# Funding and Accountability Agreement

**between the**

**Waterloo Wellington Local Health Integration Network,**

**Hamilton Niagara Haldimand Brant Local Health Integration Network,**

**and the**

**Entité de planification pour les services en français dans les régions de Waterloo, Wellington, Hamilton, Niagara**

**This Agreement** made as of January 1, 2011

**AMONG:**

WATERLOO WELLINGTON LOCAL HEALTH INTEGRATION NETWORK,

HAMILTON NIAGARA HALDIMAND Brant LOCAL HEALTH INTEGRATION NETWORK,

(individually a LHIN, together the "LHINs")

**AND**

ENTITÉ DE PLANIFICATION POUR LES SERVICES EN FRANÇAIS DANS LES RÉGIONS DE WATERLOO, WELLINGTON, HAMILTON, NIAGARA
(the "Entity")

**GOALS AND OBJECTIVES**

Prior to providing funding to an Entity under O. Reg. *515/09 Engagement with the Francophone Community* made under Section 16 of the *Local Health System Integration Act, 2006* (LHSIA) the LHINs and the Entity must enter into an agreement about the roles and responsibilities relating to the matters listed in paragraphs 3(1) (a) to (f) of Ontario Regulation 515/09 made under LHSIA.

The Parties understand that each LHIN retains the responsibility for the planning, management, and funding of the health system.

The Parties believe in public accountability and transparency to demonstrate that the health system is governed and managed in a way that promotes continuous quality improvement and efficient delivery of high quality French-language health services in their respective Area

The Parties believe that the health system should be guided by the requirements of the *French Language Services Act* in serving Ontario's French-speaking community.

## ARTICLE 1 - DEFINITIONS & INTERPRETATION

1.1 **Definitions.** In the Agreement the following terms have the following meanings:

**"Act"** means the *Local Health System Integration Act, 2006* as it may be amended from time to time;

**"Agreement"** means this agreement between the LHINs and the Entity, the Schedules and any instrument that amends this agreement or the Schedules;

**"Annual Report"** is the corporate report for the previous fiscal year that the Entity is required to provide to the LHINs and which includes the audited financial statements for the Entity;

**"Annual Work Plan"** means a plan that the Entity is required to submit to the LHINs detailing the activities, including community engagement activities, which the Entity plans to undertake to operationalize the objectives for each LHIN that are set out in the Joint Annual Action Plan;

**"Applicable Law"** means all federal, provincial or municipal laws or regulations or any orders, rules, by-laws, policies or standards of practice that are applicable to the Entity and the LHINs, this Agreement and the Parties' obligations under this Agreement during the term of this Agreement;

**"Area"** means the geographic area of a LHIN and **"Areas"** mean the geographic area encompassed by all the LHINs;

**"Budget"** means the budget approved by the LHINs and appended to the Agreement as Schedule "A".

**"CFMA"** means the *Commitment to the Future of Medicare Act, 2004*, as amended;

**"Community"** has the meaning set out is Section s. 16(2) of the Act;

**"Confidential Information"** means information that is (i) marked or otherwise identified as confidential by the disclosing Party at the time the information is provided to the receiving Party; and (ii) eligible for exclusion from disclosure at a public board meeting in accordance with Section 9 of the Act. Confidential Information does not include information that (a) was known to the receiving Party prior to receiving the information from the disclosing Party; (b) has become publicly known through no wrongful act of the receiving Party; or (c) is required to be disclosed by law, provided that the receiving Party provides timely notice of such requirement to the disclosing Party, consults with the disclosing Party on the proposed form, content and nature of the disclosure, and ensures that any disclosure is made in strict accordance with Applicable Law.

**"Conflict of Interest"** includes any situation or circumstance where, in relation to the performance of its obligations under this Agreement, the Entity's other commitments, relationships or financial interests could or could be seen to (i) exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment or (ii) compromise, impair or be incompatible with the effective performance of its obligations under this Agreement.

**"Days"** means calendar days.

"**Entities**" mean all the French language planning entities appointed under O. Reg. 515/09;

**"Funding"** means the amount of money provided by the Lead LHIN to the Entity pursuant to this Agreement and is set out in Schedule B.

**"Funding Year"** means in the case of the first Funding Year, the period commencing on the January 1, 2011 and ending on the following March 31, and in the case of Funding Years subsequent to the first Funding Year, the period commencing on the date that is

April 1 following the end of the previous Funding Year and ending on the following March 31.

**"HST"** means "*Harmonized Sales Tax*" (Canada).

**"Interest Income"** means interest earned on the Funding.

"**Joint Annual Action Plan**" means the plan that all Parties agree to by January 31 for the next fiscal year, which sets out the objectives, priorities and actions each LHIN and the Entity will undertake in the subsequent Funding Year.

**"Lead LHIN"** means the Hamilton Niagara Haldimand Brant Local Health Integration Network, the LHIN responsible for the provision of funding under this Agreement.

**"MOHLTC"** means the Minister or the Ministry of Health and Long Term Care, as is appropriate in the context.

**"Notice"** means any communication provided pursuant to the Agreement.

**"Party"** means any one of an individual LHIN or the Entity and **"Parties"** mean all of the LHINs and the Entity;

**"Regulation"** means *Ontario Regulation 515/09 Engagement with the Francophone Community* under Section 16 of the *Local Health System Integration Act, 2006*.

**"Reports"** means the reports described in Schedule "C" as well as any other reports or information required to be provided under this Agreement.

