

Kawartha Lakes OHT Data Sharing Agreement

This Data Sharing Agreement is made and entered into on the **1st day of July, 2020** (the “**Effective Date**”),

BETWEEN:

The Corporation of the City of Kawartha Lakes;

City of Kawartha Lakes Family Health Organization;

City of Kawartha Lakes Family Health Team;

Community Care, City of Kawartha Lakes;

Kawartha North Family Health Team; and

The Ross Memorial Hospital

(each a “**Participant**” and collectively, the “**Participants**”)

WHEREAS the *Connecting Care Act, 2019* was declared in force on June 6, 2019;

AND WHEREAS through the *Connecting Care Act, 2019* the Ministry of Health (the “Ministry”) intends to establish Ontario Health Teams across the Province the purposes of which are to create integrated health systems centred around the patient which will enable seamless access to care;

AND WHEREAS the Ministry of Health has initiated a Self-Assessment and Application process through which groups of organizations may apply to become an Ontario Health Team;

AND WHEREAS the Participants hereto desire to collaborate in establishing the Kawartha Lakes Ontario Health Team (the “**Ontario Health Team**”);

THIS AGREEMENT made as of the Effective Date, by and between the participants described in Schedule “A” to this Agreement (collectively the “**Participants**”, each a “**Participant**”).

WHEREAS each Participant is a “health information custodian” for the purposes of the *Personal Health Information Protection Act, 2004* (Ontario) (“PHIPA”) and as such, is permitted to disclose personal health information (as defined below) that is in its custody or under its control to another Custodian without express consent for the purposes of providing health care and assisting in providing healthcare;

AND WHEREAS the Participants have agreed to allow select agents of the other Participants, who meet established criteria, electronic access to personal health information which is in the custody or under the control of those Participants to improve the delivery of healthcare to their mutual patients;

AND WHEREAS this Agreement describes the terms and conditions upon which Participants’ eligible agents will be allowed to access, use and disclose personal health information.

NOW THEREFORE, in consideration of the promises, mutual covenants and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Participants agree as follows:

DEFINITIONS and ABBREVIATIONS The following terms have the following meanings in this Agreement (capitalized terms not defined in this Section are defined in the recitals and the body of this Agreement, words importing the singular shall include the plural and vice versa, and words importing the masculine shall include the feminine and vice versa):

- a) **“agent”, “collect”, “use”, “disclose”, “health care” and “information practices”** shall each have the meaning ascribed thereto in PHIPA;
- b) **“Agreement”** means this data sharing agreement and any schedules as amended from time to time;
- c) **“Applicable Law”** means PHIPA and the regulations made thereunder and any other legislation in force from time to time that is applicable to a Participant and a purpose of which is to protect personal information, including without limitation personal health information;
- d) **“Authorized User”** has the meaning attributed thereto in Section 8;
- e) **“Custodian”** in connection with PHI means the Participant that is the health information custodian of that PHI;
- f) **“Participants”** means the health information custodians listed in Schedule “A” to this Agreement, as amended from time to time to add participants through the process outlined in Section 22.
- g) **“Patient”** means an individual receiving health care at a Participant and in respect to PHI, the individual to whom it relates;
- h) **“PHI”** means information that is defined as personal health information in PHIPA, that is in the custody or under the control of a Participant and that is collected, used, disclosed, processed or stored by means of the Services; and
- i) **“Privacy Officer”** has the meaning attributed thereto in Section 7.

1. Purpose

Improvements in information sharing, translate into many tangible benefits. Repeat diagnostic tests can be avoided. Medical errors are reduced and outcomes improved with quicker access to complete information. Time is saved by physicians, staff and patients. With less manual processing of information and fewer phone calls for results, patients can be cared for quicker. Ultimately patients will be more engaged in their care by leveraging the technology where providers and patients can securely access necessary PHI.

Participants may include hospitals, health care organizations and healthcare providers involved in the circle of care that or who have direct involvement in the delivery of patient care, which requires the communication and sharing of patient information.

