**LONG-TERM CARE HOME SERVICE ACCOUNTABILITY AGREEMENT**
**April 1, 2019 to March 31, 2022**

# SERVICE ACCOUNTABILITY AGREEMENT

**with**

**Barnswallow Place Care Community**

**Effective Date: April 1, 2019**

## Index to Agreement


ARTICLE 1.0 - DEFINITIONS & INTERPRETATION ..... 3
ARTICLE 2.0 - TERM AND NATURE OF THIS AGREEMENT ..... 9
ARTICLE 3.0 - PROVISION OF SERVICES ..... 10
ARTICLE 4.0 - FUNDING ..... 12
ARTICLE 5.0 - ADJUSTMENT AND RECOVERY OF FUNDING ..... 14
ARTICLE 6.0 - PLANNING & INTEGRATION ..... 16
ARTICLE 7.0 - PERFORMANCE ..... 20
ARTICLE 8.0 - REPORTING, ACCOUNTING AND REVIEW ..... 21
ARTICLE 9.0 - ACKNOWLEDGEMENT OF LHIN SUPPORT ..... 25
ARTICLE 10.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS ..... 25
ARTICLE 11.0 - LIMITATION OF LIABILITY, INDEMNITY & INSURANCE ..... 27
ARTICLE 12.0 - TERMINATION ..... 29
ARTICLE 13.0 - NOTICE ..... 31
ARTICLE 14.0 - INTERPRETATION ..... 31
ARTICLE 15.0 - ADDITIONAL PROVISIONS ..... 32
ARTICLE 16.0 - ENTIRE AGREEMENT ..... 34


**Schedules**


A - Description of Home and Beds

B - Additional Terms and Conditions Applicable to the Funding Model

C - Reporting Requirements

D - Performance

E - Form of Compliance Declaration


**Schedules and appendices are not included in this document. Please contact the Waterloo Wellington Local Health Integration Network at 1-888-883-3313 for more information.**

**THIS AGREEMENT** effective as of the 1st day of April, 2019.

**B E T W E E N :**

**WATERLOO WELLINGTON LOCAL HEALTH INTEGRATION NETWORK**

(the "LHIN")

**AND**

2063414 Ontario Limited as General Partner of 2063414 Investment LP (the "HSP")

**IN RESPECT OF:**

**Barnswallow Place Care Community** located at
**120 Barnswallow Drive, Elmira, Ontario, N3B 2Y9**

**Background:**

This service accountability agreement, entered into pursuant to the *Local Health System Integration Act, 2006* ("LHSIA"), reflects and supports the commitment of the LHIN and the HSP to, separately, jointly, and in cooperation with other stakeholders, work diligently and collaboratively toward the achievement of the purpose of LHSIA, namely "to provide for an integrated health system to improve the health of Ontarians through better access to high quality health services, co-ordinated health care in local health systems and across the province and effective and efficient management of the health system at the local level by local health integration networks".

The HSP and the LHIN, being committed to a health care system as envisioned by LHSIA, intend to cooperate to advance the purpose and objects of LHSIA and the further development of a patient-centered, integrated, accountable, transparent, and evidence-based health system contemplated by LHSIA. They will do so by such actions as: supporting the development and implementation of sub-regions and Health Links to facilitate regional integrated health care service delivery; breaking down silos that inhibit the seamless transition of patients within the health care system; striving for the highest quality and continuous improvement in the delivery of health services and in all aspects of the health system, including by identifying and addressing the root causes of health inequities, and by improving access to primary care, mental health and addiction services and wait times for specialists; and otherwise striving for the highest quality and continuous improvement in the delivery of health services and in all aspects of the health system.

The HSP and the LHIN are committed to working together, and with others, to achieve evolving provincial priorities including those described: in mandate letters from the Minister of Health and Long-Term Care to the LHIN; in the provincial strategic plan for the health system; and, in the LHIN's Integrated Health Services Plan.

The LHIN recognizes municipalities as responsible and accountable governments with respect to matters within their jurisdiction. The LHIN acknowledges the unique

character of municipal governments that are funded health service providers (each a "Municipal HSP") under the Provincial Long-Term Care Home Service Accountability Agreement template (the "LSAA"), and the challenges faced by Municipal HSPs in complying with the terms of the LSAA, given the legal framework under which they operate. The LHIN further recognizes and acknowledges that where a Municipal HSP faces a particular challenge in meeting its obligations under the LSAA due to its responsibilities as a municipal government or the legal framework under which it operates, it may be appropriate for the LHIN to consult with the Municipal HSP and to use reasonable efforts to resolve the issue in a collaborative way that respects the municipal government while operating under the LSAA as a Municipal HSP.

In this context, the HSP and the LHIN agree that the LHIN will provide funding to the HSP on the terms and conditions set out in this Agreement to enable the provision of services to the local health system by the HSP.

In consideration of their respective agreements set out below, the LHIN and the HSP covenant and agree as follows:

## ARTICLE 1.0 - DEFINITIONS & INTERPRETATION

**1.1** **Definitions**. In this Agreement the following terms will have the following meanings.

"**Accountability Agreement**" means the accountability agreement, as that term is defined in LHSIA, in place between the LHIN and the MOHLTC during a Funding Year, currently referred to as the Ministry-LHIN Accountability Agreement.

"**Act**" means the *Long-Term Care Homes Act, 2007* and the regulations made under it and they may be amended from time to time.

"**Active Offer**" means the clear and proactive offer of service in French to individuals, from the first point of contact, without placing the responsibility of requesting services in French on the individual.

"**Agreement**" means this agreement and includes the Schedules and any instrument amending this agreement or the Schedules.

"**Annual Balanced Budget**" means that, in each calendar year of the term of this Agreement, the total expenses of the HSP in respect of the Services are less than or equal to the total revenue of the HSP in respect of the Services.

"**Applicable Law**" means all federal, provincial or municipal laws, orders, rules, regulations, common law, licence terms or by-laws, and includes terms or conditions of a licence or approval issued under the Act, that are applicable to the HSP, the Services, this Agreement and the parties' obligations under this Agreement during the term of this Agreement.

"**Applicable Policy**" means any orders, rules, policies, directives or standards of practice or Program Parameters issued or adopted by the LHIN, by the MOHLTC or by other ministries or agencies of the province of Ontario that are applicable to the HSP, the Services, this Agreement and the parties' obligations under this Agreement during the term of this Agreement. Without limiting the generality of the foregoing, Applicable Policy includes the Design Manual and the Long Term Care Funding and Financial Management Policies and all other manuals, guidelines, policies and other documents listed on the Policy Web Pages as those manuals, guidelines, policies and other documents may be amended from time to time.

"**Approved Funding"** has the meaning ascribed to it in Schedule B.

"**Beds**" means the long term care home beds that are licensed or approved under the Act and identified in Schedule A, as the same may be amended from time to time.

"**Board**" means in respect of an HSP that is:

(a) a corporation, the board of directors;
(b) A First Nation, the band council;
(c) a municipality, the committee of management;
(d) a board of management established by one or more municipalities or by one or more First Nations' band councils, the members of the board of management;
(e) a partnership, the partners; and
(f) a sole proprietorship, the sole proprietor.

