**General Conditions**

**for**

**Local Health Integration Network**

**Services Agreement**

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**GENERAL CONDITIONS**

# DEFINITIONS, CONSTRUCTION AND INTERPRETATION

## Definitions

The following capitalized terms wherever used in the Agreement Documents have the following meanings:

“**Accessibility Act**” is defined in GC Section 3.13;

“***Accessibility for Ontarians with Disabilities Act****”* means the Ontario *Accessibility for Ontarians with Disabilities Act*, 2005, S.O. 2005, Chapter 11, as amended from time to time;

“**Accreditation Status**” is defined in GC Section 3.12(1);

“**Actual Volume of Services**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“**Affiliate**” means, with respect to any person, any other person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such person, and includes any person in like relation to an Affiliate. A person shall be deemed to “control” another person if such person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning;

“**Agreement**” is defined in Section 1.1 of the Form of Agreement;

“**Agreement Documents**” is defined in Section 1.1 of the Form of Agreement;

“**Agreement Records**” is defined in GC Section 5.2(1);

“**Agreement Term**” is defined in GC Section 2.4;

“**Annual Report**” is defined in SS Section 1.1;

“**Applicable Law**” means, with respect to any person, property, transaction, event or other matter, any rule, statute, regulation, by-law, order, judgement, decree, treaty or other requirement having the force of law relating or applicable to such person, property, transaction, event or other matter, and includes, where appropriate, any interpretation of a rule, statute, regulation, order, decree, treaty or other requirement having the force of law by any person having jurisdiction over it, or charged with its administration or interpretation. For the purpose of clarity, “Applicable Law” includes (i) any policy or direction of the Ministry of Health and Long-Term Care of the Province of Ontario (or its successor), including, for greater clarity, any procurement policy or directive and (ii) any order of the Ontario Information and Privacy Commissioner and any guidelines or directive issued by any governmental authority having jurisdiction that applies to personal health information;

“**Audit Deficiency Notice**” is defined in GC Section 5.4(3);

“**Authorized Person**” means a person that has a need for access to Patient Information in order to enable the Service Provider to deliver the Services and that is subject to obligations of confidentially and data protection no less stringent than those of this Agreement or who is a health information custodian (as defined in the *Personal Health Information Protection Act*) to whom Patient Information is provided for the purpose of providing health care in accordance with Applicable Law;

“**Bedding-In Period**” is defined in the Performance Standards Schedule;

“**Business Day**” means any day, except a Saturday, Sunday or any day that is a Legal Holiday;

“**Caregiver**” is defined in SS Section 1.1;

“**Change**” is defined in GC Section 10.2.1(1);

“**Change Order**” is defined in GC Section 10.2.1(2);

“**Change Proposal**” is defined in GC Section 10.2.2(1);

“**College Standards and Guidelines**” means the standards, guidelines, procedures, policies, manuals and any other documentation produced and endorsed by a regulated health professional’s college, as amended from time to time, applicable to the type of Services being provided by the Service Provider and includes, for clarity, the standards guidelines, policies, manuals, and any other documentation produced and endorsed by the College of Nurses of Ontario, the College of Occupational Therapists of Ontario, the College of Physiotherapists of Ontario, the College of Dietitians of Ontario, the College of Audiologists and Speech-Language Pathologists of Ontario, the Ontario College of Social Workers and Social Service Workers, the Ontario College of Pharmacists and the College of Respiratory Therapists of Ontario;

“**Confidential Information**” means any and all data, information, material, or any item in any form, including Intellectual Property Rights, relating to,

##### the business or management of either Party, its affiliates or its licensors;

##### the Patients, including Patient Information; and

##### software,

except any information or data (other than Patient Information) that,

##### is or becomes publicly available through no fault of the other Party;

##### is already in the rightful possession of the other Party prior to its receipt from the disclosing Party;

##### is independently developed by the other Party; or

##### is rightfully obtained by the other Party from a Third Party without breach of any confidentiality restrictions;

“**Consolidated Services**” means those Services set out in the Consolidated Services Schedule;

“**Consolidated Services Patient**” is defined in GC Section 3.1.1(3);

“**Contract Management Meeting**” is defined in GC Section 11.1(2)(b);

“**Contract Performance Framework**” means the contract performance framework for Service Provider performance posted on the website of Health Shared Services Ontario, as amended or replaced from time to time;

“**Dispute**” is defined in GC Section 13.1;

“**Effective Date**” is defined in GC Section 2.1;

“**Elect-to-Work Employee**” means an employee who is employed to provide professional services, personal support services or homemaking services as defined in the *Home Care and Community Services Act, 1994* for a Service Provider, if the employee’s arrangement with the Service Provider allows the employee to elect to work or not to work when requested to do so by the Service Provider;

“**Elect-to-Work Public Holiday Obligations**” means the obligations of the Service Provider to provide Elect-to-Work Employees with public holiday pay pursuant to Part X of the *Employment Standards Act*;

“**Electronic Transmission**” is defined in GC Section 14.1(1)(c);

“***Employment Standards Act****”* means the Ontario *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended from time to time;

“**End Date**” means the date this Agreement is terminated in accordance with GC Section 12;

“**End Date Transition Period**” is defined in GC Section 2.6.2(1);

“**Equipment and Supplies**” is defined in SS Section 1.1;

“**Estimated Volume Award**” is defined in GC Section 3.1.4(1);

“**FIPPA**” is defined in GC Section 7.2(8);

“**Fiscal Year**” means the LHIN’s fiscal year which is a continuous period covering a full 365 days, 366 days in leap years, commencing on April 1 and ending on March 31;

“**Fixed Period Visit**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“**for** **clarity**” and “**for the** **purpose of clarity**” mean for the purpose of providing examples or greater clarification, in the interest or aiding in the interpretation;

“**Force Majeure**” is defined in GC Section 14.8.1(1);

“***French Language Services Act***” means the Ontario *French Language Services Act*, R.S.O. 1990, Chapter F.32, as amended from time to time;

“**Health Partner Gateway**” means the software program owned and operated by the LHIN that allows for the exchange of Patient Information and other health-related information between the LHIN and the Service Provider;

“***Home Care and Community Services Act, 1994***” means the Ontario Home Care and Community Services Act, 1994, S.O. 1994, Chapter 26, as amended from time to time;

“**Hourly Visit**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“includes” means includes but not limited to and “including” means including but not limited to;

“**Intellectual Property Rights**” means all patents, industrial designs, trade-marks, trade-names, copyright, trade secrets, know-how and confidential information and any other intellectual property rights, as recognized by any jurisdiction and whether registered or not;

“**Legal Holiday**” is defined in the Special Conditions;

“**LHIN**” is defined in the Form of Agreement;

“**LHIN Accessibility Policies**” is defined in GC Section 3.13;

“**LHIN Background Technology**” means information, know-how or technology of any kind that has been acquired or developed by the LHIN prior to the Effective Date and which is used in the provision of the Services;

“**LHIN Default Termination Date**” is defined in GC Section 12.2.1(5);

“**LHIN Indemnified Parties**” is defined in GC Section 9.1(1);

“**LHIN Notice of Termination for Convenience**” is defined in GC Section 12.1.1(1)(a);

“**LHIN Works**” is defined in GC Section 6.1(4);

“**Listed LHIN Equipment and Supplies**” is defined in SS Section 1.1;

“***Local Health System Integration Act***” means the Ontario *Local Health System Integration Act, 2006*, S.O. 2006, Chapter 4, as amended from time to time;

“**Low Volume Payment**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“**Low Volume Price**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“**Margin of Error**” is defined in the Performance Standards Schedule;

“**Market Share Calculation Group**” is defined in GC Section 3.1.4(4);

“**Missed Care**” is defined in SS Section 1.1;

“**MOHLTC**” means the Ministry of Health and Long-Term Care (Ontario);

“**Not Seen, Not Found Event**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“**Notice**” is defined in GC Section 14.1(1);

“**Notice of Pending Termination – LHIN Default**” is defined in GC Section 12.2.1(3);

“**Notice of Pending Termination – Service Provider Default**” is defined in GC Section 12.1.3(3);

“**Notice of Termination – LHIN Default**” is defined in GC Section 12.2.1(2);

“**Notice of Termination – Service Provider Default**” is defined in GC Section 12.1.3(2);

“***Occupational Health and Safety Act***” means the Ontario *Occupational Health and Safety Act,* R.S.O. 1990, Chapter O.1, as amended from time to time;

“**Other LHIN Providers**” is defined in SS Section 1.1;

“**Parties**” means each of the LHIN and the Service Provider, including, if the Service Provider is a joint venture, all entities that, in accordance with the Form of Agreement, constitute the joint venture and “**Party**” means any one of them;

“**Patient**” is defined in SS Section 1.1;

“**Patient Information**” means, with respect to identifiable Patients for whom the Service Provider has either accepted a Referral or received a Referral containing a Patient’s personal information, in accordance withSS Section 2.3.1 any information in any form, whether recorded or not, including personal health information as the term is defined in the *Personal Health Information Protection Act* with respect to those Patients, whether provided by the LHIN to the Service Provider in connection with this Agreement or collected, obtained, compiled or created by the Service Provider in connection with the delivery of Services;

“**Patient Record**” means a record containing or comprising Patient Information created or obtained, maintained or retained in connection with the delivery of Services to or in respect of a Patient pursuant to this Agreement;

“**Pending Agreement Change Order**” is defined in GC Section 10.2.2(8);

“**Performance Standards**” is defined in the Performance Standards Schedule and, if more than one Performance Standards Schedule is listed in the Special Conditions, is defined in the collection of Performance Standards Schedules as listed;

“***Personal Health Information Protection Act***” means the Ontario *Personal Health Information Protection Act*, 2004, S.O. 2004, Chapter 3, Schedule A, as amended from time to time;

“**Previous Agreement**” is defined in GC Section 2.6.4;

“**Price**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“**Price Form**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“**Price Review Date**” is defined in GC Section 2.5(1);

“**Privacy and Security Event**” means a theft, loss or unauthorized access, collection, use, disclosure, alteration, copying, distribution, disposal or other compromise of Patient Information;

“**Privacy Regulator**” is defined in GC Section 5.1.3(1);

“**Public Holiday**” means the public holidays prescribed under the *Employment Standards Act*;

"**QIN**” is defined in GC Section 11.1(2)(a);

“**Quality Operating Standards**” is defined in the Performance Standards Schedule;

“**Referral**” is defined in SS Section 1.1;

“**Referred Volume**” is defined in GC Section 3.1.4(5)(b);

“**Refusal**” is defined in SS Section 1.1;

“**Request for Change Proposal**” is defined in GC Section 10.2.2(1);

“**Required** **Market Share**” is defined in GC Section 3.1.4(1)(c);

“**Risk Event**” is defined in SS Section 1.1;

“**Risk Event Report**” is defined in SS Section 1.1;

“**Self-Employed Individuals**” is defined in GC Section 3.2(6);

“**Service Area**” is defined in GC Section 3.1.3(1);

“**Service Delivery Location**” is defined in SS Section 1.1;

“**Service Provider**” is defined in the Form of Agreement;

“**Service Provider Background Technology**” means information, know-how or technology of any kind that was acquired or developed by the Service Provider prior to the Effective Date and which is used in the provision of the Services;

“**Service Provider Default Termination Date**” is defined in GC Section 12.1.3(5);

“**Service Provider Notice of Termination for Convenience**” is defined in GC Section 12.2.2(1)(a);

“**Service Provider Personnel**” is defined in SS Section 1.1;

“**Service Provider Works**” is defined in GC Section 6.1(5);

“**Service Requests**” is defined in SS Section 1.1;

“**Services**” is defined in the Services Schedule and, if more than one Services Schedule is listed in the Special Conditions, is defined in the collection of Services Schedules as listed;

“**Shortfall**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“**Standard Equipment and Supplies**” is defined in SS Section 1.1;

“**Start-up Transition Period**” is defined in GC Section 2.6.1(1);

“**Starting Date**” is defined in GC Section 2.2(1);

“**Subcontractor**” means a person or entity having a direct contract with the Service Provider to perform a part or parts of the Services, or to supply goods or services to, for, or on behalf of the Service Provider, which goods or services are specific to the Services or any other matters covered under such direct contract (and, for clarity, includes subconsultants);

“**Subsequent Agreement**” is defined in GC Section 2.6.2(5);

“**Third Party**” means any person or entity other than the Parties to this Agreement;

“**Third Party Background Technology**” means information, know-how or technology of any kind, that has been licensed to the Service Provider and which is used by the Service Provider in the provision of the Services;

“**Unit of Service**” is defined in Section 1.1 of the Pricing and Compensation Schedule;

“**Volume Adjustment Notice**” is defined in GC Section 3.1.7(1);

“***Workplace Safety and Insurance Act***” means the Ontario *Workplace Safety and Insurance Act*, 1997, S.O. 1997, Chapter 16, Schedule A, as amended from time to time; and

“**Workplace Safety and Insurance Board**” means the Ontario Workplace Safety and Insurance Board and includes its successors and assigns.

## Construction and Interpretation

### Headings and Tables of Contents

The division of this Agreement into sections, the insertion of headings and the provision of any table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

### Number and Gender

In this Agreement the singular shall include the plural and the plural shall include the singular except where the context otherwise requires and words importing gender include all genders.

### Accounting Principles

All accounting terms not otherwise defined in this Agreement have the meanings assigned to them, and all calculations shall be made and all financial data to be submitted shall be prepared, in accordance with the generally accepted accounting principles in effect in Ontario, including those approved or recommended from time to time by the Canadian Institute of Chartered Accountants, or any successor institute, applied on a consistent basis.

### Number of Days and Calculation of Time Periods

#### Except as expressly stated to the contrary in this Agreement, in computing the number of days for the purposes of this Agreement all days shall be counted, including Saturdays, Sundays and Legal Holidays, provided, however, that if the final day of any period falls on a Saturday, Sunday, or Legal Holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or Legal Holiday.

#### When calculating the period of time within which, or following which, any act is to be done or step taken, the date on which such period commences shall be excluded and the date on which such period terminates shall be included for the purpose of that calculation.

### Currency and Payment

#### Any reference to currency in this Agreement is to Canadian currency and any amount or rate advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

#### Any payment contemplated by this Agreement shall be made by cheque, direct deposit to a bank account of the applicable Party or any other method that provides immediately available funds.

### Calculation of Interest

In calculating interest payable under this Agreement for any period of time, the first day of such period shall be included and the last day of such period shall be excluded.

### References to Legislation and Applicable Law

#### Any reference in this Agreement to any statute is a reference to the statute and any regulation in existence or made pursuant to that statute as that statute and regulations are amended, restated or re-enacted from time to time.

