

General Conditions
for
Local Health Integration Network
Equipment and Supplies Agreement

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GENERAL CONDITIONS

SECTION 1 - DEFINITIONS, CONSTRUCTION AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

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

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

“**Agreement Year**” means,

- (a) the First Agreement Year; and
- (b) a period of 12 calendar months during the Agreement Term that commences on the anniversary of the Starting Date and ends on the day before the anniversary of the Starting Date in the following year;

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

“**Authorized Person**” means a person that has a need for access to Client Information in order to enable the Service Provider to deliver the Services and that is subject to obligations of confidentiality and data protection no less stringent than those of this Agreement or who is a health information custodian (as

defined in the Personal Health Information Protection Act) to whom Client Information is provided for the purpose of providing health care in accordance with Applicable Law;

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

“**Caregiver**” is defined in SS Section 1.1 of the Services Schedule;

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

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

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

“**Client**” is defined in SS Section 1.1 of the Services Schedule;

“**Client Information**” means, with respect to identifiable Clients for whom the Service Provider has either accepted a Service Request or received a Service Request containing a Client’s personal information, in accordance with SS Section 3 any information in any form, whether recorded or not, including personal health information as the term is defined in the *Personal Health Information Protection Act* with respect to those Clients, whether provided by the LHIN to the Service Provider in connection with this Agreement or collected, obtained, compiled or created by the Service Provider in connection with the delivery of Services;

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

“**Communicable Disease**” means a disease capable of being transmitted from an infected person or species to a susceptible host, either directly or indirectly;

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

- (a) the business or management of either Party, its affiliates or its licensors;
- (b) the Clients, including Client Information; and
- (c) software,

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

- (d) is or becomes publicly available through no fault of the other Party;
- (e) is already in the rightful possession of the other Party prior to its receipt from the disclosing Party;
- (f) is independently developed by the other Party; or
- (g) is rightfully obtained by the other Party from a Third Party without breach of any confidentiality restrictions.

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

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

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

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

“**End Date**” is defined in GC Section 2.3;

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

“**Equipment**” is defined in SS Section 1.1 of the Equipment and Equipment Related Supplies Services Schedule;

“**Equipment and Supplies**” is defined in GC Section 3.1.1;

“**Equipment and Supplies List**” means, as applicable, a Medical Supplies List, an Equipment and Equipment-Related Supplies List or an Infusion Equipment and Infusion Supplies List, as defined in SS Section 1.1 of the applicable Services Schedule;

“**Equipment-Related Supplies**” is defined in SS 1.1 of the Equipment and Equipment-Related Supplies Services Schedules;

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended from time to time;

“**First Agreement Year**” means a period of 12 calendar months during the Agreement Term that commences on the Starting Date and ends on the day before the anniversary of the Starting Date;

“**for clarity**” and “**for the purpose of clarity**” mean for the purpose of providing further clarity or examples in the interest or aiding in the interpretation of the applicable section;

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

“**Immediate Delivery**” is defined in SS Section 1.1 of the Services Schedule;

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

“**Individually Scheduled Delivery**” is defined in SS Section 1.1 of the Services Schedule.

“**Infusion Equipment**” is defined in SS Section 1.1 of the Infusion Equipment and Infusion Supplies Schedule;

“**Infusion Supplies**” is defined in SS 1.1 of the Infusion Equipment and Infusion Supplies Services Schedule;

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

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

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

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

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

"LHIN Default Termination Date" is defined in GC Section 12.2.1(5);

"LHIN Indemnified Parties" is defined in GC Section 8.3(1);

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

"LHIN-Owned Equipment", if applicable, is defined in SS Section 1.1 of the Equipment and Equipment-Related Supplies Services Schedule;

"LHIN-Owned Infusion Equipment", if applicable, is defined in SS Section 1.1 of the Infusion Equipment and Infusion Supplies Schedule;

"LHIN Works" is defined in GC Section 6.1(4);

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

"Medical Supplies" is defined in SS 1.1 of the Medical Supplies Services Schedule;

"MOHLTC" means the Ministry of Health and Long-Term Care (Ontario);

"Notice" is defined in GC Section 14.1(1);

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

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

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

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

"Order" means a Medical Supplies Order, an Equipment Order, an Equipment-Related Supplies Order an Infusion Equipment Order and/or an Infusion Supplies Order, as applicable;

"Other LHIN Service Provider" means providers of Medical Supplies, Equipment and Equipment-Related Supplies, or Infusion Equipment and Infusion Supplies, other than the Service Provider;

"Other Service Providers" is defined in SS Section 1.1 of the Services Schedule;

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

"Pending Agreement Change Order" is defined in GC Section 10.2.2(8);

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

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

“**Price Form**” means the price form attached as Attachment 1 to the Pricing and Compensation Schedule;

“**Prices**” is defined in Section 1.1(1) of the Pricing and Compensation Schedule;

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

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

“**Proposal Stream**” means Proposal Stream as it was defined in the RFP;

“**Quality Operating Standards**” is defined in PSS Section 2.1(3) of the Performance Standards Schedule;

“**Recall**” is defined in SS Section 1.1 of the Services Schedule.

“**Registered Pharmacist**”, if applicable, is defined in SS Section 1.1 of the Infusion Equipment and Infusion Supplies Services Schedule;

“**Regularly Scheduled Delivery**” is defined in SS Section 1.1 of the Services Schedule;

“**Regulated Health Professional**” is defined in the *Regulated Health Professionals Act*,

“**Regulated Health Professionals Act**” means Ontario *Regulated Health Professionals Act*, 1991, S.O. 1991, c.18, as amended from time to time;

“**Renewal Period**” is defined in GC Section 2.5(3);

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

“**Request for Proposal**” or “**RFP**” means the competitive procurement process, if any, that preceded and resulted in the award of this Agreement to the Service Provider;

“**RFP Process**” means the request for proposals process that preceded the award of this Agreement;

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

“**Service Delivery Location**” is defined in SS Section 1.1 of the Services Schedule;

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

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

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

“**Service Provider Personnel**” is defined in SS Section 1.1 of the Services Schedule;

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

“**Service Requests**” is defined in SS Section 1.1 of the Services Schedule;

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

“**Significant Event Report**” is defined in SS Section 1.1 of the Services Schedule;

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

“**Start-Up Transition Period**” is defined in SS Section 1.1 of the Services Schedule, if applicable;

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

“**Subsequent Agreement**” is defined in GC Section 2.6.2(4);

“**Subsequent Service Provider**” is defined in SS Section 1.1 of the Services Schedule;

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

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

“**Third Party Claims**” is defined in GC Section 8.3(2);

“**Total Estimated Equipment-Related Supplies Price**” is defined in Section 1.1(1) the Pricing and Compensation Schedule; and

“**Total Estimated Equipment Rental Price**” is defined in the Pricing and Compensation Schedule.

1.2 Construction and Interpretation

1.2.1 Headings and Tables of Contents

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

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

1.2.2 Number and Gender

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

1.2.3 Accounting Principles

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

1.2.4 Number of Days and Calculation of Time Periods

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

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

1.2.5 Currency and Payment

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

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

1.2.6 Calculation of Interest

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

1.2.7 References to Legislation

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

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

1.2.8 Section References

(1) "GC", when used in a section reference, as in "GC Section 1.2", means the General Conditions.

(2) "SS", when used in a section reference, means the Services Schedule to the General Conditions.

(3) "PSS", when used in a section reference, means the Performance Standards Schedule to the General Conditions.

1.2.9 Persons

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

1.3 Agreement Documents - Entire Agreement

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

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

- (a) Schedule 1 – “Special Conditions of the Agreement”;
- (b) Schedule 2 – “Pricing and Compensation Schedule”;
- (c) Schedule 3 – “Services Schedule” and if more than one Services Schedule is listed in the Special Conditions, “Services Schedules” refers to all Services Schedules listed in the Special Conditions;
- (d) Schedule 4 – “Performance Standards Schedule” and if more than one Performance Standards Schedule is listed in the Special Conditions, “Performance Standards Schedule” means all Performance Standards Schedules listed in the Special Conditions; and
- (e) Addenda to the RFP, if any, and only those sections of the Addenda that amend specific named sections of the Agreement Documents – “Addenda”.

