

- (c) **Multi-year Planning Targets.** Schedule A may reflect an allocation for the first Funding Year of this Agreement as well as planning targets for up to two additional years, consistent with the term of this Agreement. In such an event,
- (1) the HSP acknowledges that if it is provided with planning targets, these targets:
 - a. are targets only,
 - b. are provided solely for the purposes of planning,
 - c. are subject to confirmation, and
 - d. may be changed at the discretion of the LHIN in consultation with the HSP.

The HSP will proactively manage the risks associated with multi-year planning and the potential changes to the planning targets; and
 - (2) the LHIN agrees that it will communicate any changes to the planning targets as soon as reasonably possible.
- (d) **Service Accountability Agreements.** The HSP acknowledges that if the LHIN and the HSP enter into negotiations for a subsequent service accountability agreement, subsequent funding may be interrupted if the next service accountability agreement is not executed on or before the expiration date of this Agreement.

6.2 Community Engagement & Integration Activities.

- (a) **Community Engagement.** The HSP will engage the community of diverse persons and entities in the area where it provides health services when setting priorities for the delivery of health services and when developing plans for submission to the LHIN including but not limited to CAPS and integration proposals. As part of its community engagement activities, the HSPs will have in place and utilize effective mechanisms for engaging families, caregivers, clients, residents, patients and other individuals who use the services of the HSP, to help inform the HSP plans, including the HSP's contribution to the establishment and implementation by the LHIN of geographic sub-regions in its local health system.
- (b) **Integration.** The HSP will, separately and in conjunction with the LHIN and other health service providers, identify opportunities to integrate the services of the local health system to provide appropriate, coordinated, effective and efficient services.
- (c) **Reporting.** The HSP will report on its community engagement and integration activities, using any templates provided by the LHIN, as requested by the LHIN and in any event, in its year-end report to the LHIN.

6.3 Planning and Integration Activity Pre-proposals.

- (a) **General.** A pre-proposal process has been developed to: (A) reduce the costs incurred by an HSP when proposing operational or service changes; (B) assist the HSP to carry out its statutory obligations; and (C) enable an effective and efficient response by the LHIN. Subject to specific direction from the LHIN, this pre-proposal process will be used in the following instances:
- (1) the HSP is considering an integration or an integration of services, as defined in LHSIA between the HSP and another person or entity;

- (2) the HSP is proposing to reduce, stop, start, expand or transfer the location of services, which for certainty includes: the transfer of services from the HSP to another person or entity whether within or outside of the LHIN; and the relocation or transfer of services from one of the HSP's sites to another of the HSP's sites whether within or outside of the LHIN;
 - (3) to identify opportunities to integrate the services of the local health system, other than those identified in (A) or (B) above; or
 - (4) if requested by the LHIN.
- (b) **LHIN Evaluation of the Pre-proposal.** Use of the pre-proposal process is not formal Notice of a proposed integration under section 27 of LHSIA. LHIN consent to develop the project concept outlined in a pre-proposal does not constitute approval to proceed with the project. Nor does the LHIN consent to develop a project concept presume the issuance of a favourable decision, should such a decision be required by sections 25 or 27 of LHSIA. Following the LHIN's review and evaluation, the HSP may be invited to submit a detailed proposal and a business plan for further analysis. Guidelines for the development of a detailed proposal and business case will be provided by the LHIN.

6.4 Proposing Integration Activities in the Planning Submission. No integration activity described in section 6.3 may be proposed in a CAPS unless the LHIN has consented, in writing, to its inclusion pursuant to the process set out in section 6.3(b).

6.5 Definitions. In this section 6.0, the terms "integrate," "integration" and "services" have the same meanings attributed to them in section 2(1) and section 23 respectively of LHSIA, as it and they may be amended from time to time.

ARTICLE 7.0 - PERFORMANCE

7.1 Performance. The parties will strive to achieve ongoing performance improvement. They will address performance improvement in a proactive, collaborative and responsive manner.