"**BPSAA**" means the *Broader Public Sector Accountability Act, 2010,* and regulations made under it as it and they may be amended from time to time.

"**CEO**" means the individual accountable to the Board for the provision of the Services in accordance with the terms of this Agreement, which individual may be the executive director or administrator of the HSP, or may hold some other position or title within the HSP.

"**Compliance Declaration**" means a compliance declaration substantially in the form set out in Schedule "E".

"**Confidential Information**" means information that is (1) marked or otherwise identified as confidential by the disclosing party at the time the information is provided to the receiving party; and (2) eligible for exclusion from disclosure at a public board meeting in accordance with section 9 of LHSIA. 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 Notice in a timely manner of such requirement to the disclosing party, consults with the disclosing

party on the proposed form and nature of the disclosure, and ensures that any disclosure is made in strict accordance with Applicable Law.

"**Conflict of Interest**" in respect of an HSP, includes any situation or circumstance where: in relation to the performance of its obligations under this Agreement

(a) the HSP;
(b) a member of the HSP's Board; or
(c) any person employed by the HSP who has the capacity to influence the HSP's decision,

has other commitments, relationships or financial interests that:

(a) could or could be seen to interfere with the HSP's objective, unbiased and impartial exercise of its judgement; or
(b) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under this Agreement.

"**Construction Funding Subsidy**" has the meaning ascribed to it in Schedule B.

"**Controlling Shareholder**" of a corporation means a shareholder who or which holds (or another person who or which holds for the benefit of such shareholder), other than by way of security only, voting securities of such corporation carrying more than 50% of the votes for the election of directors, provided that the votes carried by such securities are sufficient, if exercised, to elect a majority of the board of directors of such corporation.

"**Days**" means calendar days.

"**Design Manual**" means the MOHLTC design manual or manuals in effect and applicable to the development, upgrade, retrofit, renovation or redevelopment of the Home or Beds subject to this Agreement.

"**Designated**" means designated as a public service agency under the FLSA.

"**Digital Health**" has the meaning ascribed to it in the Accountability Agreement, and means the coordinated and integrated use of electronic systems, information and communication technologies to facilitate the collection, exchange and management of personal health information in order to improve the quality, access, productivity and sustainability of the healthcare system.

"**Director**" has the same meaning ascribed to it in the Act.

"**Effective Date**" means April 1, 2019.

"**Explanatory Indicator**" means a measure that is connected to and helps to

explain performance in a Performance Indicator or a Monitoring Indicator. An Explanatory Indicator may or may not be a measure of the HSP's performance. No Performance Target is set for an Explanatory Indicator.

**"Factors Beyond the HSP's Control"** include occurrences that are, in whole or in part, caused by persons, entities or events beyond the HSP's control. Examples may include, but are not limited to, the following:

(a) significant costs associated with complying with new or amended Government of Ontario technical standards, guidelines, policies or legislation;
(b) the availability of health care in the community (hospital care, long-term care, home care, and primary care);
(c) the availability of health human resources; arbitration decisions that affect HSP employee compensation packages, including wage, benefit and pension compensation, which exceed reasonable HSP planned compensation settlement increases and in certain cases non-monetary arbitration awards that significantly impact upon HSP operational flexibility; and
(d) catastrophic events, such as natural disasters and infectious disease outbreaks.

"**FIPPA**" means the *Freedom of Information and Protection of Privacy Act,* (Ontario) and the regulations made under it*,* as it and they may be amended from time to time.

"**FLSA**" means the *French Language Services Act* and the regulations made under it, as it and they may be amended from time to time.

"**Funding**" means the amounts of money provided by the LHIN to the HSP in each Funding Year of this Agreement. Funding includes Approved Funding and Construction Funding Subsidy.

"**Funding Year**" means in the case of the first Funding Year, the period commencing on the January 1 prior to the Effective Date and ending on the following December 31, and in the case of Funding Years subsequent to the first Funding Year, the period commencing on the date that is January 1 following the end of the previous Funding Year and ending on the following December 31.

"**Home**" means the long-term care home at the location set out above, which for clarity includes the buildings where the Beds are located and for greater certainty, includes the Beds and the common areas and common elements which will be used at least in part, for the Beds, but excludes any other part of the building which will not be used for the Beds being operated pursuant to this Agreement.

"**HSP's Personnel and Volunteers**" means the Controlling Shareholders (if any), directors, officers, employees, agents, volunteers and other representatives

of the HSP. In addition to the foregoing HSP's Personnel and Volunteers shall include the contractors and subcontractors and their respective shareholders, directors, officers, employees, agents, volunteers or other representatives.

"**Identified**" means identified by the LHIN or the MOHLTC to provide French language services.

**"Indemnified Parties"** means the LHIN and its officers, employees, directors, independent contractors, subcontractors, agents, successors and assigns and Her Majesty the Queen in right of Ontario and Her Ministers, appointees and employees, independent contractors, subcontractors, agents and assigns. Indemnified Parties also includes any person participating on behalf of the LHIN in a Review.

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

"**LHIN Cluster**" has the meaning ascribed to it in the Accountability Agreement and is a grouping of LHINs for the purpose of advancing Digital Health initiatives through regional coordination aligned with the MOHLTC's provincial priorities.

"**LHSIA**" means the *Local Health System Integration Act, 2006* and the regulations under it, as it and they may be amended from time to time.

"**Licence**" means one or more of the licences or the approvals granted to the HSP in respect of the Beds at the Home under Part VII or Part VIII of the Act.

"**Mandate Letter**" has the meaning ascribed to it in the Memorandum of Understanding between MOHLTC and the LHIN, and means a letter from the Minister to the LHIN establishing priorities in accordance with the Premier's mandate letter to the Minister.

"**Minister**" means the Minister of Health and Long-Term Care.

"**MOHLTC**" means the Minister or the Ministry of Health and Long-Term Care, as the context requires.

**"Monitoring Indicator"** means a measure of HSP performance that may be monitored against provincial results or provincial targets, but for which no Performance Target is set.

"**Notice**" means any notice or other communication required to be provided pursuant to this Agreement, LHSIA or the Act.

"**Performance Agreement**" means an agreement between an HSP and its CEO that requires the CEO to perform in a manner that enables the HSP to achieve the terms of this Agreement.

"**Performance Corridor**" means the acceptable range of results around a

Performance Target.

"**Performance Factor**" means any matter that could or will significantly affect a party's ability to fulfill its obligations under this Agreement, and for certainty, includes any such matter that may be brought to the attention of the LHIN, whether by PICB or otherwise.

"**Performance Indicator**" means a measure of HSP performance for which a Performance Target is set; technical specifications of specific Performance Indicators can be found in the LSAA 2016-19 Indicator Technical Specifications document.

"**Performance Standard**" means the acceptable range of performance for a Performance Indicator or a Service Volume that results when a Performance Corridor is applied to a Performance Target.

"**Performance Target**" means the level of performance expected of the HSP in respect of a Performance Indicator or a Service Volume.