This data sharing agreement is entered into by the Participants to enable more effective and efficient patient information sharing that then will translate into better patient care.

2. Relationship of the Participants to PHI. It is understood and agreed:

- 2.1.** that in giving effect to this Agreement, no Participant shall be or be deemed to be a partner, agent or employee of another Participant for any purpose and that the relationship of each Participant to the other Participants shall be that of independent contractors;
- 2.2.** that nothing in this Agreement shall constitute a partnership or a joint venture between the Participants;
- 2.3.** that for the purposes of this Agreement, where a Participant that is not the Custodian of PHI receives that PHI, the Participant receiving the PHI is accessing, collecting, or using the PHI and the Custodian of the PHI is disclosing the PHI; and
- 2.4.** that as between the Participants, PHI for which a Participant is the Custodian is and shall remain the property of that Custodian and within its custody and under its control for the purposes of Applicable Law and this Agreement, except that a Participant that includes PHI that it has collected from the Custodian in its record for a Patient, shall be subject to all of the duties and obligations of a health information custodian in respect of such PHI and the Patient.

3. Authorized Purposes. Participants shall only access, collect or use PHI for which they are not the Custodian (and shall cause their agents to only access, collect or use such PHI), for the purposes of providing health care or assisting in providing health care and for no other purpose.

4. Compliance with Patient Instructions. To the extent that a Participant has been made aware that a Patient has placed conditions on the collection, use or disclosure of that PHI, the Participant shall not collect, use or disclose such PHI, except in accordance with the conditions imposed by the Patient or as permitted by Applicable Law. The Custodian of the PHI shall be responsible for ensuring that any restriction, imposed by a patient, to the access, use or disclosure of PHI is clearly and reasonably identified to the Authorized User through electronic notices, bulletins or otherwise.

Should an Authorized User require access to PHI to which a patient has placed a restriction and such access is required to reduce a risk of significant bodily harm to the patient, the Authorized User shall be permitted to access only the necessary information, as permitted under PHIPA, and will document the access and reasoning for it in the patient's record.

5. Obligations of Participants. As a condition of being a Participant, each Participant shall:

- 5.1.** comply with Applicable Law when collecting, using or disclosing PHI;
- 5.2.** designate a contact person to:
 - 5.2.1. facilitate the Participant's compliance with Applicable Law and this Agreement;
 - 5.2.2. ensure that all Authorized Users of the Participant are appropriately informed of their duties under Applicable Law and this Agreement;
 - 5.2.3. communicate with the other Participants about matters arising out of or in connection with this Agreement and respond to inquiries from Patients about the Participant's information practices;
 - 5.2.4. respond to requests by a Patient for access to or correction of their PHI for which the Participant is the Custodian; and

- 5.2.5. receive complaints from Patients and other Participants about the management of PHI;
 - 5.3. ensure the integrity and good working order of its own electronic information systems (and all related components and interfaces, hardware and software); and
 - 5.4. have in place administrative, technological and physical safeguards, to prevent the theft, loss and unauthorized access, copying, modification, use, disclosure or disposal of PHI, which afford a degree of protection to PHI that meets or exceeds industry standards.
6. **Requests for Access and Correction of PHI.** For greater certainty, a Participant that receives a request for access to or the correction of PHI for which it is not the Custodian shall refer such request to the Participant that is the Custodian of the PHI.
7. **Governance.** The Privacy Officers of each Participant will be utilized as necessary in making recommendations to the Oversight Committee or the responsible position or committee regarding patient privacy, the confidentiality of PHI and future Participants.
8. **Authorized Users.** An Authorized User is an individual who has been authorized by a Participant. An Authorized User shall:
- 8.1. be an agent of the Participant;
 - 8.2. sign the User Terms & Conditions as specified in Schedule “B” as amended from time to time; and
 - 8.3. require access to PHI on a timely basis for the purpose of providing health care or assisting in the provision of health care to Patients of the Participants.
9. **Responsibilities of Participants.** In addition to their responsibilities regarding the registration of Authorized Users, each Participant shall be responsible for:
- 9.1. receiving inquiries or complaints about the Authorized User’s non-compliance with the applicable requirements of this Agreement, Applicable Law, the Privacy Policy or his or her Confidentiality Agreement;
 - 9.2. participating in decisions regarding whether the Authorized User’s access to PHI should be limited or terminated;
 - 9.3. promptly notifying the appropriate Participant if a breach of this agreement is identified; and
 - 9.4. implementing any action taken to limit or terminate the Authorized User’s access to PHI.
10. **Rights of Participants in regard to Authorized Users.** If a Participant has reasonable grounds to believe that an Authorized User has materially failed to comply with this Agreement, Applicable Law and/or the User Terms & Conditions, the Participant shall promptly give notice of same to the Authorized User and their Participant. The Participant shall deal with the matter in accordance with the terms and conditions of this Agreement. It shall be the decision of the Participant who is Custodian of the PHI to determine if the Authorized User’s access will be terminated. Any disagreement between Participants shall be handled as per Section 13.
11. **Audits.** The Privacy Officer of each Participant shall audit access to PHI for which the Participant is the Custodian, including without limitation access by its Authorized Users.