#### Any reference in this Agreement to Applicable Law is a reference to Applicable Law as it is amended, restated or re-enacted from time to time.

### Section References

#### “GC”, when used in a section reference, as in “GC Section 1.2”, means the General Conditions.

#### “SS”, when used in a section reference as in “SS Section 1.2”, means the Services Schedule to the General Conditions.

#### “PSS”, when used in a section reference, as in “PSS Section 1.2”, means the Performance Standards Schedule to the General Conditions.

### Persons

References to persons in this Agreement are to be broadly interpreted and include an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof or any agency, ministry or department of such government and the executors, administrators or other legal representatives of an individual in such capacity.

## Agreement Documents - Entire Agreement

#### The Agreement Documents shall constitute the entire agreement between the Parties with respect to the Services to be provided by the Service Provider to the LHIN and supersede all communications, understandings, representations, negotiations, and agreements, whether written or oral, made by either the Service Provider or the LHIN prior to the Effective Date. No Party has relied on any communication, understanding, representation, negotiation or agreement, whether written or oral, not expressly set out or referred to in this Agreement.

#### Subject to Sections 1.1 and 1.2 of the Form of Agreement, the Agreement Documents are intended to be correlative, complementary and mutually explanatory. This Agreement shall be read as a whole. The following schedules are referred to in the Agreement Documents as follows:

##### Schedule 1 – “Special Conditions”;

##### Schedule 2 – “Pricing and Compensation Schedule”;

##### Schedule 3 – “Services Schedule” and if more than one Services Schedule is listed in the Special Conditions, “Services Schedules” refers to all Services Schedules listed in the Special Conditions, including, for clarity, the Consolidated Services Schedule applicable to Consolidated Services Patients; and

##### Schedule 4 – “Performance Standards Schedule” and if more than one Performance Standards Schedule is listed in the Special Conditions, ”Performance Standards Schedule” means all Performance Standards Schedules listed in the Special Conditions.

# TERM OF THE AGREEMENT

## Effectiveness of Agreement

This Agreement shall come into force and effect on the date set out in the Form of Agreement as the date the Agreement was made and entered into (the “Effective Date”).

## Commencement of Services

#### The Service Provider shall assume responsibility for providing Services commencing at the time and date set out in the Special Conditions(the “Starting Date”). The LHIN and Service Provider shall commence the Start-up Transition Period on the Starting Date.

#### The LHIN shall maintain responsibility for the Services (through its existing service provider) prior to the Starting Date.

#### The Starting Date shall be no later than 60 days after the Effective Date unless it is postponed pursuant to GC Section 3.7(3)(a).

## Provincial Template Documents

The LHIN and the Service Provider acknowledge and agree that, from time to time, the terms and conditions of this Agreement may be amended in accordance with standard provincial template documents.

## Agreement Term

The term of this Agreement shall be a term commencing on the Effective Date and ending on the End Date (the “Agreement Term”).

## Review of Prices and Performance Standards

#### The Prices set out in the Price Forms shall be applicable from the Effective Date to the date set out in the Special Conditions (the “Price Review Date”). The Parties acknowledge and agree that any adjustments to Prices following the Price Review Date will be made on the basis of a provincial price review process.

#### The Parties acknowledge and agree that the Performance Standards shall be reviewed by the Parties six month following the Effective Date and thereafter on an annual basis in accordance with a provincial performance standard review process.

## Transition

### Start-up Transition

#### The Parties acknowledge and agree that notwithstanding that the LHIN shall commence transfer of Patients and referrals of volume pursuant to this Agreement on the Starting Date, if specified in the Special Conditions, there shall be a start-up transition period (the “Start-up Transition Period”) during which transfers of Patients and Referrals to the Service Provider shall be phased in such that the Service Provider reaches its Required Market Share, in accordance with GC Section 3.1.4, by the end of the Start-up Transition Period.

#### The LHIN shall not be obliged to pay Low Volume Prices in respect of the Start-up Transition Period.

#### The Service Provider shall conduct its Start-up Transition Period activities in accordance with the Services Schedule.

#### The Start-up Transition Period shall not exceed a period of 90 days.

#### If the Service Provider is unable to reach its Required Market Share in accordance with GC Section 3.1.4 by the end of the Start-up Transition Period, notwithstanding that the LHIN has made the required Patient Referrals to allow the Service Provider to reach its Required Market Share, the LHIN may,

##### issue a notice to the Service Provider identifying its failure to reach its Required Market Share by the end of the Start-up Transition Period; and

##### require the Service Provider to reach its Required Market Share no later than 60 days after the last day of the Start-up Transition Period.

#### If the Service Provider fails to reach its Required Market Share by 60 days after the last day of the Start-up Transition Period, the LHIN may, in addition to any other remedy it may have under this Agreement, in its sole discretion, reduce the Service Provider’s Required Market Share to a market share of volume that the Service Provider has demonstrated it is capable of delivering.

#### The LHIN may at any time during the Agreement Term, increase the Service Provider’s Required Market Share, provided that the Service Provider may object to such increase if it can demonstrate, to the satisfaction of the LHIN, that such increase would negatively impact the Service Provider’s financial viability or its ability to deliver the Services on a long-term basis.

#### GC Section 2.6.1(5) and 2.6.1(6) do not,

##### excuse the Service Provider from its obligation to perform the Services in accordance with the Performance Standards; or

##### limit the LHIN’s right to exercise any of its other rights under this Agreement.

#### If the Parties amend this Agreement, the Parties may agree to a Start-up Transition Period applicable following such amendment.

### End Date Transition

#### Prior to the End Date, the LHIN shall commence a period of time during which the LHIN will carry out a transition of Referrals of volume under this Agreement and transfer of Patients to a subsequent Service Provider (the “End Date Transition Period”).

#### The LHIN shall not be obliged to pay Low Volume Prices or to refer Patients based on the Service Provider’s Required Market Share during the End Date Transition Period.

#### The Service Provider shall conduct its End Date Transition Period activities in accordance with the Services Schedule.

#### The End Date Transition Period shall not exceed a period of 90 days.

#### If the Service Provider is awarded a new agreement to provide services to the LHIN on the expiration of this Agreement that are generally the same as the Services and for a similar volume as this Agreement (the “Subsequent Agreement”), the LHIN may, in its sole discretion, terminate this Agreement up to 90 days prior to the End Date provided that the Subsequent Agreement has been executed by all parties to the Subsequent Agreement and the date for the commencement of services under the Subsequent Agreement precedes or is the same as the early termination date of this Agreement pursuant to this GC Section 2.6.2(5).

### Transition Dates

The anticipated dates for the end of the Start-up Transition Period and the beginning of the End Date Transition Period are set out in the Special Conditions.

### Transition-Special Circumstances

Notwithstanding GC Section 2.6.1(1) and (4), if, prior to the Starting Date, the Service Provider is providing services to the LHIN, under a previous agreement, that are generally the same as the Services and for a similar volume as this Agreement (the “Previous Agreement”), the following rules shall apply:

##### The LHIN may determine that a Start-up Transition Period is not required; and

##### Notwithstanding the existence of a Previous Agreement,

###### the LHIN shall pay the Service Provider the new Prices set out in the Pricing and Compensation Schedule for all volume referred to the Service Provider as of the Starting Date; and

###### all terms and conditions of this Agreement shall apply to all volume referred to the Service Provider as of the Starting Date.

# SERVICE PROVIDER’S OBLIGATIONS

## Services

### Services to be Provided by the Service Provider

#### The Service Provider shall carry out the Services set out in the Services Schedule or Services Schedules, as applicable.

#### If, on the Effective Date, this Agreement includes the Consolidated Services Schedule, the Service Provider is deemed to have agreed to provide Consolidated Services during the Agreement Term. If, on the Effective Date, this Agreement does not include the Consolidated Services Schedule and the LHIN wishes to engage the Service Provider to deliver Consolidated Services during the Agreement Term, the LHIN may add the Consolidated Services Schedule to this Agreement, only with the agreement of the Service Provider.

#### The LHIN may designate a Patient to receive Consolidated Services in accordance with the Consolidated Services Schedule (the “Consolidated Services Patient”). If the LHIN designates a Patient as a Consolidated Services Patient, all provisions related to the Consolidated Services shall thereafter apply to that Patient.

#### The Service Provider shall obtain the necessary consents from each Patient required for the delivery of the Services applicable to that Patient in order to comply with the Applicable Law and, as required, the applicable College Standards and Guidelines.

#### The Service Provider shall inform each Patient, verbally and in writing, that the Service Provider is delivering the Services to the Patient under a contract with the LHIN. If the Service Provider or Service Provider Personnel observes that a Patient has misunderstood that the Service Provider is delivering the Services under a contract with the LHIN, the Service Provider shall correct the Patient and shall not, under any circumstances, misrepresent that the Services are being provided solely by the Service Provider.

#### The Service Provider shall be responsible for providing the Services to an individual Patient as of the time that it accepts a Referral of that Patient from the LHIN, in accordance with the Services Schedule(s).

### Performance Standards

#### The Service Provider shall perform the Services in accordance with the Performance Standards set out in the Performance Standards Schedule or Performance Standards Schedules, as applicable.

#### The LHIN may, in accordance with the Performance Standards Schedule, identify Performance Standards that are applicable to some or all of the Consolidated Services Patients. Performance Standards applicable to Consolidated Services Patients are set out in the Performance Standards Schedule.

### Service Area

#### The Service Provider shall perform the Services in the geographic area described in the Special Conditions (the “Service Area”).

#### The LHIN may, in its sole discretion, assign volume to the Service Provider at any location in the Service Area and may, in its sole discretion, designate particular parts of the Service Area to be served by specific service providers.

#### Notwithstanding anything else to the contrary in this Agreement, the Service Provider shall not refuse Service Requests based on the location of the Patient in the Service Area.

### Volume and Non-Exclusivity

#### The LHIN has awarded an estimated volume of work to the Service Provider (the “Estimated Volume Award”) for each partial or full Fiscal Year as set out in the Special Conditions, which may or may not include various Units of Service, such as Fixed Period Visits or hours, as more specifically set out in the Pricing and Compensation Schedule. The Service Provider acknowledges and agrees as follows:

##### The volume of Services represented by the Estimated Volume Award is not guaranteed by the LHIN to the Service Provider;

##### The LHIN may, in its sole discretion, increase or decrease the Actual Volume of Services it purchases from the Service Provider, when compared to the Estimated Volume Award, in accordance with the Pricing and Compensation Schedule;

##### Notwithstanding GC Section 3.1.4(1)(a) and 3.1.4(1)(b), if the LHIN decreases volume in any partial or full Fiscal Year below the Service Provider’s Estimated Volume Award for that partial or full Fiscal Year, the LHIN shall continue to refer volume to the Service Provider which, measured annually for each partial or full Fiscal Year, is equal to approximately the same required market share of volume that the Service Provider was allocated for the first full Fiscal Year on the Effective Date (the “Required Market Share”). The Service Provider’s Required Market Share is set out in the Special Conditions. For the purpose of this GC Section 3.1.4(1)(c), “approximately” means plus or minus two percentage points (that is, plus or minus two percentage points in relation to the Service Provider’s Required Market Share); and

##### For the purpose of clarity, GC Section 3.1.4(1)(c) applies only in circumstances where a Service Provider’s Actual Volume of Services is less than its Estimated Volume Award.

#### The Service Provider acknowledges that the LHIN may enter into similar agreements with several service providers at the same time, for the same type of services in the same Service Area. The Service Provider acknowledges and agrees that it does not have any exclusive right whatsoever to provide the Services in the Service Area.

#### The LHIN and the Service Provider acknowledge and agree that the calculation of Required Market Share and the total Estimated Volume Awards of all service providers in the Market Share Calculation Group shall exclude that portion of the LHIN’s volume attributable to Consolidated Services Patients.

#### The LHIN established the Service Provider’s Required Market Share at the outset of the Agreement based on the Estimated Volume Awards for all service providers in the Market Share Calculation Group (for those service providers whose Required Market Share was calculated as part of a group of providers sharing a volume of the Services by market share (the “Market Share Calculation Group”) in accordance with the following calculation:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Required Market Share (individual Service Provider) | = | Estimated Volume Award of Service Provider (first Full Fiscal Year) |  | X 100% |
| Total Estimated Volume Awards of all service providers in the Market Share Calculation Group (first full Fiscal Year) |  |

#### The LHIN shall determine whether a Service Provider has been referred its Required Market Share in accordance with the following rules:

##### If the LHIN has referred volume to the Service Provider equal to or greater than its Estimated Volume Award, the Service Provider is deemed to have received its Required Market Share;

##### For the purpose of this section, “referred volume” equals Actual Volume of Service carried out by the Service Provider plus the Service Provider’s Refusals and instances of Missed Care (“Referred Volume”). The LHIN shall calculate the Service Provider’s Refusals and instances of Missed Care in accordance with Section 1.3, 3.3(4), 3.3(5) and 3.3(6) of the Pricing and Compensation Schedule (that is, the same way Refusals and Missed Care are calculated for the purpose of determining whether they have caused a Shortfall);

##### A Service Provider’s actual referred market share for each partial or full Fiscal Year shall be calculated as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Actual Referred Market Share | = | Service Provider’s Referred Volume |  | X 100% |
| Total Volume |  |

WHERE: (i) Total Volume equals,

(A) the total of all service providers’ Estimated Volume Awards (all service providers with a Required Market Share for the Services); or

(B) the total of all service providers’ Actual Volume of Services,

whichever is LESS; and

(ii) if the calculation is being carried out in respect of a partial Fiscal Year, all numbers shall be pro-rated to reflect the number of months in the partial Fiscal Year (excluding any Start-up Transition Period or End Date Transition Period).

##### For clarity, the Service Provider is only entitled to its Required Market Share up to its Estimated Volume Award for the applicable partial or full Fiscal Year and the Service Provider is not entitled to its Required Market Share during the Start-up Transition Period or End Date Transition Period.

### Temporary Withdrawal of Services

#### A Service Provider may temporarily suspend the delivery of Services to an individual Patient if delivering the Services would, or would likely,

##### cause harm or risk to Service Provider Personnel; or

##### subject Service Provider Personnel to harassment or abuse,

that is atypical in the provision of the Services and which harm or risk is not inherent in the delivery of the Services, provided that prior to any suspension the Service Provider shall,

##### take all reasonable steps to avoid the temporary suspension of Services prior to any suspension; and

##### at the request of the LHIN, provide evidence to the LHIN of the Service Provider’s compliance with Section 3.1.5(c).