"**person or entity**" includes any individual and any corporation, partnership, firm, joint venture or other single or collective form of organization under which business may be conducted;

**"PICB"** means Performance Improvement and Compliance Branch of MOHLTC, or any other branch or organizational unit of MOHLTC that may succeed or replace it.

"**Planning Submission**" means the planning document submitted by the HSP to the LHIN. The form, content and scheduling of the Planning Submission will be identified by the LHIN.

"**Policy Web Pages**" means the web pages available at www.health.gov.on.ca/lsaapolicies, and at www.health.gov.on.ca/erssldpolitique or such other URLs or Web pages as the LHIN or the MOHLTC may advise from time to time. Capital policies can be found at Http://www.health.gov.on.ca/english/providers/program/ltc_redev/awardeeoperator.html.

"**Program Parameter**" means, in respect of a program, the provincial standards (such as operational, financial or service standards and policies, operating manuals and program eligibility), directives, guidelines and expectations and requirements for that program.

"**RAI MDS Tools**" means the standardized Resident Assessment Instrument – Minimum Data Set ("RAI MDS") 2.0, the RAI MDS 2.0 User Manual and the RAI MDS Practice Requirements, as the same may be amended from time to time.

"**Reports**" means the reports described in Schedule C as well as any other

reports or information required to be provided under LHSIA, the Act or this Agreement.

"**Resident**" has the meaning ascribed to it under the Act.

"**Review**" means a financial or operational audit, investigation, inspection or other form of review requested or required by the LHIN under the terms of LHSIA or this Agreement, but does not include the annual audit of the HSP's financial statements.

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

**Schedule A**: Description of Home and Beds;
**Schedule B**: Additional Terms and Conditions Applicable to the Funding Model;
**Schedule C**: Reporting Requirements;
**Schedule D**: Performance; and
**Schedule E**: Form of Compliance Declaration.

"**Services**" means the operation of the Beds and the Home and the accommodation, care, programs, goods and other services that are provided to Residents (i) to meet the requirements of the Act; (ii) to obtain Approved Funding; and (iii) to fulfill all commitments made to obtain a Construction Funding Subsidy.

"**Service Volume**" means a measure of Services for which a Performance Target is set.

**1.2** **Interpretation**. Words in the singular include the plural and vice-versa. Words in one gender include all genders. The words "including" and "includes" are not intended to be limiting and shall mean "including without limitation" or "includes without limitation", as the case may be. The headings do not form part of this Agreement. They are for convenience of reference only and will not affect the interpretation of this Agreement. Terms used in the Schedules shall have the meanings set out in this Agreement unless separately and specifically defined in a Schedule in which case the definition in the Schedule shall govern for the purposes of that Schedule.

## ARTICLE 2.0 - TERM AND NATURE OF THIS AGREEMENT

**2.1** **Term**. The term of this Agreement will commence on the Effective Date and will expire on the earlier of (1) March 31, 2022 or (2) the expiration or termination of all Licences, unless this Agreement is terminated earlier or extended pursuant to its terms.

**2.2 A Service Accountability Agreement**. This Agreement is a service accountability agreement for the purposes of section 20(1) of LHSIA.

**2.3 Prior Agreements.** The parties acknowledge and agree that all prior agreements for the Services are terminated.

## ARTICLE 3.0 - PROVISION OF SERVICES

**3.1 Provision of Services**.

(a) The HSP will provide the Services in accordance with, and otherwise comply with:

(1) the terms of this Agreement;
(2) Applicable Law; and
(3) Applicable Policy.

(b) When providing the Services, the HSP will meet the Performance Standards and conditions identified in Schedule D.

(c) Unless otherwise provided in this Agreement, the HSP will not reduce, stop, start, expand, cease to provide or transfer the provision of the Services except with Notice to the LHIN and if required by Applicable Law or Applicable Policy, the prior written consent of the LHIN**.**

(d) The HSP will not restrict or refuse the provision of Services to an individual, directly or indirectly, based on the geographic area in which the person resides in Ontario.

**3.2 Subcontracting for the Provision of Services**.

(a) The parties acknowledge that, subject to the provisions of the Act and LHSIA, the HSP may subcontract the provision of some or all of the Services. For the purposes of this Agreement, actions taken or not taken by the subcontractor and Services provided by the subcontractor will be deemed actions taken or not taken by the HSP and Services provided by the HSP.

(b) When entering into a subcontract the HSP agrees that the terms of the subcontract will enable the HSP to meet its obligations under this Agreement. Without limiting the foregoing, the HSP will include a provision that permits the LHIN or its authorized representatives, to audit the subcontractor in respect of the subcontract if the LHIN or its authorized representatives determines that such an audit would be necessary to confirm that the HSP has complied with the terms of this Agreement.

(c) Nothing contained in this Agreement or a subcontract will create a contractual relationship between any subcontractor or its directors,

officers, employees, agents, partners, affiliates or volunteers and the LHIN.

**3.3** **Conflict of Interest**. The HSP will use the Funding, provide the Services and otherwise fulfil its obligations under this Agreement without an actual, potential or perceived Conflict of Interest. The HSP will disclose to the LHIN without delay any situation that a reasonable person would interpret as an actual, potential or perceived Conflict of Interest and comply with any requirements prescribed by the LHIN to resolve any Conflict of Interest.

**3.4** **Digital Health**. The HSP agrees to:

(a) assist the LHIN to implement provincial Digital Health priorities for 2017-18 and thereafter in accordance with the Accountability Agreement, as may be amended or replaced from time to time;

(b) comply with any technical and information management standards, including those related to data, architecture, technology, privacy and security set for health service providers by MOHLTC or the LHIN within the timeframes set by MOHLTC or the LHIN, as the case may be;

(c) implement and use the approved provincial Digital Health solutions identified in the LHIN Digital Health plan;

(d) implement technology solutions that are compatible or interoperable with the provincial blueprint and with the LHIN Cluster Digital Health plan; and

(e) include in its annual Planning Submission, plans for achieving Digital Health priority initiatives.

**3.5** **Mandate Letter**. The LHIN will receive a Mandate Letter from the Minister annually. Each Mandate Letter articulates areas of focus for the LHIN, and the Minister's expectation that the LHIN and health service providers it funds will collaborate to advance these areas of focus. To assist the HSP in its collaborative efforts with the LHIN, the LHIN will share each relevant Mandate Letter with the HSP. The LHIN may also add local obligations to Schedule D as appropriate to further advance any priorities set out in a Mandate Letter.

**3.6** **French Language Services**.

**3.6.1** The LHIN will provide the MOHLTC "Guide to Requirements and Obligations of LHIN French Language Services" to the HSP and the HSP will fulfill its roles, responsibilities and other obligations set out therein.

**3.6.2** **If Not Identified or Designated**. If the HSP has not been Designated or Identified it will:

(a) develop and implement a plan to address the needs of the local Francophone community, including the provision of information on services available in French;
(b) work toward applying the principles of Active Offer in the provision of services;
(c) provide a report to the LHIN that outlines how the HSP addresses the needs of its local Francophone community; and,
(d) collect and submit to the LHIN as requested by the LHIN from time to time, French language service data.