- 12. Compliance.** Breaches by an Authorized User of this Agreement or Applicable Law will be managed by the Participant who is the Custodian of the PHI affected by the breach. Breaches will result in immediate loss of access to the affected Participant's PHI.

13. Alternative Dispute Resolution

13.1.1 General

Should any participant default in respect of or contravene any portion of the Agreement, the participants agree to address the breach or dispute through Alternative Dispute Resolution. Before pursuing this Alternative Dispute Resolution, the participants shall have first escalated the dispute to the highest level of management within their respective organization and given at least thirty (30) Days for such highest level of management to resolve the matter prior to incurring costs under this Section 13 (Alternative Dispute Resolution). Subject to the provisions of the Agreement, each participant shall continue performing its obligations during the resolution of any dispute, including payment of undisputed amounts then due.

The arbitration procedures in this Section 13 (Alternative Dispute Resolution) shall not (i) apply to claims by third participants, or (ii) prevent either participant from seeking an injunction or other equitable relief from a court in order to protect its intellectual property rights or its confidential information.

13.1.2 Election

If elected by a participant, any breach or claim arising out of or relating to this Agreement or the breach thereof, may be settled by arbitration in accordance with the applicable Ontario arbitration legislation and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

13.1.3 Arbitration Site

The arbitration shall be held at Toronto or at such other site mutually determined by the participants. Where the participants are unable to agree upon an arbitrator who is willing to serve within 45 Days of receipt of a demand to arbitrate by a participant, then the participants shall appoint an arbitrator willing to serve.

13.1.4 Procedure

Subject to the provisions of Section 25 (Notices), the arbitrator shall determine the procedure for the arbitration. Such procedure shall include at least one opportunity for written submissions by or on behalf of each participant and may include proceedings by way of exchange of oral argument, hearings with or without witnesses, and such other procedures as the arbitrator deems appropriate. The arbitrator shall have no power to amend the provisions of the Agreement.

13.1.5 Decision

The arbitrator shall not award either participant punitive damages and the participants shall be deemed to have waived any right to such damages. The decision shall be in writing and judgment upon the award by the arbitrator may be entered into any court having jurisdiction. Prompt handling and

disposal of the issue shall be important. Accordingly, the arbitrator is instructed to assume adequate managerial initiative and control over discovery and other aspects of the proceeding to schedule discovery and other activities for substantially continuous work, thereby expediting the arbitration as much as is deemed reasonable to the arbitrator, but in all events, to effect a final award within 45 Days of the arbitrator's selection or appointment and within 10 Days of the close of evidence.

13.1.6 Confidential Information

The proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard both participants' confidential information. The arbitrator shall have the right, but not the obligation, to order that the losing participant pay the fees of the arbitrator, which shall be designated by the arbitrator. If the arbitrator is unable to designate a losing participant or does not order the losing participant to pay all such fees, the arbitrator shall so state and the fees shall be split equally between the participants.