SECTION 2 - TERM OF THE AGREEMENT

2.1 Effectiveness of Agreement

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

2.2 Commencement of Supply and Services

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

(2) The LHIN shall maintain responsibility for providing the Equipment and Supplies and Services (through its existing Service Provider) prior to the Starting Date.

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

2.3 Expiration of Agreement

This Agreement shall end on the time and date set out in the Special Conditions unless terminated earlier pursuant to GC Section 12 or renewed pursuant to GC Section 2.5 (in all cases, the “End Date”).

2.4 Agreement Term

The term of this Agreement, which shall be a term commencing on the Effective Date and ending on the End Date, which, for clarity includes any renewal term, is referred to in this Agreement as the “Agreement Term”. The original term of this Agreement (from the Effective Date to the original End Date set out in the Special Conditions) is referred to in this Agreement as the “Initial Agreement Term”.

2.5 Renewal of the Agreement

(1) Subject to GC Section 2.5(2), the LHIN and the Service Provider may, upon their mutual agreement in writing, renew this Agreement on the expiration of the Initial Agreement Term.

(2) The Parties may renew this Agreement subject to the conditions set out in the Special Conditions.

(3) For the purpose of clarity, the prices for the applicable period of renewal (the “Renewal Period”) are intended to be based only on the changes in costs and expenses for the Renewal Period. Any Service Provider losses or shortfall in profit incurred by the Service Provider prior to the Renewal Period shall not be considered as part of the renegotiation of Prices for the Renewal Period.

(4) To be eligible for a renewal, the Service Provider must provide detailed financial information as to the Service Provider’s costs and expenses related to the Services for each partial or full Agreement Year up to the Renewal Period sufficient to assess the appropriate prices during the Renewal Period.

(5) To be eligible for a renewal, the Service Provider must have met its obligations pursuant to the Agreement during the Initial Agreement Term.

(6) With respect to a change in Performance Standards, the LHIN shall provide proposed revisions to the Performance Standards to the Service Provider prior to the Parties’ discussions with respect to renewal of the Agreement and any increases or decreases to Prices in accordance with GC Section 2.5(2). If the LHIN does not wish to change the Performance Standards, the Performance Standards applicable during the last Agreement Year or partial Agreement Year of the Initial Agreement Term shall apply to all full or partial Agreement Years of the Renewal Period.

(7) For clarity, neither the LHIN nor the Service Provider is obliged to renew this Agreement beyond the Initial Agreement Term.

(8) In respect of the renewal of an Agreement for only Equipment and Equipment-Related Supplies, there may be special rules relating to the Parties’ rights in the event of a significant change in the estimated volume of Equipment and Equipment-Related Supplies delivered under this Agreement. If such special rules apply, they will be set out in the Special Conditions.

2.6 Transition

2.6.1 Start-Up Transition

(1) The Parties acknowledge and agree that notwithstanding that the LHIN shall commence ordering Equipment and Supplies pursuant to this Agreement on the Starting Date, there shall be a start-up transition period in accordance with SS Section 2.2.1 of the Services Schedule, as applicable.

(2) The Service Provider shall conduct its Start-Up Transition Period activities in accordance with the Services Schedule.

(3) The Start-Up Transition Period shall not exceed a period of 90 days.

2.6.2 End Date Transition

(1) Prior to the End Date, the LHIN may commence a period of time during which the LHIN will carry out a gradual discontinuance of the ordering of Equipment and Supplies under this Agreement and ordering from a Subsequent Service Provider in accordance with SS Section 2.2.3 (the “End Date Transition Period”).

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

(3) The End Date Transition Period shall not exceed a period of 90 days.

(4) If the Service Provider is awarded a new agreement to provide equipment and supplies and services to the LHIN on the expiration of this Agreement that are generally the same as the Equipment and Supplies and Services as this Agreement (the “Subsequent Agreement”), the LHIN may, in its sole discretion, terminate this Agreement up to 60 days prior to the End Date provided that the Subsequent Agreement has been executed by all parties to the Subsequent Agreement and the date for the commencement of the provision of equipment and supplies and services under the Subsequent Agreement precedes or is the same as the early termination date of this Agreement pursuant to this GC Section 2.6.2(4).

2.6.3 Transition Dates

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

SECTION 3 - SERVICE PROVIDER’S OBLIGATIONS

3.1 Equipment and Supplies and Services

3.1.1 Equipment and Supplies and Services to be Provided by the Service Provider

(1) The Service Provider shall provide the medical equipment or medical supplies, or both, as set out in the Equipment and Equipment-Related Supplies Schedule, the Infusion Equipment and Infusion Supplies Schedule or the Medical Supplies Schedule, as applicable, (the “Equipment and Supplies”) and carry out the Services set out in the Services Schedule or Services Schedules, as applicable.

(2) For clarity, Equipment and Supplies includes LHIN-Owned Equipment and LHIN-Owned Infusion Equipment.

3.1.2 Performance Standards

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

3.1.3 Service Area

(1) The Service Provider shall provide Equipment and Supplies and perform the Services in the geographic area described in the Special Conditions (the “Service Area”).

(2) The LHIN may, in its sole discretion, require the Service Provider to provide Equipment and Supplies and perform the Services at any location in the Service Area and may, in its sole discretion, designate particular parts of the Service Area to be served by specific Service Providers.

(3) Notwithstanding anything else to the contrary in this Agreement, the Service Provider shall not refuse Orders based on the location of the Client in the Service Area.

3.1.4 Volume and Non-Exclusivity

(1) The Service Provider acknowledges that the LHIN may enter into similar agreements with several Service Providers at the same time, for the same type of Equipment and Supplies and Services in the same Service Area. The Service Provider acknowledges and agrees that it does not have any right whatsoever to provide Services or the Equipment and Supplies in the Service Area.

(2) The Parties acknowledge and agree that the estimates set out in the Price Forms are solely for purposes of evaluation during the RFP Process and do not represent any commitment by the LHIN with respect to the ordering of Equipment and Supplies during the Agreement Term.

3.1.5 Temporary Withdrawal of Services

(1) A Service Provider may temporarily suspend the delivery of Services to an individual Client if delivering the Services would, or would likely,

- (a) cause harm or risk to Service Provider Personnel; or
- (b) subject Service Provider Personnel to harassment or abuse,

that is atypical in the provision of the Services and which harm or risk is not inherent in the delivery of the Services.

(2) If the Service Provider temporarily suspends the provision of Equipment and Supplies and Services pursuant to GC Section 3.1.5(1), then,

- (a) the Service Provider shall,
 - (i) if possible, notify the LHIN prior to withdrawing Services;
 - (ii) submit a Risk Event Report to the LHIN pursuant to SS Section 10.2; and
 - (iii) provide, to the LHIN, an assessment of the risks to the Client that may result due to the withdrawal of Services pursuant to GC Section 3.1.5(1);
- (b) on the request by the LHIN and at the LHIN's expense, the Service Provider shall provide an independent Third Party assessment of the withdrawal of Services pursuant to GC Section 3.1.5(1) carried out by an independent Third Party assessor agreed to by the LHIN and compensated in accordance with the Special Conditions;
- (c) the independent Third Party assessment carried out in accordance with GC Section 3.1.5(2)(b) shall determine whether the withdrawal of Services was carried out in accordance with GC Section 3.1.5(1);
- (d) the Service Provider shall develop, with the assistance of the LHIN, and implement a plan to resume the delivery of Services to the Client as soon as possible; and
- (e) the Service Provider shall cooperate with the LHIN in alternative service delivery planning for that Client.

3.1.6 Permanent Withdrawal of Services

(1) The Service Provider may permanently withdraw the provision of Equipment and Supplies and Services from an individual Client if,

- (a) the delivery of Services to the Client would cause the Service Provider to breach the Applicable Law relating to the health and safety of its Service Provider Personnel; and
- (b) the LHIN authorizes the permanent withdrawal of the Services.

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

- (a) states the reason for permanently withdrawing the Equipment and Supplies and Services;
- (b) documents the measures the Service Provider has taken in an attempt to address the problem necessitating the withdrawal; and
- (c) sets the date for withdrawal of the Services.

