

NORTH WEST
LOCAL HEALTH INTEGRATION NETWORK
(the “LHIN”)

and

ST. JOSEPH’S CARE GROUP
(the “Hospital”)

Hospital Service Accountability Agreement
for 2008-10

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SCHEDULES

- Schedule A: Planning and Funding Timetable
- Schedule B: Performance Obligations
- Schedule C: Hospital Multi-Year Funding Allocation
- Schedule D: Global Volumes and Performance Indicators
- Schedule E: Critical Care Funding
- Schedule F: Post-Construction Operating Plan Funding and Volume
- Schedule G: Protected Services
- Schedule H: Wait Time Services

1.0 **BACKGROUND**

1.1. **Goal.**

The LHIN seeks to enter into a Hospital Service Accountability Agreement ("H-SAA") with the Hospital. The H-SAA reflects that to the extent one party succeeds, the other party will also succeed as the parties share a common interest in supporting "... a health care system that keeps people healthy, gets them good care when they are sick and will be there for our children and grandchildren".

1.2. **Roles.**

1.2.1 MOHLTC's Role. The MOHLTC provides strategic leadership, planning and central oversight as steward of the health system in Ontario. The MOHLTC is an active partner in supporting the health system and establishes strategic direction, multi-year plans, provincial standards and priorities. The MOHLTC also monitors, evaluates and reports on the performance of the health system and the health of Ontarians and establishes funding models and funding levels for the health system.

1.2.2 LHIN and Hospital Shared Roles. The parties will collaborate and cooperate to facilitate the achievement of this Agreement. The parties will work together to enhance the efficiency and effectiveness of Hospital Services using a continuous improvement framework.

1.2.3 LHIN's Role. The LHIN will lead, plan, coordinate, integrate and fund the local health system. The LHIN will also monitor, evaluate, report on and address the performance of health service providers and the local health system.

1.2.4 Hospital's Role. The Hospital provides Hospital Services and organizational leadership supporting systems integration and improved health outcomes. The Hospital also plans, monitors, evaluates and reports on the performance of Hospital Services delivered by the Hospital.

1.3. **Governance.**

The LHIN acknowledges and supports the role of local independent hospital boards contributing to an effective and efficient local health system. The Hospital's Board of Directors remains fully responsible for using its authority to govern the Hospital under Applicable Law and Applicable Provincial Policies.

1.4. **Relationship Principles.**

Recognizing their interdependence, the parties will adopt and follow a proactive, collaborative and responsive approach to:

- (i) establish clear lines of communication and responsibility;
- (ii) develop clear and achievable performance obligations;
- (iii) focus on ongoing performance improvement and risk management; and
- (iv) resolve issues in a diligent, proactive and timely manner,

all based on the practice of early notice.

1.5. Legal Context.

1.5.1 Background. Under the Local Health System Integration Act (the "Act"), the LHIN is required to enter into a service accountability agreement with each of the health service providers that it funds. This Agreement is the first public hospital H-SAA and it succeeds the 07/08 HAA that was assigned by the MOHLTC to the LHIN in April 2007.

1.5.2 The Act. The purpose of the Act is to provide for an integrated health system to improve the health of Ontarians through: (i) better access to high quality health services; (ii) coordinated health care in local health systems and across the province; and (ii) effective and efficient management of the health system at the local level by LHINs.

1.5.3 The Act and an H-SAA. The Act requires the terms and conditions of an H-SAA to be in accordance with: (i) the funding that the LHIN receives from the MOHLTC; and (ii) the LHIN's accountability agreement with the MOHLTC. The H-SAA is a service accountability agreement under, and subject to, the provisions of the *Commitment to the Future of Medicare Act, 2004* (the "CFMA").

1.6. Health System Transformation.

Health system transformation will be an evolutionary process. The H-SAA and processes contained within it reflect this transitional state. Through the term of the H-SAA, it is intended that LHINs and hospitals will work collaboratively to further define and refine the processes necessary to fulfill their respective funding, planning, integration and performance obligations. The H-SAA template reflects, in part, the LHINs' intention over the next few years to move to the use of standardized terms and common formats as appropriate in their service accountability agreements with all health service providers. The use of standard terms and common formats will support equitable treatment of health service providers across the province, facilitate the administration of Service Accountability Agreements (SAAs) and ensure that the focus is on outcomes and the quality of care and treatment of individuals.