**"Schedule"** means any one of, and "Schedules" mean any two or more, as the context requires, of the schedules appended to this Agreement including the following:

Schedule A: Approved Budget
Schedule B: Funding
Schedule C: Reporting
Schedule D: Liaison Committee

1.2 **Interpretation.** Words in the singular include the plural and vice-versa. Words in one gender include both genders. The headings do not form part of the Agreement. They are for convenience of reference only and will not affect the interpretation of the Agreement.

1.3 **Conflict.** In the event of conflict, the terms of the agreement take precedence over the terms set out in the Schedules, unless the terms of the Schedules expressly provide otherwise.

## ARTICLE 2 - PURPOSE AND TERM OF AGREEMENT

2.1 This Agreement is the agreement required by s. 3(2) of the Regulation. It sets out the roles and responsibilities of each Party relating to the provision of advice by the Entity on:

(a) methods of engaging the Francophone Community in each of the Areas
(b) the health needs and priorities of the Francophone Community in each of the Areas, including the needs and priorities of diverse groups within that Community;
(c) the health services available to the Francophone Community in the Areas;
(d) the identification and designation of health service providers for the provision of French language health services in the Areas;
(e) strategies to improve access to, accessibility of and integration of French language health services in the local health system; and
(f) the planning for and integration of health services in the Areas.

2.2 The term of this Agreement shall be for 5 years unless terminated earlier in accordance with section 13.

## ARTICLE 3 - ACCOUNTABILITY

3.1 Under this Agreement, the Entity and the LHIN are committed to the Francophone population in the Areas and the Entity is accountable to each of the LHINs for providing advice on the matters set out under s. 2.1 above in respect of each LHIN's area, in accordance with the terms of the Agreement.

## ARTICLE 4 - COLLABORATION and PLANNING

4.1 Each Party agrees to respect the other Parties' responsibilities under this Agreement and further agrees that in fulfilling its responsibilities, it will do so in a manner that supports and enables the other Parties to fulfill their respective responsibilities. Furthermore, the Parties agree to fulfill their responsibilities through:

(i) Honesty, collaboration, consensus building, and mutual respect;

(ii) Agreed to objectives and methods, including optimal and effective use of all Parties' resources where appropriate in an effort to avoid duplication of efforts and ensure optimal results for Francophones in the Areas through clear articulation of roles and responsibilities;

4.2 In terms of the engagement of the Francophone community, the Parties will strive to:

(i) link the Entity's engagement and consultation mechanisms to the LHIN's community engagement strategy, where appropriate;

(ii) support the mobilization and participation of Francophone stakeholders in initiatives to plan and integrate the local health system.

(iii) collaborate to plan, organize, and evaluate activities to engage and consult with Francophones in the Area.

4.3 The Parties agree to collaborate and cooperate to enable each Party to fulfill its obligations under this Agreement.

4.4 The Parties shall respect each other's autonomy and governance structures;

(a) The Parties agree to communicate and discuss any concerns associated with their relationship in the spirit of collaboration, respect, and honesty and to deal with objections that may be raised by either party reasonably and with the goal of reaching a consensus.

(b) The Parties agree and commit to the timely sharing of information and consultation that will be essential to their success in discharging their respective responsibilities.

(c) The Parties will establish a Liaison Committee. The Liaison Committee's composition, mechanism for collaboration and frequency of engagement will be outlined in Schedule D.

4.5 Where appropriate, each LHIN will invite representatives from the Entity to join local committees or working groups that are either established by the LHIN or created in collaboration with the LHIN and whose work or mandate is consistent with the duties and responsibilities of the Entity under this Agreement.

4.6 Each LHIN's annual business plan will help to inform the objectives and priorities that will be set out in the Joint Annual Action Plan.

## ARTICLE 5 - DUTIES AND RESPONSIBILITIES

5.1 <u>The Parties Generally</u>. The Parties will:

(i) fulfil their obligations as set out in this Agreement and schedules in accordance with Applicable Law;
(ii) establish a Liaison Committee;
(iii) draft a Joint Annual Action Plan by January 31 for the subsequent Funding Year of this Agreement and examine progress of the Joint Annual Action Plan on a quarterly basis; and
(iv) evaluate the Joint Annual Action Plan on an annual basis.

5.2 <u>Each LHIN</u>. Each LHIN will:

(i) seek the Entity's advice on:

(a) methods of engaging the Francophone Community in the Area;

(b) the health needs and priorities of the Francophone Community in the Area, including the needs and priorities of diverse groups within that Community;
(c) the health services available to the Francophone Community in the Area;
(d) the identification and designation of health service providers for the provision of French language health services in the Area;
(e) strategies to improve access to, accessibility of and integration of French language health services in the local health system;
(f) the planning for and integration of health services in the Area; and
(g) any other matters that the LHIN considers appropriate.

(ii) consider, and where appropriate, act in a fashion consistent with the Entity's advice and recommendations;

(iii) provide further information to the Entity, upon request of the Entity, regarding follow up on advice the Entity has provided to the LHIN; and

(iv) report, in its annual report, on its engagement activities, including the content, frequency and format of the activities as required in section 4 of the Regulation.