13.1.7 Termination Clauses not Subject

Notwithstanding the above, the termination clause provisions as set out in Sections 20 (Termination for Convenience) and 21 (Termination for Cause) shall not be subject to Alternative Dispute Resolution.

14. Injunctive Relief. Notwithstanding the dispute resolution procedure described in Section 13, any Participant may seek injunctive or other interim relief from a court of competent jurisdiction in the case of a breach of this Agreement by another Participant resulting in a threat to patient safety, or where PHI is used in a manner or is threatened to be used in a manner that is inconsistent with the terms of this Agreement or applicable law.

15. Limitation of Liability. Each Participant acknowledges that it is in no Participant's interest for one Participant to seek damages against another or other Participants in connection with a breach of this Agreement. No Participant shall seek recourse against another or other Participants for damages that it may suffer that arise out of or in connection with this Agreement. The Participants will work with their respective insurance carriers, and with their respective risk managers, to mitigate the risk of any third participant claims that could potentially arise under or in connection with this Agreement.

16. Insurance and Indemnification.

16.1. The Participants to this Agreement (in each case an "Indemnifying Participant") shall indemnify the other, its directors, officers, employees and agents (in each case an "Indemnified Participant") of and from all loss, cost and expense, including all legal expense on a full recovery basis, incurred by the Indemnified Participant as a result of or arising from any default by the Indemnifying Participant in the performance of any of the duties or obligations of the Indemnifying Participant under this Agreement or any subsequent Integration Terms attached as a Schedule hereto.

- 16.2.** Each Participant shall maintain during the term of this Agreement at its own expense comprehensive general liability insurance with limits of at least Five Million Dollars (\$5,000,000.00) per occurrence. Upon the request of the other Participant, the requested Participant shall promptly provide the other with satisfactory proof of such insurance.
- 17. Term.** This Agreement will commence on the Effective Date and will terminate on the day on which all access under this Agreement to PHI by Participants and their Authorized Users is terminated.
- 18. Termination for Convenience.** Any Participant may terminate this Agreement in respect of such Participant by providing thirty (30) days' prior written notice to the other Participants.
- 19. Termination for Cause.** This Agreement may be terminated immediately in respect of a Participant that commits a material breach of this Agreement or Applicable Law in respect of PHI for which it is not the Custodian.
- 20. Post-Termination PHI Obligations.** Notwithstanding the termination provisions of this Agreement, to the extent that any Participant continues to have access to PHI for which it is not the Custodian for any reason, that Participant shall continue to govern itself in accordance with the terms of this Agreement in respect of its obligations regarding PHI and make reasonable efforts to discontinue or otherwise prevent such access from continuing where possible.
- 21. Additional Participants.** The addition of a potential Participant to this Agreement shall require the approval of 90% of the Participants and shall be conditional upon such potential Participant's executing an addendum as specified in Schedule "C" hereto pursuant to which it agrees to comply with all of the obligations of this Agreement.
- 22. Survival.** Except as otherwise provided herein, those sections of this Agreement which, by the nature of the rights or obligations set out therein, might reasonably be expected to survive any termination or expiry of this Agreement shall survive any termination or expiry of this Agreement.
- 23. Notice.** Any notice or other communication required or permitted to be given hereunder will be in writing and will be delivered in person, transmitted by facsimile [or email, requesting confirmation or receipt] or sent by registered mail, charges prepaid, addressed as indicated within Schedule "A".

Any such notice or other communication will be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided however that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder will be delivered or transmitted by another specified means as aforesaid.

Any Participant may at any time change its address for service from time to time by giving notice to the other Participants in accordance with this Article.