2.0 DEFINITIONS

2.1. **Definitions.** The following definitions are applicable to terms used in this Agreement:

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

Agreement means this agreement and includes the Schedules, as amended from time to time;

Applicable Law, when used in reference to the Hospital means legislation affecting the operations of the Hospital, and when used in reference to the LHIN, means legislation affecting the operations of the LHIN;

Applicable Policies means provincial policies, standards and operating manuals that are identified by the parties and where there is agreement that they apply;

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Base Funding means the funding set out in **Schedule C** on the lines labeled "Opening Base Funding" and "Incremental Base Funding";

Balanced Budget means that in a given Fiscal Year the total corporate revenues (excluding interdepartmental recoveries and facility-related deferred revenues) of the Hospital are greater than or equal to the total corporate expenses (excluding interdepartmental expenses and facility-related amortization expenses) of the Hospital when using the consolidated corporate income statements (all fund types and sector codes) (see subsection 6.1.3);

Capital Initiatives means any initiative of the Hospital related to the construction, renewal or renovation of a facility or site, funded in whole or in part by the Government of Ontario, that is not an Own-Funds Capital Project or part of the HIRF;

CEO means Chief Executive Officer;

CFMA means the *Commitment to the Future of Medicare Act, 2004* as it may be amended from time to time;

Days means calendar days;

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

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

Fiscal Year means a period of 12 consecutive months beginning on April 1 and ending the following March 31;

Funding means the funding provided by the LHIN to the Hospital under this Agreement;

HAA means the hospital accountability agreement previously executed between a hospital and the MOHLTC;

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HAPS means the Board-approved hospital annual planning submission provided by the Hospital to the LHIN for the Fiscal Years 2008-2009 and 2009-2010;

HIRF means the health infrastructure renewal fund established to provide capital funding grants of usually less than \$1 million for the renewal or renovation of a public hospital;

Hospital Services means the clinical services provided by the Hospital, and the operational activities that support those clinical services;

H-SAA means a hospital service accountability agreement, i.e. a SAA between a LHIN and a hospital;

Improvement Plan means a plan that the Hospital may be required to develop under subsection 9.7 of this Agreement;

LHINs mean one or more of the local health integration networks continued or established under the Act;

MOHLTC means the Ministry of Health and Long-Term Care;

Own-Funds Capital Project means a capital project funded by the Hospital without capital funding from the Government of Ontario, including the MOHLTC and the LHIN;

Performance Corridor means the acceptable range of results around a Performance Target;

Performance Factor means any matter that significantly affects a party's ability to fulfill its obligations under this Agreement;

Performance Indicator means a measure of Hospital performance for which a Performance Target is set;

Performance Standard means the acceptable range of performance for a Performance Indicator or Service Volume that results when a Performance Corridor is applied to a Performance Target (as described in the Schedules);

Performance Target means the planned level of performance expected of the Hospital in respect of Performance Indicators or Service Volumes;

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

SAA means a service accountability agreement as that term is defined in the Act;

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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: Planning and Funding Timetable;
- Schedule B: Performance Obligations;
- Schedule C: Hospital Multi-Year Funding Allocation;
- Schedule D: Global Volumes and Performance Indicators;
- Schedule E: Critical Care Funding;
- Schedule F: Post-Construction Operating Plan Funding and Volume;
- Schedule G: Protected Services; and
- Schedule H: Wait Time Services.

Service Volume means a measure of Hospital Services for which a Performance Target has been set.

3.0 APPLICATION AND TERM OF AGREEMENT

- 3.1. A Service Accountability Agreement.** This Agreement is a SAA for the purposes of subsection 20(1) of the Act and Part III of the CFMA. This Agreement sets out the parties' respective obligations as set out in *section 4.0*.
- 3.2. Term.** This Agreement will commence on April 1, 2008 and will terminate on March 31, 2010.
- 3.3. Schedules.** Each Schedule will clearly specify the fiscal period or periods to which it applies.
- 3.4. Application.** This Agreement does not apply to or supersede other funding or contractual arrangements that the Hospital may have with the provincial Crown, Cancer Care Ontario or the federal Crown.

4.0 OBLIGATIONS OF THE PARTIES

- 4.1. The LHIN.** The LHIN will fulfill its obligations under this Agreement in accordance with the terms of this Agreement, Applicable Law and Applicable Provincial Policies.
- 4.2. The Hospital.** The Hospital will fulfill its obligations under this Agreement in accordance with the terms of this Agreement, Applicable Law and Applicable Provincial Policies.