**3.6.3 If Identified**. If the HSP is Identified it will:

(a) work toward applying the principles of Active Offer in the provision of services;
(b) provide services to the public in French in accordance with its existing French language services capacity;
(c) develop, and provide to the LHIN upon request from time to time, a plan to become Designated by the date agreed to by the HSP and the LHIN;
(d) continuously work towards improving its capacity to provide services in French and toward becoming Designated within the time frame agreed to by the parties;
(e) provide a report to the LHIN that outlines progress in its capacity to provide services in French and toward becoming Designated;
(f) annually, provide a report to the LHIN that outlines how it addresses the needs of its local Francophone community; and,
(g) collect and submit to the LHIN, as requested by the LHIN from time to time, French language services data.

**3.6.4 If Designated**. If the HSP is Designated it will:

(a) apply the principles of Active Offer in the provision of services;
(b) continue to provide services to the public in French in accordance with the provisions of the FLSA;
(c) maintain its French language services capacity;
(d) submit a French language implementation report to the LHIN on the date specified by the LHIN, and thereafter, on each anniversary of that date, or on such other dates as the LHIN may, by Notice, require; and,
(e) collect and submit to the LHIN as requested by the LHIN from time to time, French language services data.

## ARTICLE 4.0 - FUNDING

**4.1 Funding**. Subject to the terms of this Agreement, and in accordance with the applicable provisions of the Accountability Agreement, the LHIN will provide the

Funding by depositing the Funding in monthly instalments over the term of this Agreement, into an account designated by the HSP provided that the account resides at a Canadian financial institution and is in the name of the HSP.

**4.2 Conditions of Funding**.

(a) The HSP will:

(1) use the Funding only for the purpose of providing the Services in accordance with Applicable Law, Applicable Policy and the terms of this Agreement;
(2) not use the Funding for compensation increases prohibited by Applicable Law;
(3) meet all obligations in the Schedules;
(4) fulfill all other obligations under this Agreement; and
(5) plan for and achieve an Annual Balanced Budget.

(b) Interest Income will be reported to the LHIN and is subject to a year-end reconciliation. The LHIN may deduct the amount equal to the Interest Income from any further funding instalments under this or any other agreement with the HSP or the LHIN may require the HSP to pay an amount equal to the unused Interest Income to the Ministry of Finance.

**4.3 Limitation on Payment of Funding**. Despite section 4.1, the LHIN:

(a) will not provide any funds to the HSP until this Agreement is fully executed;

(b) may pro-rate the Funding if this Agreement is signed after the Effective Date;

(c) will not provide any funds to the HSP until the HSP meets the insurance requirements described in section 11.4;

(d) will not be required to continue to provide funds,

(1) if the Minister or the Director so directs under the terms of the Act;
(2) while the Home is under the control of an interim manager pursuant to section 157 of the Act; or
(3) in the event the HSP breaches any of its obligations under this Agreement until the breach is remedied to the LHIN's satisfaction; and

(e) upon notice to the HSP, may adjust the amount of funds it provides to the HSP in any Funding Year pursuant to Article 5.

**4.4 Additional Funding**. Unless the LHIN has agreed to do so in writing, the LHIN is not required to provide additional funds to the HSP for providing services other than the Services or for exceeding the requirements of Schedule D.

**4.5** **Appropriation**. Funding under this Agreement is conditional upon an appropriation of moneys by the Legislature of Ontario to the MOHLTC and funding of the LHIN by the MOHLTC pursuant to LHSIA. If the LHIN does not receive its anticipated funding the LHIN will not be obligated to make the payments required by this Agreement.

**4.6** **Procurement of Goods and Services**.

(a) If the HSP is subject to the procurement provisions of the BPSAA, the HSP will abide by all directives and guidelines issued by the Management Board of Cabinet that are applicable to the HSP pursuant to the BPSAA.

(b) If the HSP is not subject to the procurement provisions of the BPSAA, the HSP will have a procurement policy in place that requires the acquisition of supplies, equipment or services valued at over $25,000 through a competitive process that ensures the best value for funds expended. If the HSP acquires supplies, equipment or services with the Funding it will do so through a process that is consistent with this policy.

**4.7** **Disposition**. Subject to Applicable Law and Applicable Policy, the HSP will not, without the 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 5.0 - ADJUSTMENT AND RECOVERY OF FUNDING

**5.1** **Adjustment of Funding**.

(a) The LHIN may adjust the Funding in any of the following circumstances:

(1) in the event of changes to Applicable Law or Applicable Policy that affect Funding;
(2) on a change to the Services;
(3) if required by either the Director or the Minister under the Act;
(4) in the event that a breach of this Agreement is not remedied to the satisfaction of the LHIN; and
(5) as otherwise permitted by this Agreement.

(b) Funding recoveries or adjustments required pursuant to section 5.1(a) may be accomplished through the adjustment of Funding, requiring the repayment of Funding, through the adjustment of the amount of any future funding installments, or through both. Approved Funding already expended properly in accordance with this Agreement will not be subject to adjustment. The LHIN will, at its sole discretion, and without liability or penalty, determine whether the Funding has been expended properly in accordance with this Agreement.

(c) In determining the amount of a funding adjustment under section 5.1 (a) (4) or (5), the LHIN shall take into account the following principles:

(1) Resident care must not be compromised through a funding adjustment arising from a breach of this Agreement;

(2) the HSP should not gain from a breach of this Agreement;

(3) if the breach reduces the value of the Services, the funding adjustment should be at least equal to the reduction in value; and

(4) the funding adjustment should be sufficient to encourage subsequent compliance with this Agreement,

and such other principles as may be articulated in Applicable Law or Applicable Policy from time to time.

**5.2 Provision for the Recovery of Funding**. The HSP will make reasonable and prudent provision for the recovery by the LHIN of any Funding for which the conditions of Funding set out in section 4.2(a) are not met and will hold this Funding in an interest bearing account until such time as reconciliation and settlement has occurred with the LHIN.

**5.3 Settlement and Recovery of Funding for Prior Years**.

(a) The HSP acknowledges that settlement and recovery of Funding can occur up to 7 years after the provision of Funding.

(b) Recognizing the transition of responsibilities from the MOHLTC to the LHIN, the HSP agrees that if the parties are directed in writing to do so by the MOHLTC, the LHIN will settle and recover funding provided by the MOHLTC to the HSP prior to the transition of the funding for the Services to the LHIN, provided that such settlement and recovery occurs within 7 years of the provision of the funding by the MOHLTC. All such settlements and recoveries will be subject to the terms applicable to the original provision of funding.

**5.4 Debt Due**.

(a) If the LHIN requires the re-payment by the HSP of any Funding, the amount required will be deemed to be a debt owing to the Crown by the HSP. The LHIN may adjust future funding instalments to recover the amounts owed or may, at its discretion, direct the HSP to pay the amount owing to the Crown and the HSP shall comply immediately with any such direction.

(b) All amounts repayable to the Crown will be paid by cheque payable to the “Ontario Minister of Finance” and mailed or delivered to the LHIN at the address provided in section 13.1.