7.2 Performance Factors.

- (a) Each party will notify the other party of the existence of a Performance Factor, as soon as reasonably possible after the party becomes aware of the Performance Factor. The Notice will:
 - (1) describe the Performance Factor and its actual or anticipated impact;
 - (2) include a description of any action the party is undertaking, or plans to undertake, to remedy or mitigate the Performance Factor;
 - (3) indicate whether the party is requesting a meeting to discuss the Performance Factor; and
 - (4) address any other issue or matter the party wishes to raise with the other party.
- (b) The recipient party will provide a written acknowledgment of receipt of the Notice within 7 Days of the date on which the Notice was received ("Date of the Notice").

- (c) Where a meeting has been requested under paragraph 7.2(a)(3), the parties agree to meet and discuss the Performance Factors within 14 Days of the Date of the Notice, in accordance with the provisions of section 7.3.

7.3 Performance Meetings. During a meeting on performance, the parties will:

- (a) discuss the causes of a Performance Factor;
- (b) discuss the impact of a Performance Factor on the local health system and the risk resulting from non-performance; and
- (c) determine the steps to be taken to remedy or mitigate the impact of the Performance Factor (the "Performance Improvement Process").

7.4 The Performance Improvement Process.

- (a) The Performance Improvement Process will focus on the risks of non-performance and problem-solving. It may include one or more of the following actions:
 - (1) a requirement that the HSP develop and implement an improvement plan that is acceptable to the LHIN;
 - (2) the conduct of a Review;
 - (3) an amendment of the HSP's obligations;
 - (4) an in-year, or year-end, adjustment to the Funding,among other possible means of responding to the Performance Factor or improving performance.
- (b) Any performance improvement process begun under a prior service accountability agreement that was not completed under the prior agreement will continue under this Agreement. Any performance improvement required by a LHIN under a prior service accountability agreement will be deemed to be a requirement of this Agreement until fulfilled or waived by the LHIN.

7.5 Factors Beyond the HSP's Control. Despite the foregoing, if the LHIN, acting reasonably, determines that the Performance Factor is, in whole or in part, a Factor Beyond the HSP's Control:

- (a) the LHIN will collaborate with the HSP to develop and implement a mutually agreed upon joint response plan which may include an amendment of the HSP's obligations under this Agreement;
- (b) the LHIN will not require the HSP to prepare an Improvement Plan; and
- (c) the failure to meet an obligation under this Agreement will not be considered a breach of this Agreement to the extent that failure is caused by a Factor Beyond the HSP's Control.

ARTICLE 8.0 - REPORTING, ACCOUNTING AND REVIEW

8.1 Reporting.

- (a) **Generally.** The LHIN's ability to enable its local health system to provide appropriate, coordinated, effective and efficient health services, as contemplated by LHSIA, is heavily dependent on the timely collection and analysis of accurate information. The HSP acknowledges that the timely provision of accurate information related to the HSP, and its performance of its obligations under this Agreement, is under the HSP's control.
- (b) **Specific Obligations.** The HSP:
- (1) will provide to the LHIN, or to such other entity as the LHIN may direct, in the form and within the time specified by the LHIN, the Reports, other than personal health information as defined in LHSIA, that the LHIN requires for the purposes of exercising its powers and duties under this Agreement, the Accountability Agreement, LHSIA or for the purposes that are prescribed under any Applicable Law;
 - (2) will fulfill the specific reporting requirements set out in Schedule B;
 - (3) will ensure that every Report is complete, accurate, signed on behalf of the HSP by an authorized signing officer where required and provided in a timely manner and in a form satisfactory to the LHIN; and
 - (4) agrees that every Report submitted to the LHIN by or on behalf of the HSP, will be deemed to have been authorized by the HSP for submission.

For certainty, nothing in this section 8.1 or in this Agreement restricts or otherwise limits the LHIN's right to access or to require access to personal health information as defined in LHSIA, in accordance with Applicable Law for purposes of carrying out the LHIN's statutory objects to achieve the purposes of LHSIA, including to provide certain services, supplies and equipment in accordance with section 5(m.1) of LHSIA and to manage placement of persons in accordance with section 5(m.2).