5.0 FUNDING

- 5.1. Annual Funding.** The LHIN will provide the Hospital with the Funding specified in **Schedule C** in equal installments twice monthly unless otherwise agreed. The LHIN is not responsible for any commitment or expenditure by the Hospital in excess of the Funding that the Hospital makes in order to meet its commitments under this Agreement nor does this Agreement commit the LHIN to provide additional funds during or beyond the term of this Agreement.
- 5.2. Planning Allocations.** The Hospital acknowledges that the planning allocations specified in **Schedule C** are targets only, provided solely for the purposes of planning and is subject to confirmation. Funding and the confirmation of **Schedule C** is conditional upon an appropriation of moneys by the Legislature of Ontario to the MOHLTC and funding of the LHIN by the MOHLTC under the Act.
- 5.3. Revisions.** If actual Funding is different than what is specified in **Schedule C**, the parties will negotiate and revise the requirements for Performance Indicators, Performance Standards or Service Volumes, as necessary.

5.4. Adjustments. The LHIN may make in-year, year end and after year end settlement adjustments to the Funding. Increases in Funding specified in **Schedule C** will be carried out in accordance with the provisions of *subsection 5.5*. Any recovery of Funding specified in **Schedule C** will be carried out in accordance with the provisions of *subsection 5.6*.

5.5. Funding Increases. Before the LHIN can make an allocation of additional funds to the Hospital, the parties will: (i) agree on the amount of the increase; (ii) agree on any terms and conditions that will apply to the increase; and (iii) execute an amendment to this Agreement that reflects the agreement reached.

5.6. Funding Recovery.

5.6.1 Recovery of Funding.

(a) Generally. Recovery of Funding specified in **Schedule C** may occur for the following reasons:

- (i) the LHIN makes an overpayment to the Hospital that results in the Hospital receiving more Funding than specified in **Schedule C**;
- (ii) an assessment of financial reductions under *subsection 12.1*;
- (iii) as a result of a system planning process under *section 7.4*;
- (iv) as a result of an integration decision made under section 26 of the Act; and
- (v) as provided for in **Schedule B**.

(b) Recovery of Errors, Penalties and under Schedule B. The LHIN may recover Funding subject to *subsection 5.6.1(a)(i), (ii) or (v)* in accordance with the process outlined in *subsection 5.6.2*.

(c) Recovery of Funding as a Result of System Planning or Integration. If Hospital Services are reduced as a result of a system planning process under *subsection 7.4* or an integration decision made under section 26 of the Act, the LHIN may recover Funding as agreed in the process in *subsection 7.4* or as set out in the decision.

5.6.2 Process of Recovery. If the LHIN, acting reasonably, determines that a recovery of Funding is required under *subsection 5.6.1 (a)(i), (ii) or (v)*, then:

- (i) the LHIN will give 30 Days' notice to the Hospital.
- (ii) The notice will describe:
 - (a) the amount of the proposed recovery;
 - (b) the term of the recovery if not permanent;
 - (c) the proposed timing of the recovery;

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- (d) the reasons for the recovery; and
 - (e) the amendments, if any, that the LHIN proposes be made to the Hospital's obligations under this Agreement.
- (iii) Where a Hospital disputes any matter set out in the notice, the parties will discuss the circumstances that resulted in the notice and the Hospital may make representations to the LHIN about the matters set out in the notice within 14 Days of receiving the notice.
- (iv) The LHIN will consider the representations made by the Hospital and will advise the Hospital of its decision. Funding recoveries, if any, will occur in accordance with the timing set out in the LHIN's decision. No recovery of Funding will be implemented earlier than 30 Days after the delivery of the notice.

5.6.3 Full Consideration. In making a determination under *subsection 5.6.2*, the LHIN will act reasonably and will consider the impact, if any, that a recovery of Funding will have on the Hospital's ability to meet its obligations under this Agreement.

5.6.4 Hospital's Retention of Operating Surplus. In accordance with the MOHLTC's 1982 (revised 1999) Business Oriented New Development Policy (BOND), the Hospital will retain any net income or operating surplus of income over expenses earned in a Fiscal Year, subject to any in-year or year-end adjustments to Funding in accordance with *subsection 5.6.1*. Any net income or operating surplus retained by the Hospital under the BOND policy must be used in accordance with the BOND policy. If using operating surplus to start or expand the provision of clinical services, the Hospital will comply with *subsection 7.3*.