(3) The LHIN may, in its sole discretion,

- (a) approve the Service Provider's request for withdrawal of Equipment and Supplies and Services; or
- (b) acting reasonably and in accordance with the Applicable Law refuse the Service Provider's request for withdrawal of Equipment and Supplies and Services and either,
 - (i) require the Service Provider to continue delivering Equipment and Supplies and Services to the Client; or
 - (ii) at the Service Provider's option, allow the Service Provider to withdraw from the delivery of Equipment and Supplies and Services to the Client and the withdrawal pursuant to this GC Section 3.1.6(3)(b)(ii) shall be deemed as a failure of the Service Provider to fill an Order in accordance with SS Section 3.4(3) of the Services Schedule.

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

(4) Subject to GC Section 3.1.5, the Service Provider shall continue to provide Equipment and Supplies and Services until the LHIN makes its determination with respect to the permanent withdrawal of Equipment and Supplies and Services.

(5) The LHIN may, in its sole discretion, withdraw Equipment and Supplies and Services from an individual Client for any reason the LHIN deems necessary, including withdrawal because of Client complaints about the Service Provider.

(6) If the Client appeals any decision of the LHIN to withdraw Equipment and Supplies and Services from the Client, the Service Provider shall cooperate with, and provide assistance to, the LHIN in connection with the Client's appeal.

3.2 Subcontractors

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

(2) The Service Provider shall obtain the prior written approval of the LHIN before replacing or hiring any Subcontractor to provide any Equipment and Supplies or perform any Services. Notwithstanding anything to the contrary contained in this Agreement, any LHIN approval of a Subcontractor shall not relieve the Service Provider of any of its obligations under this Agreement.

(3) If,

- (a) in the LHIN's sole discretion, the LHIN determines that any Subcontractor of the Service Provider has committed serious misconduct or has been charged with having committed a criminal action; or
- (b) the LHIN has reasonable cause to be dissatisfied with the performance of any Subcontractor of the Service Provider,

then the Service Provider shall, at the LHIN's written request, which request shall identify the basis for the LHIN's determination or dissatisfaction pursuant to GC Section 3.2(3)(a) or (b), remove the Subcontractor immediately and replace it with another Subcontractor of equivalent or better qualifications, to the satisfaction of the LHIN.

(4) If, pursuant to GC Section 3.2(3), the Service Provider is required to provide a replacement Subcontractor, it shall be at no additional cost to the LHIN.

3.3 Staffing – Service Provider Personnel

(1) The Service Provider shall provide Service Provider Personnel that possess the training and qualifications required to deliver the Services, and in addition, if specified in the Special Conditions, specialized Service Provider Personnel who possess the training and qualifications set out in the Special Conditions.

(2) If,

- (a) the LHIN, in its sole discretion, determines that any Service Provider Personnel has committed serious misconduct or has been charged with having committed a criminal action; or
- (b) the LHIN has reasonable cause to be dissatisfied with the performance of any Service Provider Personnel,

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

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

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

- (a) it has met with the Service Provider to discuss the conduct or performance of the applicable Service Provider Personnel member; and
- (b) it has given the Service Provider an opportunity and a reasonable length of time, considering the circumstances, to investigate and correct the performance problem.

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

(6) The Service Provider shall keep detailed records with respect to the qualifications of Service Provider Personnel.

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

3.4.1 Conflict of Interest

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

(2) The Service Provider shall interact with each Client solely for the purpose of fulfilling the Service Provider's obligations under the Agreement, and, in particular, the Service Provider shall not use or take advantage of its access to any Client, or the Client's family or any Caregiver,

- (a) for the purpose of providing information about,
 - (i) leasing or purchasing equipment currently being used by a Client; or
 - (ii) additional related equipment or supplies that a Client may obtain from the Service Provider, or
- (b) for the purpose of soliciting or accepting funds or gifts,

except with the prior consent of the LHIN; or

- (c) for any other purpose not directly connected with or arising out of the Service Provider's performance of its obligations under this Agreement.

(3) The Service Provider shall not represent to any Client that they are the sole or exclusive provider of the Equipment and Supplies and Services.

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

(5) If the Service Provider becomes aware of any conflict of interest arising in connection with the provision of Services to any Clients, the Service Provider shall immediately disclose the conflict of interest to the LHIN.

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

- (a) will or will likely interfere with or adversely affect or influence the performance of the Service Provider's obligations under this Agreement; or
 - (b) gives or will likely or might be reasonably perceived to give the Service Provider any advantage derived from the provision of any Services under the Agreement.
- (7) The LHIN may, in its sole discretion,
- (a) make the determination of whether a Service Provider conflict of interest exists; and
 - (b) prescribe, for the Service Provider, the manner in which the Service Provider must resolve any actual, potential or perceived conflict between the LHIN's interest and the Service Provider's interest under this Agreement.

3.4.2 Hiring of LHIN Staff

(1) Unless otherwise mutually agreed in writing, the Service Provider shall not, prior to the second anniversary of the Starting Date, hire any directors, contract management employees, former directors or former contract management employees of the LHIN if that director, contract management employee, former director or former contract management employee,

- (a) was a director or contract management employee of the LHIN at any time during the six month period prior to the issuance by the LHIN of the RFP documents relating to Equipment and Supplies and Services that are the subject of this Agreement; and
- (b) was directly involved with the Services at any time during the six month period prior to the Effective Date.

(2) For the purposes of GC Section 3.4.2(1), LHIN contract management employee or former contract management employee includes all present and former full and part-time LHIN employees and fee-for-service consultants performing the contract management role.

(3) GC Section 3.4.2(1) and 3.4.1(2) do not apply to LHIN employees that have been laid-off, terminated or otherwise severed by the LHIN.

3.5 Compliance with Law

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

3.6 News Releases

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

3.7 Transition of Clients

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

- (a) transition Clients to Other LHIN Service Providers;

- (b) provide relevant Client information to the LHIN and Other LHIN Service Providers; and
- (c) follow instructions of the LHIN when both the Service Provider and the Other LHIN Service Provider are delivering Services to the same Client at the same Service Delivery Location,

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

(2) The Client information provided pursuant to GC Section 3.7(1) shall include:

- (a) any instruction manuals relating to the Equipment;
- (b) whether any Equipment and Supplies have been previously trialed by the Client;
- (c) any risk factors associated with the Client or the Service Delivery Location; or
- (d) any particular sensitivities of the Client that affect the delivery of the Services.

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

- (a) postpone the Starting Date; or
- (b) withhold payment of the Service Provider pursuant to GC Section 11.2.

3.8 Information Systems and Technology

(1) The Service Provider shall have the following:

- (a) capability to receive Orders electronically;
- (b) an electronic mail system;
- (c) facsimile equipment with a dedicated telephone line available for receiving facsimile transmissions, 7 days per week, 24 hours per day, each day of the year;
- (d) an internal voice mail system, including the capability to receive after-hours voice mail messages; and
- (e) computer hardware and software which is capable of reporting data in a format that is compatible with the LHIN's computer hardware and software.

(2) The Service Provider shall,

- (a) comply with the data formatting requirements as specified in the LHIN policies and procedures relating to data formatting as amended from time to time including the ability to accept Orders electronically;

- (b) comply with the data integrity and confidentiality standards established by the LHIN; and
- (c) have the capability to exchange data with the LHIN via the LHIN's web-based communication protocol.

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

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

3.9 Emergency Situations

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

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

3.10 Research Programs

The Service Provider shall obtain the prior consent of the LHIN prior to implementing any research or student programs that relate to the Service Provider's obligations under this Agreement.

3.11 Joint Venture Service Providers

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

- (a) each joint venture participant shall be jointly and severably liable for all obligations of the Service Provider under this Agreement;
- (b) the joint venture participants hereby confirm that the individual joint venture participants appoint the party named in the Special Conditions as the "Participant in Charge" to represent them in all matters of interaction with the LHIN (including accepting any Notice on behalf of the joint venture) and to make all decisions on their behalf pursuant to this Agreement, including the receipt of payments from the LHIN; and
- (c) the joint venture shall not change its members without the prior consent of the LHIN.

3.12 Service Provider Accreditation

(1) The Service Provider shall, at its own cost and expense, obtain and maintain the accreditation specified in the Special Conditions, by a recognized third party accreditation body set out in HSSO's list of approved accreditation bodies ("Accreditation Status") in accordance with the terms and conditions, including the deadline for achieving the Accreditation Status set out in the Special Conditions.