5.3 <u>The Entity</u>. The Entity will:

(i) provide advice on the matters outlined in 5.2(a);
(ii) provide advice on any other matter that the Entity considers appropriate, with respect to the Francophone community, which has an impact, directly or indirectly, on the health of Francophones;
(iii) (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) disclose to the Lead LHIN without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Lead LHIN to resolve any Conflict of Interest. In addition to all other contractual rights or rights available at law or in equity, the Lead LHIN may immediately terminate the Agreement upon giving notice to the Entity where: (a) the Entity fails to disclose an actual or potential Conflict of Interest; (b) the Entity fails to comply with any requirements prescribed by the Lead LHIN to resolve a Conflict of Interest; or (c) the Conflict of Interest cannot be resolved. This paragraph will survive any termination or expiry of the Agreement; and
(iv) Fulfil the reporting and other obligations that it has under this Agreement.
(v) act in concert with the other Entities to resolve common issues in a common manner; and
(vi) enter into a shared services agreement with other Entities for the procurement and management of common services, as is appropriate.

5.4 <u>The Lead LHIN</u>. The Lead LHIN will:

(i) Provide the Funding pursuant to the terms of this Agreement;
(ii) Fulfill the obligations and responsibilities of the Lead LHIN responsibly and in the best interest of the LHINs; and

(iii) When required to make a decision under this Agreement that affects all the LHINs, abide by the consensus position of the LHINs or if consensus cannot be reached, the majority decision of the LHINs.

## ARTICLE 6 – REPORTING

6.1 The Entity will:

(i) Provide to the Lead LHIN, or to such other entity as the Lead LHIN may direct, in the form and within the time specified by the Lead LHIN, the plans, reports, financial statements and other information, other than personal health information as defined in subsection 31 (5) of the CFMA, that (i) the Lead LHIN or any LHIN, requires for the purposes of exercising its powers and duties under this Agreement, the Act or for the purposes that are prescribed under the Act, or (ii) may be requested under the CFMA.

(ii) Provide the LHINs with an Annual Work Plan of proposed activities that are necessary to fulfill the objectives of the Joint Annual Action Plan, including proposed community engagement activities, and budgeting for these activities. Proposed activities and advice to each LHIN must be consistent with the LHIN's planning and reporting cycle.

(iii) Work with the LHINs to determine the frequency of reporting and key annual planning cycle dates and regular meeting schedule.

(iv) Provide the LHINs with an Annual Report.

(v) Fulfill the reporting requirements as set out in Reporting Schedule C.

## ARTICLE 7 – FUNDING PROVISIONS

7.1 **Funding.** The Lead LHIN:

(i) will provide the Funding to the Entity to enable the Entity to fulfill its duties and responsibilities set out in the Agreement;

(ii) may pro-rate the funds to the date on which the Agreement is signed, if that date is after April 1; and

(iii) will deposit the funds in instalments over the Term of the Agreement, into an account designated by the Entity provided that the account resides at a Canadian financial institution and is in the name of the Entity.

7.2 **Limitation on Payment of Funding**. Despite Section 7.1 the Lead LHIN:

(i) will not provide any funds to the Entity until the Agreement is fully executed;

(ii) will not provide any funds to the Entity until the Entity meets the insurance requirements described in Section 12.5;

(iii) will not be required to continue to provide funds in the event the Entity breaches any of its obligations under this Agreement, until the breach is remedied to the LHINs satisfaction; and

(iv) may adjust the amount of funds it provides to the Entity in any Funding Year based upon the LHINs assessment of the information contained in the Reports provided to the LHINs by the Entities. The LHIN and Entity will discuss any funding adjustments in the spirit of subsection 4.4, prior to proceeding with a funding adjustment.

7.3 **Appropriation.** Funding is conditional upon an appropriation of moneys by the Legislature of Ontario to the MOHLTC and funding of the Lead LHIN by the MOHLTC pursuant to the Act. If the Lead LHIN does not receive its anticipated funding the Lead LHIN will not be obligated to make the payments required by this Agreement and the Lead LHIN may terminate the Agreement in accordance with section 13.

7.4 **Additional Funding**. Unless the Lead LHIN has agreed to do so in writing, the Lead LHIN is not required to provide additional funds to the Entity for any purpose.

7.5 **Conditions of Funding.**

(a) The Entity will:

(i) use the Funding only for the purpose of this Agreement and in accordance with the terms of this Agreement;

(ii) spend the Funding only in accordance with the Annual Work Plan; and

(iii) propose and maintain an Annual Balanced Budget.

(b) “Annual Balanced Budget” means that, in each fiscal year of the term of this Agreement, the total expenses of the Entity are less than or equal to the total revenue, from all sources, of the Entity.

(c) The LHINs may impose such additional terms or conditions on the use of the Funding which they consider appropriate for the proper expenditure and management of the Funding.

7.6 **Interest.**

(a) Funding will be placed in an interest bearing account at a Canadian financial institution.

(b) Interest Income must be used by the Entity, within the fiscal year in which it is received.

(c) Interest Income will be reported to the Lead LHIN and is subject to a yearend reconciliation. In the event that some or all of the Interest Income is not used,

(i) the Lead LHIN may deduct the amount equal to the unused Interest Income from any further Funding instalments under this or any other agreement with the Entity; and/or

(ii) the Lead LHIN may require the Entity to pay an amount equal to the unused Interest Income to the Ministry of Finance.

7.7 **HST.** The Entity:

(i) acknowledges that all HST rebates it anticipates receiving from the use of the Funding have been incorporated in its Budget;

(ii) agrees that it will advise the Lead LHIN if it receives any unanticipated HST rebates from the use of the Funding;

(iii) agrees that all HST rebates referred to in (ii) will be considered Funding in the year that the rebates are received, regardless of the year to which the rebate relates.