- 5.7. Consideration of Weighted Cases.** Where a settlement and recovery is primarily based on volumes of cases performed by the Hospital, the LHIN may consider the Hospital's actual total weighted cases.
- 5.8. LHIN Discretion Regarding Case Load Volumes.** The LHIN may consider, where appropriate, accepting case load volumes that are less than a Service Volume or Performance Standard, and the LHIN may decide not to settle and recover from the Hospital if such variations in volumes are: (i) only a small percentage of volumes; or (ii) due to a fluctuation in demand for the services.
- 5.9. Settlement and Recovery of Funding for Prior Years.** The Hospital acknowledges that settlement and recovery of Funding can occur up to seven years after the provision of Funding. Recognizing the transition of responsibilities from the MOHLTC to the LHIN, the Hospital agrees that if the parties are directed in writing to do so by the MOHLTC, the LHIN will settle and recover on behalf of the MOHLTC, and the Hospital will enable the recovery of, Funding provided to the Hospital by the MOHLTC in fiscal 2000/01 and every subsequent Fiscal Year up to and including 2006/07. All such settlements and recoveries will be subject to the terms applicable to the original provision of funding.
- 5.10. Debt Owing to the Crown.** Where the Hospital is required to repay the LHIN any amount of the Funding, the amount is a debt owing to the Crown and the LHIN may:
- (i) set-off the amount owing against any further payment under this Agreement or under any other agreement with the LHIN; or
 - (ii) require the Hospital to immediately pay the amount to the MOHLTC.

6.0 HOSPITAL SERVICES

6.1. Funding Conditions.

6.1.1 Funding. The Hospital will ensure that the Funding is:

- (i) used to provide Hospital Services in accordance with *subsection 6.2*;
- (ii) used in accordance with **Schedules B - H**; and
- (iii) not used for major building renovation or construction, or for direct expenses relating to research projects.

6.1.2 Provision for the Recovery of Funding. The Hospital will make reasonable and prudent provision for the recovery by the LHIN of any Funding that the LHIN may recover under this Agreement and will hold this Funding in an interest bearing account until such time as reconciliation and settlement has occurred with the LHIN. Interest earned on Funding will be recoverable by the LHIN or be used for the provision of Hospital Services in accordance with this Agreement.

6.1.3 Balanced Budget.

- (a) **Basic Requirement.** The Hospital will achieve and maintain a Balanced Budget.
- (b) **Facilitating a Balanced Budget.** The parties will work together to identify budgetary flexibility and manage in-year risks and pressures to facilitate the achievement of a Balanced Budget for the Hospital and a balanced budget for the LHIN.
- (c) **Waiver.** The obligation to achieve a Balanced Budget may be waived by the LHIN as follows:
- (i) Where the Hospital has the capacity to fund a negative margin, it can request a different target. The LHIN may consider the request based upon the overall financial health of the Hospital (as measured by its Current Ratio), the Hospital's commitment to use its working capital to fund its deficit and the Hospital's plan to achieve a Balanced Budget within an agreed upon timeframe; or
 - (ii) The LHIN may consider accepting a proposed deficit where the LHIN has determined that achievement of a Balanced Budget position is not feasible in such cases the LHIN may agree to a reasonable deficit in the first Fiscal Year of the H-SAA as long as a Balanced Budget will be achieved within a timeframe acceptable to the LHIN.

Prior to considering a waiver of the Balanced Budget requirement, the LHIN must first work with the Hospital under *subsection 6.1.3(b)* determine whether a waiver is necessary and/or appropriate. Any waiver granted under this *subsection 6.1.3(c)* at the discretion of the LHIN and will be subject to conditions, including, but not limited to: (i) a requirement that the Hospital comply with a plan approved by the LHIN to achieve a Balanced Budget within a defined period of time; and (ii) monitoring requirements. The conditions of any waiver of *subsection 6.1.3(a)* that may be granted by the LHIN will be set out in **Schedule B**.

Where such a waiver is granted, it and the conditions attached to it will form part of this Agreement.

6.2. Hospital Services. The Hospital will:

- (i) achieve the Performance Standards described in the Schedules;
- (ii) not reduce, stop, start, expand, cease to provide or transfer the provision of Hospital Services to another hospital or to another site of the Hospital if such action would result in the Hospital being unable to achieve the Performance Standards described in the Schedules; and
- (iii) not restrict or refuse the provision of Hospital Services to an individual based on the geographic area in which the person resides in Ontario.

- 6.3. E-health; Interoperability of Ontario's Health System.** The MOHLTC has agreed to set, in consultation with the LHIN and others, as appropriate, technical standards related to e-Health and the interoperability of Ontario's health system. It is expected that the LHINs will consult the hospital sector when setting these standards. The Hospital agrees to comply with any standards set by Ontario Health Informatics Standards Council that are approved for use.