(2) If the Service Provider fails to achieve Accreditation Status in accordance with the terms and conditions set out in the Special Conditions, including the prescribed deadline, it may not be eligible for renewal of this Agreement pursuant to the GC Section 2.5, in the LHIN's sole discretion.

(3) The Service Provider acknowledges and agrees that it shall not be entitled to payment of any costs or expenses related to the achievement of its Accreditation Status and that all such costs and expenses have been taken into account in the Prices set out in the Price Form in accordance with Section 1.2(4) of the Pricing and Compensation Schedule.

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

3.13 Compliance with Accessibility for Ontarians with Disabilities Act

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

SECTION 4 - PAYMENT

4.1 Service Provider's Prices and Payment

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

SECTION 5 - INFORMATION, AGREEMENT RECORDS, ACCOUNTING AND AUDITING

5.1 Client Information Privacy, Protection and Management

5.1.1 Relationship between the LHIN and Service Provider

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

(2) The Service Provider acknowledges that the LHIN is a health information custodian under the Personal Health Information Protection Act and that all Client Information processed by the Service Provider on behalf of the LHIN is subject to the provisions of the Personal Health Information Protection Act relating to the protection of personal health information. The Service Provider further acknowledges that the LHIN is an institution under FIPPA and that all information in the custody or control of the LHIN, including information processed by the Service Provider on behalf of the LHIN, is subject to FIPPA. The Service Provider shall ensure that in delivering the Services it will at all times conduct itself and carry out its activities in a manner that facilitates LHIN's compliance with, and does not cause the LHIN to be in contravention of, the Personal Health Information Protection Act or FIPPA.

(3) In the event that under the Applicable Law, the Service Provider is considered to be a health information custodian under the Personal Health Information Protection Act, the Parties agree that they

will meet to resolve any issues in good faith and to agree on alternative arrangements, if necessary, with respect to the treatment of Client Information and Client Records.

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

5.1.2 Client Information – Privacy and Protection

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

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

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

(4) Except as otherwise provided in this GC Section 5.1, the Service Provider shall not print, save, copy or store any Client Information, whether on removable, mobile or other media, in printed, electronic or optical form or otherwise, except temporarily within a secure location within the Service Provider’s facilities and only to the extent necessary in connection with providing the Services, and immediately and securely destroy or delete any such temporary copies or saved or stored versions upon conclusion of the activity giving rise to the necessity of saving, copying or storing such Client Information.

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

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

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

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

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

5.1.3 Privacy Regulators

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

5.1.4 Designated Individual

(1) The Service Provider shall designate and identify to the LHIN an individual to be accountable for Service Provider’s compliance with this GC Section 5.1. The Service Provider shall designate an alternate individual to be accountable for Service Provider’s compliance with this GC Section 5.1 when the primary designate is unavailable and shall identify the alternate to the LHIN.

5.1.5 Subcontracting

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

5.1.6 Consents and Notification

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

(2) The LHIN shall obtain consents required for the collection, use and disclosure of Client Information prior to the acceptance of a Service Request by the Service Provider.

5.1.7 Client Requests for Access to Information

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

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

5.1.8 Third Party Requests for Access to Information

(1) Other than requests for access to or disclosure of Client Information by an Authorized Person, if the Service Provider receives a request from a Third Party seeking access to Client Information, it shall immediately notify the LHIN and shall consult with the LHIN prior to providing such access or making any such disclosure and shall comply with the LHIN's reasonable directions with respect to permitting or denying such access or making or refusing such disclosure.

5.1.9 Client Records

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

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

- (a) be capable at all times of clearly distinguishing and separating Client Records from other records created by the Service Provider, including from,
 - (i) records created in respect of other clients of the Service Provider;
 - (ii) records created in respect of other local health integration networks in the Province of Ontario for whom the Service Provider provides services;
 - (iii) records of services provided to Clients other than those Services delivered pursuant to this Agreement;
 - (iv) other Agreement Records not otherwise containing or comprising Client Information; and
 - (v) other administrative records of the Service Provider; and
- (b) be compatible with the LHIN's physical and electronic information and records management, cataloguing and tracking systems as the LHIN may implement and

of which the LHIN provides reasonable notice to the Service Provider from time to time.

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

(4) For clarity, the term “Client Record” shall include all records, in whatever form, including both paper and electronic format.

5.1.10 Long-term Retention of Client Records

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

5.1.11 Return of Client Records to the LHIN

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

- (a) the Service Provider ceases to carry on business;
- (b) any of the circumstances described in GC Section 12.2.1(1)(a) occurs;
- (c) the Service Provider materially breaches any provision of this Section 5.1; or
- (d) the LHIN, in its sole discretion, determines that it requires the return of the original Client Records, whether the original Client Records are stored electronically or otherwise,

the Service Provider shall, no later than 60 days after receiving a request from the LHIN and subject to the Applicable Law prohibiting or prescribing conditions on such delivery, deliver all Client Records to the LHIN in a secure manner meeting the requirements of GC Section 5.1.12 and provide to the LHIN an officer’s certificate certifying that all Client Records have been so delivered to the LHIN.

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

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

5.1.12 Privacy and Security Events

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

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

5.1.13 Audit and Inspection

(1) The Service Provider shall establish, maintain and follow appropriate and regular audit, monitoring and inspection processes and procedures with respect to the Service Provider's systems and practices designed to ensure its compliance with its obligations with respect to Client Information in this Section 5.1. The Service Provider shall regularly report to the LHIN as part of its Annual Reports and as otherwise reasonably requested by the LHIN from time to time with respect to the results of such audits, monitoring and inspection and its compliance with this GC Section 5.1.

(2) The Service Provider shall permit the LHIN and/or its authorized representatives to access the Service Provider's premises to audit the Service Provider's compliance with its obligations in this GC Section 5.1 including, without limitation, the security measures used to protect Client Information and the systems and processes established and used by the Service Provider with respect to the collection, use, disclosure, storage and handling of Client Information. The Service Provider shall permit the LHIN to enter onto the Service Provider's premises for such purposes. The Service Provider shall otherwise promptly and properly respond to all reasonable inquiries from the LHIN with respect to the Service Provider's handling of Client Information and the Service Provider's compliance with this GC Section 5.1.

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

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

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

5.2 Agreement Records

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

(2) The Agreement Records shall include,

- (a) information of any kind whatsoever related to the finances, revenues or expenditures of the Service Provider's operations;
- (b) all files, documents, plans, drawings specifications, notes, minutes of meetings and minutes of conversations; and
- (c) all manuals, reports, safety records, audit records, performance and quality records, financial statements, invoices, accounting records, subcontracts and personnel records,

whether stored in hard copy or electronically.

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

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

(5) In the event that the Service Provider ceases operation, the Service Provider shall not dispose of any records related to the Equipment and Supplies or the Services, including Agreement Records, without the prior consent of the LHIN.

5.3 Accounting

(1) The Service Provider shall keep accurate and systematic accounts in respect of the Services and the Agreement in accordance with generally accepted accounting principles in the province of Ontario.

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

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

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

5.4 Auditing the Service Provider's Accounts and the Agreement Records

(1) The LHIN may, in its sole discretion, audit,

- (a) the Service Provider's accounts, financial information, financial statements and performance information at any reasonable time and with 24 hours notice to the Service Provider; and

- (b) the Agreement Records at any reasonable time and without notice to the Service Provider,

in respect of any matters related to the Agreement.

(2) The LHIN may carry out the audit or audits itself or may retain an independent auditor, at the LHIN's expense, to carry out the audit or audits.

5.5 Service Provider's Audited Financial Statements

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

SECTION 6 - INTELLECTUAL PROPERTY

6.1 Intellectual Property

(1) The Service Provider shall not present any data or other information or publish or present papers derived from the Services delivered under this Agreement without the prior consent of the LHIN, except for information required to be disclosed to Affiliates or under the Applicable Law or required in the preparation of the Service Provider's annual report or financial statements.

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

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

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

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

(6) The Service Provider shall ensure that each license it holds for Third Party Background Technology enables the Service Provider to grant to the LHIN all rights, whether by sublicense or otherwise, necessary in order to freely use the Equipment and Supplies, and the benefits of the Services embodying such Third Party Background Technology, all without any restriction upon the LHIN regarding the time, place, purpose or amount of use or reuse, or any restriction on resale or sublicensing, unless agreed in writing by the LHIN, and the Service Provider hereby grants such rights to the LHIN.

