

MEMORANDUM OF UNDERSTANDING

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented by the Minister of Health and Long-
Term Care
(the “Ministry”)

AND

ONTARIO HEALTH QUALITY COUNCIL operating as
HEALTH QUALITY ONTARIO
(the “Agency”)

1.0 INTRODUCTION

1.1 Purpose

1.1.1 The purpose of this Memorandum of Understanding is to:

- (a) clarify the roles, relationships and mutual expectations and accountabilities of the Agency, Chair, the Board and CEO and the Minister and Deputy Minister;
- (b) confirm the accountability mechanisms of the Agency and the Ministry as well as the framework for accountability between the Chair and the Minister;
- (c) specify the principles and administrative procedures that the Agency should follow in support of its accountability requirements, within a framework that recognizes the legislative responsibilities of the Agency and facilitates the achievement of its mandate and functions; and
- (d) set out the framework for accountability between the Minister and the Agency that meets the requirements of the Management Board of Cabinet *Agency Establishment and Accountability Directive*, dated January, 2010.

1.1.2 This Memorandum should be read in conjunction with the Act and Regulation to determine how the Agency should govern itself. This Memorandum does not affect, modify, limit or interfere with the responsibilities of either the Minister, the Agency or any other party mentioned in this Memorandum under law.

1.1.3 The provisions of this Memorandum pertaining to the rights and obligations of the Parties in respect of Funding to be provided by the Minister, shall be read and interpreted in a manner that is consistent with the provisions of the Accountability Agreement.

1.1.4 The Parties to this Memorandum shall act according to the responsibilities set out for each other in this Memorandum.

1.2 Definitions

1.2.1 As used in this Memorandum of Understanding the following terms have the following meanings:

- a) **“Accountability Agreement”** means the agreement to be entered between the Ministry and the Agency that contains terms and conditions which are in addition to the terms and conditions contained in this Memorandum in respect of funding the Ministry provides to the Agency, as that agreement may be amended or replaced from time to time;
- b) **“Act”** means the *Excellent Care for All Act, 2010* as amended from time to time and includes all regulations thereunder;
- c) **“AEAD”** means the *Agency Establishment and Accountability Directive* dated January 26, 2010, issued by Management Board of Cabinet, as amended from time to time;
- d) **“Agency”** means the Ontario Health Quality Council established under the Act and operating as “Health Quality Ontario” as registered under the *Business Names Act*, R.S.O. 1990, c. B.17;
- e) **"Agency Data"** means all data (including all information whether or not contained in or on any database or electronic information storage system or media) of any kind and in any form provided by Her Majesty the Queen in right of Ontario to the Agency or otherwise collected by, owned by or in the custody or control of the Agency and all such data that is created, developed, generated, prepared or produced as a result of any compilation (whether combined or compiled with other data or not) or developments or modifications to the data described above;
- f) **"Agency I & IT Assets”** means all of the information and information technology assets of the Agency, and includes but is not limited to any such tangible and intangible assets, properties and rights that are owned or controlled by the Agency at any time or times, but excluding the Agency I & IT Contracts. For greater certainty, the Agency I & IT Assets include but are not limited to:
 - (i) All right, title and interest of the Agency in patents, patent applications and the right to file for patent applications, trademarks, logos, official marks, service marks, trade names and service names (in each case whether or not registered) and applications for and the right to file applications for registration thereof;
 - (ii) All right, title and interest of the Agency in any World Wide Web sites maintained in connection with the Agency's mandate, including all related URL addresses, domain names and related rights;
 - (iii) The tangible information and information technology assets and tangible embodiments of intangible information and information technology assets of the Agency, including all additions or accessions to them;
 - (iv) Licences and permissions in information and information

- technology material belonging to third-parties; and
- (v) The paper, electronic or other media upon which any of the above is stored.
- g) **"Agency I & IT Contracts"** means collectively, the information and information technology contracts, agreements, leases and licences, written or oral, relating to the Agency's mandate (each an "Agency I & IT Contract");
- h) **"Annual Business Plan"** means the annual plan prepared by the Agency and submitted by the Agency to the Minister in accordance with subsection 13(6) of the Act;
- i) **"Annual Report"** means the annual report on the affairs of the Agency prepared by the Agency in accordance with subsection 15(1) of the Regulation and the AEAD;
- j) **"Board"** means the Board of Directors of the Agency whose members are appointed by the Lieutenant Governor in Council;
- k) **"By-laws"** means the by-laws as adopted by the Board providing for the internal governance and operation of the Agency;
- l) **"CEO"** means the President and Chief Executive Officer of the Agency;
- m) **"Chair"** means the member of the Agency appointed by the Lieutenant Governor in Council as the Chair of the Agency;
- n) **"Deputy Minister"** means the Deputy Minister of Health and Long-Term Care;
- o) **"Directives"** means (i) the directives set out in Schedule A and the related policies and guidelines, as consolidated from time to time to reflect additions or exemptions approved by TB/MBC, and (ii) such other Government, Ministry, or Ministry of Finance directives, policies or guidelines as are applicable to the Agency, all of which are provided by the Ministry to the Agency in accordance with subsection 1.3.3;
- p) **"Fund(s)(ing)"** means any funds provided to the Agency by the Ministry under the terms of this Memorandum, the Accountability Agreement or such other funding agreement(s) entered as between the Ministry and the Agency;
- q) **"Government"** means the Government of Ontario;
- r) **"Intellectual Property Rights"** means any intellectual or industrial property rights protected or protectable under the laws of Canada or any foreign country including any intellectual property protected by legislation such as legislation governing copyrights, industrial designs, integrated circuit topographies, patents or trademarks or by common law such as confidential information and trade secrets; whether written or otherwise invented, licensed, created, developed and/or acquired by the Agency, in the fulfillment of its mandate;
- s) **"Memorandum"** means this Memorandum of Understanding;