7.0 PLANNING

- 7.1. Planning Cycle.** The parties will use, and meet the due dates in, the planning cycle in Part II of **Schedule A** ("Planning Cycle") for Fiscal Years 2010/11 and 2011/12.
- 7.2. Community Engagement.** The Hospital acknowledges that it is required by subsection 16(6) of the Act to engage the community of diverse persons and entities in the area where it provides health services when developing plans and setting priorities for the delivery of health services. The Hospital agrees to communicate with the LHIN on its efforts and activities in community engagement.
- 7.3. System Planning.** The parties will collaborate and cooperate in matters that affect them concerning health system improvement. If the Hospital is planning to significantly reduce, stop, start, expand, cease to provide or transfer the provision of Hospital Services to another hospital or to another site of the Hospital, it will inform the LHIN.
- 7.4. Process for System Planning.**

If:

- (i) the Hospital has identified an opportunity to integrate its Hospital Services with that of one or more other health service providers;
- (ii) the health service provider or providers, as the case may be, has or have agreed to the proposed integration with the Hospital;
- (iii) the Hospital and the health service providers have agreed on the amount of funds needed to be transferred from the Hospital to one or more other health service providers to effect the integration as planned between them;
- (iv) the Hospital has complied with its obligations under section 27 of the Act;

then the LHIN may recover from the Hospital, Funding specified in **Schedule C** and agreed by the Hospital as needed to facilitate the integration.

7.5. Capital Projects.

7.5.1 Capital Initiatives. The Hospital acknowledges that the LHIN will provide advice to the MOHLTC about the consistency of a Hospital's Capital Initiative with local health system needs during the MOHLTC's review and approval processes, including at the pre-proposal, business case or functional program stages and that

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the MOHLTC will continue to be responsible for the approval and funding of approved Capital Initiatives.

7.5.2 Own-Funds Capital Projects. The Hospital acknowledges that until such time as the MOHLTC devolves the review and approval process for Own-Funds Capital Projects to the LHIN, the LHIN will provide advice to the MOHLTC about the consistency of the Hospital's Own-Funds Capital Project with local health system needs during the MOHLTC's review and approval processes, including at the pre-proposal, business case or functional program stages.

7.5.3 HIRF. The Hospital acknowledges that starting in Fall 2007, the LHIN will approve eligible HIRF projects in accordance with the MOHLTC's guidelines. The MOHLTC will continue to be responsible for the funding of approved HIRF projects.

7.6. Reviews and Approvals.

7.6.1 Timely Response. Subject to *subsection 7.6.2*, and except as expressly provided by the terms of this Agreement, the LHIN will respond to Hospital submissions requiring a response from the LHIN in a timely manner and in any event, within the time period set out in **Schedule B**. If the LHIN has not responded to the Hospital within the time period set out in **Schedule B**, following consultation with the Hospital, the LHIN will provide the Hospital with written notice of the reasons for the delay and a new expected date of response. If a delayed response from the LHIN could reasonably be expected to have a prejudicial effect on the Hospital, the Hospital may refer the matter for issue resolution under *section 10.0*.

7.6.2 Exceptions. *Subsection 7.6.1* does not apply to: (i) any notice provided to the LHIN under section 27 of the Act, which shall be subject to the timelines of the Act; and (ii) any report required to be submitted to the MOHLTC by the LHIN for which the MOHLTC response is required before the LHIN can respond.

8.0 REPORTING AND DOCUMENT RETENTION

- 8.1. General Reporting Obligations.** The Hospital will provide to the LHIN, or to such other entity as the parties may reasonably agree, in the form and within the time specified by the LHIN, the plans, reports, financial statements or other information ("Information"), other than personal health information as defined in subsection 31(5) of the CFMA, that: (i) the 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) that may be requested under the CFMA.
- 8.2. Specific Reporting Obligations.** Without limiting the foregoing, the Hospital will fulfill the specific reporting requirements set out in **Schedule B**. The Hospital will ensure that all reports are in a form satisfactory to the LHIN, are complete, accurate, signed on behalf of the Hospital by a person authorized to sign them and provided to the LHIN in a timely manner.
- 8.3. Confidential Information.** If any Information submitted by the Hospital under this Agreement contains information that is of a confidential nature, then the LHIN will treat that Information as confidential and will not disclose the Information except with the consent of the Hospital or under the *Freedom of Information and Protection of Privacy Act*, which the Hospital acknowledges applies to the LHIN.
- 8.4. Disclosure of Information.** The LHIN may disclose information that it collects under this Agreement in accordance with the Act, the CFMA, the *Freedom of Information and Protection of Privacy Act*, court order or subpoena.
- 8.5. Document Retention.** The Hospital will retain all records (as that term is defined in the *Freedom of Information and the Protection of Privacy Act*) related to the Hospital's performance of its obligations under this Agreement for seven years after the expiration of the term of this Agreement.