6.2 LHIN Trademarks

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

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

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

SECTION 7 - CONFIDENTIALITY

7.1 No Disclosure of Confidential Information

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

7.2 Permitted Disclosures

(1) The Service Provider acknowledges and agrees that the LHIN is an institution governed by FIPPA and that any information in the custody or control of the LHIN, including Service Provider's Confidential Information, may be disclosed by the LHIN where it is obligated to do so under FIPPA, by an order of a court or tribunal or pursuant to a legal proceeding.

(2) Without limiting GC Section 7.2(1), the Service Provider agrees that, the LHIN may disclose,

- (a) the name and address of the Service Provider;
- (b) the type and quantity of Equipment and Supplies delivered under this Agreement; and
- (c) the total estimated value of this Agreement,

to other local health integration networks and the public.

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

(4) The LHIN may disclose to the Government of Ontario any and all LHIN information with respect to this Agreement.

(5) The LHIN may disclose any information with respect to the Service Provider and this Agreement as required by the Applicable Law.

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

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

SECTION 8 - REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the LHIN

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

- (a) the LHIN is a corporation incorporated under the laws of the Province of Ontario and has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
- (b) the LHIN has taken all necessary corporate action to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement;
- (c) this Agreement has been duly executed and delivered by the LHIN and is a legal, valid and binding obligation of the LHIN, enforceable against it by the Service Provider in accordance with its terms;
- (d) neither the execution and delivery by the LHIN of this Agreement nor the performance by it of its obligations under this Agreement will result in a violation of,
 - (i) the *Local Health System Integration Act*, the LHIN's enabling legislation, by-laws or any of the resolutions passed by its board of directors; or
 - (ii) any the Applicable Laws; and

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

8.2 Representations and Warranties of the Service Provider

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

- (a) the Service Provider (or, if applicable, each Party consulting the Service Provider) is a legal entity legally established under the laws of its jurisdiction and has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
- (b) the Service Provider has taken all necessary actions to authorize the execution and delivery of this Agreement and the performance of its obligations under this Agreement;
- (c) this Agreement has been duly executed and delivered by the Service Provider and is a legal, valid and binding obligation of it, enforceable against it by the LHIN in accordance with its terms;
- (d) neither the execution and delivery by the Service Provider of this Agreement nor the performance by it of its obligations under this Agreement will result in a violation of,
 - (i) its constating documents or by-laws or any of the resolutions passed by its board of directors or shareholders; or
 - (ii) any the Applicable Laws; or
 - (iii) the terms of any licence or any other restrictions on use imposed by a Third Party;
- (e) the Service Provider has and shall at all times have the right to perform all of its obligations to the LHIN set out in this Agreement;
- (f) there is no requirement for the Service Provider to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any government or regulatory authority as a condition to the lawful consummation by the Service Provider of the transactions contemplated by this Agreement;
- (g) the Service Provider is an established provider of health care services, and has, and will have, the skills, qualifications, expertise and experience necessary to perform and manage the Services in accordance with the Performance Standards Schedule;
- (h) the Service Provider holds and will continue to hold throughout the Agreement Term all municipal, provincial or federal licences, approvals and permits required to perform its obligations hereunder, and all of the Service Provider Personnel who attend at the Service Delivery Location to provide any Services are duly qualified to provide such Services, in accordance with the Applicable Law;

- (i) except with respect to LHIN-Owned Equipment, none of the intellectual property the Service Provider uses or will use to provide Services or to discharge its obligations will infringe or violate the intellectual and industrial property, privacy, moral or other rights of any Third Party;
- (j) the Service Provider shall comply with all policies, plans and procedures that relate to the Equipment and Supplies and Services, as those policies, plans and procedures are provided to the Service Provider by the LHIN; and
- (k) the Service Provider is under no current obligation or restriction, nor will it knowingly assume any such obligation or restriction that does or would in any way interfere or conflict with, or that does or would present a conflict of interest concerning the performance to be rendered, or the rights granted, under this Agreement.

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

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

8.3 Product Liability

(1) Notwithstanding anything to the contrary in this Agreement, including without limitation the Service Provider indemnity in GC Section 9.1, the Service Provider agrees to release, indemnify, protect and hold harmless the LHIN and its affiliates, directors, officers, employees, servants, agents, independent contractors and representatives (each a “LHIN Indemnified Party”), and each of them, from and against any and all actions, claims (including Third Party Claims), proceedings, demands, losses, damages, costs, charges, fines, liabilities, expenses, and fees (including any legal, professional, or advisory fees, disbursements or amounts paid or by the LHIN or a LHIN Indemnified Party in settlement of such claims) in respect of the provision of the Equipment and Supplies and the use thereof, including, without limitation, any claim made by a Third Party against the LHIN or a LHIN Indemnified Party for loss or damage based on an alleged product defect in the Equipment and Supplies, however caused, and regardless of whether based in tort, strict liability, breach of contract, breach of warranty, failure to warn or otherwise, and even if the LHIN or a LHIN Indemnified Party is advised of the possibility of such injury, loss or damage or if such injury, loss or damage could have been reasonably foreseen by the LHIN or a LHIN Indemnified Party.

(2) Without limiting the generality of GC Section 8.3(1), the Parties agree that GC Section 8.3(1) shall not apply to a product liability claim made by a Third Party against the LHIN or a LHIN Indemnified Party based upon an alleged product defect in LHIN-Owned Equipment or LHIN-Owned Infusion Equipment. For greater clarity, the Parties agree that with respect claims made by a Third Party (“Third Party Claims”) related to product defects in LHIN-Owned Equipment:

- (a) where the Service Provider has received notice of a Third Party Claim against the Service Provider or Service Provider Personnel related to a product defect in LHIN-Owned Equipment, and where the LHIN has not been named as a party defendant to the Third Party Claim, the Service Provider shall immediately provide written notice to the LHIN of the Third Party Claim, including a copy of the Claim. Following receipt of written notice of the Third Party Claim, the LHIN, in its sole discretion, may direct the Service Provider to tender its defence of the Third Party Claim to the LHIN. In the event that the LHIN directs the Service

Provider to tender its defence of the Third Party Claim to the LHIN, the LHIN shall have sole discretion as to the manner in which the Third Party Claim is defended, including any settlement thereof;

- (b) nothing in this Agreement precludes the right of the LHIN to take the position that a Third Party Claim against either Party is not attributable to a product defect in the LHIN-Owned Equipment, but rather, has resulted from an act or omission on the part of the Service Provider or Service Provider Personnel with respect to the provision, maintenance, upkeep, repair and modification of the LHIN-Owned Equipment;
- (c) in the event that a Third Party Claim against either Party has resulted from an act or omission on the part of the Service Provider or its Personnel with respect to the provision, maintenance, upkeep, repair and modification of the LHIN-Owned Equipment, the Service Provider agrees to release, indemnify, protect and hold harmless the LHIN in accordance with the obligations set out in GC Section 8.3(1). For greater certainty, in this circumstance, the Service Provider agrees to indemnify the LHIN for any legal, professional, or advisory fees, disbursements or amounts paid or by the LHIN in the defence or the settlement of such Third Party Claims related to the LHIN-Owned Equipment; and
- (d) where a Third Party Claim is made against either Party that includes allegations of both product defect and an act or omission by the Service Provider with respect to the provision, maintenance and upkeep of LHIN-Owned Equipment, the Parties agree that both Parties shall bear their own costs with respect to the defence of such claims until such time as the Third Party Claim is finally resolved in a court of competent jurisdiction, or a settlement in the Third Party Claim is reached. For the purposes of defending a Third Party Claim in which either Party is named as party defendant, neither Party shall be precluded from exerting claims for contribution or from exercising any rights in accordance with the rules of court in the jurisdiction in which the Third Party Claim has been brought, and for greater clarity, the LHIN shall not be precluded from exerting any claims for indemnity under this Agreement. In the event the Parties are not able to resolve issues as related to indemnification on an amicable basis following resolution or settlement of the Third Party Claim, the Parties shall attempt to resolve their dispute in accordance with GC Section 13.