7.8 **Procurement of Goods and Services.** The Entity will have a procurement policy in place that is consistent with the *Ontario Management Board of Cabinet Procurement Directive, July* 2009 as the same may be amended from time to time.

7.9 **Disposition.** The Entity will not, without the Lead LHIN's prior written consent, sell, lease or otherwise dispose of any assets purchased with Funding, the cost of which exceeded $25,000 at the time of purchase.

## ARTICLE 8 – REPAYMENT AND RECOVERY OF FUNDING

8.1 **Provisions for Repayment.**

(a) **At the End of a Funding Year.** If, in any Funding Year, the Entity has not spent all of the Funding the Lead LHIN will require the repayment of the unspent Funding.

(b) **On Termination or Expiration of the Agreement.** Upon termination or expiry of the Agreement, the Lead LHIN will require the repayment of any Funding remaining in the possession or under the control of the Entity and the payment of an amount equal to any Funding the Entity used for purposes not permitted by this Agreement.

(c) **On Reconciliation and Settlement**. If the year end reconciliation and settlement process demonstrates that the Entity received Funding in excess of its entitlement, the Lead LHIN will require the repayment of the excess Funding.

(d) **In the Event of Forecasted Surpluses**. If the Entity is forecasting a surplus the

Lead LHIN may adjust the amount of Funding require the repayment of excess Funding and/or adjust the amount of any future funding instalments accordingly.

(e) **On the Request of the Lead LHIN**. The Entity will, at the request of the Lead LHIN, repay the whole or any part of the Funding, or an amount equal thereto if the Entity:

(i) has provided false information to any LHIN knowing it to be false;

(ii) breaches a term or condition of this Agreement and does not, within 30 Days or such other period specified by the LHIN, after receiving from the Lead LHIN written Notice of the breach take reasonable steps to remedy the breach;

(iii) breaches any federal or provincial law or regulation that directly relates to the Entity's functions under this Agreement; or

(iv) if the Lead LHIN is otherwise entitled to require repayment under this Agreement.

(f) Subsection 8.1(e) does not apply to Funding already expended properly in accordance with this Agreement. The Lead LHIN will, at its sole discretion, in the spirit of subsection 4.4, and without liability or penalty, determine whether the Funding has been expended properly in accordance with this Agreement.

8.2 **Provision for the Recovery of Funding.** The Entity will make reasonable and prudent provision for the recovery by the Lead LHIN of any Funding for which the conditions of Funding set out in subsection 7.5 are not met and will hold this Funding in trust in accordance with the provisions of subsection 7.6 until such time as reconciliation and settlement has occurred with the Lead LHIN. Interest earned on Funding will be reported and recovered in accordance with subsection 7.6.

8.3 **Settlement and Recovery of Funding for Prior Years.** The Entity acknowledges that settlement and recovery of Funding can occur up to seven years after the provision of Funding.

8.4 **Debt Due.**

(a) If the Lead LHIN requires the re-payment by the Entity of any Funding the amount required will be deemed to be a debt owing to the Lead LHIN by the Entity. The Lead LHIN may adjust future instalments to recover the amounts owed, or may at its discretion, direct the Entity to repay the amount owing to the Lead LHIN.

(b) All amounts repayable to the Lead LHIN will be paid by cheque payable to the "Ontario Minister of Finance" and mailed to the Lead LHIN at the address provided in Section 14.1.

8.5 **Interest Rate.** The Lead LHIN may charge the Entity interest on any amount owing by the Entity at the then current interest rate charged by the Province of Ontario on

accounts receivable.

## ARTICLE 9 – REPORTING, ACCOUNTING AND REVIEW

9.1 **Inspections and Audit.**

(a) During the term of this Agreement and for seven (7) years after the term of this Agreement, the Entity agrees that the Lead LHIN or its authorized representatives may conduct a financial or operational audit, investigation or other form of review of the Entity to confirm the Entity's fulfillment of its obligations under this Agreement, and for these purposes the Lead LHIN or its authorized representatives may:

(i) inspect and copy any financial records, invoices and other financially-related documents in the possession or under the control of the Entity which relate to the Funding or otherwise to the Entity's performance under this Agreement.

(ii) inspect and copy non-financial records in the possession or under the control of the Entity which relate to the Funding or otherwise to the performance of the Entity under this Agreement.

(iii) upon no less than twenty-four hours' Notice to the Entity and during normal business hours, enter the Entity's premises to review the Entity's fulfillment of any one or more of its obligations under this Agreement.

(b) The cost of a financial audit, review or investigation will be borne by the Entity if it (i) was made necessary because the Entity did not comply with a requirement under the Act or this Agreement; or (ii) determines that the Entity has not fulfilled its obligations under this Agreement.

(c) The Entity's obligations under this paragraph will survive any termination or expiration of the Agreement.

9.2 **Document Retention and Record Maintenance.** The Entity agrees:

(i) that it will retain all records (as that term is defined in the *Freedom of Information and the Protection of Privacy Act*) related to the Entity's performance of its obligations under this Agreement for seven (7) years after the termination or expiration of the term of the Agreement. The Entity's obligations under this paragraph will survive any termination or expiry of the Agreement;

(ii) all financial records, invoices and other financially-related documents relating to the Funding or otherwise to the Entity's performance under this Agreement will be kept in a manner consistent with generally accepted accounting principles and clerical practices; and

(iii) all non-financial documents and records relating to the Funding or otherwise to

the Entity's performance under this Agreement will be kept in a manner consistent with all Applicable Law.