9.0 PERFORMANCE MANAGEMENT AND IMPROVEMENT

- 9.1. General Approach.** The parties will follow a proactive, collaborative and responsive approach to performance management and improvement. Either party may request a meeting at any time. The parties will use their best efforts to meet as soon as possible following a request.
- 9.2. Notice of a Performance Factor.** Each party will notify the other party, as soon as reasonably possible, of any Performance Factor. The notice will:
- (i) describe the Performance Factor and its actual or anticipated impact;
 - (ii) include a description of any action the party is undertaking, or plans to undertake, to remedy or mitigate the Performance Factor;
 - (iii) indicate whether the party is requesting a meeting to discuss the Performance Factor; and

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- (iv) address any other issue or matter the party wishes to raise with the other party, including whether the Performance Factor may be a Factor Beyond the Hospital's Control.

The recipient party will acknowledge in writing receipt of the notice within five Days of the date on which the notice was received ("Date of the Notice").

- 9.3. Performance Meetings.** Where a meeting has been requested under *subsection 9.2(iii)*, the parties will meet to discuss the Performance Factor within 14 Days of the Date of the Notice. A LHIN can require a meeting to discuss the Hospital's performance of its obligations under this Agreement, including but not limited to a result for a Performance Indicator or a Service Volume that falls outside the applicable Performance Standard.
- 9.4. Performance Meeting Purpose.** During a performance meeting, the parties will:
- (i) discuss the causes of the Performance Factor;
 - (ii) discuss the impact of the Performance Factor and the relative risk of non-performance; and
 - (iii) determine the steps in the performance improvement process to be taken to remedy or mitigate the impact of the Performance Factor.
- 9.5. Performance Improvement Process.** The purpose of the performance improvement process is to remedy or mitigate the impact of a Performance Factor. The performance improvement process may include:
- (i) a requirement that the Hospital develop an Improvement Plan; or
 - (ii) an amendment of the Hospital's obligations as mutually agreed by the parties.
- 9.6. Factors Beyond the Hospital's Control.** If the LHIN, acting reasonably, determines that the Performance Factor is, in whole or in part, a Factor Beyond the Hospital's Control:
- (i) the LHIN will collaborate with the Hospital to develop and implement a mutually agreed upon joint response plan which may include an amendment of the Hospital's obligations under this Agreement;
 - (ii) the LHIN will not require the Hospital to prepare an Improvement Plan; and
 - (iii) the failure to meet an obligation under this Agreement will not be considered a breach of the Agreement for the purposes of paragraph 5 of subsection 24(1) of the CFMA, to the extent that failure is caused by a Factor Beyond the Hospital's Control.
- 9.7. Hospital Improvement Plan.**
- 9.7.1 Development of an Improvement Plan.** If, as part of a performance improvement process, the LHIN requires the Hospital to develop an Improvement

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Plan, the process for the development and management of the Improvement Plan is as follows:

- (i) The Hospital will submit the Improvement Plan to the LHIN within 30 Days of receiving the LHIN's request. In the Improvement Plan, the Hospital will identify remedial actions and milestones for monitoring performance improvement and the date by which the Hospital expects to meet its obligations.
- (ii) Within 15 business Days of its receipt of the Improvement Plan, the LHIN will advise the Hospital which, if any, remedial actions the Hospital should implement immediately. If the LHIN is unable to approve the Improvement Plan as presented by the Hospital, subsequent approvals will be provided as the Improvement Plan is revised to the satisfaction of the LHIN.
- (iii) The Hospital will implement all aspects of the Improvement Plan for which it has received written approval from the LHIN, upon receipt of such approval.
- (iv) The Hospital will report quarterly on progress under the Improvement Plan, unless the LHIN advises the Hospital to report on a more frequent basis. If Hospital performance under the Improvement Plan does not improve by the timelines in the Improvement Plan, the LHIN may agree to revisions to the Improvement Plan.

The LHIN may require, and the Hospital will permit and assist the LHIN in conducting, an operational and/or financial audit of the Hospital to assist the LHIN in its consideration and approval of the Improvement Plan. The Hospital will pay the costs of these audits.