#### If the Service Provider temporarily suspends the provision of Services pursuant to GC Section 3.1.5(1), then,

##### the Service Provider shall,

###### if possible, notify the LHIN prior to withdrawing Services;

###### submit a Risk Event Report to the LHIN pursuant to SS Section 5.5; and

###### provide, to the LHIN, an assessment of the risks to the Patient that may result due to the withdrawal of Services pursuant to GC Section 3.1.5(1);

##### on the request by the LHIN and at the LHIN’s expense, the Service Provider shall provide an independent Third Party assessmentof the withdrawal of Services pursuant to GC Section 3.1.5(1) carried out by an independent Third Party assessor agreed to by the LHIN and compensated in accordance with the Special Conditions;

##### the independent Third Party assessment carried out in accordance with GC Section 3.1.5(2)(b) shall determine whether the withdrawal of Services was carried out in accordance with GC Section 3.1.5(1);

##### the Service Provider shall develop, with the assistance of the LHIN, and implement a plan to resume the delivery of Services to the Patient as soon as possible; and

##### the Service Provider shall cooperate with the LHIN in alternative service delivery planning for that Patient.

### Permanent Withdrawal of Services

#### The Service Provider may permanently withdraw Services from an individual Patient if,

##### the delivery of Services to the Patient would cause the Service Provider to breach the Applicable Law relating to the health and safety of its Service Provider Personnel; and

##### the LHIN authorizes the permanent withdrawal of the Services.

#### If a Service Provider requests authorization from the LHIN to permanently withdraw Services pursuant to GC Section 3.1.6(1), then the Service Provider shall submit a report to the LHIN that,

##### states the reason for permanently withdrawing the Services;

##### documents the measures the Service Provider has taken in an attempt to address the problem necessitating the withdrawal; and

##### sets the date for withdrawal of the Services.

#### The LHIN may,

##### approve the Service Provider’s request for withdrawal of Services; or

##### acting reasonably and in accordance with the Applicable Law and any applicable College Standards and Guidelines, refuse the Service Provider’s request for withdrawal of Services and either,

###### require the Service Provider to continue delivering Services to the Patient; or

###### at the Service Provider’s option, allow the Service Provider to withdraw from the delivery of Services to the Patient and the withdrawal pursuant to this GC Section 3.1.6(3)(b)(ii) shall be deemed as a Refusal to accept a Referral for the purposes of the Performance Standards for SS Section 2.3.1(2).

If the Service Provider permanently withdraws Services pursuant to this GC Section 3.1.6, the Service Provider shall cooperate with the LHIN in alternative service delivery planning for that Patient.

#### Subject to GC Section 3.1.5, the Service Provider shall continue to provide Services until the LHIN makes its determination with respect to the permanent withdrawal of Services.

#### The LHIN may, in its sole discretion, withdraw Services from an individual Patient for any reason the LHIN deems necessary, including withdrawal because of Patient complaints about the Service Provider.

#### If the Patient appeals any decision of the LHIN to withdraw Services from the Patient, the Service Provider shall cooperate with, and provide assistance to, the LHIN in connection with the Patient’s appeal.

### Notice of Change in Estimated Volume Award

#### The LHIN shall provide the Service Provider with at least 84 days’ prior Notice of any change in the Service Provider’s Estimated Volume Award of greater than 10% of the Estimated Volume Award as of the Effective Date (the “Volume Adjustment Notice”), provided that such change arises from adjustments to the volume of Services resulting from the implementation of Consolidated Services by the LHIN. The LHIN shall have no obligation to provide Notice to a Service Provider of changes unrelated to Consolidated Services.

#### The Volume Adjustment Notice delivered pursuant to GC Section 3.1.7(1) shall set out, to the extent such information is available to the LHIN, the estimated adjustment to the Service Provider’s Estimated Volume Award and the approximate timing of the implementation of such adjustment. The Service Provider acknowledges and agrees that any information contained in a Volume Adjustment Notice is subject to change and does not represent any guarantee of volume of Services to the Service Provider.

## Subcontractors

#### The Service Provider is the prime contractor under this Agreement and, as such, assumes full responsibility for the delivery and performance of the Services in accordance with the terms of this Agreement, including any Services provided by any Subcontractors engaged by the Service Provider.

#### For clarity, in the case of Consolidated Services provided by the Service Provider, the Service Provider may, with the prior written approval of the LHIN,

##### provide the Services itself; or

##### arrange to provide the Services by engaging a Subcontractor.

#### The Service Provider shall obtain the prior written approval of the LHIN before replacing or retaining any Subcontractor to perform any Services, such approval not to be unreasonably withheld or delayed. Notwithstanding anything to the contrary contained in this Agreement, any LHIN approval of a Subcontractor shall not relieve the Service Provider of any of its obligations under this Agreement.

#### If,

##### in the LHIN’s sole discretion, the LHIN determines that any Subcontractor of the Service Provider has committed serious misconduct or has been charged with having committed a criminal action; or

##### the LHIN has reasonable cause to be dissatisfied with the performance of any Subcontractor of the Service Provider,

then the Service Provider shall, at the LHIN’s written request, which request shall identify the basis for the LHIN’s determination or dissatisfaction pursuant to GC Section 3.2(4)(a) or 3.2(4)(b), remove the Subcontractor immediately and replace it with another Subcontractor of equivalent or better qualifications, to the satisfaction of the LHIN.

#### If, pursuant to GC Section 3.2(4), the Service Provider is required to provide a replacement Subcontractor, it shall be at no additional cost to the LHIN.

#### GC Section 3.2(3) does not apply to self-employed individuals who have no employees themselves and that are retained by the Service Provider to carry out the Services (“Self-Employed Individuals”). For clarity, all other provisions in these Agreement Documents related to Subcontractors apply to Self-Employed Individuals.

## Staffing – Service Provider Personnel

#### The Service Provider shall provide Service Provider Personnel that possess the training and qualifications set out in the Special Conditions and are competent and capable of carrying out the Services in accordance with this Agreement. The Service Provider shall ensure that the individuals specifically named in the Special Conditions carry out the management and supervision of the Services unless those individuals are no longer employed or associated with the Service Provider. If an individual named in the Special Conditions is no longer employed or associated with the Service Provider, the Service Provider must replace the individual named in the Special Conditions with a person of equal or better qualifications, to the satisfaction of the LHIN.

#### If,

##### the LHIN, in its sole discretion, determines that any Service Provider Personnel has committed serious misconduct or has been charged with having committed a criminal action; or

##### the LHIN has reasonable cause to be dissatisfied with the performance of any Service Provider Personnel,

then the Service Provider shall, at the LHIN’s written request, remove the identified Service Provider Personnel forthwith from the delivery of Services under this Agreement.

#### If, as a result of the removal of Service Provider Personnel pursuant to GC Section 3.3(2), the Service Provider is required to provide a replacement Service Provider Personnel, it shall be at no additional cost to the LHIN.

#### Except in circumstances where the LHIN is of the opinion that a Patient or Patients may be placed at serious risk, the LHIN shall not exercise its discretion pursuant to GC Section 3.3(2) unless,

##### it has met with the Service Provider to discuss the conduct or performance of the applicable Service Provider Personnel member; and

##### it has given the Service Provider an opportunity and a reasonable length of time considering the circumstances to investigate and correct the performance problem.

#### In the interest of clarity, the LHIN acknowledges and agrees that it does not have the right to instruct a Service Provider to dismiss any Service Provider Personnel from the Service Provider’s employment.

#### The Service Provider shall keep detailed records with respect to the qualifications of Service Provider Personnel.

#### Without limiting the generality of the Service Provider’s obligations pursuant to GC Section 3.5, the Service Provider shall ensure that it complies, at all times, with its duties and obligations under the *Occupational Health and Safety Act*, including the Service Provider’s duties as an employer to the Service Provider Personnel pursuant to the *Occupational Health and Safety Act*.

#### If a Service Provider is deemed to be an “independent operator” by the Workplace Safety and Insurance Board for the purposes of the *Workplace Safety and Insurance Act*, notwithstanding that the Service Provider may not be required under the *Workplace Safety and Insurance Act* to register with the Workplace Safety and Insurance Board, the Service Provider shall register with the Workplace Safety and Insurance Board and shall obtain workplace insurance coverage from the Workplace Safety and Insurance Board.

## Conflict of Interest and Hiring of LHIN Staff, etc.

### Conflict of Interest

#### The Service Provider shall ensure that Service Provider Personnel do not, while providing Services to a Patient, use their position for personal financial gain or for the financial gain of a spouse, relative, or persons whose economic well being is of interest to them.

#### The Service Provider shall interact with each Patient solely for the purpose of fulfilling the Service Provider’s obligations under this Agreement, and, in particular, the Service Provider shall not use or take advantage of its access to any Patient, or the Patient’s family or any Caregiver, for the purpose of,

##### selling or promoting any other services or goods offered by the Service Provider or any related person, excluding,

###### giving a new Patient a brochure or publication that describes the Service Provider and its range of services, or an update of that brochure or publication; and

###### giving a Patient information materials about community services that the Patient can receive at no cost to the Patient, if the Service Provider, at the time, informs the LHIN’s applicable care coordinator that such materials have been provided; or

##### soliciting or accepting funds or gifts;

or for any other purpose not directly connected with or arising out of the Service Provider’s performance of its obligations under this Agreement.

#### Whether the LHIN exempts Service Providers engaging in charitable fund raising from the application of GC Section 3.4.1(2) or whether special rules will apply in such circumstances is set out in the Special Conditions.

#### Neither the Service Provider nor any one of the Service Provider Personnel shall do anything that could reasonably result in an actual, potential, or perceived conflict between its interest and the interest of the LHIN under this Agreement.

#### If the Service Provider becomes aware of any conflict of interest arising in connection with the provision of Services to any Patients, the Service Provider shall immediately disclose the conflict of interest to the LHIN.

#### Without limiting the generality of GC Section 3.4.1(4), neither the Service Provider nor any one of the Service Provider Personnel shall engage in any outside work or business undertaking or provide any outside service that,

##### will or will likely interfere with or adversely affect or influence the performance of the Service Provider’s obligations under this Agreement; or

##### gives or might reasonably be perceived to give the Service Provider any advantage derived from the provision of any Services under this Agreement.

#### The LHIN may, in its sole discretion,

##### make the determination of whether a Service Provider conflict of interest exists; and

##### prescribe, for the Service Provider, the manner in which the Service Provider must resolve any actual, potential or perceived conflict between the LHIN’s interest and the Service Provider’s interest under this Agreement.

#### For clarity, this GC Section 3.4.1 does not prohibit a Service Provider from providing private services to a Patient, provided that the Service Provider complies with this GC Section 3.4.1, such determination of compliance to be made by the LHIN in its sole discretion.

## Compliance with Law

The Service Provider shall comply at all times with the Applicable Law.

## News Releases

The Service Provider shall not issue any publicity or news release or otherwise respond to or contact any member of the media pertaining to this Agreement or the Services without the prior consent of the LHIN.

## Transition of Patients

#### The Service Provider shall, in accordance with the instructions of the LHIN, cooperate with the LHIN and Other LHIN Providers to,

##### transition Patients to Other LHIN Providers; and

##### provide relevant Patient information to the LHIN and Other LHIN Providers,

during the periods at the beginning and end of the Agreement Term and during any urgent situation, as determined and instructed by the LHIN.

#### The Patient information provided pursuant to GC Section 3.7(1) shall include the Patient history, progress to date and current status.

#### If the Service Provider fails to cooperate with the LHIN pursuant to GC Section 3.7(1) or otherwise fails to implement the transition instructions of the LHIN in a manner that is satisfactory to the LHIN, the LHIN may, in its sole discretion and in addition to any other rights or remedies it may have,

##### postpone the Starting Date; or

##### withhold payment of the Service Provider pursuant to GC Section 11.2.

## Information Systems and Technology

#### The Service Provider shall have the following:

##### the capability to receive Service Requests electronically;

##### an electronic mail system;

##### facsimile equipment with a dedicated telephone line available for receiving facsimile transmissions, 7 days per week, 24 hours per day, each day of the year;

##### an internal voice mail system, including the capability to receive after-hours voice mail messages; and

##### computer hardware and software which is capable of reporting data in a format that is compatible with the LHIN’s computer hardware and software.

#### The Service Provider shall,

##### comply with the data formatting requirements as specified in theLHIN policies and procedures relating to data formatting as amended from time to time, including the ability to accept Service Requests electronically;

##### comply with the data integrity and confidentiality standards established by the LHIN; and

##### have the capability to exchange data with the LHIN via the LHIN’s web-based e‑commerce application.

#### The Service Provider shall implement and maintain security and data back-up procedures that will ensure data integrity, data recovery and continuation of service in a disaster situation.

#### The Service Provider shall, on an ongoing basis update its existing information systems and technology, at its own cost and expense, to ensure that its information systems and technology are, at all times during the Agreement Term, similar to or better than the level and type of information systems and technology of a good service provider in a comparable market.

#### The LHIN may, in its sole discretion and by providing 90 days’ prior Notice to Service Providers, or such other notice period as agreed by the Parties, introduce new information systems and technology requirements applicable to Service Providers in respect of the Consolidated Services.

## Emergency Situations

#### The Service Provider shall cooperate with the LHIN and public health officials in the event of any emergency or urgent situation that, in the opinion of the LHIN, requires a coordinated response within the community health services sector.

#### The Parties acknowledge that during an emergency situation set out in GC Section 3.9(1), the Parties may be required to comply with the instructions of the LHIN in order to address the emergency situation and that in so doing, the Parties may be required to take all necessary measures, including carrying out their obligations under this Agreement in a different manner for the duration of the emergency situation, in order to meet the requirements of GC Section 3.9(1).

## Research Programs

The Service Provider shall obtain the prior consent of the LHIN prior to implementing any research or student programs that relate to the Service Provider’s obligations under this Agreement, such consent not to be unreasonably withheld or delayed.

## Joint Venture Service Providers

If the Service Provider is a joint venture in accordance with the Form of Agreement,

##### each joint venture participant shall be jointly and severally liable for all obligations of the Service Provider under this Agreement;

##### the joint venture participants hereby confirm that the individual joint venture participants appoint the party named in the Special Conditions as the “Participant in Charge” to represent them in all matters of interaction with the LHIN (including accepting any Notice on behalf of the joint venture) and to make all decisions on their behalf pursuant to this Agreement, including the receipt of payments from the LHIN; and

##### the joint venture shall not change its members without the prior consent of the LHIN.

## Service Provider Accreditation

#### The Service Provider shall, at its own cost and expense, obtain and maintain the accreditation specified in the Special Conditions, by a recognized third party accreditation body set out in the Health Shared Services Ontario’s list of approved accreditation bodies (“Accreditation Status”) in accordance with the terms and conditions, including the deadline for achieving the Accreditation Status, set out in the Special Conditions.