9.3 **Disclosure of Information.** Each LHIN will treat Confidential Information as confidential and will not disclose Confidential Information except with the consent of the Entity or under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), which the Entity acknowledges applies to each LHIN. Notwithstanding the foregoing, a LHIN may disclose information that it collects under this Agreement in accordance with the Act, the CFMA, FIPPA, court order, subpoena or other Applicable Law.

9.4 **Transparency.** The Entity will post a copy of this Agreement in a conspicuous public place at its sites of operations to which this Agreement applies and on its public website, if the Entity operates a website.

9.5 **Auditor General.** For greater certainty the Lead LHIN's rights under this article are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

## ARTICLE 10 - ACKNOWLEDGEMENT OF LHIN SUPPORT

10.1 **Publication.** For the purposes of this Article 10, the term "publication" means any material on or concerning the Services that the Entity makes available to the public, regardless of whether the material is available electronically or in hard copy. Examples include a web-site, an advertisement, a brochure, promotional documents and a report. Materials that are prepared by the Entity in order to fulfill its reporting obligations under this Agreement are not included in the term "publication".

10.2 **Acknowledgment of Funding Support.** The Entity agrees all publications will include:

(i) an acknowledgment of the Funding provided by the LHINs and the government of Ontario. Prior to including an acknowledgement in any publication, the Entity will obtain the LHINs' approval of the form of acknowledgement. A LHIN may, at its discretion, decide that an acknowledgement isn't necessary; and

(ii) a statement indicating that the views expressed in the publication are the views of the Entity and do not necessarily reflect those of the LHINs or the Government of Ontario.

## ARTICLE 11 – REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 **General.** The Entity represents, warrants, and covenants that:

(i) it is, and will continue for the term of the Agreement to be, a validly existing legal entity with full power to fulfill its obligations under the Agreement;

(ii) it has the experience and expertise necessary to carry out the duties and responsibilities in this Agreement;

(iii) it holds all permits, licenses, consents intellectual property rights and authorities necessary to perform its obligations under this Agreement;

(iv) all information (including information relating to any eligibility requirements for Funding) that the Entity provided to the Lead LHIN to obtain Funding was true and complete at the time the Entity provided it, and will continue to be true and complete for the term of the Agreement; and

(v) it does, and will continue for the term of the Agreement to, operate in compliance with all applicable law, including observing where applicable, the requirements of the *Corporations Act*, Ontario and the Entity's by-laws in respect of, but not limited to, the holding of board meetings, the requirements of quorum for decision-making, the maintenance of minutes for all board and committee meetings and the holding of members' meetings.

11.2 **Execution of Agreement.** The Entity represents and warrants that:

(i) it has the full power and authority to enter into the Agreement; and

(ii) it has taken all necessary actions to authorize the execution of the Agreement, including passing a board resolution authorizing the Entity to enter into the Agreement with the LHINs.

11.3 **Governance.** The Entity represents warrants and covenants that it has established, and will maintain for the period during which the Agreement is in effect, policies and procedures:

(i) for effective and appropriate decision-making;

(ii) for effective and prudent risk-management, including the identification and management of real and perceived conflicts of interest;

(iii) for the prudent and effective management of the Funding;

(iv) to monitor and ensure the accurate and timely fulfillment of the Entity's obligations under this Agreement;

(v) to enable the preparation, approval and delivery of all Reports required pursuant to Section 6; and

(vi) to address complaints, the management or governance of the Entity.

11.4 **Functions.** The Entity represents warrants and covenants that the functions it performs are and will continue to be provided:

(i) by persons with the expertise, professional qualifications, licensing and skills necessary to complete their respective tasks; and

(ii) in compliance with Applicable Law.

11.5 **Supporting Documentation.** Upon request, the Entity will provide the Lead LHIN with proof of the matters referred to in this Article.

## ARTICLE 12 – LIMITATION OF LIABILITY, INDEMNITY & INSURANCE

12.1 **"Indemnified Parties"** means the LHINs and their officers, employees, directors, independent contractors, subcontractors, agents and assigns and her Majesty the Queen in Right of Ontario and her Ministers, appointees and employees, independent contractors, subcontractors, agents and assigns.

12.2 **Limitation of Liability.** The Indemnified Parties will not be liable to the Entity or any of the Entity's personnel for costs, losses, claims, liabilities and damages howsoever caused (including any incidental, indirect, special or consequential damages, injury or any loss of use or profit of the Entity) arising out of or in any way related to the functions performed under this Agreement or otherwise in connection with the Agreement, unless caused by the gross negligence or wilful act of a LHIN's officers, employees and agents.

12.3 **Ibid.** For greater certainty and without limiting subsection 12.2, a LHIN is not liable for how the Entity and its personnel carry out its obligations and responsibilities under this Agreement and is therefore not responsible to the Entity for the performance of such obligations and responsibilities. Moreover a LHIN is not contracting with or employing people for the Entity to carry out the terms of this Agreement. As such, it is not liable for contracting with, employing or terminating a contract or the employment of any personnel of the Entity required to carry out this Agreement, nor for the withholding, collection or payment of any taxes, premiums, contributions or any other remittances due to government for the personnel required by the Entity to carry out this Agreement.