(3) The indemnity set out in GC Section 8.3(1) shall not extend to any actions, claims, proceedings, demands, losses, damages, costs, charges, fines, liabilities, expenses or fees to the extent that they are based on, occasioned by, or attributable to anything negligently done or omitted to be done by the LHIN or any of the LHIN Indemnified Parties in connection with this Agreement.

8.4 Equipment and Supply Warranties

(1) The Service Provider represents and warrants that the Equipment and Supplies and all components thereof shall,

- (a) be fit for the purpose intended by the manufacturer;
- (b) be free from defects in material or workmanship;
- (c) comply with all applicable LHIN and MOHLTC guidelines;
- (d) comply with the Applicable Law;

- (e) in the case of Equipment and Infusion Equipment, be standard new or used but of the current model and with a “like new appearance”, unless otherwise specified by the LHIN in the Special Conditions; and
- (f) in the case of Equipment-Related Supplies, Medical Supplies and Infusion Supplies, be standard new and pre-packaged.

SECTION 9 - INDEMNITY AND INSURANCE

9.1 Service Provider Indemnity

(1) The Service Provider shall release, indemnify, protect and hold harmless the LHIN, and each of the LHIN Indemnified Parties, from and against any and all actions, claims (including Third Party claims), proceedings, demands, losses, damages, costs, charges, fines, liabilities, expenses, and fees (including any legal or professional fees, disbursements or amounts paid by the LHIN or a LHIN Indemnified Party in settlement of such claims), in respect of anything done or omitted to be done on the part of the Service Provider, its affiliates, directors, officers, employees, independent contractors, subcontractors or agents in connection with the responsibilities of the Service Provider or its affiliates, directors, officers, employees, independent contractors or agents in connection with this Agreement.

(2) The indemnity set out in GC Section 9.1 shall not extend to any actions, claims, proceedings, demands, losses, damages, costs, charges, fines, liabilities, expenses or fees to the extent that they are based on, occasioned by, or attributable to anything negligently done or omitted to be done by the LHIN or any of the LHIN Indemnified Parties in connection with this Agreement.

(3) The Service Provider’s obligation to indemnify the LHIN and the LHIN Indemnified Parties shall not affect or prejudice the LHIN from exercising any other rights under the Applicable Law.

(4) The Service Provider shall protect itself from and against all claims that might arise from anything done or omitted to be done by the Service Provider or its affiliates, directors, officers, employees, independent contractors, subcontractors or agents under this Agreement, and more specifically all claims that might arise from anything done or omitted to be done under this Agreement where bodily injury, including personal injury, death, or property damage, including loss of use thereof, is caused.

(5) The Service Provider shall protect itself from and against all claims that may arise in connection with a breach of the *Personal Health Information Protection Act* and, without limiting the generality of GC Section 9.1(1), shall indemnify and hold harmless the LHIN and each of the LHIN Indemnified Parties from and against any and all actions, claims (including Third Party claims), proceedings, demands, losses, damages, costs, charges, fines, liabilities, expenses, and fees (including any legal or professional fees, disbursements or amounts paid by the LHIN or any LHIN Indemnified Party in settlement of such claims), arising out of a breach of the *Personal Health Information Protection Act* by the Service Provider.

(6) Without limiting the generality of GC Section 9.1(1), the Service Provider shall indemnify and hold harmless the LHIN and each of the LHIN Indemnified Parties from and against any and all actions, claims (including Third Party claims), proceedings, demands, losses, damages, costs, charges, fines, liabilities, expenses, and fees (including any legal or professional fees, disbursements or amounts paid by the LHIN or any LHIN Indemnified Party in settlement of such claims), arising out of the spread of a Communicable Disease that is caused by the use of any Equipment and Supplies by a Client, Caregiver or Other Service Provider.

9.2 Insurance

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

- (a) a clause that includes the LHIN and the LHIN's employees, independent contractors and agents as additional insureds;
- (b) a clause that includes all Subcontractors as additional insureds;
- (c) a cross-liability insurance clause endorsement acceptable to the LHIN;
- (d) a clause requiring the insurer to provide 30 days prior written notice to the LHIN in the manner set forth in the policy in the event of the termination; and
- (e) a clause including liability arising out of contract or agreement.

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

- (a) reference this Agreement;
- (b) outline the limits and coverage; and
- (c) are otherwise acceptable to the LHIN.

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

(4) When the Service Provider's insurance is renewed during the Agreement Term, the Service Provider shall provide a replacement certificate of insurance to the LHIN immediately after the Service Provider's insurance is renewed.

9.3 Patent and Copyright Indemnity

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

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

- (a) procure for the LHIN the right to continue using the Services or part thereof;
- (b) replace same or part thereof with non-infringing Services; or
- (c) modify the Services or part thereof to the LHIN's satisfaction so that they become non-infringing.

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

9.4 Indirect etc. Damages

Notwithstanding GC Sections 9.1, 9.2 and 9.3, in no event shall the measure of damages payable by either Party include, nor will either Party be liable for, any consequential, indirect, incidental, exemplary or punitive damages, including damages due to business interruption or lost profits, savings, competitive advantage or goodwill arising from or related to this Agreement, regardless of the type of claim, whether in contract, tort, negligence, strict liability or other legal or equitable theory, whether or not foreseeable, and regardless of the cause of such damages even if the Party has been advised of the possibility of such damages in advance. For greater certainty, this GC Section 9.4 shall not apply to GC Section 8.3.

SECTION 10 - CHANGES

10.1 No Changes to Service Provider's Prices – General

(1) Except as provided in GC Sections 2.5, 10.1(2), 10.1(3) and 10.2 and the Pricing and Compensation Schedule, the Service Provider shall make no claim whatsoever for any adjustments to the Service Provider Prices, including any adjustment as a result of,

- (a) changes to any of the Service Provider's costs or expenses, including, for clarity, a change in transportation and delivery costs;
- (b) a change as a result of the corporate restructuring or reorganization of the Service Provider;
- (c) a change in the LHIN's structure or organization;
- (d) the Service Provider's employee or labour disputes or settlements; or

(2) The LHIN and Service Provider may each make a claim for an increase or decrease in Price if either Party can demonstrate that a change in the Applicable Law, excluding the matters listed in GC Section 10.1(1)(d), after the date set out in the Special Conditions has directly caused an actual increase or decrease in the cost of providing the Services, and the LHIN or the Service Provider, as applicable, can demonstrate to the other Party the actual increase or decrease and that the actual increase or decrease was directly caused by the change in the Applicable Law. For clarity, a statute that is in force and effect as of the date set out in the Special Conditions or that will come into force and effect during the Agreement Term (determined as of the date set out in the Special Conditions) or a regulation that has been filed as of the date set out in the Special Conditions shall not give rise to a right to claim an increase or decrease in Price in accordance with this GC Section 10.1(2).

(3) Subject to the Service Provider's obligations regarding information systems and technology set out in GC Section 3.8, if the LHIN requires the Service Provider to make a change to the Service

Provider's information systems and technology during the Agreement Term, the Service Provider may only make a claim for an adjustment to the Service Provider Prices if,

- (a) the required change would not have been otherwise implemented by the Service Provider in the ordinary course of its business; and
 - (b) the net effect of the required change is an increase in the cost of providing the Services.
- (4) For clarity, this Section 10.1 does not apply to changes to the Equipment and Supplies List.

10.2 Change to the Services and Performance Standards

10.2.1 Introducing a Change

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

- (a) falls within the general scope of the Services and does not constitute unrelated work;
- (b) falls within the general categories of the type of Equipment and Supplies provided by the Service Provider to the LHIN in accordance with the Services Schedule; and
- (c) is technically practicable, taking into account both the state of advancement of the Services and the technical compatibility of the Change with the nature of the Services as specified in the Agreement.

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

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

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

10.2.2 Changes Originating from the LHIN

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

- (a) a brief description of the Change as set out by the LHIN and a plan for the implementation of the Change;
- (b) an estimate of the cost of the Change, including the identification of any saving that could be achieved as a result of the Change; and

- (c) a description of the effect of the Change on any other provisions of this Agreement.

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

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

- (a) withdraw the proposed Change and notify the Service Provider in writing of the withdrawal; or
- (b) enter into negotiations with the Service Provider for a Price increase.

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

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

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

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

- (a) that the LHIN does not intend to issue the Change Order; or
- (b) the date that the LHIN intends to issue a Change Order.