#### The Service Provider acknowledges and agrees that it shall not be entitled to payment of any costs or expenses related to the achievement of its Accreditation Status and that all such costs and expenses have been taken into account in the Prices set out in the Price Form in accordance with Section 1.2(5) of the Pricing and Compensation Schedule.

#### The Service Provider shall, upon request by the LHIN, provide evidence of its Accreditation Status no later than ten days following receipt of the request from the LHIN.

## Compliance with Accessibility for Ontarians with Disabilities Act

#### Without limiting the Service Provider’s obligations under GC Section 3.5, the Service Provider shall comply with the *Accessibility for Ontarians with Disabilities Act* and the regulations thereto (collectively the “Accessibility Act”) and shall cooperate with the LHIN in its compliance with the Accessibility Act. The Service Provider shall comply with LHIN’s policies and procedures established in accordance with the Accessibility Act (the “LHIN Accessibility Policies”) at no additional cost or expense to the LHIN. For clarity, the LHIN will train the Service Provider on the LHIN Accessibility Policies and the Service Provider shall then train its Service Provider Personnel on the LHIN Accessibility Policies, at no additional cost or expense to the LHIN.

## Elect-To-Work Public Holiday Obligations

#### The requirements with respect to Elect-to-Work Public Holiday Obligations are set out in the Special Conditions.

## Personal Support Minimum Wage

#### The Service Provider shall established a minimum base wage of $16.50 per hour for each Service Provider Personnel that provides Personal Support and Homemaking Services delivered to Patients, in accordance with the Ministry of Health and Long Term Care’s 2016 Addendum to Directive to Local Health Integration Networks on Personal Support Services Wage Enhancement, made effective April 1, 2016.

# PAYMENT

## Service Provider’s Prices and Payment

#### The LHIN shall pay the Service Provider in accordance with the Pricing and Compensation Schedule.

## Right of Set-Off

#### Without limiting GC Section 12.2.2, in calculating any monies owed to the Service Provider pursuant to this Agreement, the LHIN shall be entitled to set-off any amounts owed to the LHIN by the Service Provider pursuant to this Agreement.

# INFORMATION, AGREEMENT RECORDS, ACCOUNTING AND AUDITING

## Patient Information Privacy, Protection and Management

### Relationship between the LHIN and Service Provider

#### The Service Provider acknowledges that in delivering the Services, it will be processing Patient Information on behalf of the LHIN and that it is an agent of the LHIN for the purposes of and within the meaning of the *Personal Health Information Protection Act*. The Service Provider acknowledges that it holds all Patient Information on behalf of the LHIN, that such Patient Information remains under the control of the LHIN and that the Service Provider shall not acquire any right, title or interest in or to any Patient Information.

#### The Service Provider acknowledges that the LHIN is a health information custodian under the *Personal Health Information Protection Act* and that all Patient Information processed by the Service Provider on behalf of the LHIN is subject to the provisions of the *Personal Health Information Protection Act* relating to the protection of personal health information. The Service Provider shall ensure that in delivering the Services it will at all times conduct itself and carry out its activities in a manner that facilitates LHIN’s compliance with, and does not cause the LHIN to be in contravention of, the *Personal Health Information Protection Act*.

#### In the event that under the Applicable Law, the Service Provider is considered to be a health information custodian under the *Personal Health Information Protection Act*, the Parties agree that they will meet to resolve any issues in good faith and to agree on alternative arrangements, if necessary, with respect to the treatment of Patient Information and Patient Records.

#### For the purposes of this Section 5, the terms “process”, “processing” and “processes” and any grammatical variations thereof means any use of or operation or set of operations which is performed upon or in connection with data or information, by any means including without limitation, collection, recording, analysis, consultation, organization, maintenance, storage, adaptation, modeling, retrieval, disclosure or otherwise making available, combination, matching, erasure or destruction;

### Patient Information – Privacy and Protection

#### The Service Provider shall protect all Patient Information processed by it with physical, organizational and technological safeguards that are appropriate to the nature, quantity and sensitivity of such information, applying security standards and procedures equivalent to those used by it to protect its own confidential information and the personal information of the Service Provider Personnel and the personal health information of other individuals whose information it processes and in conformity with any specific security directives provided to it by the LHIN. Without restriction, the Service Provider shall identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of the Patient Information that could result in a Privacy and Security Event and shall assess the sufficiency of its safeguards to control these risks. The Service Provider shall implement such additional safeguards as are appropriate to control the risks identified in the assessment conducted in accordance with this GC Section 5.1.2. The Service Provider shall limit access to all Patient Information to the Service Provider Personnel who have a need for such access in order to deliver the Services and to Authorized Persons, and shall restrict entry (including physical and/or electronic entry) and access (using appropriate security controls) of any unauthorized persons to those areas of the Service Provider’s premises or other locations in which any Patient Information is processed. Without limiting the generality of the foregoing, the Service Provider shall ensure the security, confidentiality and integrity of the Patient Information at the Service Delivery Location and any other locations where Service Provider Personnel process Patient Information.

#### If the Service Provider is not able to comply with any proposed security directive provided to it by the LHIN, it shall notify the LHIN immediately in writing of the details of its inability to comply. The Service Provider shall use commercially reasonably efforts to alter the processing of Patient Information to ensure compliance with the proposed security directive. If the LHIN determines, in its sole discretion, that the Service Provider has failed to take commercially reasonable efforts or if the Service Provider refuses to comply with the proposed security directive, the LHIN may terminate this Agreement in accordance with GC Section 12.1.3(1)(b)(iii)(B)(III).

#### The Service Provider shall process Patient Information only for the purposes of delivering the Services and in accordance with instructions received from the LHIN. The Service Provider shall not disclose any Patient Information to Third Parties (other than Authorized Persons), except with the prior consent of the LHIN or as may be required by Applicable Law. In each circumstance in which the Service Provider is authorized pursuant to this Agreement to disclose Patient Information, it shall disclose only such Patient Information as strictly as is necessary in connection with such authorized disclosure.

#### Except as otherwise provided in this GC Section 5.1, the Service Provider shall not print, save, copy or store any Patient Information, whether on removable, mobile or other media, in printed, electronic or optical form or otherwise, except temporarily using the appropriate security measures as prescribed in this GC Section 5.1.2 and only to the extent necessary in connection with providing the Services, and immediately and securely destroy or delete any such temporary copies or saved or stored versions upon conclusion of the activity giving rise to the necessity of saving, copying or storing such Patient Information.

#### The Service Provider shall only move, remove, relocate or transmit Patient Information from the Service Provider’s facilities with appropriate measures to ensure the security, confidentiality and integrity of the Patient Information, including appropriate secure encryption technology to protect electronic Patient Information while in transit (e.g. on laptops, removable media, or over the Internet).

#### The Service Provider shall ensure at all times that Patient Information and all data, databases or other records containing Patient Information that are stored, handled or processed for the LHIN in connection with the Services are kept technologically isolated and physically separate from any information, data, databases or other records stored, handled or processed by the Service Provider for itself or for Third Parties.

#### The Service Provider shall not process any Patient Information outside of Ontario without the prior written consent of the LHIN, which consent may be unreasonably withheld.

#### The Service Provider shall be responsible for compliance by all Service Provider Personnel with the provisions of this GC Section 5.1.2.

#### The Service Provider shall notify the LHIN immediately of any demand, order or other requirement of a court or governmental authority to disclose or provide access to any Patient Information and shall take all reasonable steps to respond to such demand, order or requirement, including assisting the LHIN in opposing disclosure or access through court proceedings.

### Privacy Regulators

#### The Service Provider shall provide, in a timely manner, all necessary and reasonable information and co-operation to the LHIN and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over applicable privacy laws (each, a “Privacy Regulator”) in connection with any investigations, audits or inquiries made by any Privacy Regulator under Applicable Law. The Service Provider acknowledges that the LHIN may be required to disclose Confidential Information of the Service Provider (including, this Agreement and any agreement or other documentation relating to the Services), without the Service Provider’s consent, to such Privacy Regulators in connection with any investigation, audit or inquiry that pertains to or involves the Services.

### Designated Individual

#### The Service Provider shall designate and identify to the LHIN an individual to handle all aspects of the Services that relate to the handling of Patient Information. The Service Provider shall designate an alternate individual to handle all matters relating to the handling of Patient Information when the primary designate is unavailable and shall identify the alternate to the LHIN.

### Subcontracting

#### The Service Provider shall not subcontract, assign or delegate to any Third Party its obligations with respect to the processing of Patient Information in connection with the Services without prior written approval of the LHIN and without obtaining written contractual commitments of such Third Party with respect to the processing of Patient Information substantially the same as those of this Agreement.

### Consents and Notification

#### The Service Provider shall be responsible for developing and implementing all public statements and notifications required to be provided to Patients or the public regarding its health information practices required by this Agreement and the *Personal Health Information Protection Act*, which shall be consistent with the LHIN’s policies and procedures*.*

#### With the exception of any consent obtained by the LHIN pursuant to GC Section 5.1.6(4), the Service Provider shall be responsible for obtaining and administering Patient consents required for the collection, use and disclosure of Patient Information necessary in connection with delivery of Services, including proper administration of any withdrawals or refusals of consent, in accordance with the *Personal Health Information Protection Act*. The Service Provider shall, in connection with the delivery of Services to Patients, use a form of consent compliant with the *Personal Health Information Protection Act* and the requirements of the LHIN.

#### All forms for Patient consents shall, at a minimum, provide for appropriate consent to the collection of Patient Information on behalf of the LHIN in connection with this Agreement, and to audit and inspection rights of the LHIN under this Agreement and any delivery of Patient Records to the LHIN required or contemplated in accordance with this Agreement.

#### Without limiting the obligation of the Service Provider to obtain and administer Patient consents in accordance with GC Section 5.1.6(2), the LHIN may obtain consents required for the collection, use and disclosure of Patient Information prior to the acceptance of a Service Request by the Service Provider.

### Patient Requests for Access to Information

#### Except as provided by GC Section 5.1.7(2), the Service Provider shall immediately notify the LHIN regarding any Patient who contacts the Service Provider seeking access or correction to or with any inquiries or complaints about his or her Patient Information, and provide all necessary co-operation and assistance to the LHIN, and comply with the LHIN’s reasonable directions, with respect to responding to such request, inquiry or complaint. The Service Provider shall develop, maintain and follow processes and procedures to promptly and appropriately address access and correction requests and complaints and inquiries regarding its information practices.

#### The Service Provider is not obliged to notify the LHIN with respect to day to day routine inquiries (for example, inquiries with respect to scheduling) made by Patients with respect to Patient Information.

### Third Party Requests for Access to Information

#### Other than requests for access to or disclosure of Patient Information by an Authorized Person, with respect to any Third Party seeking access to or disclosure of Patient Information to that Third Party,

##### if the Service Provider receives such a request, it shall immediately notify the LHIN and shall consult with the LHIN prior to providing such access or making any such disclosure and shall comply with the LHIN's reasonable directions with respect to permitting or denying such access or making or refusing such disclosure; or

##### if the LHIN receives such a request it shall forward the request to the Service Provider with directions with respect to permitting or denying such access or making or refusing such disclosure.

### Patient Records

#### The Service Provider shall create, maintain and retain a record of Services delivered to each Patient in accordance with applicable College Standards and Guidelines and Applicable Law, and shall retain custody and control over all Patient Records relating to such Services on behalf of the LHIN until destroyed or disposed of in accordance with this Agreement and the Applicable Law. The Service Provider shall ensure that all Patient Information used or disclosed in connection with delivery of Services is as accurate, up-to-date and complete as is necessary for such purposes.

#### The Service Provider shall establish and maintain information and records management, cataloguing and tracking systems, with respect to both physical and electronic copies of documents, that meet or exceed applicable College Standards and Guidelines and other Applicable Law. These systems shall, at a minimum:

##### be capable at all times of clearly distinguishing and separating Patient Records from other records created by the Service Provider, including from,

###### records created in respect of other clients of the Service Provider;

###### records created in respect of other Local Health Integration Networks in the Province of Ontario for whom the Service Provider provides services;

###### records of services provided to Patients other than those Services delivered pursuant to this Agreement;

###### other Agreement Records not otherwise containing or comprising Patient Information; and

###### other administrative records of the Service Provider; and

##### be compatible with the LHIN’s physical and electronic information and records management, cataloguing and tracking systems as the LHIN may implement and of which the LHIN provides reasonable notice to the Service Provider from time to time.

#### The Service Provider shall, at the LHIN’s request, maintain a Patient Record at the Service Delivery Location.

#### The Service Provider shall not transfer, store, handle or process any Patient Records outside Ontario without the prior written consent of the LHIN, which consent may be unreasonably withheld.

#### For clarity, the term “Patient Record” shall include all records, in whatever form, including both paper and electronic format.

### Long-term Retention of Patient Records

#### Notwithstanding any termination or expiration of this Agreement, the Service Provider shall retain and store at its own cost and expense, at a site with security, document protection, and controlled access acceptable to the LHIN acting reasonably, all Patient Records for no less that the period required under the Applicable Law. The Service Provider shall comply with any storage, retention and destruction policy, guidelines or procedures established by the LHIN from time to time.

### Return of Patient Records to the LHIN

#### In the event that, at any time during the Agreement Term or subsequent to the termination or expiration of this Agreement,

##### the Service Provider ceases to carry on business;

##### any of the circumstances described in GC Section 12.2.1(1)(a) occurs;

##### the Service Provider materially breaches any provision of this Section 5.1; or

##### the LHIN, in its sole discretion, determines that it requires the return of the original Patient Records, whether the original Patient Records are stored electronically or otherwise,

the Service Provider shall, no later than 30 days after receiving a request from the LHIN (unless the LHIN, in its sole discretion, agrees to a longer period of time) and subject to the Applicable Law prohibiting or prescribing conditions on such delivery, deliver all Patient Records to the LHIN in a secure manner meeting the requirements of GC Section 5.1.12 and provide to the LHIN an officer’s certificate certifying that all Patient Records have been so delivered to the LHIN.

#### After delivery of Patient Records to the LHIN in accordance with GC Section 5.1.11(1), the Service Provider shall, subject to the Applicable Law prohibiting or prescribing conditions on such destruction or disposition, destroy or dispose of all remaining copies, whether in physical, electronic or any other form, of all such Patient Records in a secure manner meeting the requirements ofGC Section 5.1.12, and shall provide to the LHIN an officer’s certificate certifying that all Patient Records have been so destroyed or disposed of. In the event that the Applicable Law prohibits such destruction or otherwise requires the Service Provider to retain copies of the Patient Records, the Service Provider’s obligations with respect to the copies of such Patient Records under this GC Section 5.1 shall continue until such time as the Service Provider is no longer in possession of the copies of such Patient Records.