12.4 **Indemnification.** The Entity hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively "Claims"), by whomever made, sustained, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Entity, its subcontractors or their respective directors, officers, agents, employees or independent contractors in the course of performance of the Entity's obligations under, or otherwise in connection with, the Agreement. The Entity further agrees to indemnify and hold harmless the Indemnified Parties for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, by any person, entity or organization, including without limitation the LHINs, claimed or resulting from such Claims.

12.5 **Commercial General Liability Insurance**.

(a) **Required Insurance.** The Entity will put into effect and maintain, with insurers acceptable to the Lead LHIN, for the period during which the Agreement is in effect, at its own expense Commercial General Liability Insurance, for third Party bodily injury, personal injury and property damage to an inclusive limit of not less than two million dollars per occurrence and not less than two million dollars

products and completed operations aggregate. The policy will include the following clauses:

(i) The LHINs and Her Majesty the Queen in Right of Ontario, her Ministers, appointees and employees as additional insureds;

(ii) Contractual Liability;

(iii) Products and Completed Operations Liability;

(iv) A valid WSIB Clearance Certificate, or Employers Liability and Voluntary Compensation, which ever applies;

(v) Tenants Legal Liability; (*for premises/building leases only)*;

(vi) Non-Owned automobile coverage with blanket contractual and physical damage coverage for hired automobiles; and

(vii) A thirty Day written Notice of cancellation.

(b) **Certificates of Insurance.** The Entity will provide the Lead LHIN with proof of the insurance required by the Agreement in the form of a valid certificate of insurance that references the Agreement and confirms the required coverage, on or before the commencement of the Agreement, and renewal replacements on or before the expiry of any such insurance.

## ARTICLE 13 – TERMINATION OF THE AGREEMENT

13.1 **Termination – Minister Deselects.** This Agreement will terminate on cancellation or expiration of the selection of the Entity for an Area or the Areas in accordance with O. Reg. 515/09.

13.2 **Termination by the LHIN.**

(a) **Where No Appropriation.** If, as provided for in Section 7.3, the Lead LHIN does not receive the necessary funding from the MOHLTC, the Lead LHIN may terminate the Agreement immediately by giving Notice to the Entity.

(b) **For Cause.** The Lead LHIN may terminate the Agreement immediately upon giving Notice to the Entity if:

(i) in the opinion of the LHIN:

A. the Entity has knowingly provided false or misleading information regarding its funding request or in any other communication with a LHIN;

B. the Entity breaches any material provision of the Agreement; or

C. the Entity is unable to complete or has discontinued carrying out its obligations under the Agreement

(ii) the nature of the Entity's business, or its corporate status, changes so that it no longer meets the applicable eligibility requirements of O. Reg. 515/09;

(iii) the Entity makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver; or

(iv) the Entity ceases to carry on business.

13.3 **Termination by the Entity.** The Entity may terminate the Agreement at any time, for any reason, upon giving 6 months of Notice to the Lead LHIN provided if:

(i) the nature of the Entity's business, or its corporate status, changes so that it no longer meets the applicable eligibility requirements of the program under which the Lead LHIN provides the Funding;

(ii) the Entity makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver; or

(iii) the Entity ceases to carry on business.

13.4 **Opportunity to Remedy.**

(a) **Opportunity to Remedy.** The Lead LHIN may give the Entity an opportunity to remedy a breach of the Agreement by giving the Entity Notice of the particulars of the breach and such period of time as the Lead LHIN considers reasonable within which the Entity is required to remedy the breach. The Notice will also advise the Entity that the Lead LHIN will terminate the Agreement:

(i) at the end of the Notice period provided for in the Notice if the Entity fails to remedy the breach within the time specified in the Notice; or

(ii) prior to the end of the Notice period provided for in the Notice if it becomes apparent to the Lead LHIN that the Entity cannot completely remedy the breach within that time or a further period, or the Entity is not proceeding to remedy the breach in a way that is satisfactory to the Lead LHIN.

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

(i) the Entity does not remedy the breach within the time period specified in the Notice;

(ii) it becomes apparent to the Lead LHIN that the Entity cannot completely remedy the breach within the time specified in the Notice or such further period of time as the Lead LHIN considers

reasonable; or

(iii) the Entity is not proceeding to remedy the breach in a way that is satisfactory to the Lead LHIN;

then the Lead LHIN may immediately terminate the Agreement by giving Notice of termination to the Entity.

13.5 **Consequences of Termination.**

(a) **Transition Plan.** In the event of termination the Entity will develop a transition plan, acceptable to the LHINs. In the event that the Entity fails to provide an acceptable transition plan, the Lead LHIN may reduce Funding payable to the Entity prior to termination of the Agreement to compensate the Lead LHIN for transition costs.

(b) If the Agreement is terminated pursuant to this Article, the Lead LHIN may:

(i) cancel all further Funding instalments;
(ii) demand the repayment of any Funding remaining in the possession or under the control of the Entity;
(iii) determine the Entity's reasonable costs to wind down; and
(iv) permit the Entity to offset the costs determined pursuant to subsection (iii) against the amount owing pursuant to subsection (ii).

(c) Despite (b), if the cost determined pursuant to Section 13.5(b) (iii) exceeds the Funding remaining in the possession or under the control of the Entity the Lead LHIN will not provide additional monies to the Entity to wind down.

13.6 **Effective Date.** The effective date of any termination under this Section 13.2 will be the last Day of the Notice period, the last Day of any subsequent Notice period or immediately, which ever applies.