- (c) **French Language Services.** If the HSP is required to provide services to the public in French under the provisions of the FLSA, the HSP will be required to submit a French language services report to the LHIN. If the HSP is not required to provide services to the public in French under the provisions of the FLSA, it will be required to provide a report to the LHIN that outlines how the HSP addresses the needs of its local Francophone community.
- (d) **Declaration of Compliance.** Within 90 Days of the HSP's fiscal year-end, the Board will issue a Compliance Declaration declaring that the HSP has complied with the terms of this Agreement. The form of the declaration is set out in Schedule F and may be amended by the LHIN from time to time through the term of this Agreement.
- (e) **Financial Reductions.** Notwithstanding any other provision of this Agreement, and at the discretion of the LHIN, the HSP may be subject to a financial reduction in any of the following circumstances:
- (1) its CAPS is received after the due date;
 - (2) its CAPS is incomplete;
 - (3) the quarterly performance reports are not provided when due; or

(4) financial or clinical data requirements are late, incomplete or inaccurate, where the errors or delay were not as a result of LHIN actions or inaction or the actions or inactions of persons acting on behalf of the LHIN. If assessed, the financial reduction will be as follows:

- (1) if received within 7 Days after the due date, incomplete or inaccurate, the financial penalty will be the greater of (1) a reduction of 0.02 percent (0.02%) of the Funding; or (2) two hundred and fifty dollars (\$250.00); and
- (2) for every full or partial week of non-compliance thereafter, the rate will be one half of the initial reduction.

8.2 Reviews.

- (a) During the term of this Agreement and for 7 years after the term of this Agreement, the HSP agrees that the LHIN or its authorized representatives may conduct a Review of the HSP to confirm the HSP's fulfillment of its obligations under this Agreement. For these purposes the LHIN or its authorized representatives may, upon 24 hours' Notice to the HSP and during normal business hours enter the HSP's premises to:
 - (1) inspect and copy any financial records, invoices and other finance-related documents, other than personal health information as defined in LHSIA, in the possession or under the control of the HSP which relate to the Funding or otherwise to the Services; and
 - (2) inspect and copy non-financial records, other than personal health information as defined in LHSIA, in the possession or under the control of the HSP which relate to the Funding, the Services or otherwise to the performance of the HSP under this Agreement.
- (b) The cost of any Review will be borne by the HSP if the Review: (1) was made necessary because the HSP did not comply with a requirement under LHSIA or this Agreement; or (2) indicates that the HSP has not fulfilled its obligations under this Agreement, including its obligations under Applicable Law and Applicable Policy.
- (c) To assist in respect of the rights set out in (a) above, the HSP shall disclose any information requested by the LHIN or its authorized representatives, and shall do so in a form requested by the LHIN or its authorized representatives.
- (d) The HSP may not commence a proceeding for damages or otherwise against any person with respect to any act done or omitted to be done, any conclusion reached or report submitted that is done in good faith in respect of a Review.

8.3 Document Retention and Record Maintenance. The HSP will:

- (a) retain all records (as that term is defined in FIPPA) related to the HSP's performance of its obligations under this Agreement for 7 years after the termination or expiration of the term of this Agreement;
- (b) keep all financial records, invoices and other finance-related documents relating to the Funding or otherwise to the Services in a manner consistent with either generally accepted accounting principles or international financial reporting standards as advised by the HSP's auditor; and

- (c) keep all non-financial documents and records relating to the Funding or otherwise to the Services in a manner consistent with all Applicable Law.

8.4 Disclosure of Information.

- (a) **FIPPA.** The HSP acknowledges that the LHIN is bound by FIPPA and that any information provided to the LHIN in connection with this Agreement may be subject to disclosure in accordance with FIPPA.
- (b) **Confidential Information.** The parties will treat Confidential Information as confidential and will not disclose Confidential Information except with the consent of the disclosing party or as permitted or required under FIPPA or the *Personal Health Information Protection Act, 2004*, LHSIA, court order, subpoena or other Applicable Law. Notwithstanding the foregoing, the LHIN may disclose information that it collects under this Agreement in accordance with LHSIA.