9.7.2 Peer/LHIN Review of Improvement Plan. If Hospital performance under the Improvement Plan does not improve in accordance with the Improvement Plan, or if the Hospital is unable to develop an Improvement Plan satisfactory to the LHIN, the LHIN may appoint an independent team to assist the Hospital to develop an Improvement Plan or revise an existing Improvement Plan. The independent team will include a representative from another hospital selected with input from the OHA. The independent team will work closely with the representatives from the Hospital and the LHIN. The Hospital will submit a new Improvement Plan or revisions to an existing Improvement Plan within 60 Days of the appointment of the independent team.

9.7.3 Costs. The Hospital will pay for costs incurred by the Hospital in developing an Improvement Plan and costs incurred by an independent team assisting the Hospital to either develop or revise an Improvement Plan.

10.0 ISSUE RESOLUTION

- 10.1. Principles to be Applied.** The parties will use their best efforts to resolve issues and disputes in a collaborative manner. This includes avoiding disputes by clearly articulating expectations, establishing clear lines of communication, and respecting each party's interests.
- 10.2. Informal Resolution.** The parties will use their best efforts to resolve all issues and disputes through informal discussion and resolution. To facilitate and encourage this informal resolution process, the parties will use their best efforts to jointly develop a written issues statement. The issues statement will describe the facts and events leading to the issue or dispute and will list potential options for its resolution. If the issue or dispute cannot be resolved at the level at which it first arose, either party may refer it to the Senior Director of Performance Contracts and Allocations of the LHIN and to his or her counterpart in the senior management of the Hospital. If senior management is unable to resolve the issue or dispute, each party will refer it to its respective CEO. The CEOs will meet within 14 Days of this referral and will use their best efforts to resolve the issue or dispute.
- 10.3. Formal Resolution.** If the issue or dispute remains unresolved 30 Days after the first meeting of the CEOs, then the LHIN will either: (a) provide the Hospital with its decision to resolve the issue or dispute; or (b) provide the Hospital with notice under subsection 24(1) of the CFMA. The parties agree that before invoking the provisions of *subsection 10.3 or 10.4*, the parties' respective Boards Chairs (or Board member designate) will be engaged in the attempt to resolve the issue or dispute.
- 10.4. CFMA Resolution.** If the LHIN provides notice under subsection 24(1) of the CFMA, then the resolution of the issue or dispute will thereafter be governed by the dispute resolution provisions of the CFMA.

11.0 INSURANCE AND INDEMNITY

- 11.1. Insurance.** The Hospital shall maintain Comprehensive Professional and General Liability insurance against claims for bodily injury, death or property damage or loss arising out of the performance of the Hospital's obligations under this Agreement, including the provision of Hospital Services, indemnifying and protecting the LHIN and her Majesty the Queen as represented by the Minister of Health and Long Term Care ("HMQ") but only with respect to liability arising from this Agreement, to an amount of not less than the maximum limit of liability maintained under the Hospital's Comprehensive Professional and General Liability Insurance coverage, in respect of any one accident or occurrence. Any and all such policies of such insurance shall be for the mutual benefit of the Hospital, the LHIN and HMQ and shall include coverage providing for cross liability and severability of interest. The Hospital agrees to include the LHIN and HMQ as additional insureds.
- 11.2. Indemnity.** The Hospital will indemnify and save harmless the LHIN and its officers, employees, directors, independent contractors, subcontractors, agents, and assigns and HMQ and her Ministers, employees, directors, independent contractors, subcontractors, agents and assigns (together the "Indemnified Persons"), from all

costs, losses, damages, judgments, claims, demands, suits, actions, causes of action or other proceedings of any kind or nature (a "Claim"), based on, occasioned by, or attributable to anything done or omitted to be done by the Hospital or the Hospital's directors, agents, employees and/or students related to or arising out of this Agreement, including all legal expenses and costs incurred by an Indemnified Person in defending any legal action pertaining to the Claim, except to the extent that the Claim arose as a direct result of the gross negligence or willful misconduct of the LHIN or HMQ.

12.0 REMEDIES FOR NON-COMPLIANCE

12.1. Planning Cycle. The success of the Planning Cycle depends on the timely performance of each party. To ensure delays do not have a material adverse effect on Hospital Services or LHIN operations, the following provisions apply:

- (i) If the LHIN fails to meet an obligation or due date in **Schedule A**, the LHIN may do one or all of the following:
 - (a) adjust funding for Fiscal Year 2009/10 to offset a material adverse effect on Hospital Services resulting from the delay; and/or
 - (b) work with the Hospital in developing a plan to offset any material adverse effect on Hospital Services resulting from the delay, including providing LHIN approvals for any necessary changes in Hospital Services.
- (ii) At the discretion of the LHIN, the Hospital may be subject to a financial reduction if the Hospital's:
 - (a) HAPS is received by the LHIN after the due date in Schedule A without prior LHIN approval of such delay;
 - (b) HAPS is incomplete;
 - (c) quarterly performance reports are not provided when due; or
 - (d) financial and/or clinical data requirements are late, incomplete or inaccurate.