#### In the event that the Applicable Law prohibits the return of Patient Records to the LHIN as contemplated in this GC Section 5.1.11, the Service Provider or its representative shall promptly apply to a court of competent jurisdiction, at the Service Provider’s or its representative’s cost, for directions respecting the disposition of such Patient Records. The LHIN may, in its sole discretion, intervene at its own cost in any such application.

### Privacy and Security Events

#### The Service Provider shall immediately inform the LHIN of any actual or suspected Privacy and Security Event. In the event of any such Privacy and Security Event, the Service Provider shall provide all necessary co-operation and assistance requested by the LHIN in relation to the LHIN’s obligations under Applicable Law including without restriction with respect to notification of Patients regarding any such Privacy and Security Event. The Service Provider shall develop, maintain and follow processes and procedures to detect, address and remedy Privacy and Security Events. Upon becoming aware of any Privacy and Security Event, the Service Provider, in consultation with the LHIN, shall take prompt and appropriate steps to remedy and minimize the effects of such Privacy and Security Event.

#### Each Privacy and Security Event shall be a Risk Event as described in SS Section 5.5(1) and the Service Provider shall follow the procedures for reporting a Risk Event set out in SS Section 5.5.

### Audit and Inspection

#### The Service Provider shall establish, maintain and follow appropriate and regular audit, monitoring and inspection processes and procedures with respect to the Service Provider’s systems and practices designed to ensure its compliance with its obligations with respect to Patient Information in this Section 5.1, and with any other agreement between the LHIN and the Service Provider that involves Patient Information, including any agreement regarding access to Health Partner Gateway. The Service Provider shall regularly report to the LHIN as part of its Annual Reports and as otherwise reasonably requested by the LHIN from time to time with respect to the results of such audits, monitoring and inspection and its compliance with this GC Section 5.1 and such other agreements involving Patient Information.

#### The Service Provider shall permit the LHIN and/or its authorized representatives to access the Service Provider’s premises to audit the Service Provider’s compliance with its obligations in this GC Section 5.1 including, without limitation, the security measures used to protect Patient Information and the systems and processes established and used by the Service Provider with respect to the collection, use, disclosure, storage and handling of Patient Information, and with any other agreement between the LHIN and the Service Provider that involves Patient Information, including any agreement regarding access to Health Partner Gateway. The Service Provider shall permit the LHIN to enter onto the Service Provider’s premises for such purposes. The Service Provider shall otherwise promptly and properly respond to all reasonable inquiries from the LHIN with respect to the Service Provider’s handling of Patient Information and the Service Provider’s compliance with this GC Section 5.1.

#### The Service Provider shall provide the LHIN with unrestricted access to Patient Records during the Agreement Term and thereafter while the Patient Records are in the custody and control of the Service Provider, including the right to maintain and retain copies, subject to the Applicable Law prohibiting or prescribing conditions on such access or copying.

### Obligations of Service Provider under the Personal Health Information Protection Act

#### Without limiting the provisions of GC Section 5.1 or the Service Provider’s obligations under GC Section 3.5, the Service Provider shall at all times comply with all obligations applicable to the Service Provider under the *Personal Health Information Protection Act*.

## Agreement Records

#### Subject to GC Section 5.1, all data, information, documentation, accounts, plans, programs, reports, surveys and guidelines of any kind whatsoever (the “Agreement Records”) prepared by the Service Provider in performing the Services or in relation to the Services shall become and remain the property of the Service Provider. The LHIN may, on request, have a copy of any or all Agreement Records. The Service Provider shall deliver the copy of the requested Agreement Records no later than seven days after the request by the LHIN, except where the LHIN informs the Service Provider that it is an emergency requirement, in which case the Service Provider shall deliver the copy as soon as possible.

#### The Agreement Records shall include,

##### information of any kind whatsoever related to the finances, revenues or expenditures of the Service Provider’s operations;

##### all files, documents, plans, drawings, specifications, notes, minutes of meetings and minutes of conversations;

##### the plans, programs, reports, surveys and guidelines listed in SS Section 7; and

##### all manuals, reports, safety records, audit records, performance and quality records, financial statements, invoices, accounting records, subcontracts and personnel records,

whether stored in hard copy or electronically.

#### Subject to GC Section 5.1, the Service Provider shall provide the LHIN with unrestricted access to the Agreement Records during the Agreement Term, including the right to make and retain copies, subject to the Applicable Law prohibiting or prescribing conditions on such access or copying.

#### The Service Provider shall retain Agreement Records for at least the number of years required by the Applicable Law.

#### In the event that the Service Provider ceases operation, the Service Provider shall not dispose of any records related to the Services, including Agreement Records, without the prior consent of the LHIN.

## Accounting

#### The Service Provider shall keep accurate and systematic accounts in respect of the Services and this Agreement in accordance with generally accepted accounting principles in the Province of Ontario.

#### The Service Provider, during the Agreement Term and for a period of seven years after the applicable transaction, shall maintain financial records, books, documents and other accounting records relating to the performance of its obligations under this Agreement.

#### To ensure that the LHIN is billed only for Services delivered to Patients, the Service Provider shall maintain adequate and appropriate internal controls, details of which shall be available to the LHIN upon request. The Service Provider shall, at the LHIN’s request, provide a report from an external auditor stating that adequate controls exist and that they have been in place for the lesser of the 12 months prior to the external auditor’s report or for the term of Agreement to the date of that report. If the external auditor determines that adequate and appropriate internal controls were not in place, then the Service Provider shall bear the cost of the external auditor’s investigation and report. If the external auditor determines that adequate and appropriate internal controls were in place, then the LHIN shall bear the cost of the external auditor’s investigation and report.

#### The Service Provider shall provide the LHIN with full and timely disclosure, in writing, of any monetary, contingent liabilities or commitments or other concerns that might impact its ability to provide Services for the full Agreement Term.

## Auditing the Service Provider’s Accounts and the Agreement Records

#### The LHIN may, in its sole discretion, audit or cause to be audited,

##### the Service Provider’s accounts, financial information, financial statements and performance information at any reasonable time and with no less than 24 hours’ notice to the Service Provider; and

##### the Agreement Records at any reasonable time and without notice to the Service Provider,

in respect of any matters related to this Agreement.

#### The LHIN may carry out the audit or audits itself or may retain an independent auditor, at the LHIN’s expense, subject to GC Section 5.4(3), to carry out the audit or audits. The LHIN may engage an independent auditor to carry out, or have carried out, any such audit on behalf of itself and other Local Health Integration Networks.

#### If an audit performed in accordance with this GC Section 5.4 determines that there is any deficiency, inconsistency or inaccuracy in the Service Provider’s performance of its obligations under this Agreement, without limiting the LHIN’s rights under this Agreement:

##### the LHIN shall notify the Service Provider of the deficiency, inconsistency or inaccuracy (the “Audit Deficiency Notice”);

##### the Service Provider shall remedy any deficiencies, inconsistencies or inaccuracies determined by an audit performed in accordance with this GC Section 5.4; and

##### if the cost or value of the deficiency, inconsistency or inaccuracy exceeds $10,000, the Service Provider shall reimburse the LHIN for the costs and expenses of such audit.

#### The Service Provider shall remedy any deficiencies, inconsistencies or inaccuracies determined by an audit performed in accordance with this GC Section 5.4 in accordance with the time period specified in the Audit Deficiency Notice, or no later than thirty days if no time period is specified. For clarity, the Service Provider’s obligation to remedy any deficiencies, inconsistencies or inaccuracies in accordance with this GC Section 5.4(4), shall include reimbursement to the LHIN of any overpayment by the LHIN to the Service Provider.

## Service Provider’s Audited Financial Statements

Except as provided in the Special Conditions, the Service Provider shall submit, to the LHIN, the annual audited financial statements of the Service Provider’s finances for each of the Service Provider’s financial years that occur during the Agreement Term. The Service Provider shall provide its audited financial statements to the LHIN pursuant to this GC Section 5.5 no later than 120 days after the end of the applicable financial year.

# INTELLECTUAL PROPERTY

## Intellectual Property

#### The Service Provider shall not present any data or other information or publish or present papers derived from the Services delivered under this Agreement without the prior consent of the LHIN, such consent not to be unreasonably withheld or delayed.

#### As between the Parties, all right, title and interest in and to the Service Provider Background Technology and the Third Party Background Technology, including without limitation any Intellectual Property Rights and proprietary rights relating thereto shall belong and will continue to belong to the Service Provider.

#### As between the Parties, all right, title and interest in and to the LHIN Background Technology, including without limitation any Intellectual Property Rights and proprietary rights relating thereto shall belong and will continue to belong to the LHIN.

#### Except for the Service Provider Background Technology and the Third Party Background Technology, the Service Provider agrees that the LHIN shall own all right, title and interest in and to any work developed by the Service Provider as part of the provision of the Services and for which the LHIN has funded such development (the “LHIN Works”) including any Intellectual Property Rights and proprietary rights relating thereto. The Service Provider undertakes to obtain from all authors of the LHIN Works waivers of all moral rights that such authors may have in the LHIN Works and execute such further documents and perform such further acts as may be necessary to record, perfect or confirm the grant of right, title and interest as agreed to by the Service Provider pursuant to this GC Section 6.1(4).

#### Subject to GC Section 6.1(4), the Service Provider shall own all right, title and interest in and to any work developed by the Service Provider as part of the provision of the Services and for which the LHIN has not funded such development (the “Service Provider Works”) including any Intellectual Property Rights and proprietary rights relating thereto. The Service Provider hereby grants to the LHIN a non-exclusive, worldwide, royalty-free, fully paid-up and transferable licence to use, reproduce and sublicense the Service Provider Works in connection with the Services or the provision of the Services by the LHIN or another service provider or that service provider’s subcontractors.

## LHIN Trademarks

#### Neither the LHIN trademarks, nor any words or designations confusingly similar thereto, shall be included in any name or trademark used by the Service Provider, or otherwise used by the Service Provider or its Affiliates, except for advertising including the LHIN trademarks to which the LHIN has consented from time to time or except as the LHIN may otherwise permit in writing.

#### All permitted use of the LHIN trademarks by the Service Provider shall be accompanied by a statement indicating the ownership of the trademarks in such form as the LHIN may reasonably require from time to time.

#### Neither this Agreement nor the relationship of the Parties under this Agreement confer upon the Service Provider any interest in the LHIN trademarks except the right to depict the trademarks in accordance with the terms of this Agreement, and the Service Provider agrees not to depict the LHIN trademarks in any manner calculated to represent that the Service Provider is the owner of the LHIN trademarks. The Service Provider agrees during the Agreement Term and thereafter not to dispute or contest, directly or indirectly, the validity of the registration of the LHIN trademarks or otherwise attempt to dilute the value of the goodwill attaching to the LHIN trademarks nor to counsel, procure or assist any other person to do the same.

# CONFIDENTIALITY

## No Disclosure of Confidential Information

Except as expressly set out in this Agreement, neither Party shall use, disclose, or permit any person to obtain any Confidential Information, in written, tangible or other form, learned from or provided by the other Party, whether directly or indirectly, without the prior consent of the other Party. Each Party shall take all reasonable steps to ensure that any person having access to the other Party’s Confidential Information complies with this provision. The Parties acknowledge that disclosure of Confidential Information may cause serious and irreparable harm which cannot be adequately compensated for in damages and accordingly agree that each Party shall be entitled to obtain injunctive relief, in addition to any other appropriate remedy, to prevent such disclosure.

## Permitted Disclosures

#### The Service Provider agrees that, the LHIN may disclose,

##### the name and address of the Service Provider;

##### the average unit prices of the Service Provider on a Fiscal Year basis;

##### the Actual Volume of Services of the Service Provider;

##### a report of the Service Provider’s performance of its obligations under this Agreement, including its performance in relation to the Performance Standards and in relation to applicable Health Quality Ontario indicators; and

##### the results of any Patient surveys conducted by the LHIN,

to any Local Health Integration Network and the public.

#### The Service Provider agrees that data and statistics in respect of this Agreement including data and statistics with respect to quality of performance and Performance Standards monitoring may be collected by the local health integration networks in Ontario, Health Shared Services Ontario, or nationally, under the direction of the Ontario Ministry of Health and Long-Term Care or the federal Department of Health, on a no-names basis and the Service Provider consents to the disclosure of such information.

#### The Service Provider agrees that data and statistics with respect to the Service Provider’s quality of performance and Performance Standards monitoring may be disclosed, on a quarterly basis, to other Local Health Integration Networks, and the Service Provider consents to the disclosure of such information.

#### The Service Provider agrees that information with respect to the Service Provider’s quality of performance and the Service Provider’s annual continuous quality improvement plan may be included in the LHIN’s public reporting of its annual continuous quality improvement plan.

#### The LHIN may disclose any information with respect to the Service Provider and this Agreement as required by the Applicable Law. The LHIN may disclose to the Government of Ontario and any Local Health Integration Network any information with respect to this Agreement.

#### If the Service Provider makes a public statement in the media or otherwise in contravention of GC Section 3.6, in addition to any other legal remedies the LHIN may have, the LHIN may, in its sole discretion and notwithstanding GC Section 7.1 or 7.2, disclose any information about the Service Provider if, in the LHIN’s opinion, such disclosure is necessary to provide accurate information to the public or to correct erroneous information that has appeared in the media.

#### The Service Provider shall not require the LHIN or any of its representatives to sign a confidentiality agreement in respect of information provided by the Service Provider as required by this Agreement, including information provided by the Service Provider during LHIN site visits, audits or inspections for the purpose of monitoring the Service Provider’s performance under this Agreement.

#### The LHIN is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter F.31, as amended from time to time (“FIPPA”). The Service Provider acknowledges that, subject to the terms and conditions of FIPPA, including any protection afforded to the Service Provider’s information by FIPPA, the LHIN may be required to disclose information regarding the Service Provider, the Services and this Agreement, which may include Confidential Information of the Service Provider, pursuant to FIPPA.

# REPRESENTATIONS AND WARRANTIES

## Representations and Warranties of the LHIN

The LHIN represents, warrants and covenants to the Service Provider as follows and acknowledges that the Service Provider is relying upon such representations, warranties and covenants in entering into this Agreement and performing its obligations under this Agreement:

##### the LHIN is a corporation incorporated under the laws of the Province of Ontario and has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;

##### the LHIN has taken all necessary corporate action to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement;

##### this Agreement has been duly executed and delivered by the LHIN and is a legal, valid and binding obligation of the LHIN, enforceable against it by the Service Provider in accordance with its terms;

##### neither the execution and delivery by the LHIN of this Agreement nor the performance by it of its obligations under this Agreement will result in a violation of,

###### the *Local Health System Integration Act*, the LHIN’s enabling legislation, by-laws or any of the resolutions passed by its board of directors; or

###### any Applicable Law; and

##### there is no requirement for the LHIN to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any government or regulatory authority as a condition to the lawful consummation by the LHIN of the transactions contemplated by this Agreement.