**5.5** **Interest Rate**. The LHIN may charge the HSP interest on any amount owing by the HSP at the then current interest rate charged by the Province of Ontario on accounts receivable.

## ARTICLE 6.0 - PLANNING & INTEGRATION

**6.1** **Planning for Future Years**.

(a) **Advance Notice**. The LHIN will give at least 60 Days' Notice to the HSP of the date by which a Planning Submission, approved by the HSP's governing body, must be submitted to the LHIN.

(b) **Multi-Year Planning**. The Planning Submission will be in a form acceptable to the LHIN and may be required to incorporate

(1) prudent multi-year financial forecasts;

(2) plans for the achievement of Performance Targets; and

(3) realistic risk management strategies.

It will be aligned with the LHIN's then current integrated health service plan required by LHSIA and will reflect local LHIN priorities and initiatives. If the LHIN has provided multi-year planning targets for the HSP, the Planning Submission will reflect the planning targets.

(c) **Multi-year Planning Targets**. The parties acknowledge that the HSP is not eligible to receive multi-year planning targets under the terms of Schedule B in effect as of the Effective Date. In the event that Schedule B is amended over the term of this Agreement and the LHIN is able to provide the HSP with multi-year planning targets, the HSP acknowledges that these targets:

(1) are targets only;

(2) are provided solely for the purposes of planning;

(3) are subject to confirmation; and

(4) may be changed at the discretion of the LHIN.

The HSP will proactively manage the risks associated with multi-year planning and the potential changes to the planning targets.

The LHIN agrees that it will communicate any material changes to the planning targets as soon as reasonably possible.

(d) **Service Accountability Agreements**. Subject to advice from the Director about the HSP's history of compliance under the Act and provided that the HSP has fulfilled its obligations under this Agreement, the parties expect that they will enter into a new service accountability agreement at the end of the Term. The LHIN will give the HSP at least 6 months' Notice if the LHIN does not intend to enter into negotiations for a subsequent service accountability agreement

because the HSP has not fulfilled its obligations under this Agreement. The HSP acknowledges that if the LHIN and the HSP enter into negotiations for a subsequent service accountability agreement, subsequent funding may be interrupted if the next service accountability agreement is not executed on or before the expiration date of this Agreement.

**6.2 Community Engagement & Integration Activities**.

(a) **Community Engagement**. The HSP will engage the community of diverse persons and entities in the area where it provides health services when setting priorities for the delivery of health services and when developing plans for submission to the LHIN including but not limited to the HSP's Planning Submission and integration proposals. As part of its community engagement activities, the HSPs will have in place, and utilize, effective mechanisms for engaging families and patients to help inform the HSP plans, including the HSP's contribution to the establishment and implementation by the LHIN of geographic sub-regions in its local health system.

(b) **Integration**. The HSP will, separately and in conjunction with the LHIN and other health service providers, identify opportunities to integrate the services of the local health system to provide appropriate, co-coordinated, effective and efficient services.

(c) **Reporting.** The HSP will report on its community engagement and integration activities, using any templates provided by the LHIN, as requested by the LHIN.

**6.3 Planning and Integration Activity Pre-proposals**.

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

(1) the HSP is considering an integration, or an integration of services, as defined in LHSIA between the HSP and another person or entity;
(2) the HSP is proposing to reduce, stop, start, expand or transfer the location of services, which for certainty includes: the transfer of Services from the HSP to another person or entity whether within or outside of the LHIN; and the relocation or transfer of services from one of the HSP's sites to another of the HSP's sites whether within or outside of the LHIN;
(3) to identify opportunities to integrate the services of the local health system, other than those identified in (A) or (B) above; or
(4) if requested by the LHIN.

(b) **LHIN Evaluation of the Pre-proposal**. Use of the pre-proposal process is not formal Notice of a proposed integration under section. 27 of LHSIA. LHIN consent to develop the project concept outlined in a pre-proposal does not constitute approval to proceed with the project. Nor does the LHIN consent to develop a project concept presume the issuance of a favourable decision, should such a decision be required by sections 25 or 27 of LHSIA. Following the LHIN's review and evaluation, the HSP may be invited to submit a detailed proposal and a business plan for further analysis. Guidelines for the development of a detailed proposal and business case will be provided by the LHIN.

(c) Where an HSP integrates its services with those of another person and the integration relates to services funded in whole or in part by the LHIN, the HSP will follow the provisions of section 27 of LHSIA. Without limiting the foregoing, a transfer of services from the HSP to another person or entity is an example of an integration to which section 27 of LHSIA may apply.

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

**6.5 Termination of Designation of Convalescent Care Beds**.

(a) Notwithstanding section 6.3, the provisions in this section 6.5 apply to the termination of a designation of convalescent care Beds.

(b) The HSP may terminate the designation of one or more convalescent care Beds and revert them back to long-stay Beds at any time provided the HSP gives the MOHLTC and the LHIN at least 6 months' prior Notice. Such Notice shall include:

(1) a detailed transition plan, satisfactory to the LHIN acting reasonably, setting out the dates, after the end of the 6-month Notice period, on which the HSP plans to terminate the designation of each convalescent care Bed and to revert same to a long-stay Bed; and,

(2) a detailed explanation of the factors considered in the selection of those dates.

The designation of a convalescent care Bed will terminate and the Bed will revert to a long-stay Bed on the date, after the 6-month Notice period, on which the Resident who is occupying that convalescent care Bed at the end of the 6-month Notice period has been discharged from that Bed, unless otherwise agreed by the LHIN and the HSP.

(c) The LHIN may terminate the designation of the convalescent care Beds at any time by giving at least 6 months' prior Notice to the HSP. Upon

receipt of any such Notice, the HSP shall, within the timeframe set out in the Notice, provide the LHIN with:

(1) a detailed transition plan, satisfactory to the LHIN acting reasonably, setting out the dates, after the end of the 6-month Notice period, on which the HSP plans to terminate the designation of each convalescent care Bed and, if required by the Notice, to revert same to a long-stay Bed; and,
(2) a detailed explanation of the factors considered in the selection of those dates.

The designation of a convalescent care Bed will terminate, and if applicable revert to a long-stay Bed on the date, after the 6-month Notice period, on which the Resident who is occupying that convalescent care Bed at the end of the Notice period has been discharged from that Bed, unless otherwise agreed by the LHIN and the HSP.

**6.6** In this Article 6, the terms “integrate”, “integration” and “services” have the same meanings attributed to them in section 2(1) and section 23 respectively of LHSIA, as it and they may be amended from time to time.

(a) “**service**” includes;

(1) a service or program that is provided directly to people,
(2) a service or program, other than a service or program described in clause (1), that supports a service or program described in that clause, or
(3) a function that supports the operations of a person or entity that provides a service or program described in clause (1) or (2).

(b) “**integrate**” includes;

(1) to co-ordinate services and interactions between different persons and entities,
(2) to partner with another person or entity in providing services or in operating,
(3) to transfer, merge or amalgamate services, operations, persons or entities,
(4) to start or cease providing services,
(5) to cease to operate or to dissolve or wind up the operations of a person or entity,

and “**integration**” has a similar meaning.

