cause the execution of all such further documents as are within its power to cause the doing or execution of, as the other Party may from time to time reasonably request be done and/or executed as may be necessary or desirable to effect the purpose of this Agreement.

- 16.3 **Counterparts.** This Agreement may be executed by the Parties in separate counterparts each of which when so executed and delivered shall be an original and all such counterparts shall together constitute one and the same instrument.
- 16.4 **Amendment.** This Agreement may not be altered or amended except by a written agreement duly executed by each of the Parties.
- 16.5 **Agreement Binding.** The provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns, subject, however, to the provisions regarding assignment hereinabove set forth.
- 16.6 **Entire Agreement.** This Agreement, and any agreements and other documents to be delivered pursuant to it including Addendums, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, oral or written, between the Parties. The execution of this Agreement has not been induced by, nor do either of the Parties rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgments not expressly made in this Agreement or in the agreements and other documents to be delivered pursuant hereto.
- 16.7 **Invalidity.** If any of the provisions contained in this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not be in any way affected or impaired thereby.
- 16.8 **Governing Law.** 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 therein.
- 16.9 **No Waiver.** The failure of either of the Parties to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed as a waiver of such provisions or of the right of such Party thereafter to enforce each and every such provision of this Agreement.
- 16.10 **Relationship of Parties.** This Agreement does not constitute a Party to be an agent, legal representative, joint venturer or partner, employee or servant of the other Party for any purpose whatsoever; and it is deemed understood between the Parties hereto that each Party shall be an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of the other Party or to create any obligation, express or implied on behalf of the other Party.
- 16.11 **Survival.** The following sections shall survive expiration or termination of this Agreement: 9.2, 10.1, 10.2, Article 11 and Article 12.

IN WITNESS WHEREOF the undersigned parties hereto have executed and delivered this Agreement.

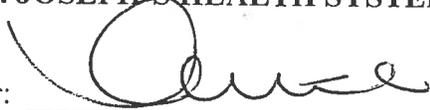
NIAGARA HEALTH SYSTEM

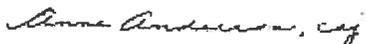
Per: 
Chair

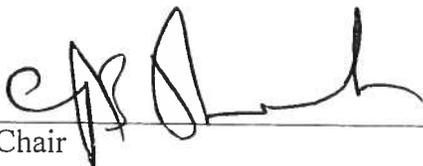
Per: 
Vice-Chair

Per: 
Treasurer

ST. JOSEPH'S HEALTH SYSTEM

Per: 
CEO/Secretary

Per: 
Chair

Per: 
Vice Chair