8.5 Transparency. The HSP will post a copy of this Agreement and each Compliance Declaration submitted to the LHIN during the term of this Agreement in a conspicuous and easily accessible public place at its sites of operations to which this Agreement applies and on its public website, if the HSP operates a public website.

8.6 Auditor General. For greater certainty the LHIN's rights under this article are in addition to any rights provided to the Auditor General under the *Auditor General Act (Ontario)*.

ARTICLE 9.0 - ACKNOWLEDGMENT OF LHIN SUPPORT

9.1 Publication. For the purposes of this Article 9, the term "publication" means any material on or concerning the Services that the HSP makes available to the public, regardless of whether the material is provided electronically or in hard copy. Examples include a website, an advertisement, a brochure, promotional documents and a report. Materials that are prepared by the HSP in order to fulfill its reporting obligations under this Agreement are not included in the term "publication."

9.2 Acknowledgment of Funding Support.

- (a) The HSP agrees all publications will include
 - (1) an acknowledgment of the Funding provided by the LHIN and the Government of Ontario. Prior to including an acknowledgment in any publication, the HSP will obtain the LHIN's approval of the form of acknowledgment. The LHIN may, at its discretion, decide that an acknowledgment is not necessary; and
 - (2) a statement indicating that the views expressed in the publication are the views of the HSP and do not necessarily reflect those of the LHIN or the Government of Ontario.
- (b) The HSP shall not use any insignia or logo of Her Majesty the Queen in right of Ontario, including those of the LHIN, unless it has received the prior written permission of the LHIN to do so.

ARTICLE 10.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 General. The HSP represents, warrants and covenants that:

- (a) it is, and will continue for the term of this Agreement to be, a validly existing legal entity with full power to fulfill its obligations under this Agreement;
- (b) it has the experience and expertise necessary to carry out the Services;
- (c) it holds all permits, licences, consents, intellectual property rights and authorities necessary to perform its obligations under this Agreement;
- (d) all information (including information relating to any eligibility requirements for Funding) that the HSP provided to the LHIN in support of its request for Funding was true and complete at the time the HSP provided it, and will, subject to the provision of Notice otherwise, continue to be true and complete for the term of this Agreement; and
- (e) it does, and will continue for the term of this Agreement to, operate in compliance with all Applicable Law and Applicable Policy, including observing where applicable, the requirements of the *Corporations Act* or successor legislation and the HSP's by-laws in respect of, but not limited to, the holding of board meetings, the requirements of quorum for decision-making, the maintenance of minutes for all board and committee meetings and the holding of members' meetings.

10.2 Execution of Agreement. The HSP represents and warrants that:

- (a) it has the full power and authority to enter into this Agreement; and
- (b) it has taken all necessary actions to authorize the execution of this Agreement.

10.3 Governance.

- (a) The HSP represents, warrants and covenants that it has established, and will maintain for the period during which this Agreement is in effect, policies and procedures:
 - (1) that set out a code of conduct for, and that identify the ethical responsibilities for all persons at all levels of the HSP's organization;
 - (2) to ensure the ongoing effective functioning of the HSP;
 - (3) for effective and appropriate decision-making;
 - (4) for effective and prudent risk-management, including the identification and management of potential, actual and perceived conflicts of interest;
 - (5) for the prudent and effective management of the Funding;
 - (6) to monitor and ensure the accurate and timely fulfillment of the HSP's obligations under this Agreement and compliance with LHSIA;
 - (7) to enable the preparation, approval and delivery of all Reports;
 - (8) to address complaints about the provision of Services, the management or governance of the HSP; and
 - (9) to deal with such other matters as the HSP considers necessary to ensure that the HSP carries out its obligations under this Agreement.

- (b) The HSP represents and warrants that:
- (1) it has, or will have within 60 Days of the execution of this Agreement, a Performance Agreement with its CEO that ties a reasonable portion of the CEO's compensation plan to the CEO's performance;
 - (2) it will take all reasonable care to ensure that its CEO complies with the Performance Agreement;
 - (3) it will enforce the HSP's rights under the Performance Agreement; and
 - (4) a reasonable portion of any compensation award provided to the CEO during the term of this Agreement will be pursuant to an evaluation of the CEO's performance under the Performance Agreement and the CEO's achievement of performance goals and performance improvement targets and in compliance with Applicable Law.