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

(8) If the Parties cannot reach agreement on the Prices for the Change or any other matters identified in the Change Proposal, the LHIN may nevertheless instruct the Service Provider to proceed with the Change by issue of a "Pending Agreement Change Order."

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

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

SECTION 11 - CONTRACT MONITORING

11.1 Performance Monitoring

(1) The LHIN will, during the Agreement Term, monitor the quality of the Service Provider performance of the Services and the quality of the Equipment and Supplies, including the quality of performance in accordance with the Performance Standards Schedule.

(2) If the LHIN has any concerns with respect to the Service Provider's performance of the Service Provider's obligations under this Agreement, or with respect to the level of performance of any of the Service Provider Personnel, then,

- (a) the LHIN may, by written notice to the Service Provider, cause a meeting (a "Contract Management Meeting") to take place between the President or other senior executive officer of the Service Provider and a representative of the LHIN no later than 5 days after the delivery of such notice by the LHIN, and the notice may specify the areas of concern that the LHIN wishes to raise with the Service Provider at the Contract Management Meeting; and
- (b) at the Contract Management Meeting, the Service Provider shall,
 - (i) respond to the concerns raised by the LHIN; and
 - (ii) if applicable, prepare and implement a plan of remedial or other action acceptable to the LHIN, within a reasonable time period determined by the Parties, for the purpose of addressing the concerns for which the LHIN called the Contract Management Meeting.

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

(4) The Service Provider shall take any and all action necessary or required to permit the inspection of the Equipment and Supplies or Services, including making available, or, at the LHIN's request, providing to the LHIN for review, any pertinent routine reports and substantiating data.

(5) The LHIN may exercise any of its rights under this Agreement without convening the meeting set out in GC Section 11.1(2) including exercising its rights pursuant to GC Section 11.2 and 11.3.

11.2 Withholding of Payments

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

- (a) specifies the nature of the Service Provider's failure; and

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

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

11.3 Reduction of Service Requests and Orders

(1) The LHIN may, in its sole discretion, reduce the Service Provider's Service Requests and Orders if the Service Provider fails to meet its obligations under this Agreement.

(2) The LHIN may, in its sole discretion, increase the Service Provider's Service Requests and Orders back to the levels prior to the decrease pursuant to GC Section 11.3(1) if the LHIN determines, in its sole discretion, that the Service Provider's failure to meet its obligations under this Agreement has been corrected. The LHIN may, in its sole discretion, determine the timing of the reinstatement of Service Requests and Orders after the Service Provider's correction of its failure to meet its obligations under this Agreement.

(3) The LHIN's reduction of Service Requests and Orders pursuant to this GC Section 11.3 does not preclude the LHIN from exercising its other rights under this Agreement.

SECTION 12 - TERMINATION OF THE AGREEMENT

12.1 Termination by the LHIN

12.1.1 Termination for the LHIN's Convenience

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

- (a) the LHIN may issue a notice of termination for convenience (the "LHIN Notice of Termination for Convenience") no earlier than 6 months after the Starting Date; and
- (b) the LHIN Notice of Termination for Convenience shall give the Service Provider at least 6 months notice of the termination for convenience, from the date of the LHIN Notice of Termination for Convenience.

(2) Upon receipt of the LHIN Notice of Termination for Convenience pursuant to GC Section 12.1.1(1), the Service Provider shall, either immediately or upon such other date as mutually agreed to by the Parties, commence the implementation of the Service Provider's Client transition plan.

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

12.1.2 Payment upon Termination by the LHIN for Convenience

(1) Upon termination of this Agreement pursuant to GC Section 12.1.1(1) or GC Section 14.8.7, the LHIN shall compensate the Service Provider for Services satisfactorily performed prior to the date of termination and the LHIN shall, in its reasonable determination, reimburse the Service Provider for any reasonable cost incurred by the Service Provider incident to the prompt and orderly termination of this Agreement.

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

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

12.1.3 Termination for the Service Provider's Default

(1) Subject to GC Section 12.1.3(2), the LHIN, without prejudice to any other rights or remedies it may possess, may terminate this Agreement, in whole but not in part, on the occurrence of any of the following circumstances:

- (a) If,
 - (i) the Service Provider becomes insolvent or is unable to pay its debts;
 - (ii) the Service Provider enters into or files a petition, arrangement, application, action or other proceeding seeking the appointment of a trustee or liquidator of or a receivership for all or a substantial part of its assets and relief or protection under the bankruptcy laws of Canada or any similar laws of Canada or any province of Canada or any other country;
 - (iii) the Service Provider has proceedings seeking the appointment of a trustee or liquidator of or a receivership for all or a substantial part of its assets under the bankruptcy laws of Canada or any similar laws of Canada or any province of Canada or any other country commenced against it which are not terminated or dismissed within 90 days of such commencement; or
 - (iv) the LHIN receives a notice of requirement to pay from the Canada Revenue Agency or any other taxation authority; or
- (b) If the Service Provider,
 - (i) assigns or transfers this Agreement or any right or interest therein in violation of GC Section 14.9;
 - (ii) has abandoned this Agreement;
 - (iii) is in material breach or default of any material provision or material obligation of this Agreement including,
 - (A) over any three month period, persistently failing to provide the Equipment and Supplies or carry out the Services in accordance with this Agreement;
 - (B) failing to,
 - (I) fill an Order as specified by the LHIN in accordance with SS Section 3.3 without an error;

- (II) respond to an Order as specified by the LHIN in accordance with SS Section 3.4;
- (III) complete an Immediate Delivery within the specified timeframe;
- (IV) complete a Regularly Scheduled Delivery within the specified timeframe;
- (V) complete an Individually Scheduled Delivery within the specified timeframe;

in each of any three months in any two consecutive quarters;

- (C) failing to collect and submit reasonable performance quality information as required by this Agreement for any quarter;
 - (D) submitting false or misleading information to the LHIN; or
 - (E) persistently failing to meet the Quality Operating Standards;
- (iv) fails to disclose an actual, potential or perceived conflict of interest contrary to GC Section 3.4.1(5), contravenes GC Section 3.4.1(1) or fails to implement the LHIN's prescribed resolution of a conflict of interest pursuant to GC Section 3.4.1(7);
 - (v) makes a false or misleading statement in the proposal submitted by the Service Provider during the RFP Process leading to this Agreement;
 - (vi) fails to comply with Section 7 of the Services Schedule with respect to Recalls;
 - (vii) fails to comply with an undertaking issued by a regulatory body in respect of the Equipment and Supplies; or
 - (viii) contravenes GC Section 5.1.
- (c) If none of the alternatives listed in GC Section 9.3(2)(a), 9.3(2)(b) and 9.3(2)(c) are reasonably available, the LHIN may terminate this Agreement without liability to the Service Provider and without prejudice to any other rights of the LHIN on termination.

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

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

(4) Upon receipt of the Notice of Termination – Service Provider Default pursuant to GC Section 12.1.3(2), the Service Provider shall, either immediately or upon such date as is specified in the notice of termination, commence the implementation of the Service Provider’s Client transition plan.

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

12.2 Termination by the Service Provider

12.2.1 Termination for the LHIN’s Default

(1) The Service Provider, without prejudice to any other rights or remedies it may possess, may terminate this Agreement in the following circumstances:

- (a) The LHIN,
 - (i) becomes insolvent or is unable to pay its debts;
 - (ii) enters into or files a petition, arrangement, application, action or other proceeding seeking the appointment of a trustee or liquidator of or a receivership for all or a substantial part of its assets and relief or protection under the bankruptcy laws of Canada or any similar laws of Canada or any province of Canada or any other country; or
 - (iii) has proceedings seeking the appointment of a trustee or liquidator of or a receivership for all or a substantial part of its assets under the bankruptcy laws of Canada or any similar laws of Canada or any province of Canada or any other country commenced against it which are not terminated or dismissed within 90 days of such commencement; or
- (b) The LHIN,
 - (i) has abandoned this Agreement, which abandonment shall not include termination of this Agreement pursuant to GC Section 12.1.1; or
 - (ii) is in material breach or default of any material provision or material obligation under this Agreement.