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

## ARTICLE 14 - NOTICE

14.1 **Notice.** A Notice will be in writing; delivered personally or by pre-paid courier, or sent by facsimile; and, addressed to the other Parties as provided below or as each Party may later designate to the other in writing:

**To the Waterloo Wellington LHIN:** **To the Entity:**

50 Sportsworld Crossing Road,
East Building, Suite 220

Kitchener, ON N2P 0A4

**Attention:** Board Chair

Fax: 519-650-3155
Telephone: 519-650-4472

**To the Hamilton Niagara Haldimand Brant LHIN:**

264 Main Street East
Grimsby, ON L3M 1P8

**Attention:** Board Chair

Fax: 905-945-1992
Telephone: 905-945-4930

Entité de planification pour les services en français dans les régions de Waterloo, Wellington, Hamilton, Niagara

c/o Centre de santè communautaire Hamilton-Niagara Inc
1 Vanier Drive
Welland, ON L3B1A1

Attention: Board Chair

Fax: 905-734-1678
Telephone: 905-734-1141

14.2 **Notices Effective From.** A Notice will be effective at the time the delivery is made if the Notice is delivered personally, by pre-paid courier or by facsimile.

## ARTICLE 15 – ADDITIONAL PROVISIONS

15.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement and any invalid or unenforceable provision will be deemed to be severed.

15.2 **Terms and Conditions on Any Consent.** A LHIN may impose any reasonable terms and conditions on any consent or approval that the LHIN may grant under this Agreement.

15.3 **Waiver.** A Party may only rely on a waiver of the Party's failure to comply with any term of the Agreement if the other Party has provided a written and signed Notice of waiver. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

15.4 **Parties Independent.** The Parties are and will at all times remain independent of each other and are not and will not represent themselves to be the agent, joint venturer, partner or employee of the other. No representations will be made or acts taken by either Party which could establish or imply any apparent relationship of agency, joint venture, partnership or employment and neither Party will be bound in any manner whatsoever by any agreements, warranties or representations made by the other Party to any other person or entity, nor with respect to any other action of the other Party.

15.5 **LHIN is an Agent of the Crown**. The Parties acknowledge that a LHIN is an agent of

the Crown and may only act as an agent of the Crown in accordance with the provisions of the Act. Notwithstanding anything else in this Agreement, any express or implied reference to a LHIN providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the LHIN or Government of Ontario, whether at the time of execution of the Agreement or at any time during the term of the Agreement, will be void and of no legal effect.

15.6. **Express Rights and Remedies Not Limited.** The express rights and remedies of a LHIN are in addition to and will not limit any other rights and remedies available to the LHIN at law or in equity. For further certainty, a LHIN has not waived any provision of any applicable statute, including the Act and the CFMA, nor the right to exercise its right under these statutes at any time.

15.7 **No Assignment.** The Entity will not assign the Agreement or the Funding or any part thereof without the prior written consent of the Lead LHIN. A LHIN may assign this Agreement or any of its rights and obligations under this Agreement to any one or more of the local health integration networks in Ontario or to the MOHLTC.

15.8 **Survival.** The following provisions survive the termination of this Agreement: Articles 1, 6, 7.9, 8, 9, 12, 14, and 15.

15.9 **Further Assurances.** The Parties agree to do or cause to be done all acts or things necessary to implement and carry into effect the Agreement to its full extent.

15.10 **Amendment of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

15.11 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

15.12 **Entire Agreement.** The Agreement together with the appended Schedules constitutes the entire Agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

The Parties have executed the Agreement on the dates set out below.

**WATERLOO WELLINGTON LOCAL HEALTH INTEGRATION NETWORK**

**By:**

Kathy Durst, Chair — Date: Mar. 9/11

**And by:**

Bruce Lauckner, Acting CEO — Date: Mar 9/11

**HAMILTON NIAGARA HALDIMAND BRANT LOCAL HEALTH INTEGRATION NETWORK**

**By:**

Juanita Gledhill, Chair — Date: Mar 8/11

~~Chair~~ Date

**And by:**

Donna Cripps, CEO — Date: March 9/11

**Entité de planification pour les services en français dans les régions de Waterloo, Wellington, Hamilton, Niagara**

By:

Marcel Castonguay, Board Chair
I have authority to bind the Entity — Date: 7/3/2011

And by:

Gérald Lachapelle, Board Vice Chair — Date: 4/3/2011

I have authority to bind the Entity

RECEIVED
MAR 07 2011

## SCHEDULE A – Approved Budget

Schedule A will set out the Entity's approved budget for such things as salaries and wages, office administration, engagement activities, etc.

| Category | 2010/2011 Budget | 2011/2012 Budget Request | 2012/2013 Budget Target | 2013/2014 Budget Target | 2014/2015 Budget Target | 2015/2016 Budget Target |
|---|---|---|---|---|---|---|
| **Revenue** | | | | | | |
| LHIN | 152,924 | 411,693 | 411,693 | 411,693 | 411,693 | 411,693 |
| **Total Revenue** | **152,924** | **411,693** | **411,693** | **411,693** | **411,693** | **411,693** |
| **Expenses** | | | | | | |
| Salaries | | 240,000 | 240,000 | 240,000 | 240,000 | 240,000 |
| Benefits | | 48,000 | 48,000 | 48,000 | 48,000 | 48,000 |
| Travel | | 15,000 | 15,000 | 15,000 | 15,000 | 15,000 |
| Community Engagement | | 40,000 | 40,000 | 40,000 | 40,000 | 40,000 |
| Planning | 152,924 | | | | | |
| Board of Directors | | 10,000 | 10,000 | 10,000 | 10,000 | 10,000 |
| Rent/Lease Office Space | | 10,000 | 10,000 | 10,000 | 10,000 | 10,000 |
| Communications | | 14,000 | 14,000 | 14,000 | 14,000 | 14,000 |
| Insurance | | 2,500 | 2,500 | 2,500 | 2,500 | 2,500 |
| Office Expense | | 15,000 | 15,000 | 15,000 | 15,000 | 15,000 |
| Legal and Auditing | | 2,500 | 2,500 | 2,500 | 2,500 | 2,500 |
| IT | | | | | | |
| HR Support | | 14,693 | 14,693 | 14,693 | 14,693 | 14,693 |
| **Total Expenses** | **152,924** | **411,693** | **411,693** | **411,693** | **411,693** | **411,693** |