## Representations and Warranties of the Service Provider

The Service Provider represents, warrants and covenants to the LHIN as follows and acknowledges that the LHIN is relying upon such representations, warranties and covenants in entering into this Agreement and performing its obligations under this Agreement:

##### the Service Provider (or, if applicable, each Party constituting the Service Provider) is a legal entity legally established under the laws of its jurisdiction and has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;

##### the Service Provider has taken all necessary actions to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement;

##### this Agreement has been duly executed and delivered by the Service Provider and is a legal, valid and binding obligation of it, enforceable against it by the LHIN in accordance with its terms;

##### neither the execution and delivery by the Service Provider of this Agreement nor the performance by it of its obligations under this Agreement will result in a violation of,

###### its constating documents or by-laws or any of the resolutions passed by its board of directors or shareholders; or

###### any Applicable Law;

##### the Service Provider has and shall at all times have the right to perform all of its obligations to the LHIN set out in this Agreement;

##### there is no requirement for the Service Provider to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any government or regulatory authority as a condition to the lawful consummation by the Service Provider of the transactions contemplated by this Agreement;

##### the Service Provider is an established provider of health care services, and has, and will have, the skills, qualifications, expertise and experience necessary to perform and manage the Services in accordance with the Performance Standards Schedule;

##### the Service Provider holds and will continue to hold throughout the Agreement Term all municipal, provincial or federal licences, approvals and permits required to perform its obligations hereunder, and all of the Service Provider’s Personnel who attend at the Service Delivery Location to provide any Services are duly qualified to provide such Services, in accordance with the Applicable Law;

##### none of the Intellectual Property Rights the Service Provider uses or will use to provide Services or to discharge its obligations will infringe or violate the Intellectual Property Rights, industrial property, privacy, moral or other rights of any Third Party;

##### the Service Provider shall comply with all policies, plans and procedures that relate to the Services, as those policies, plans and procedures are provided to the Service Provider by the LHIN; and

##### the Service Provider is under no current obligation or restriction, nor will it knowingly assume any such obligation or restriction that does or would in any way interfere or conflict with, or that does or would present a conflict of interest concerning the performance to be rendered, or the rights granted, under this Agreement.

#### The Service Provider covenants and agrees to take all steps necessary to cause each of its representations and warranties contained in this Agreement to remain true and correct throughout the Agreement Term.

#### The Service Provider represents and warrants that the Standard Equipment and Supplies and all components thereof will be new or the equivalent of new and shall be free from defects in material or workmanship and shall comply with the Applicable Law.

#### The representations and warranties expressed in this Agreement are in addition to all other warranties express or implied by statute or otherwise and are in addition to all obligations or liabilities on the part of the Service Provider arising out of, or in connection with, the performance of its obligations under this Agreement.

# INDEMNITY AND INSURANCE

## Service Provider Indemnity

#### The Service Provider shall release, indemnify, protect and hold harmless the LHIN, its affiliates, directors, officers, employees, independent contractors, agents, successors and assigns (the “LHIN Indemnified Parties”), from and against all claims, losses, damages, costs, demands, expenses, contracts, liabilities, actions and other proceedings of any kind or nature (including, without limitation, any legal fees and disbursements incurred), made, sustained, brought, prosecuted, threatened to be brought or prosecuted by any Third Party, in any manner based upon, occasioned by or attributable to anything done or omitted to be done on the part of the Service Provider, its directors, officers, employees, independent contractors, Subcontractors or agents in connection with the responsibilities of the Service Provider or its directors, officers, employees, independent contractors or agents in connection with this Agreement.

#### The indemnity set out in GC Section 9.1(1) shall not extend to any claims, losses, damages, costs, demands, expenses, contracts, actions or other proceedings of any kind or nature to the extent that they are based on, occasioned by, or attributable to anything negligently done or omitted to be done by the LHIN or its employees in connection with this Agreement.

#### The Service Provider’s ability to indemnify or reimburse the LHIN shall not affect or prejudice the LHIN from exercising any other rights under the Applicable Law.

#### The Service Provider shall protect itself from and against all claims that might arise from anything done or omitted to be done by the Service Provider or its directors, officers, employees, independent contractors, Subcontractors or agents 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 thereof, is caused.

#### The Service Provider shall protect itself from and against all claims that may arise in connection with a breach of the *Personal Health Information Protection Act* or any privacy-related tort or principle of equity.

#### Without limiting the generality of GC Section 9.1(1) or 9.1(4), the Service Provider shall indemnify and hold harmless the LHIN and each of the LHIN Indemnified Parties from and against any and all actions, claims (including Third Party claims), proceedings, demands, losses, damages, costs, charges, fines, liabilities, expenses and fees (including any legal or professional fees, disbursements or amounts paid by the LHIN or any LHIN Indemnified Party in settlement of such claims), arising out of a breach or an alleged breach of the *Occupational Health and Safety Act* by the Service Provider or by the LHIN in relation to actions or omissions of the Service Provider or Service Provider Personnel.

## Insurance

#### For the purpose of GC Section 9.1(4) and without restricting the generality of GC Section 9.1(4), the Service Provider shall maintain in full force and effect during the Agreement Term, at its own expense, a policy of commercial general liability insurance, in form and substance reasonablyacceptable to the LHIN, with prior consultation, providing coverage for a limit of not less than $5,000,000 for each occurrence of a claim of bodily injury, including personal injury, death, or property damage, including loss of use thereof, products and completed operations and non-owned automobile insurance, that may arise directly or indirectly from the acts or omissions of the Service Provider or its directors, officers, employees, independent contractors or agents under this Agreement, and which insurance policy shall include the following terms:

##### a clause that includes the LHIN and the LHIN's employees, independent contractors and agents as additional insureds;

##### a clause that includes all Subcontractors as additional insureds;

##### a cross-liability insurance clause endorsement acceptable to the LHIN;

##### a clause requiring the insurer to provide 30 days prior written notice to the LHIN in the manner set forth in the policy in the event of,

###### termination of the policy; or

###### any material change to the policy; and

##### a clause including liability arising out of contract or agreement.

#### The Service Provider shall maintain in full force and effect during the Agreement Term, at its own expense, a policy of professional liability insurance in the form and substance reasonably acceptable to the LHIN, with prior consultation, providing coverage for a limit of not less than $5,000,000 per claim. For greater certainty, such professional liability shall be exclusive of any professional liability insurance coverage obtained by Service Provider Personnel pursuant to the applicable College Standards and Guidelines.

#### No later than five days prior to the Starting Date, the Service Provider shall provide to the LHIN updated certificates of insurance which,

##### reference this Agreement;

##### outline the limits and coverage; and

##### are otherwise acceptable to the LHIN.

#### The Service Provider shall notify the LHIN of the expiry or non-renewal of a required insurance policy, change in insurer or of any amendments to the insurance policy by providing an amended certificate of insurance to the LHIN within 10 days after the effective date of such expiration, non-renewal, change in insurer or amendment to the insurance policy.

#### When the Service Provider’s insurance is renewed during the Agreement Term, the Service Provider shall provide a replacement certificate of insurance to the LHIN immediately after the Service Provider’s insurance is renewed.

## Patent and Copyright Indemnity

#### The Service Provider shall defend, in the name and on behalf of the LHIN, any suit or proceeding brought against the LHIN to the extent that any such suit or proceeding is based on a claim that the Services or any part thereof infringes on any patent, copyright, trade secret or Intellectual Property Right enforceable in Canada, on condition that the Service Provider is notified promptly in writing of any such suit or proceeding and given authority, information and assistance, at the Service Provider’s expense, to permit the Service Provider sole control to defend the same and enter into any negotiation for the settlement of same and the Service Provider shall pay all damages and costs finally awarded against the LHIN in any such suit or proceeding, provided that the Service Provider shall not be responsible for any costs, expense, compromise or settlement incurred or entered into by the LHIN without the Service Provider’s prior consent.

#### In the event that the Services or part thereof are in any legal action held to constitute an infringement, and the use thereof is enjoined, the Service Provider shall, at its expense:

##### procure for the LHIN the right to continue using the Services or part thereof;

##### replace same or part thereof with non-infringing Services; or

##### modify the Services or part thereof to the LHIN’s satisfaction so that they become non-infringing.

#### If none of the alternatives listed in GC Section 9.3(2)(a), 9.3(2)(b) and 9.3(2)(c) are reasonably available, then the LHIN may terminate this Agreement in accordance with GC Section 12.1.3.

#### This GC Section 9.3 states the entire liability of the Service Provider for any loss and damage whatsoever as a result of the infringement of any patents, copyrights, trade secrets and other Intellectual Property Rights by the Services or any part thereof.

## Indirect etc. Damages

#### Notwithstanding GC Sections 9.1, 9.2 and 9.3 but subject to GC Section 9.4(2), in no event shall the measure of damages payable by either Party include, nor will either Party be liable for, any consequential, indirect, incidental, exemplary or punitive damages, including damages due to business interruption or lost profits, savings, competitive advantage or goodwill arising from or related to this Agreement, regardless of the type of claim, whether in contract, tort, negligence, strict liability or other legal or equitable theory, whether or not foreseeable, and regardless of the cause of such damages even if the Party has been advised of the possibility of such damages in advance.

#### GC Section 9.4 shall not apply to:

##### a breach of Applicable Law by the Service Provider;

##### a breach of the Service Provider’s obligations under GC Section 5 or GC Section 7; or

##### the wilful misconduct, deliberate acts of wrongdoing or fraudulent acts by the Service Provider.

# CHANGES

## No Changes to Service Provider’s Prices – General

#### Except as provided in GC Sections 10.1(2) and 10.2 and the Pricing and Compensation Schedule, the Service Provider shall make no claim whatsoever for any adjustments to the Service Provider’s Prices, including any adjustment as a result of,

##### a change in Listed LHIN Equipment and Supplies;

##### changes to any of the Service Provider’s costs or expenses;

##### a change as a result of the corporate restructuring or reorganization of the Service Provider;

##### a change in the LHIN’s structure or organization;

##### the Service Provider’s employee or labour disputes or settlements;

##### a determination that the Service Provider is a successor employer under the Applicable Law;

##### any change in applicable College Standards and Guidelines; or

##### any change resulting from the increase or decrease in the volume of Patients referred to the Service Provider as Consolidated Services Patients.

#### The LHIN and Service Provider may each make a claim for an increase or decrease in Price if either Party can demonstrate that a change in the Applicable Law, excluding the matters listed in GC Section 10.1(1)(e), 10.1(1)(f) and 10.1(1)(g), after the date set out in the Special Conditions has directly caused an actual increase or decrease in the cost of providing the Services, and the LHIN or the Service Provider, as applicable, can demonstrate to the other Party the actual increase or decrease and that the actual increase or decrease was directly caused by the change in the Applicable Law. For clarity, a statute that is in force and effect as of the date set out in the Special Conditions or that will come into force and effect during the Agreement Term (determined as of the date set out in the Special Conditions) or a regulation that has been filed as of the date set out in the Special Conditions shall not give rise to a right to claim an increase or decrease in Price in accordance with this GC Section 10.1(2). For further clarity, the Service Provider acknowledges and agrees that the Service Provider’s Prices include all costs and expenses relating to the Service Provider’s termination and severance obligations to Service Provider Personnel resulting from the coming into effect on October 1, 2012 of section 2(1)(10) and/or section 9(1)(9) of Ontario Regulation 288/01 under the *Employment Standards Act*.

## Change to the Services and Performance Standards

### Introducing a Change

#### Subject to GC Sections 10.2.2(3) and 10.2.2(10), the LHIN may propose, and subsequently require, that the Service Provider, from time to time during the performance of this Agreement, make any change, modification, addition or deletion to, in or from the Services or Performance Standards (a “Change”), provided that the Change,

##### with respect to a change in the Services, falls within the general scope of the Services and does not constitute unrelated work; and

##### is technically practicable, taking into account both the state of advancement of the Services and the technical compatibility of the Change with the nature of the Services as specified in this Agreement.

##### Unless the Service Provider demonstrates that GC Section 10.2.2(3) applies, a Change shall be at no cost to the LHIN.

#### The Service Provider shall not commence the implementation of a Change unless it receives a formal written notification from the LHIN (a “Change Order”) to do so.

#### Notwithstanding GC Section 10.2.1(1), no change made necessary because of any default of the Service Provider in the performance of its obligations under this Agreement shall be deemed to be a Change, and such change shall not result in any adjustment of the Service Provider’s compensation under this Agreement.

### Changes Originating from the LHIN

#### If the LHIN proposes a Change pursuant to GC Section 10.2.1, it shall send a request for Change proposal (a “Request for Change Proposal”) to the Service Provider, requiring the Service Provider to prepare and furnish to the LHIN, as soon as reasonably practicable, a Change proposal (a “Change Proposal”), which shall include the following:

##### a brief description of the Change as set out by the LHIN and a plan for the implementation of the Change;

##### an estimate of the cost impact of the Change, including the identification of any savings that could be achieved as a result of the Change; and

##### a description of the effect of the Change on any other provisions of this Agreement including its impact, if any, on the Service Provider’s Required Market Share and Estimated Volume Award.

#### The estimate of the cost or savings of any Change shall be reasonable and, as far as practicable, be calculated in accordance with the Prices included in this Agreement. If such Prices are inequitable, the Parties shall agree on specific prices for the valuation of the Change.

#### If, before or during the preparation of the Change Proposal, it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Service Provider under this GC Section 10.2.2 would be to increase the Service Provider’s cost by more than five percent of the Service Providers total costs, the Service Provider may give a written notice of objection thereto prior to furnishing the Change Proposal. If the LHIN accepts the Service Provider’s objection, the LHIN shall either,

##### withdraw the proposed Change and notify the Service Provider in writing of the withdrawal; or

##### enter into negotiations with the Service Provider for a Price increase.

In assessing whether a five percent increase in the Service Provider’s costs will result, or has resulted, from Change Orders, the Service Provider shall also take into account any cost decreases that have resulted from Change Orders.

#### The Service Provider’s failure to object pursuant to GC Section 10.2.2(3) shall neither affect its right to object to any subsequent requested Changes or Change Orders, nor affect its right to take into account, when making such subsequent objection, the percentage increase in the Service Provider’s costs that any Change not objected to by the Service Provider represents.