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

(3) If any one of the circumstances set out in GC Section 12.2.1(1)(b)(ii) occurs, then the Service Provider may, without prejudice to any other rights it may possess under this Agreement, give a notice to the LHIN (“Notice of Pending Termination – LHIN Default”) stating the nature of the default and requiring the LHIN to remedy the default. If the LHIN fails to remedy or to take steps to remedy the default within 30 days after the date of that Notice of Pending Termination – LHIN Default, then the Service Provider may terminate this Agreement forthwith by giving, to the LHIN, a Notice of Termination – LHIN Default that refers to this GC Section 12.1.1(3).

(4) Upon delivery of the Notice of Termination - LHIN Default under GC Sections 12.2.1(2) or 12.2.1(3), the Service Provider shall immediately commence the implementation of the Service Provider’s Client transition plan.

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

12.2.2 Set-Off – Payment upon Termination

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

- (a) any sum previously paid by either Party under this Agreement; and
- (b) any sum owing by one Party to the other Party under this Agreement.

12.3 Confidential Information on Termination

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

SECTION 13 - DISPUTE RESOLUTION

13.1 Mediation

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

- (a) either Party may submit the Dispute to mediation by serving the other Party with a written notice to mediate. If either Party serves a notice to mediate, the mediation process is mandatory for both Parties;
- (b) the mediation shall be held before an independent Third Party jointly selected and paid for by the Parties; and
- (c) if the LHIN and the Service Provider are unable to agree to the selection of a mediator, each Party shall select and pay for an independent Third Party, and those two independent Third Parties shall jointly select an independent Third Party to serve as the mediator.

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

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

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

13.2 Arbitration

13.2.1 Mutual Agreement to refer to Arbitration

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

13.2.2 Selection of Arbitrator

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

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

13.2.3 Qualification of Arbitrator

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

13.2.4 Location of Arbitration

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

13.2.5 Decisions of Arbitrators

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

(2) Notwithstanding Rule 36 of the National Arbitration Rules, the arbitrator(s) shall not be entitled to retain their own expert(s).

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

13.3 Costs of Dispute Resolution

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

SECTION 14 - GENERAL MATTERS

14.1 Notices and Consents

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

- (a) delivered in person on a Business Day;
- (b) sent by prepaid courier service; or
- (c) sent prepaid by e-mail or facsimile transmission or other similar means of electronic communication, which produces a paper record (“Electronic Transmission”), during a Business Day and sent subsequently by prepaid first class mail as confirmation,

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

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

- (a) on the day it was delivered if delivered in person or by prepaid courier service; or
- (b) on the day that it was sent by Electronic Transmission, or at the start of business on the first Business Day thereafter if the day on which it was sent by Electronic Transmission was not a Business Day.

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

14.2 Waiver/No Election

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

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

14.3 Independent Contractor

In performance of this Agreement, the Service Provider is acting as an independent contractor. Nothing contained in this Agreement shall be deemed to create a partnership, association, joint venture or agency relationship between the Parties. Service Provider Personnel supplied by the Service Provider under this Agreement are not the LHIN’s employees, personnel or agents (except for agency specifically with respect to the *Personal Health Information Protection Act as set out in GC*

Section 5.1.1), and the Service Provider assumes full responsibility for their acts and omissions. The Service Provider shall be solely responsible for the payment of compensation to the Service Provider Personnel and Subcontractors assigned to provide the Equipment and Supplies and perform Services under this Agreement, and such Service Provider Personnel and Subcontractors shall be informed that they are not entitled to the provision of any employee benefits of the LHIN. The Service Provider shall be responsible for payment of workers' compensation, disability benefits, employment insurance and all other similar payments and benefits and for withholding income taxes or other deductions with respect to all Service Provider Personnel. For the purpose of greater certainty, the Parties acknowledge and agree that the LHIN and the Service Provider are not common employers.

14.4 Amendments to Agreement

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

14.5 Survival

All obligations of the Parties set out in this Agreement that expressly or by their nature survive the termination or the expiry of this Agreement shall continue in full force and effect subsequent to the termination or expiry of this Agreement and until the obligations are satisfied or, by their nature, expire. Obligations that shall survive the termination or expiry of this Agreement pursuant to this GC Section 14.5 include the obligations set out in GC Sections 3.6, 3.7, 5.1, 5.1, 5.4, 6.1, 6.2, 7.1, 8.3, 9.1, 9.3, 9.4, 12.1.2 and 14.7 and SS Sections 2.2 and 14.2.

14.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable in that Province and shall be treated, in all respects, as an Ontario contract.

14.7 Attornment to Ontario Courts

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

- (a) any action or proceeding relating to this Agreement shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose each Party irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
- (b) it irrevocably waives any right to, and will not, oppose any Ontario action or proceeding relating to this Agreement on any jurisdictional basis, including *forum non conveniens*; and
- (c) it will not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this GC Section 14.7.

14.8 Force Majeure

14.8.1 General

(1) For the purposes of this Agreement, "Force Majeure" means an event that is,

- (a) beyond the reasonable control of a Party; and

- (b) makes a Party's performance of its obligations under this Agreement impossible or so impractical as reasonably to be considered impossible in the circumstances.

(2) Force Majeure includes,

- (a) war, riots and civil disorder;
- (b) storm, flood, earthquake or other severely adverse weather conditions;
- (c) confiscation, expropriation or other similar action by a government body; and
- (d) strikes, lockouts or similar labour actions, provided they are not caused by the Service Provider's unreasonable actions,

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

(3) Force Majeure shall not include,

- (a) any event that is caused by the negligence or intentional action of a Party or such Party's Subcontractors or agents or employees; or
- (b) any event that a diligent Party could reasonably have been expected to,
 - (i) take into account at the time of the execution of this Agreement; and
 - (ii) avoid or overcome in the carrying out of its obligations under this Agreement.

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

14.8.2 No Breach of Contract

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

14.8.3 Measures to be Taken

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

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

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

14.8.4 Payments

During the period of the Service Provider's inability to perform the Services as a result of an event of Force Majeure, the LHIN shall continue to pay the Service Provider under the terms of this Agreement for any of the Services that it completes pursuant to this Agreement and in accordance with this Agreement and, except if the Force Majeure event is a strike, lockout or similar labour action, shall reimburse the Service Provider for additional costs that the LHIN agrees have been reasonably and necessarily incurred by the Service Provider during such period for the purpose of carrying out the Services.

14.8.5 Consultation

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

14.8.6 Alternative Arrangements for Services

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

(2) Except as provided in GC Section 14.8.7, once the Service Provider has notified LHIN that the conditions giving rise to Force Majeure no longer exist, and has satisfied the LHIN that it can deliver the Services to the LHIN within the required time periods and in accordance with this Agreement, the LHIN will use its reasonable efforts to return to the Service Provider the Services that were the subject of the event of Force Majeure. The Service Provider acknowledges that the LHIN's reasonable efforts pursuant to this GC Section 14.8.6(2) may result in the failure to transfer the care of Clients back to the Service Provider if the LHIN determines that this would be disruptive to the Client or the Client's care.

14.8.7 Termination

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

14.9 Assignment

The Service Provider shall not assign or transfer this Agreement, or any of its rights or obligations under this Agreement, in whole or in part, without the prior consent of the LHIN, which consent shall not be unreasonably withheld. Any merger or change of control of the Service Provider shall be deemed to be an assignment of this Agreement. The LHIN may, in its sole discretion, assign this Agreement without the consent of the Service Provider.

14.10 Further Assurances

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

14.11 Counterparts

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

(2) The Parties may execute the counterparts in either original or faxed form and the Parties adopt any signatures received by a receiving fax machine as original signatures of the Parties but any Party providing its signature by fax shall promptly forward to the other Party an original of the signed copy of this Agreement that was faxed.

14.12 Enurement

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

14.13 Language

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

14.14 Severability

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

14.15 Acknowledgement

Each Party hereby acknowledges having,

- (a) read this Agreement before signing it;
- (b) the authority to sign this Agreement; and
- (c) received a copy of this Agreement.

SECTION 15 - SPECIAL SITUATION – MULTIPLE CONTRACTS / MULTIPLE LOCAL HEALTH INTEGRATION NETWORKS**15.1 Joint RFPs**

If multiple local health integration networks in Ontario jointly issued an RFP which resulted in this Agreement, any special conditions that apply to this Agreement because of the joint issuance of the RFP are set out in the Special Conditions.