"compensation award", for the purposes of Section 10.3(b)(4) above, means all forms of payment, benefits and perquisites paid or provided, directly or indirectly, to or for the benefit of a CEO who performs duties and functions that entitle him or her to be paid.

10.4 Funding, Services and Reporting. The HSP represents warrants and covenants that

- (a) the Funding is, and will continue to be, used only to provide the Services in accordance with the terms of this Agreement;
- (b) the Services are and will continue to be provided;
 - (1) by persons with the expertise, professional qualifications, licensing and skills necessary to complete their respective tasks; and
 - (2) in compliance with Applicable Law and Applicable Policy; and
- (c) every Report is accurate and in full compliance with the provisions of this Agreement, including any particular requirements applicable to the Report and any material change to a Report will be communicated to the LHIN immediately.

10.5 Supporting Documentation. Upon request, the HSP will provide the LHIN with proof of the matters referred to in this Article.

ARTICLE 11.0 - LIMITATION OF LIABILITY, INDEMNITY & INSURANCE

11.1 Limitation of Liability. The Indemnified Parties will not be liable to the HSP or any of the HSP's Personnel and Volunteers for costs, losses, claims, liabilities and damages howsoever caused arising out of or in any way related to the Services or otherwise in connection with this Agreement, unless caused by the negligence or willful act of any of the Indemnified Parties.

11.2 Ibid. For greater certainty and without limiting section 11.1, the LHIN is not liable for how the HSP and the HSP's Personnel and Volunteers carry out the Services and is therefore not responsible to the HSP for such Services. Moreover, the LHIN is not contracting with or employing any HSP's Personnel and Volunteers to carry out the terms of this Agreement. As such, it is not liable for contracting with, employing or terminating a contract with or the employment of any HSP's Personnel and Volunteers required to

carry out this Agreement, nor for the withholding, collection or payment of any taxes, premiums, contributions or any other remittances due to government for the HSP's Personnel and Volunteers required by the HSP to carry out this Agreement.

11.3 Indemnification. The HSP hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant costs), causes of action, actions, claims, demands, lawsuits or other proceedings (collectively, the "Claims"), by whomever made, sustained, brought or prosecuted (including for third party bodily injury (including death), personal injury and property damage), in any way based upon, occasioned by or attributable to anything done or omitted to be done by the HSP or the HSP's Personnel and Volunteers, in the course of the performance of the HSP's obligations under, or otherwise in connection with, this Agreement, unless caused by the negligence or willful misconduct of any Indemnified Parties.

11.4 Insurance.

- (a) **Generally.** The HSP shall protect itself from and against all Claims that might arise from anything done or omitted to be done by the HSP and the HSP's Personnel and Volunteers under this Agreement and more specifically all Claims that might arise from anything done or omitted to be done under this Agreement where bodily injury (including personal injury), death or property damage, including loss of use of property is caused.
- (b) **Required Insurance.** The HSP will put into effect and maintain, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all necessary and appropriate insurance that a prudent person in the business of the HSP would maintain, including, but not limited to, the following at its own expense:
- (1) Commercial General Liability Insurance, for third party bodily injury, personal injury and property damage to an inclusive limit of not less than 2 million dollars per occurrence and not less than 2 million dollars products and completed operations aggregate. The policy will include the following clauses:
 - a. The Indemnified Parties as additional insureds;
 - b. Contractual Liability;
 - c. Cross-Liability;
 - d. Products and Completed Operations Liability;
 - e. Employers Liability and Voluntary Compensation unless the HSP complies with the Section below entitled "Proof of WSIA Coverage";
 - f. Tenants Legal Liability; (for premises/building leases only);
 - g. Non-Owned automobile coverage with blanket contractual coverage for hired automobiles; and
 - h. A 30-Day written notice of cancellation, termination or material change.
 - (2) **Proof of WSIA Coverage.** Unless the HSP puts into effect and maintains Employers Liability and Voluntary Compensation as set out above, the HSP will provide the LHIN with a valid *Workplace Safety and Insurance*

Act, 1997 ("WSIA") Clearance Certificate and any renewal replacements, and will pay all amounts required to be paid to maintain a valid WSIA Clearance Certificate throughout the term of this Agreement.