## ARTICLE 7.0 - PERFORMANCE

**7.1** **Performance**. The parties will strive to achieve on-going performance improvement. They will address performance improvement in a proactive,

collaborative and responsive manner.

**7.2 Performance Factors**.

(a) Each party will notify the other party of the existence of a Performance Factor, as soon as reasonably possible after the party becomes aware of the Performance Factor. The Notice will:

(1) describe the Performance Factor and its actual or anticipated impact;
(2) include a description of any action the party is undertaking, or plans to undertake, to remedy or mitigate the Performance Factor;
(3) indicate whether the party is requesting a meeting to discuss the Performance Factor; and
(4) address any other issue or matter the party wishes to raise with the other party.

(b) The recipient party will provide a written acknowledgment of receipt of the Notice within 7 Days of the date on which the Notice was received ("Date of the Notice").

(c) Where a meeting has been requested under section 7.2(a), the parties agree to meet and discuss the Performance Factors within 14 Days of the Date of the Notice, in accordance with the provisions of section 7.3. PICB may be included in any such meeting at the request of either party.

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

(a) discuss the causes of a Performance Factor;

(b) discuss the impact of a Performance Factor on the local health system and the risk resulting from non-performance; and

(c) determine the steps to be taken to remedy or mitigate the impact of the Performance Factor (the "Performance Improvement Process").

**7.4 The Performance Improvement Process**.

(a) The Performance Improvement Process will focus on the risks of non-performance and problem-solving. It may include one or more of the following actions:

(1) a requirement that the HSP develop and implement an improvement plan that is acceptable to the LHIN;
(2) the conduct of a Review;
(3) an amendment of the HSP's obligations; and
(4) an in-year, or year end, adjustment to the Funding,

among other possible means of responding to the Performance Factor or improving performance.

(b) Any performance improvement process begun under a prior service accountability agreement that was not completed under the prior agreement will continue under this Agreement. Any performance improvement required by a LHIN under a prior service accountability agreement will be deemed to be a requirement of this Agreement until fulfilled or waived by the LHIN.

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

(a) the LHIN will collaborate with the HSP to develop and implement a mutually agreed upon joint response plan which may include an amendment of the HSP's obligations under this Agreement;

(b) the LHIN will not require the HSP to prepare an Improvement Plan; and

(c) the failure to meet an obligation under this Agreement will not be considered a breach of this Agreement to the extent that failure is caused by a Factor Beyond the HSP's Control.

## ARTICLE 8.0 - REPORTING, ACCOUNTING AND REVIEW

**8.1 Reporting**.

(a) **Generally**. The LHIN's ability to enable its local health system to provide appropriate, co-ordinated, effective and efficient health services as contemplated by LHSIA, is heavily dependent on the timely collection and analysis of accurate information. The HSP acknowledges that the timely provision of accurate information related to the HSP, its Residents and its performance of its obligations under this Agreement, is under the HSP's control.

(b) **Specific Obligations**. The HSP:

(1) will provide to the LHIN, or to such other entity as the LHIN may direct, in the form and within the time specified by the LHIN, the Reports other than personal health information as defined in LHSIA, that the LHIN requires for the purposes of exercising its powers and duties under this Agreement or LHSIA or for the purposes that are prescribed under any Applicable Law;

(2) will comply with the applicable reporting standards and requirements in both Chapter 9 of the Ontario Healthcare Reporting Standards and the RAI MDS Tools;

(3) will fulfil the specific reporting requirements set out in Schedule C;

(4) will ensure that every Report is complete, accurate, signed on behalf of the HSP by an authorized signing officer where

required and provided in a timely manner and in a form satisfactory to the LHIN; and

(5) agrees that every Report submitted to the LHIN by or on behalf of the HSP, will be deemed to have been authorized by the HSP for submission.

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

(c) **RAI MDS**. Without limiting the foregoing, the HSP

(1) will conduct quarterly assessments of Residents, and all other assessments of Residents required by the RAI MDS Tools, using the RAI MDS Tools;

(2) will ensure that the RAI MDS Tools are used correctly to produce an accurate assessment of the HSP's Residents ("RAI MDS Data");

(3) will submit the RAI MDS Data to the Canadian Institute for Health Information ("CIHI") in an electronic format at least quarterly in accordance with the submission guidelines set out by CIHI; and

(4) acknowledges that if used incorrectly, the RAI MDS Tools can increase Funding beyond that to which the HSP would otherwise be entitled. The HSP will therefore have systems in place to regularly monitor, evaluate and where necessary correct the quality and accuracy of the RAI MDS Data.

(d) **Health Quality Ontario**. The HSP will submit a Quality Improvement Plan to the Ontario Health Quality Council operating as Health Quality Ontario that is aligned with this Agreement and supports local health system priorities.

(e) **French Language Services**. If the HSP is required to provide services to the public in French under the provisions of the *FLSA*, the HSP will be required to submit a French language services report to the LHIN. If the HSP is not required to provide services to the public in French under the provisions of the *FLSA*, it will be required to provide a report to the LHIN that outlines how the HSP addresses the needs of its local Francophone community.

(f) **Declaration of Compliance**. On or before March 1 of each Funding Year, the Board will issue a Compliance Declaration declaring that the HSP has complied with the terms of this Agreement. The form of the declaration is set out in Schedule E and may be amended by the LHIN from time to time through the term of this Agreement.

(g) **Financial Reductions**. Notwithstanding any other provision of this Agreement, and at the discretion of the LHIN, the HSP may be subject to a financial reduction if any of the Reports are received after the due date, are incomplete, or are inaccurate where the errors or delay were not as a result of LHIN actions or inaction or the actions or inactions of persons acting on behalf of the LHIN. If assessed, the financial reduction will be as follows:

(1) if received within 7 Days after the due date, incomplete or inaccurate, the financial penalty will be the greater of (1) a reduction of 0.02 percent (0.02%) of the Funding; or (2) two hundred and fifty dollars ($250.00), and

(2) for every full or partial week of non-compliance thereafter, the rate will be one half of the initial reduction.

**8.2 Reviews**.

(a) During the term of this Agreement and for 7 years after the term of this Agreement, the HSP agrees that the LHIN or its authorized representatives may conduct a Review of the HSP to confirm the HSP's fulfillment of its obligations under this Agreement. For these purposes the LHIN or its authorized representatives may, upon 24 hours' Notice to the HSP and during normal business hours enter the HSP's premises to:

(1) inspect and copy any financial records, invoices and other finance-related documents, other than personal health information as defined in LHSIA, in the possession or under the control of the HSP which relate to the Funding or otherwise to the Services, and

(2) inspect and copy non-financial records, other than personal health information as defined in LHSIA, in the possession or under the control of the HSP which relate to the Funding, the Services or otherwise to the performance of the HSP under this Agreement.

(b) The cost of any Review will be borne by the HSP if the Review (1) was made necessary because the HSP did not comply with a requirement under the Act or this Agreement; or (2) indicates that the HSP has not fulfilled its obligations under this Agreement, including its obligations under Applicable Law and Applicable Policy.