24. **Assignment.** This Agreement may not be assigned by any Participant without the prior written consent of the others, such consent not to be unreasonably withheld or delayed.
25. **Further Assurances.** Each Participant agrees that it shall do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and shall cause the doing of all such acts and the execution of all such further documents as are within its power to cause the doing or execution of, as the other Participants hereto may from time to time reasonably request in writing and as may be necessary or desirable to give effect to this Agreement.
26. **Entire Agreement.** This Agreement, and any agreements and other documents to be delivered pursuant to it or referenced herein, constitutes the entire agreement between the Participants pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, oral or written, between the Participants. The execution of this Agreement has not been induced by, nor do any of the Participants rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgements not expressly made in this Agreement or in the agreements and other documents to be delivered pursuant hereto.
27. **Severability.** Should any provision of this Agreement be found to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and the remainder of this Agreement shall remain in full force and effect.
28. **Amendments.** This Agreement may be amended, modified or supplemented only by written agreement signed by each of the Participants.
29. **Governing Law.** This Agreement shall be interpreted, construed, and governed by and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract. The Participants agree to submit to the exclusive jurisdiction of the courts of Ontario.
30. **Counterparts.** This Agreement may be executed in counterparts and when each Participant has executed an identical counterpart and delivered a copy thereof to the other Participants (by personal delivery or facsimile transmission), then all the counterparts taken together shall be deemed to constitute a single identical agreement dated as of the Effective Date.
31. **Schedules.** The following are the schedules attached to and forming part of this Agreement:

Schedule "A" – Participating Organizations

Schedule “B” – User Terms and Conditions
Schedule “C” – Additional Participant Agreement

IN WITNESS WHEREOF this AGREEMENT has been signed and delivered on behalf of the Participants by their duly authorized representatives.

The Corporation of the City of Kawartha Lakes	The Corporation of the City of Kawartha Lakes
Per: Name: Title:	Per: Name: Title:
I/We have the authority to bind the corporation	I/We have the authority to bind the corporation

City of Kawartha Lakes Family Health Organization	City of Kawartha Lakes Family Health Organization
Per: Name: Title:	Per: Name: Title:
I/We have the authority to bind the corporation	I/We have the authority to bind the corporation

City of Kawartha Lakes Family Health Team	City of Kawartha Lakes Family Health Team
Per: Name: Title:	Per: Name: Title:
I/We have the authority to bind the corporation	I/We have the authority to bind the corporation

Community Care, City of Kawartha Lakes	Community Care, City of Kawartha Lakes
Per: Name: Title:	Per: Name: Title:
I/We have the authority to bind the corporation	I/We have the authority to bind the corporation

Schedule "A"
Participating Organizations

1. The Corporation of the City of Kawartha Lakes

Contact Name/Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

2. City of Kawartha Lakes Family Health Organization

Contact Name/Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

3. City of Kawartha Lakes Family Health Team

Contact Name/Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

4. Community Care, City of Kawartha Lakes

Contact Name/Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

5. Kawartha North Family Health Team

Contact Name/Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

6. The Ross Memorial Hospital

Contact Name/Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Schedule “B”

User Terms & Conditions

To facilitate the provision of care certain health care providers (Participants), each of which is a health information custodian under the *Personal Health Information Protection Act, 2004* (PHIPA), have agreed to provide access to patient personal health information under their care and control to other Participants and their agents who have been approved as Authorized Users.

To protect the privacy rights of patients, the interests of patients and Participants, and to ensure the compliance of the Participants with PHIPA, each individual Authorized User (referred to as “I” and “me” in what follows) must accept and comply with the User Terms and Conditions (Terms and Conditions) set out below:

1. I will abide by the privacy and security policies and procedures of the Participant that has registered me as an Authorized User and applicable legislation (including but not limited to the Ontario *Personal Health Information Protection Act, 2004*) and applicable professional standards and guidelines.
2. I will direct any inquiries I have about my privacy responsibilities or applicable law to the Privacy Officer of the Participant that has registered me as an Authorized User.
3. I will collect, use and disclose personal health information (PHI) accessed through the systems of other Participants only for the purpose of **providing health care or assisting in the provision of health care to a patient** to whom the PHI relates and who is receiving health care from the Participant that has registered me, and will limit such collection, use or disclosure to what is necessary for such purposes.
4. If I believe that I am required by law to use PHI from the systems of other Participants for any other purpose, I will confirm such use with the Privacy Officer of the Participant that has registered me before proceeding and will only proceed with the express written consent of the Privacy Officer.
5. I will access only that PHI required for the performance of my duties and without limiting the scope of this restriction, will not access my own personal health information or that of my family members, friends or colleagues or family members of friends or colleagues.
6. I will not disclose any PHI to any unauthorized staff member, family member or other individual or correct any PHI in response to a request to do so unless authorized to make the correction by the Participant that has registered me. I will redirect any request for personal health information to the Health Records Department of the Participant that is the Custodian of the information or where in doubt, to the Privacy Officer of the Participant that has registered me.
7. If I am, or become, aware that the Patient (or the Patient’s Substitute Decision Maker) has withheld or withdrawn consent to the collection, use or disclosure of the patient’s PHI by me or the Participant that has registered me, I will immediately cease such collection, use or disclosure and ensure that such information is reported to the Privacy Officer of the Participant that has registered me.

8. I will keep my computer access codes or access devices secure and will not share them with others and will ensure that I promptly log out of the systems of other Participants at the end of each session. I will not attempt to, or circumvent, or facilitate the circumvention of the security features of the system by any other individual.
9. I acknowledge and understand that my access rights are based on my role. I will not transfer or assign my access rights to another individual. I will notify the Participant that has registered me immediately upon transferring my position or leaving the organization.
10. If I become aware of any security or privacy breaches involving PHI, I will notify the Privacy Officer of the Participant that has registered me. I understand that any one or more of the Participants may launch a breach investigation and that investigation may include the sharing of my personal information with other Participants.
11. Similarly, I acknowledge that audits of access to and the use of PHI made under my access code will be completed and that my personal information may be used or disclosed for the purpose of carrying out and acting upon the results of such audit, including the sharing of my personal information among the Participants.

I acknowledge that I have read, have had an opportunity to seek clarification of, and understand the above Terms and Conditions. I understand that by signing these Terms and Conditions, I am accepting them and that by accepting these Terms and Conditions, I am entering into a *binding legal agreement with the Participants*.

By accepting these Terms and Conditions, I hereby acknowledge and agree that any unauthorized collection, access, use, disclosure, storage and disposal of PHI are serious breaches. Violation of the Terms and Conditions by me will result in disciplinary action that may include the disabling of my user account, termination of my working relationship with one or more Participants, being reported to any regulated health professional college of which I am a member, being reported to the Information and Privacy Commissioner/Ontario (IPC) and may make me subject to legal action, fines, or penalties.

Date: _____

Signature

Signature of Witness

Name and Title

Name and Title

Address

Address

Schedule "C"

Additional Participant Agreement

This Participation Agreement is entered into by _____ ("Additional Participant")
as of _____ (Date)

The terms used in this Participation Agreement have the meaning attributed to them in the Data Sharing Agreement (DSA) between the Participants with effective date _____

The DSA establishes the terms and condition upon which each Participant and its Authorized Users may access PHI for which another Participant is the Custodian.

The Additional Participant wishes to access PHI for which another Participant is the Custodian and to authorize its agents, who meet the criteria for becoming an Authorized User, to access PHI and the Participants wish to extend such access to the Additional Participant and its Authorized Users on the following terms and conditions:

1. The Additional Participant has reviewed and agrees to be bound by the DSA, the terms and conditions of which are incorporated herein by reference.
2. The Participants and the Additional Participant acknowledge that the Participants have approved of the addition of the Additional Participant as a participant to the DSA, and the Additional Participant is hereby deemed a "Participant" for the purposes of the DSA.
3. The following contact information for the Additional Participant is hereby added to Schedule "A":

Organization Name: _____

Contact Name/Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

In witness whereof, this Agreement has been executed by the Additional Participant as of the Effective Date.

Per: _____

Name: _____

Title: _____

Signature: _____