**Note: Total Expenses must be equal to or less than Total Revenue**

## SCHEDULE B – Funding

| Planning Entity | Lead LHIN | LHIN Regions | Prorated Base | One-Time | Annualized Base |
|---|---|---|---|---|---|
| 2 | Hamilton Niagara Haldimand Brant | Waterloo Wellington<br>Hamilton Niagara Haldimand Brant | $102,924 | $50,000 | $411,693 |

## SCHEDULE C – Reporting

Schedule C will set out the due dates for plans, reports, financial statements and other information that the Planning Entity is required to provide to the LHIN, that the LHIN provides to the Planning Entity and plans that are joint LHIN and Planning Entity.

### Joint LHIN and Planning Entity

| Joint Annual Action Plan | |
|---|---|
| **Fiscal Year** | **Due Date** |
| 2011/2012 | June 30, 2011 |
| 2012/2013 | January 31, 2012 |
| 2013/2014 | January 31, 2013 |
| 2014/2015 | January 31, 2014 |
| 2015/2016 | January 31, 2015 |

### Planning Entity to LHIN

| Annual Work Plan | |
|---|---|
| **Fiscal Year** | **Due Date** |
| 2011/2012 | July 31, 2011 |
| 2012/2013 | February 28, 2012 |
| 2013/2014 | February 28, 2013 |
| 2014/2015 | February 28, 2014 |
| 2015/2016 | February 28, 2015 |

| Annual Report (Including Board-Approved Audited Financial Statement) | |
|---|---|
| **Fiscal Year** | **Due Date** |
| 2010/2011 | December 15, 2011 |
| 2011/2012 | May 30, 2012 |
| 2012/2013 | May 30, 2013 |
| 2013/2014 | May 30, 2014 |
| 2014/2015 | May 30, 2015 |
| 2015/2016 | May 30, 2016 |

| Advisory Report | | |
|---|---|---|
| **Fiscal Year** | **Draft Advisory Report Due** | **Final Advisory Report Due** |
| 2011/2012 | November 31, 2011 | December 31, 2011 |
| 2012/2013 | November 31, 2012 | December 31, 2012 |
| 2013/2014 | November 31, 2013 | December 31, 2013 |
| 2014/2015 | November 31, 2014 | December 31, 2014 |
| 2015/2016 | November 31, 2015 | December 31, 2015 |

| **Quarterly Report**<br>The quarterly report will include a report on financials as well as the Joint Annual Action Plan. | |
|---|---|
| **Quarter** | **Due Date** |
| Q1 | No report Required |
| Q2 | November 7th |
| Q3 | February 7th |
| Q4 Annual Reconciliation | June 7th |

**LHIN to Planning Entity**

| **Templates for Annual Reports** | |
|---|---|
| **Fiscal Year** | **Due Date** |
| 2010/2011 | August 15, 2011 |
| 2011/2012 | March 1, 2012 |
| 2012/2013 | March 1, 2013 |
| 2013/2014 | March 1, 2014 |
| 2014/2015 | March 1, 2015 |
| 2015/2016 | March 1, 2016 |

| **Templates for Quarterly Reports** | |
|---|---|
| **Fiscal Year** | **Due Date** |
| 2010/2011 | August 15, 2011 |
| 2011/2012 | April 1, 2012 |
| 2012/2013 | April 1, 2013 |
| 2013/2014 | April 1, 2014 |
| 2014/2015 | April 1, 2015 |
| 2015/2016 | April 1, 2016 |

## SCHEDULE D - Liaison Committee

### Schedule D: Liaison Committee

The Accountability Agreement requires the establishment of a Liaison Committee. The composition, meeting frequency and mechanism for collaboration are set out below.

### 1. Committee Composition

The Liaison Committee shall be comprised of representatives from each Party:

- Senior representatives from each Local Health Integration Network for the respective area of the French Language Health Planning Entity; and
- Senior representatives from the French Language Health Planning Entity for the respective area of the Local Health Integration Network.

The specific representation on the Liaison Committee will be set out in the terms of reference.

### 2. Meeting Frequency

The Liaison Committee must meet at least twice a year. The Parties may meet more often if required.

### 3. Mechanism for Collaboration

The Liaison Committee shall develop appropriate mechanisms for collaboration and ongoing dialogue, including the development of the Joint Annual Action Plan. The purpose of establishing collaboration mechanism is to ensure there is open, ongoing communication between the Parties that will enable them to fulfill their responsibilities as set out in the Agreement.

Mechanism for collaborating may include regular dialogue between the Parties and the creation of ad hoc committees that may be needed from time to time.