#### Upon receipt of the Change Proposal, the Parties shall attempt to reach a mutual agreement upon all matters contained in the Change Proposal. No later than 14 days after such agreement, if any, the LHIN, shall, either issue a Change Order or give notice to the Service Provider of its position on the Change in accordance with GC Section 10.2.2(6). Subject to GC Section 10.2.2(8), if the Parties cannot reach a mutual agreement, no further action is required by either Party.

#### If the LHIN does not issue the Change Order pursuant to GC Section 10.2.2(5) within 14 days after agreement with the Service Provider on all matters contained in the Change Proposal, it shall notify the Service Provider either,

##### that the LHIN does not intend to issue the Change Order; or

##### of the date that the LHIN intends to issue a Change Order.

#### If the LHIN decides not to proceed with the Change for whatever reason, the Service Provider shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal.

#### If the Parties cannot reach agreement on the price for the Change or any other matters identified in the Change Proposal, the LHIN may nevertheless instruct the Service Provider to proceed with the Change by issue of a “Pending Agreement Change Order.”

#### Upon receipt of a Pending Agreement Change Order, the Service Provider shall immediately proceed to implement the Changes covered by such order. The Parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

#### If the Parties cannot reach agreement within 60 days after the date of issue of the Pending Agreement Change Order, then either Party may refer the matter to the settlement of disputes process set out in GC Section 13.

# CONTRACT MONITORING

## Performance Monitoring

#### The LHIN may, during the Agreement Term, monitor the quality of the Service Provider’s performance of the Services, including the performance of the Services in accordance with the Performance Standards Schedule.

#### If the LHIN has any concerns with respect to the Service Provider’s performance of the Services or any of the Service Provider’s other obligations under this Agreement, or with respect to the level of performance of any of the Service Provider Personnel, then,

##### the LHIN may take any action in accordance with the Contract Performance Framework, including issuing a quality improvement notice (“QIN”) to the Service Provider;

##### the LHIN may, by written notice to the Service Provider, cause a meeting (a “Contract Management Meeting”) to take place between the President or other senior executive officer of the Service Provider and a representative of the LHIN no later than five days after the delivery of such notice by the LHIN, and the notice may specify the areas of concern that the LHIN wishes to raise with the Service Provider at the Contract Management Meeting; and

##### at the Contract Management Meeting, the Service Provider shall,

###### respond to the concerns raised by the LHIN; and

###### if applicable, prepare and implement a plan of remedial or other action acceptable to the LHIN, within a reasonable time period determined by the Parties, for the purpose of addressing the concerns for which the LHIN called the Contract Management Meeting.

#### The LHIN, or any other persons authorized by the LHIN, may at any reasonable time and with prior written notice to the Service Provider, inspect, survey, or otherwise review the Services performed by the Service Provider under this Agreement. The Service Provider consents to the attendance by the LHIN personnel at the Service Provider’s premises for the purpose of any such inspection or review at any reasonable time.

#### The Service Provider shall take any and all action necessary or required to permit the inspection of the Services, including making available or, at the LHIN’s request, provide to the LHIN for review any pertinent routine reports and substantiating data, including data collected with respect to management plans and programs, produced in connection with the Services.

#### The LHIN may exercise any of its rights under this Agreement without taking action in accordance with the Contract Performance Framework or convening the meeting set out in GC Section 11.1(2) including exercising its rights pursuant to GC Section 11.2 and 11.3.

#### The Service Provider acknowledges and agrees that the LHIN may, in its sole discretion, collect information from Patients regarding the quality of the Services delivered by the Service Provider. The Service Provider shall cooperate with the LHIN in any Patient surveys conducted by the LHIN. The Service Provider shall avoid duplication by the Service Provider of surveys conducted by the LHIN. The LHIN shall, if requested by the Service Provider, provide a report to the Service Provider summarizing the Service Provider’s specific results from the Patient surveys. The Service Provider agrees that the results of Patient surveys will be used by the LHIN for the purposes of monitoring the Service Provider’s performance under this Agreement.

## Withholding of Payments

#### The LHIN may, by written notice of suspension to the Service Provider, suspend all, or a part of, payments to the Service Provider under this Agreement if the Service Provider fails to perform any of its obligations under this Agreement, including the carrying out of the Services, provided that such notice of suspension,

##### specifies the nature of the Service Provider’s failure; and

##### requires the Service Provider to remedy such failure no later than 30 days after receipt by the Service Provider of such notice of suspension.

#### The LHIN shall pay to the Service Provider the amounts withheld pursuant to GC Section 11.2(1), without interest, no later than 30 days after the Service Provider remedies the default that gave rise to the withholding pursuant to GC Section 11.2(1).

## Reduction of Volume

#### The LHIN may, in its sole discretion, reduce the Service Provider’s volume of Units of Service below the Service Provider’s Required Market Share if the Service Provider fails to meet its obligations under this Agreement.

#### If the LHIN reduces the Service Provider’s volume of Units of Service pursuant to GC Section 11.3(1), the Service Provider shall not be eligible for compensation at the Low Volume Price in accordance with the Pricing and Compensation Schedule.

#### The LHIN may, in its sole discretion, reinstate the Service Provider’s volume of Units of Service back to the Service Provider’s Required Market Share if the LHIN determines, in its sole discretion, that the Service Provider’s failure to meet its obligations under this Agreement has been corrected. The LHIN may, in its sole discretion, determine the timing of the reinstatement of volume after the Service Provider’s correction of its failure to meet its obligations under this Agreement.

#### If the LHIN reduces the Service Provider’s volume in accordance with this GC Section 11.3, the Service Provider shall not be entitled to its Required Market Share for the full or partial Fiscal Year during which the LHIN has reduced the Service Provider’s volume.

#### The LHIN’s reduction of volume pursuant to this GC Section 11.3 does not preclude the LHIN from exercising its other rights under this Agreement.

# TERMINATION OF THE AGREEMENT

## Termination by the LHIN

### Termination for the LHIN’s Convenience

#### The LHIN, without prejudice to any other rights or remedies it may possess, may terminate this Agreement, in whole or in part, for any reason by giving the Service Provider a notice of termination in accordance with the following:

##### the LHIN may issue a notice of termination for convenience (the “LHIN Notice of Termination for Convenience”)no earlier than six months after the Starting Date; and

##### the LHIN Notice of Termination for Convenience shall give the Service Provider at least six months’ notice of the termination for convenience, from the date of the LHIN Notice of Termination for Convenience.

#### Upon receipt of the LHIN Notice of Termination for Convenience pursuant to GC Section 12.1.1(1), the Service Provider shall, either immediately or upon such other date as mutually agreed to by the Parties, commence the implementation of the Service Provider’s Patient transition plan and shall cooperate with the LHIN to ensure an orderly transition of Patients.

#### In the event of termination pursuant to GC Section 12.1.1(1), the effective date of termination shall be considered to be midnight of the last day of the applicable notice period.

### Payment upon Termination by the LHIN for Convenience

#### Upon termination of this Agreement pursuant to GC Section 12.1.1(1) or GC Section 14.8.7, the LHIN shall compensate the Service Provider for Services satisfactorily performed prior to the date of termination and the LHIN shall, in its reasonable determination, reimburse the Service Provider for any reasonable incremental cost incurred by the Service Provider incident to the prompt and orderly termination of this Agreement. For clarity, such amount shall exclude any Service Provider Personnel costs or expenses, including any costs relating to the termination of any employment.

#### The Service Provider acknowledges that the payments pursuant to GC Section 12.1.2(1) are in complete and final satisfaction of any and all LHIN liabilities to the Service Provider related to the termination for convenience.

#### The Service Provider shall not make a claim for lost or foregone profits, revenues, consequential damages or any other cost, damages, expenses or losses of any kind as a result of or in connection with the termination of this Agreement pursuant to GC Section 12.1.1.

### Termination for the Service Provider’s Default

#### Subject to GC Section 12.1.3(2), the LHIN, without prejudice to any other rights or remedies it may possess, may terminate this Agreement, in whole or in part, on the occurrence of any of the following circumstances:

##### If,

###### the Service Provider becomes insolvent or is unable to pay its debts;

###### the Service Provider enters into or files a petition, arrangement, application, action or other proceeding seeking the appointment of a trustee or liquidator of or a receivership for all or a substantial part of its assets and relief or protection under the bankruptcy laws of Canada or any similar laws of Canada or any province of Canada or any other country;

###### the Service Provider has proceedings seeking the appointment of a trustee or liquidator of or a receivership for all or a substantial part of its assets under the bankruptcy laws of Canada or any similar laws of Canada or any province of Canada or any other country commenced against it which are not terminated or dismissed within 90 days of such commencement; or

###### the LHIN receives a notice of requirement to pay from the Canada Revenue Agency or any other taxation authority regarding the Service Provider; or

##### If the Service Provider,

###### assigns or transfers this Agreement or any right or interest therein in violation of GC Section 14.9;

###### has abandoned this Agreement;

###### is in material breach or default of any material provision or material obligation of this Agreement including,

over any three month period, persistently failing to carry out the Services in accordance with this Agreement;

in each of any three months in any two consecutive quarters, failing to,

meet any one or more of the Performance Standards set out in the Performance Standards Schedule;

submit one or more reports in accordance with the requirements set out with respect to SS Section 5.2, 5.3, 5.4, 5.5, 5.6 and 5.7 and in the Performance Standards Schedule;

meet one or more of the requirements relating to Patient Information privacy, protection and management in GC Section 5.1 or any other agreement between the LHIN and the Service Provider that involves Patient Information; or

deliver Services to Patients in French in accordance with the *French Language Services Act*;

failing to collect and submit reasonable performance quality information as required by this Agreement for any quarter;

submitting false or misleading information to the LHIN; or

persistently failing to meet the Quality Operating Standards; or

###### fails to disclose an actual, potential or perceived conflict of interest contrary to GC Section 3.4.1(4), contravenes GC Section 3.4.1(1) or (2) or fails to implement the LHIN’s prescribed resolution of a conflict of interest pursuant to GC Section 3.4.1(6).; or

##### If none of the alternatives listed in GC Section 9.3(2)(a), (b) and (c) are reasonably available.

#### If any one of the circumstances set out in GC Section 12.1.3(1)(a), 12.1.3(1)(b) or 12.1.3(1)(c) occurs, then the LHIN may, without prejudice to any other rights it may possess under this Agreement, immediately issue a notice of termination for default (“Notice of Termination – Service Provider Default”) to the Service Provider.

#### If any one of the circumstances set out in GC Section 12.1.3(1)(b)(iii) occurs, then the LHIN may, without prejudice to any other rights it may possess under this Agreement, give a notice to the Service Provider (“Notice of Pending Termination – Service Provider Default") stating the nature of the default and requiring the Service Provider to remedy the default. If the Service Provider fails to remedy or to take steps to remedy the default within 30 days after the date of that Notice of Pending Termination – Service Provider Default, then the LHIN may terminate this Agreement forthwith by giving, to the Service Provider, a Notice of Termination – Service Provider Default that refers to this GC Section 12.1.3(3).

#### Upon receipt of the Notice of Termination – Service Provider Default pursuant to GC Section 12.1.3(2), the Service Provider shall, either immediately or upon such date as is specified in the notice of termination, commence the implementation of Patient transition in accordance with SS Section 7.6.2.

#### The termination date in respect of a termination of the Service Provider for default shall be no later than 60 days after the date of the Notice of Termination – Service Provider Default (the “Service Provider Default Termination Date”).

## Termination by the Service Provider

### Termination for the LHIN’s Default

#### The Service Provider, without prejudice to any other rights or remedies it may possess, may terminate this Agreement, in whole but not in part,in the following circumstances:

##### The LHIN,

###### becomes insolvent or is unable to pay its debts;

###### enters into or files a petition, arrangement, application, action or other proceeding seeking the appointment of a trustee or liquidator of or a receivership for all or a substantial part of its assets and relief or protection under the bankruptcy laws of Canada or any similar laws of Canada or any province of Canada or any other country; or

###### has proceedings seeking the appointment of a trustee or liquidator of or a receivership for all or a substantial part of its assets under the bankruptcy laws of Canada or any similar laws of Canada or any province of Canada or any other country commenced against it which are not terminated or dismissed within 90 days of such commencement; or

##### The LHIN,

###### has abandoned this Agreement, which abandonment shall not include termination of this Agreement pursuant to GC Section 12.1.1; or

###### is in material breach or default of any material provision or material obligation under this Agreement.

#### If any one of the circumstances set out in GC Sections 12.2.1(1)(a) or 12.2.1(1)(b)(i) occurs, then the Service Provider may, without prejudice to any other rights it may possess under this Agreement, immediately issue a notice of termination for default (“Notice of Termination – LHIN Default”).

#### If any one of the circumstances set out in GC Section 12.2.1(1)(b)(ii) occurs, then the Service Provider may, without prejudice to any other rights it may possess under this Agreement, give a notice to the LHIN (“Notice of Pending Termination – LHIN Default”) stating the nature of the default and requiring the LHIN to remedy the default. If the LHIN fails to remedy or to take steps to remedy the default within 30 days after the date of that Notice of Pending Termination – LHIN Default, then the Service Provider may terminate this Agreement forthwith by giving, to the LHIN, a Notice of Termination – LHIN Default that refers to this GC Section 12.2.1.

#### Upon delivery of the Notice of Termination - LHIN Default under GC Sections 12.2.1(2) or 12.2.1(3), the Service Provider shall immediately commence the implementation of the Patient transition in accordance with SS Section 7.6.2.

#### The termination date in respect of a termination of the LHIN for default shall be no later than 60 days after the date of the Notice of Termination - LHIN Default (the “LHIN Default Termination Date”).

### Termination for the Service Provider’s Convenience

#### The Service Provider may terminate this Agreement, in whole but not in part, for any reason by giving the LHIN a notice of termination in accordance with the following:

##### the Service Provider may issue a notice of termination for convenience (the “Service Provider Notice of Termination for Convenience”) no earlier than six months after the Starting Date; and

##### the Service Provider Notice of Termination for Convenience shall give the LHIN at least one year notice of a termination for convenience, or such shorter period agreed by the Parties, from the date of the Service Provider Notice of Termination for Convenience.

#### Upon delivery of the Service Provider Notice of Termination for Convenience, the Service Provider shall immediately, or upon such date as mutually agreed to by the Parties, commence the implementation of the Service Provider’s Patient transition plan and shall cooperate with the LHIN to ensure an orderly transition of Patients.

#### In the event of termination pursuant to GC Section 12.2.2(1), the effective date of termination shall be considered to be midnight of the last day of the applicable notice period.