(c) To assist in respect of the rights set out in (a) above the HSP shall disclose any information requested by the LHIN or its authorized representatives, and shall do so in a form requested by the LHIN or its authorized representatives.

(d) The HSP may not commence a proceeding for damages or otherwise against any person with respect to any act done or omitted to be done,

any conclusion reached or report submitted that is done in good faith in respect of a Review.

**8.3 Document Retention and Record Maintenance**. The HSP will

(a) retain all records (as that term is defined in FIPPA) related to the HSP's performance of its obligations under this Agreement for 7 years after the termination or expiration of the term of this Agreement. The HSP's obligations under this section will survive any termination or expiry of this Agreement;

(b) keep all financial records, invoices and other finance-related documents relating to the Funding or otherwise to the Services in a manner consistent with either generally accepted accounting principles or international financial reporting standards as advised by the HSP's auditor; and

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

**8.4 Disclosure of Information**.

(a) **FIPPA**. The HSP acknowledges that the LHIN is bound by FIPPA and that any information provided to the LHIN in connection with this Agreement may be subject to disclosure in accordance with FIPPA.

(b) **Confidential Information**. The parties will treat Confidential Information as confidential and will not disclose Confidential Information except with the consent of the disclosing party or as permitted or required under FIPPA, the *Municipal Freedom of Information and Protection of Privacy Act*, the *Personal Health Information Protection Act, 2004*, the Act, court order, subpoena or other Applicable Law. Notwithstanding the foregoing, the LHIN may disclose information that it collects under this Agreement in accordance with LHSIA.

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

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

## ARTICLE 9.0 - ACKNOWLEDGEMENT OF LHIN SUPPORT

**9.1 Publication**. For the purposes of this Article 9, the term "*Publication"* means: an annual report; a strategic plan; a material publication on a consultation about a possible integration; a material publication on community engagement; and, a

material report to the community that the HSP develops and makes available to the public in electronic or hard copy.

**9.2 Acknowledgment of Funding Support**.

(a) The following statement will be included on the HSP's website, on all Publications and, upon request of the LHIN, on any other publication of the HSP relating to a HSP initiative:

> "The [Insert name of HSP] receives funding from [Insert name of LHIN] Local Health Integration Network. The opinions expressed in this publication do not necessarily represent the views of [Insert name of LHIN] Local Health Integration Network."

(b) Neither party may use any insignia or logo of the other party without the prior written permission of the other party. For the LHIN, this includes any insignia or logo of Her Majesty the Queen in right of Ontario.

## ARTICLE 10.0 - REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

(b) it has the experience and expertise necessary to carry out the Services;

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

(d) all information that the HSP provided to the LHIN in its Planning Submission or otherwise in support of its application for funding was true and complete at the time the HSP provided it, and will, subject to the provision of Notice otherwise, continue to be true and complete for the term of this Agreement;

(e) it has not and will not for the term of this Agreement, enter into a non-arm's transaction that is prohibited by the Act; and

(f) it does, and will continue for the term of this Agreement to, operate in compliance with all Applicable Law and Applicable Policy.

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

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

(b) it has taken all necessary actions to authorize the execution of this Agreement.

**10.3 Governance**.

(a) The HSP represents, warrants and covenants that it has established, and will maintain for the period during which this Agreement is in effect, policies and procedures:

(1) that set out one or more codes of conduct for, and that identify, the ethical responsibilities for all persons at all levels of the HSP's organization;
(2) to ensure the ongoing effective functioning of the HSP;
(3) for effective and appropriate decision-making;
(4) for effective and prudent risk-management, including the identification and management of potential, actual and perceived conflicts of interest;
(5) for the prudent and effective management of the Funding;
(6) to monitor and ensure the accurate and timely fulfillment of the HSP's obligations under this Agreement and compliance with the Act and LHSIA;
(7) to enable the preparation, approval and delivery of all Reports;
(8) to address complaints about the provision of Services, the management or governance of the HSP; and
(9) to deal with such other matters as the HSP considers necessary to ensure that the HSP carries out its obligations under this Agreement.

(b) The HSP represents and warrants that it:

(1) has, or will have within 60 Days of the execution of this Agreement, a Performance Agreement with its CEO;
(2) will take all reasonable care to ensure that its CEO complies with the Performance Agreement; and
(3) will enforce the HSP's rights under the Performance Agreement.

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

(a) the Funding is, and will continue to be, used only to provide the Services in accordance with the terms of this Agreement:

(b) the Services are and will continue to be provided:

(1) by persons with the expertise, professional qualifications, licensing and skills necessary to complete their respective tasks; and
(2) in compliance with Applicable Law and Applicable Policy; and

(c) every Report is and will continue to be, accurate and in full compliance with the provisions of this Agreement, including any particular requirements applicable to the Report, and any material change to a Report will be communicated to the LHIN immediately.

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

## ARTICLE 11.0 - LIMITATION OF LIABILITY, INDEMNITY & INSURANCE

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

**11.2 Same**. For greater certainty and without limiting section 11.1, the LHIN is not liable for how the HSP and the HSP's Personnel and Volunteers carry out the Services and is therefore not responsible to the HSP for such Services. Moreover, the LHIN is not contracting with or employing any HSP's Personnel and Volunteers to carry out the terms of this Agreement. As such, it is not liable for contracting with, employing or terminating a contract with or the employment of any HSP's Personnel and Volunteers required to carry out this Agreement, nor for the withholding, collection or payment of any taxes, premiums, contributions or any other remittances due to government for the HSP's Personnel and Volunteers required by the HSP to carry out this Agreement.

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

**11.4 Insurance**.

(a) **Generally**. The HSP shall protect itself from and against all Claims that might arise from anything done or omitted to be done by the HSP and the HSP's Personnel and Volunteers under this Agreement and more specifically all Claims that might arise from anything done or omitted to be done under this Agreement where bodily injury (including personal injury), death or property damage, including loss of use of property is caused.

(b) **Required Insurance**. The HSP will put into effect and maintain, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent

person in the business of the HSP would maintain including, but not limited to, the following at its own expense.

(1) **Commercial General Liability Insurance**. Commercial General Liability Insurance, for third party bodily injury, personal injury and property damage to an inclusive limit of not less than 2 million dollars per occurrence and not less than 2 million dollars products and completed operations aggregate. The policy will include the following clauses:

A. The Indemnified Parties as additional insureds,
B. Contractual Liability,
C. Cross-Liability,
D. Products and Completed Operations Liability,
E. Employers Liability and Voluntary Compensation unless the HSP complies with the Section below entitled "Proof of WSIA Coverage,
F. Tenants Legal Liability (for premises/building leases only*)*,
G. Non-Owned automobile coverage with blanket contractual coverage for hired automobiles, and
H. A 30 Day written notice of cancellation, termination or material change.

(2) **Proof of WSIA Coverage**. Unless the HSP puts into effect and maintains Employers Liability and Voluntary Compensation as set out above, the HSP will provide the LHIN with a valid *Workplace Safety and Insurance Act, 1997* ("WSIA") Clearance Certificate and any renewal replacements, and will pay all amounts required to be paid to maintain a valid WSIA Clearance Certificate throughout the term of this Agreement.