- (3) All Risk Property Insurance on property of every description, for the term, providing coverage to a limit of not less than the full replacement cost, including earthquake and flood. All reasonable deductibles and self-insured retentions are the responsibility of the HSP.
 - (4) Comprehensive Crime insurance, Disappearance, Destruction and Dishonest coverage.
 - (5) Errors and Omissions Liability Insurance insuring liability for errors and omissions in the provision of any professional services as part of the Services or failure to perform any such professional services, in the amount of not less than two million dollars per claim and in the annual aggregate.
- (c) **Certificates of Insurance.** The HSP will provide the LHIN with proof of the insurance required by this Agreement in the form of a valid certificate of insurance that references this Agreement and confirms the required coverage, on or before the commencement of this Agreement, and renewal replacements on or before the expiry of any such insurance. Upon the request of the LHIN, a copy of each insurance policy shall be made available to it. The HSP shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract.

ARTICLE 12.0 - TERMINATION AND EXPIRY OF AGREEMENT

12.1 Termination by the LHIN.

- (a) **Without Cause.** The LHIN may terminate this Agreement at any time, for any reason, upon giving at least 60 Days' Notice to the HSP.
- (b) **Where No Appropriation.** If, as provided for in section 4.3, the LHIN does not receive the necessary funding from the MOHLTC, the LHIN may terminate this Agreement immediately by giving Notice to the HSP.
- (c) **For Cause.** The LHIN may terminate all or part of this Agreement immediately upon giving Notice to the HSP if:
 - (1) in the opinion of the LHIN:
 - a. the HSP has knowingly provided false or misleading information regarding its funding request or in any other communication with the LHIN;
 - b. the HSP breaches any material provision of this Agreement;
 - c. the HSP is unable to provide or has discontinued all or part of the Services; or
 - d. it is not reasonable for the HSP to continue to provide all or part of the Services;

- (2) the nature of the HSP's business, or its corporate status, changes so that it no longer meets the applicable eligibility requirements of the program under which the LHIN provides the Funding;
 - (3) the HSP makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver; or
 - (4) the HSP ceases to carry on business.
- (d) **Material Breach.** A breach of a material provision of this Agreement includes, but is not limited to:
- (1) misuse of Funding;
 - (2) a failure or inability to provide the Services as set out in the Service Plan;
 - (3) a failure to provide the Compliance Declaration;
 - (4) a failure to implement, or follow, a Performance Agreement, one or more material requirements of a Performance Improvement Process or of a Transition Plan;
 - (5) a failure to respond to LHIN requests in a timely manner;
 - (6) a failure to: A) advise the LHIN of actual, potential or perceived Conflict of Interest; or B) comply with any requirements prescribed by the LHIN to resolve a Conflict of Interest; and
 - (7) a Conflict of Interest that cannot be resolved.
- (e) **Transition Plan.** In the event of termination by the LHIN pursuant to this section, the LHIN and the HSP will develop a Transition Plan. The HSP agrees that it will take all actions, and provide all information, required by the LHIN to facilitate the transition of the HSP's clients.

12.2 Termination by the HSP.

- (a) The HSP may terminate this Agreement at any time, for any reason, upon giving 6 months' Notice (or such shorter period as may be agreed by the HSP and the LHIN) to the LHIN provided that the Notice is accompanied by:
- (1) satisfactory evidence that the HSP has taken all necessary actions to authorize the termination of this Agreement; and
 - (2) a Transition Plan, acceptable to the LHIN, that indicates how the needs of the HSP's clients will be met following the termination and how the transition of the clients to new service providers will be effected within the six-month Notice period.
- (b) In the event that the HSP fails to provide an acceptable Transition Plan, the LHIN may reduce Funding payable to the HSP prior to termination of this Agreement to compensate the LHIN for transition costs.