### Set-Off – Payment upon Termination

In GC Section 12.1 or 12.2, in calculating any monies due from one Party to the other Party, account shall be taken of,

##### any sum previously paid by either Party under this Agreement; and

##### any sum owing by one Party to the other Party under this Agreement.

## Effect of Termination

Upon termination of this Agreement, the Parties shall return all Confidential Information of the other, shall forthwith pay all sums owing to the other hereunder and each Party shall deliver a signed acknowledgement to the other Party that all Confidential Information obtained from or provided by the other Party, whether directly or indirectly, has been returned.

# DISPUTE RESOLUTION

## Mediation

All disputes, claims or controversies arising out of or in any way connected with this Agreement, its negotiation, performance, breach, enforcement, existence or validity, any failure of the Parties to reach agreement with respect to matters provided for in this Agreement and all matters of dispute relating to the rights and obligations of the Parties (each, a “Dispute”) shall be mediated pursuant to the following process:

##### either Party may submit the Dispute to mediation by serving the other Party with a written notice to mediate. If either Party serves a notice to mediate, the mediation process is mandatory for both Parties;

##### the mediation shall be held before an independent Third Party jointly selected and paid for by the Parties; and

##### if the LHIN and the Service Provider are unable to agree to the selection of a mediator, each Party shall select and pay for an independent Third Party, and those two independent Third Parties shall jointly select an independent Third Party to serve as the mediator.

#### The mediation shall take place in the English language at a location in the Province of Ontario specified by the LHIN.

#### If the Dispute has not been settled within 30 days after the written notice to mediate was served in accordance with GC Section 13.1(a), then the Dispute shall be arbitrated and finally resolved pursuant to GC Section 13.2.

#### Despite this agreement to mediate, a Party may apply to a court of competent jurisdiction for interim measures of protection at any time.

## Arbitration

### Mutual Agreement to refer to Arbitration

Subject to GC Section 13.1, all Disputes shall be arbitrated and finally resolved pursuant to this GC Section 13.2. Except as otherwise set out in this Agreement or otherwise agreed by the Parties, the arbitration shall be determined in accordance with the ADR Institute of Canada National Arbitration Rules in force.

### Selection of Arbitrator

#### Subject to this GC Section 13.2.2, the arbitration shall be heard by one arbitrator. If the Parties are unable to agree upon the selection of a single arbitrator within 15 days after the responding Party receives the notice of arbitration, each Party shall name one arbitrator and the two arbitrators named by the Parties shall promptly thereafter choose a third arbitrator.

#### If either Party fails to name an arbitrator within 15 days after the responding Party receives the notice of arbitration, then that Party’s arbitrator shall be appointed by any Justice of the Ontario Superior Court of Justice, and the costs of the application to the Ontario Superior Court of Justice shall be borne by the Party that failed to name its arbitrator. If the two arbitrators fail, within 15 days after the appointment of the two arbitrators, to agree upon and appoint the third arbitrator then, upon written application by either of the Parties, the third arbitrator shall be appointed by any Justice of the Ontario Superior Court of Justice, and, unless otherwise required pursuant to Applicable Law, the costs of the application to the Ontario Superior Court of Justice shall be borne equally by the Parties.

### Qualification of Arbitrator

The arbitrator(s) shall be qualified by education, training, or experience in the areas that may be the subject of the Dispute.

### Location of Arbitration

The arbitration shall take place in the English language at a location in the Province of Ontario specified by the LHIN.

### Decisions of Arbitrators

#### The arbitrator(s) shall proceed promptly to hear and determine the Dispute. Time shall be of the essence.

#### Notwithstanding Rule 4.21 of the National Arbitration Rules, the arbitrator(s) shall not be entitled to retain their own expert(s).

#### The decision of the arbitrator(s) shall constitute the award of the arbitration. The award shall be final and binding upon the Parties as to any matter or matters so submitted to arbitration and the Parties shall comply with the terms and conditions of the determination of the arbitrator or arbitrators. For greater clarity, there shall be no appeal from the award on any question of fact, law or mixed fact and law.

## Costs of Dispute Resolution

The LHIN and the Service Provider shall each bear its own costs in connection with the dispute resolution processes set out in GC Sections 13.1 and 13.2, and the Parties shall equally bear the costs of the mediator and, if applicable, the arbitrator(s).

# GENERAL MATTERS

## Notices and Consents

#### Any notice, consent, approval, determination, demand or other communication required or permitted to be given or made under this Agreement (“Notice”) by either Party shall be in writing and shall be,

##### delivered in person on a Business Day;

##### sent by prepaid courier service; or

##### sent prepaid by e-mail or facsimile transmission or other similar means of electronic communication, which produces a paper record (“Electronic Transmission”), during a Business Day and sent subsequently by prepaid first class mail as confirmation,

and sent to the applicable address and identifying the person designated to receive Notices as set out in the Special Conditions.

#### Each Notice sent in accordance with this GC Section 14.1 shall be deemed to have been received,

##### on the day it was delivered if delivered in person or by prepaid courier service; or

##### on the day that it was sent by Electronic Transmission, or at the start of business on the first Business Day thereafter if the day on which it was sent by Electronic Transmission was not a Business Day.

#### Either Party may, from time to time, change its address for Notice by giving Notice to the other Parties as provided in this GC Section 14.1.

## Waiver/No Election

#### A waiver by a Party of any default, breach or non-compliance under this Agreement is not effective unless it is in writing, dated, and signed by the Party making such waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party’s rights under this Agreement in respect to any continuing or subsequent default, breach or non-observance, whether of the same or any other nature.

#### Resort to any remedy referred to in this Agreement or the exercise of any option in this Agreement shall not be construed as an election of remedies or a waiver of any other rights and remedies to which the Party is or may be entitled at law, in equity or otherwise, under this Agreement against the Party in breach. The rights of termination shall be cumulative and in addition to, and not in substitution for, any and all rights or remedies available to the non-defaulting Party against the defaulting Party.

## Independent Contractor

In performance of this Agreement, the Service Provider is acting as an independent contractor. Nothing contained in this Agreement shall be deemed to create a partnership, association, joint venture or agency relationship between the Parties. Service Provider Personnel supplied by the Service Provider under this Agreement are not the LHIN’s employees, personnel or agents (except for agency specifically with respect to the *Personal Health Information Protection Act* as set out in GC Section 5.1.1), and the Service Provider assumes full responsibility for its acts and omissions. The Service Provider shall be solely responsible for the payment of compensation to the Service Provider Personnel and Subcontractors assigned to perform Services under this Agreement, and such Service Provider Personnel and Subcontractors shall be informed that they are not entitled to the provision of any employee benefits of the LHIN. The Service Provider shall be responsible for payment of workers’ compensation, disability benefits, employment insurance and all other similar payments and benefits and for withholding income taxes or other deductions with respect to all Service Provider Personnel. For the purpose of greater certainty, the Parties acknowledge and agree that the LHIN and the Service Provider are not common employers.

## Amendments to Agreement

Except as otherwise expressly provided in this Agreement, no amendment of this Agreement will be effective unless it is in writing, dated, and signed by the Parties.

## Survival

All obligations of the Parties set out in this Agreement that expressly or by their nature survive the termination or the expiry of this Agreement shall continue in full force and effect subsequent to the termination or expiry of this Agreement and until the obligations are satisfied or, by their nature, expire. Obligations that shall survive the termination or expiry of this Agreement pursuant to this GC Section 14.5 include the obligations set out in GC Sections 3.6, 3.7,5.1, 5.2, 5.4, 6.1, 6.2, Section 7, 9.1, 9.3, 12.1.2 and 14.7 and SS Sections 7.6,and 8.5.

## Governing Law and Compliance with the Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable in that Province and shall be treated, in all respects, as an Ontario contract. In carrying out their obligations under this Agreement the Parties shall, at all times, be in compliance with the Applicable Law.

## Attornment to Ontario Courts

Each Party agrees that, except as provided in GC Section 13,

##### any action or proceeding relating to this Agreement shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose each Party irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;

##### it irrevocably waives any right to, and will not, oppose any Ontario action or proceeding relating to this Agreement on any jurisdictional basis, including *forum non conveniens*; and

##### it will not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this GC Section 14.7.

## Force Majeure

### General

#### For the purposes of this Agreement, “Force Majeure” means an event that is,

##### beyond the reasonable control of a Party; and

##### makes a Party’s performance of its obligations under this Agreement impossible or so impractical as reasonably to be considered impossible in the circumstances.

#### Force Majeure includes,

##### war, riots and civil disorder;

##### storm, flood, earthquake or other severely adverse weather conditions;

##### confiscation, expropriation or other similar action by a government body; and

##### strikes, lockouts or similar labour actions, provided they are not caused by the Service Provider’s unreasonable actions,

if such events meet the test set out in GC Section 14.8.1(1)(b).

#### Force Majeure shall not include,

##### any event that is caused by the negligence or intentional action of a Party or such Party’s Subcontractors or agents or employees; or

##### any event that a diligent Party could reasonably have been expected to,

###### take into account at the time of the execution of this Agreement; and

###### avoid or overcome in the carrying out of its obligations under this Agreement.

#### Force Majeure shall not include insufficiency of funds, failure to make any payment required hereunder, or an emergency situation as contemplated under GC Section 3.9.

### No Breach of Contract

The failure of a Party to fulfill any of its obligations under this Agreement shall not be considered to be a breach of, or default under, this Agreement to the extent that such failure to fulfill the Agreement obligation arose from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

### Measures to be Taken

#### A Party affected by an event of Force Majeure shall take all reasonable measures to fulfill its obligations under this Agreement with a minimum of delay.

#### A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 days after the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

#### The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

### Payments

During the period of the Service Provider’s inability to perform the Services as a result of an event of Force Majeure, the LHIN shall continue to pay the Service Provider under the terms of this Agreement for any of the Services that it completes pursuant to this Agreement and in accordance with this Agreement and, except if the Force Majeure event is a strike, lockout or similar labour action, shall reimburse the Service Provider for additional costs that the LHIN agrees have been reasonably and necessarily incurred by the Service Provider during such period for the purpose of carrying out the Services. The LHIN shall not be obliged to meet the Required Market Share of the Service Provider or make Low Volume Payments in respect of the period of the Service Provider’s inability to carry out the Services, or part thereof, as a result of an event of Force Majeure.

### Consultation

Not later than 30 days after the Service Provider, as the result of an event of Force Majeure, has become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

### Alternative Arrangements for Services

#### Notwithstanding any other rights that the LHIN may have under this Agreement and subject to GC Section 14.8.6(2), the LHIN may, during the period that the Service Provider is unable to provide any or all of the Services due to an event of Force Majeure, seek alternative sources of service, provided that such alternative sources are in respect of only those Services that the Service Provider is not able to deliver and shall be used only for the period that the Service Provider is not able to deliver those Services.

#### If a Service Provider is a party to a collective bargaining agreement in respect of Service Provider Personnel, the Service Provider shall immediately notify the LHIN, in the format requested by the LHIN, upon the occurrence of any of the following:

##### if a “notice to bargain” has been served by either party to the collective bargaining agreement during the last 90 days of the term of the collective bargaining agreement or at any other time permitted by the collective bargaining agreement;

##### if either party to the collective bargaining agreement has requested that the Ministry of Labour appoint a conciliation officer;

##### if conciliation is unsuccessful and the conciliation officer advises the Ministry of Labour to issue a “no board report”; and

##### when union members have voted on and ratified a new collective bargaining agreement.

#### In anticipation of a strike, lockout or similar labour action, the LHIN and Service Provider shall meet to discuss a voluntary program for the transfer of care of Patients to alternative sources of service. If the LHIN and the Service Provider cannot agree on the terms of a voluntary program for the transfer of care of Patients, the LHIN may, in its sole discretion, transfer the care of Patients where necessary to ensure Patient safety. At the request of the LHIN, the Service Provider shall provide timely information regarding the transfer of Patients to the LHIN.

#### Except as provided in GC Section 14.8.7, once the Service Provider has notified the LHIN that the conditions giving rise to Force Majeure no longer exist, and has satisfied the LHIN that it can deliver the Services to the LHIN within the required time periods and in accordance with this Agreement, the LHIN will use its reasonable efforts to return to the Service Provider the Services that were the subject of the event of Force Majeure. The Service Provider acknowledges that the LHIN’s reasonable efforts pursuant to this GC Section 14.8.6(1) may result in the failure to transfer the care of Patients back to the Service Provider if the LHIN determines that this would be disruptive to the Patient or the Patient’s care.

### Termination

If the event of Force Majeure exists for a period of more than 90 days and the Service Provider is unable, during that period, to provide, the majority or all Services as a result of the event of Force Majeure, the LHIN or the Service Provider may terminate this Agreement immediately (without notice) and the Service Provider shall be compensated in accordance with GC Section 12.1.2.

## Assignment and Change of Control

#### The Service Provider shall not assign or transfer this Agreement, or any of its rights or obligations under this Agreement, in whole or in part, without the prior consent of the LHIN, which consent shall not be unreasonably withheld. The LHIN may, in its sole discretion, assign this Agreement without the consent of the Service Provider.

#### Any direct change of control of the Service Provider shall not be permitted without the prior written consent of the LHIN. For the purposes of this GC Section 14.9(2) a “direct change of control” means a change in ownership, beneficial or otherwise, of at least 50% of the Service Provider's outstanding voting shares or units of ownership or a change in possession of the power to direct or cause the direction of the management of the Service Provider. For any change of control that is not a “direct change of control”, the Service Provider shall provide the LHIN with advance notice and shall comply with the LHIN’s request for additional information in respect of such change of control.

#### The Service Provider shall reimburse the LHIN for any costs and expenses (including legal and advisory fees) incurred by the LHIN or Health Shared Services Ontario in relation to compliance with this GC Section 14.9.

## Further Assurances

The Parties shall promptly do, execute, acknowledge and deliver, or cause to be done, executed acknowledged and delivered, all such further assurances, instruments and documents and do all such other acts as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.

## Counterparts

#### This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

#### The Parties hereto may execute the counterparts in either original or electronic transmission in portable document format (PDF) and the Parties adopt any signatures received by electronic transmission as original signatures of the Parties but any Party providing its signature by electronic transmission shall promptly forward to the other Party an original of the signed copy of this Agreement that was electronically transmitted.

## Enurement

This Agreement shall enure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns.

## Language

The Parties have required that this Agreement and all documents and Notices relating to this Agreement to be drawn up and interpreted in the English language.

## Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement.

## Acknowledgement

Each Party hereby acknowledges having,

##### read this Agreement before signing it;

##### the authority to sign this Agreement; and

##### received a copy of this Agreement.