(3) All Risk Property Insurance on property of every description, for the term, providing coverage to a limit of not less than the full replacement cost, including earthquake and flood. All reasonable deductibles and self-insured retentions are the responsibility of the HSP.

(4) Comprehensive Crime insurance, Disappearance, Destruction and Dishonest coverage.

(5) Errors and Omissions Liability Insurance insuring liability for errors and omissions in the provision of any professional services as part of the Services or failure to perform any such professional services, in the amount of not less than two million dollars per claim and in the annual aggregate.

(c) **Certificates of Insurance**. The HSP will provide the LHIN with proof of the insurance required by this Agreement in the form of a valid certificate of insurance that references this Agreement and confirms the required coverage, on or before the commencement of this Agreement, and

renewal replacements on or before the expiry of any such insurance. Upon the request of the LHIN, a copy of each insurance policy shall be made available to it. The HSP shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract.

## ARTICLE 12.0 – TERMINATION

### 12.1 Termination by the LHIN.

(a) **Immediate Termination.** The LHIN may terminate this Agreement immediately upon giving Notice to the HSP if:

(1) the HSP is unable to provide or has discontinued the Services in whole or in part or the HSP ceases to carry on business;

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

(3) the LHIN is directed, pursuant to the Act, to terminate this Agreement by the Minister or the Director;

(4) the Home has been closed in accordance with the Act; or

(5) as provided for in section 4.5, the LHIN does not receive the necessary funding from the MOHLTC.

(b) **Termination in the Event of Financial Difficulties**. If the HSP makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver the LHIN will consult with the Director before determining whether this Agreement will be terminated. If the LHIN terminates this Agreement because a person has exercised a security interest as contemplated by section 107 of the Act, the LHIN would expect to enter into a service accountability agreement with the person exercising the security interest or the receiver or other agent acting on behalf of that person where the person has obtained the Director's approval under section 110 of the Act and has met all other relevant requirements of Applicable Law.

(c) **Opportunity to Remedy Material Breach**. If an HSP breaches any material provision of this Agreement, including, but not limited to, the reporting requirements in Article 8 and the representations and warranties in Article 10 and the breach has not been satisfactorily resolved under Article 7, the LHIN will give the HSP Notice of the particulars of the breach and of the period of time within which the HSP is required to remedy the

breach. The Notice will advise the HSP that the LHIN may terminate this Agreement:

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

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

the LHIN may then terminate this Agreement in accordance with the Notice.

**12.2 Termination of Services by the HSP**.

(a) Except as provided in section 12.2(b) and (c) below, the HSP may terminate this Agreement at any time, for any reason, upon giving the LHIN at least six months' Notice.

(b) Where the HSP intends to cease providing the Services and close the Home, the HSP will provide Notice to the LHIN at the same time the HSP is required to provide Notice to the Director under the Act. The HSP will ensure that the closure plan required by the Act is acceptable to the LHIN.

(c) Where the HSP intends to cease providing the Services as a result of an intended sale or transfer of a Licence in whole or in part, the HSP will comply with section 6.3 of this Agreement.

**12.3 Consequences of Termination**.

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

(1) cancel all further Funding instalments;

(2) demand the repayment of any Funding remaining in the possession or under the control of the HSP;

(3) determine the HSP's reasonable costs to wind down the Services; and

(4) permit the HSP to offset the costs determined pursuant to section (3), against the amount owing pursuant to section (2).

(b) Despite (a), if the cost determined pursuant to section 12.3(a) (3) exceeds the Funding remaining in the possession or under the control of the HSP the LHIN will not provide additional monies to the HSP to wind down the Services.

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

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

## ARTICLE 13.0 - NOTICE

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

To the LHIN:

Waterloo Wellington LHIN
141 Weber St South
Waterloo, Ontario N2J 2A9

Attn: CEO

Telephone: 519-748-2222
Fax: 519-883-5555

To the HSP:

2063414 Ontario Limited as General
Partner of 2063414 Investment LP
120 Barnswallow Drive
Elmira, Ontario N3B 2Y9

Attention: Vice President, Operation

Email: joanne.dykeman@siennaliving.ca
Telephone: 905-477-4006

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

## ARTICLE 14.0 - INTERPRETATION

**14.1 Interpretation**. In the event of a conflict or inconsistency in any provision of this Agreement, the main body of this Agreement will prevail over the Schedules.

**14.2 Jurisdiction**. Where this Agreement requires compliance with the Act, the Director will determine compliance and advise the LHIN. Where the Act requires compliance with this Agreement, the LHIN will determine compliance and advise the Director.

**14.3** **Determinations by the Director**. All determinations required by the Director under this Agreement are subject to an HSP's rights of review and appeal under the Act.

**14.4** **The Act**. For greater clarity, nothing in this Agreement supplants or otherwise excuses the HSP from the fulfillment of any requirements of the Act. The HSP's obligations in respect of LHSIA and this Agreement are separate and distinct from the HSP's obligations under the Act.

## ARTICLE 15.0 - ADDITIONAL PROVISIONS

**15.1** **Currency**. All payment to be made by the LHIN or the HSP under this Agreement shall be made in the lawful currency of Canada.

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

**15.3** **Terms and Conditions on Any Consent**. Any consent or approval that the LHIN may grant under this Agreement is subject to such terms and conditions as the LHIN may reasonably require.

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

**15.5** **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.

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

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

**15.8 No Assignment**. The HSP will not assign this Agreement or the Funding in whole or in part, directly or indirectly, without the prior written consent of the LHIN which consent shall not be unreasonably withheld. No assignment or subcontract shall relieve the HSP from its obligations under this Agreement or impose any liability upon the LHIN to any assignee or subcontractor. The LHIN may assign this Agreement or any of its rights and obligations under this Agreement to any one or more of the LHINs or to the MOHLTC.

**15.9 Governing Law**. This Agreement and the rights, obligations and relations of the parties hereto will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any litigation arising in connection with this Agreement will be conducted in Ontario unless the parties agree in writing otherwise.

**15.10 Survival**. The provisions in Articles 1.0, 5.0, 8.0, 10.5, 11.0, 13.0, 14.0 and 15.0 and sections 2.3, 4.6, 10.4, 10.5 and 12.3 will continue in full force and effect for a period of seven years from the date of expiry or termination of this Agreement.

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

**15.12 Amendment of Agreement**. This Agreement may only be amended by a written agreement duly executed by the parties.

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

## ARTICLE 16.0 - ENTIRE AGREEMENT

**16.1 Entire Agreement**. This Agreement together with the appended Schedules constitutes the entire Agreement between the parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.

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

**WATERLOO WELLINGTON LOCAL HEALTH INTEGRATION NETWORK**

By:

_____ _____

Jeff Nesbitt, Acting Chair Date

And by:

_____

Bruce Lauckner, CEO Date

**2063414 Ontario Limited as General Partner of 2063414 Investment LP**

By:

_____ _____

Name, Chair, Date
I have authority to bind the HSP

And by:

_____ _____

Name, Title Date
I have authority to bind the HSP