12.3 Opportunity to Remedy.

- (a) **Opportunity to Remedy.** If the LHIN considers that it is appropriate to allow the HSP an opportunity to remedy a breach of this Agreement, the LHIN may give the HSP an opportunity to remedy the breach by giving the HSP Notice of the particulars of the breach and of the period of time within which the HSP is

required to remedy the breach. The Notice will also advise the HSP that the LHIN may terminate this Agreement:

- (1) at the end of the Notice period provided for in the Notice if the HSP fails to remedy the breach within the time specified in the Notice; or
- (2) prior to the end of the Notice period provided for in the Notice if it becomes apparent to the LHIN that the HSP cannot completely remedy the breach within that time or such further period of time as the LHIN considers reasonable, or the HSP is not proceeding to remedy the breach in a way that is satisfactory to the LHIN.

(b) **Failure to Remedy.** If the LHIN has provided the HSP with an opportunity to remedy the breach, and:

- (1) the HSP does not remedy the breach within the time period specified in the Notice;
- (2) it becomes apparent to the LHIN that the HSP cannot completely remedy the breach within the time specified in the Notice or such further period of time as the LHIN considers reasonable; or
- (3) the HSP is not proceeding to remedy the breach in a way that is satisfactory to the LHIN,

then the LHIN may immediately terminate this Agreement by giving Notice of termination to the HSP.

12.4 Consequences of Termination. If this Agreement is terminated pursuant to this Article, the LHIN may:

- (a) cancel all further Funding installments;
- (b) demand the repayment of any Funding remaining in the possession or under the control of the HSP;
- (c) through consultation with the HSP, determine the HSP's reasonable costs to wind down the Services; and
- (d) permit the HSP to offset the costs determined pursuant to section (c), against the amount owing pursuant to section (b).

12.5 Effective Date. Termination under this Article will take effect as set out in the Notice.

12.6 Corrective Action. Despite its right to terminate this Agreement pursuant to this Article, the LHIN may choose not to terminate this Agreement and may take whatever corrective action it considers necessary and appropriate, including suspending Funding for such period as the LHIN determines, to ensure the successful completion of the Services in accordance with the terms of this Agreement.

12.7 Expiry of Agreement. If the HSP intends to allow this Agreement to expire at the end of its term, the HSP will provide 6 months' Notice (or such shorter period as may be agreed by the HSP and the LHIN) to the LHIN, along with a Transition Plan, acceptable to the LHIN, that indicates how the needs of the HSP's clients will be met following the expiry

and how the transition of the clients to new service providers will be effected within the 6-month Notice period.

- 12.8 Failure to Provide Notice of Expiry.** If the HSP fails to provide the required 6 months' Notice that it intends to allow this Agreement to expire, or fails to provide a Transition Plan along with any such Notice, this Agreement shall automatically be extended and the HSP will continue to provide the Services under this Agreement for so long as the LHIN may reasonably require to enable all clients of the HSP to transition to new service providers.

ARTICLE 13.0 - NOTICE

- 13.1 Notice.** A Notice will be in writing; delivered personally, by pre-paid courier, by any form of mail where evidence of receipt is provided by the post office, or by facsimile with confirmation of receipt, or by email where no delivery failure notification has been received. For certainty, delivery failure notification includes an automated 'out of office' notification. A Notice will be addressed to the other party as provided below or as either party will later designate to the other in writing:

To the LHIN:

Central East Local Health Integration Network
314 Harwood Avenue South, Suite 204A
Ajax, ON L1S 2J1

Attn: Stewart Sutley, Interim Chief Executive Officer
Fax: (905) 427-9659
Email: Stewart.Sutley@lhins.on.ca

To the HSP:

Brain Injury Association of Durham Region
850 King Street West, Unit 24
Oshawa, ON L1J 8N5

Attn: Jeff Chartier, Chief Executive Officer
Fax: (905) 723-4936
Email: jchartier@biad.ca

- 13.2 Notices Effective From.** A Notice will be deemed to have been duly given 1 business day after delivery if the Notice is delivered personally, by pre-paid courier or by mail. A notice that is delivered by facsimile with confirmation of receipt or by email where no delivery failure notification has been received will be deemed to have been duly given 1 business day after the facsimile or email was sent.