If assessed, the financial reduction will be as follows:

- (i) if received within seven Days after the due date, incomplete or inaccurate, the financial penalty will be the greater of: (i) a reduction of 0.03% of the Hospital's Base Funding; or (ii) \$2,000; and
- (ii) for every full or partial week of non-compliance thereafter, the rate will be one half of the initial financial reduction.

13.0 DENOMINATIONAL HOSPITALS

13.1. For the purpose of interpreting this Agreement, nothing in this Agreement is intended to, and this Agreement will not be interpreted to, unjustifiably, as determined under section 1 of the *Canadian Charter of Rights and Freedoms*, require a Hospital with a denominational mission to provide a service or to perform a service in a manner that is contrary to the denominational mission of the Hospital.

14.0 NOTICE

14.1. Notice. Any notice required to be given under this Agreement must be in writing. Notice will be sufficiently given if a party delivers it personally, by courier or by fax to the other party at the address set out below.

North West Local Health Integration
Network
Gwen DuBois-Wing
Chief Executive Officer
975 Alloy Drive, Suite 201
Thunder Bay, ON P7B 5Z8

(807) 684-9533

St. Joseph's Care Group

Tracy Buckler
President and Chief Executive Officer
35 Algoma Street North
P.O. Box 32
Thunder Bay, ON P7B 5G7
(807) 345-4994

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- 14.2. Effective Date.** All notices will be effective at the time the delivery is made when the notice is delivered personally, by courier or by fax provided that the sender of the notice has a written confirmation that the notice was received during the recipient's ordinary business hours. If delivered outside ordinary business hours, the notice will be effective at 9 a.m. at the start of the next business Day.
- 14.3. LHIN Representative.** The LHIN's representative for the purposes of implementing any adjustments to Funding may be a person other than the person named in this section.

15.0 ADDITIONAL PROVISIONS

- 15.1. Interpretation.** In the event of a conflict or inconsistency in any provision of this Agreement, the main body of this Agreement will govern over the Schedules.
- 15.2. Transparency.** As required by the CFMA, the Hospital 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.
- 15.3. Amendment.** The parties may amend this Agreement (including any amendment that adds additional Schedules or amends existing Schedules) and amendments will be in writing and executed by duly authorized representatives of each party.
- 15.4. Severability.** 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.
- 15.5. Assignment and Assumption.** The Hospital requires the prior written consent of the LHIN to assign this Agreement or the Funding in whole or in part. 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 Minister.
- 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 the Act. 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 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.
- 15.7. Relationship of the Parties.** The Hospital will have no power or authority to bind the LHIN or to assume or create any obligation or responsibility, express or implied, on behalf of the LHIN. The Hospital will not hold itself out as an agent, partner or employee of the LHIN. Nothing in the Agreement will have the effect of creating an employment, partnership or agency relationship between the LHIN and the Hospital (or any of the Hospital's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

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- 15.8. Survival.** The provisions in *sections 2.1, 5.1, 5.4, 5.6, 5.9, 6.1.1, 6.1.2, 6.1.3(c), 6.2(i), 7.4, 8.3, 8.4, 8.5, 9.5, 9.6, 9.7, 10.0, 11.2, 12.1, 13.1, 14.0, 15.1, 15.6 and 15.12* will survive the termination or expiry of this Agreement.
- 15.9. Waiver.** The LHIN or the Hospital may waive in writing any of the other party's obligations under this Agreement. A waiver of any failure to comply with any term of this Agreement will not have the effect of waiving any subsequent failures to comply.
- 15.10. Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 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. 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.
- 15.13. Entire Agreement.** This Agreement 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.

IN WITNESS WHEREOF the parties have executed this Agreement made effective as of April 1, 2008.

St. Joseph's Care Group

By:

Name

Chair

I sign as a representative of the Hospital, not in my personal capacity, and I represent that I have authority to bind the Hospital.

And By:

Tracy Buckler

President and Chief Executive Officer

I sign as a representative of the Hospital, not in my personal capacity, and I represent that I have authority to bind the Hospital.

Date

Date

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NORTH WEST LOCAL HEALTH INTEGRATION NETWORK

By:

Name
Chair

Date

And By:

Gwen DuBois-Wing
Chief Executive Officer

Date

Facility No. 781