ARTICLE 14.0 - ADDITIONAL PROVISIONS

- 14.1 Interpretation.** In the event of a conflict or inconsistency in any provision of this Agreement, the main body of this Agreement will prevail over the Schedules.
- 14.2 Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement and any invalid or unenforceable provision will be deemed to be severed.
- 14.3 Waiver.** A party may only rely on a waiver of the party's failure to comply with any term of this Agreement if the other party has provided a written and signed Notice of waiver. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.
- 14.4 Parties Independent.** The parties are and will at all times remain independent of each other and are not and will not represent themselves to be the agent, joint venturer, partner or employee of the other. No representations will be made or acts taken by either party which could establish or imply any apparent relationship of agency, joint venture, partnership or employment and neither party will be bound in any manner whatsoever by any agreements, warranties or representations made by the other party to any other person or entity, nor with respect to any other action of the other party.
- 14.5 LHIN is an Agent of the Crown.** The parties acknowledge that the LHIN is an agent of the Crown and may only act as an agent of the Crown in accordance with the provisions of LHSIA. Notwithstanding anything else in this Agreement, any express or implied reference to the LHIN providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the LHIN or of Ontario, whether at the time of execution of this Agreement or at any time during the term of this Agreement, will be void and of no legal effect.
- 14.6 Express Rights and Remedies Not Limited.** The express rights and remedies of the LHIN are in addition to and will not limit any other rights and remedies available to the LHIN at law or in equity. For further certainty, the LHIN has not waived any provision of any applicable statute, including LHSIA, nor the right to exercise its rights under these statutes at any time.
- 14.7 No Assignment.** The HSP will not assign this Agreement or the Funding in whole or in part, directly or indirectly, without the prior written consent of the LHIN. No assignment or subcontract shall relieve the HSP from its obligations under this Agreement or impose any liability upon the LHIN to any assignee or subcontractor. The LHIN may assign this Agreement or any of its rights and obligations under this Agreement to any one or more of the LHINs or to the MOHLTC.
- 14.8 Governing Law.** This Agreement and the rights, obligations and relations of the parties hereto will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any litigation arising in connection with this Agreement will be conducted in Ontario unless the parties agree in writing otherwise.

- 14.9 Survival.** The provisions in Articles 1.0, 5.0, 8.0, 10.5, 11.0, 13.0, 14.0 and 15.0 will continue in full force and effect for a period of seven years from the date of expiry or termination of this Agreement.
- 14.10 Further Assurances.** The parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.
- 14.11 Amendment of Agreement.** This Agreement may only be amended by a written agreement duly executed by the parties.
- 14.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

ARTICLE 15.0 - ENTIRE AGREEMENT

Entire Agreement. This Agreement forms the entire Agreement between the parties and supersedes all prior oral or written representations and agreements, except that where the LHIN has provided Funding to the HSP pursuant to an amendment to the 2014-2018 MSAA, the 2018 Multi-Sector Accountability Agreement, or to this Agreement, whether by Project Funding Agreement or otherwise, and an amount of Funding for the same purpose is set out in the Schedules, that Funding is subject to all of the terms and conditions on which funding for that purpose was initially provided, unless those terms and conditions have been superseded by any terms or conditions of this Agreement or by the MSAA Indicator Technical Specifications document, or unless they conflict with Applicable Law or Applicable Policy.

The parties have executed this Agreement on the dates set out below.

CENTRAL EAST LOCAL HEALTH INTEGRATION NETWORK

By:

Louis O'Brien, Board Chair

Date

And by:

Stewart Sutley, Interim Chief Executive Officer

Date

BRAIN INJURY ASSOCIATION OF DURHAM REGION

By:

Herb Paquette, Board Chair
I have authority to bind the HSP

Date

And by:

Jeff Chartier, Chief Executive Officer
I have authority to bind the HSP

Date