- t) **“Minister”** means the Minister of Health and Long-Term Care;
- u) **“Person”** is broadly defined to include an individual, a corporation, a partnership, a trust, a joint venture, an unincorporated association, a federal, provincial or municipal government and the agencies of such governments;
- v) **“Regulation”** means Ontario Regulation 445/10 made pursuant to the Act as may be amended from time to time;
- w) **“Software”** includes computer programming code and software programs (including both object and source code) executable or not executable, including any reusable code, libraries, routines, sub-routines, and utilities, and related documentation;
- x) **“TB/MBC”** means Treasury Board and/or Management Board of Cabinet; and
- y) **“Yearly Report”** means the report(s) that the Agency is required to make to the Minister, annually, under subsections 13(1)–(5) of the Act.

1.3 Crown Agent Status and Agency Classification

- 1.3.1 In accordance with section 4 of the Regulation, the Agency is an agent of the Crown and exercises its powers only as an agent of Her Majesty. The Agency, while accountable to the Minister, operates as a separate legal entity from the Ministry and exercises its powers and performs its duties in accordance with its legislative authority and mandate, this Memorandum, Directives, and all applicable laws. All property, real or otherwise, acquired by the Agency is the property of the Crown.
- 1.3.2 The Agency is designated as an Operational Service Agency in accordance with the AEAD and is subject to and shall comply with all TB/MBC Directives applicable to an Operational Service Agency as set out in Schedule A to this Memorandum.
- 1.3.3 The Agency will also be subject to and shall comply with any new Directives that are applicable to the Agency or an Operational Service Agency that may be approved in the future by TB/MBC, or by any other body with the authority to make Directives that are binding on the Agency. The Ministry shall notify the Agency of such applicable new Directives by written notification to the Agency.
- 1.3.4 The Agency is subject to and shall comply with all applicable federal, provincial and municipal laws, rules, orders, regulations and by-laws, including those statutes as set out in Schedule B to this Memorandum.

1.3.5 The Agency is a corporation without share capital and is not subject to the *Corporations Act*, or the *Corporations Information Act* unless otherwise provided for in the Act or Regulation.

1.3.6 In the event of any conflict or inconsistency between this Memorandum, the Directives, and the Act or Regulation, the Act or Regulation, as the case may be, will prevail. In the event of any conflict or inconsistency between this Memorandum and the Directives, the latter shall prevail.

1.4 Legislative Authority and Mandate

1.4.1 The legislative authority of the Agency is set out in the Act.

1.4.2 The functions of the Agency as set out in section 12 of the Act are:

- (a) to monitor and report to the people of Ontario on,
 - (i) access to publicly funded health services,
 - (ii) health human resources in publicly funded health services,
 - (iii) consumer and population health status, and
 - (iv) health system outcomes;
- (b) to support continuous quality improvement;
- (c) to promote health care that is supported by the best available scientific evidence by,
 - (i) making recommendations to health care organizations and other entities on standards of care in the health system, based on or respecting clinical practice guidelines and protocols, and
 - (ii) making recommendations, based on evidence and with consideration of the recommendations in subclause (i), to the Minister concerning the Government of Ontario's provision of funding for health care services and medical devices; and
- (d) any other functions provided for in the regulations.

1.4.3 A further function of the Agency as set out in section 8 of the Regulation is:

“...to carry out any functions formerly carried out by a ministry of the Government of Ontario that are transferred to the Council by an agreement with the Crown or the Minister and with the approval of the Lieutenant Governor in Council, and the Council has every power needed for the purposes of entering into and carrying out such an agreement.”

- 1.4.4 The Parties further agree that with the written approval of the Minister, the Agency may assume or acquire any function(s) formerly carried out by any other transfer payment agency or classified agency provided such additional responsibilities or operations fall within the functions of the Agency as set out in the Act and Regulation and provided that such arrangement(s) receive such other required approvals including that of TB/MBC and the Lieutenant Governor in Council prior to such assumption or acquisition taking place.
- 1.4.4 The affairs of the Agency are governed and managed by the Board, which is appointed by the Lieutenant Governor in Council.
- 1.4.5 In accordance with section 7 of the Regulation the Agency has the capacity, rights, powers and privileges of a natural person for carrying out its functions, except as limited by the Act or the Regulation. The revenues of the Agency, including all money or assets received by the Agency by grant, gift, contribution, profit or otherwise, shall only be used to further its functions. In addition, the Agency shall not, except with the approval of the Lieutenant Governor in Council:
- (a) acquire, hold or dispose of any interest in real property;
 - (b) borrow money;
 - (c) pledge the assets of the Agency; or
 - (d) create any subsidiary.

1.5 Conflict of Interest

- 1.5.1 The Agency and members of the Board are subject to sections 132, 134 (1) and 136 of the *Business Corporations Act*, which deal with disclosure of conflict of interest and indemnification of the Board members.
- 1.5.2 Members of the Board and employees of the Agency are acknowledged to be subject to all applicable ethical conduct, political activity, and disclosure of wrongdoing rules in Parts IV, V, and VI of the *Public Service of Ontario Act, 2006*.

1.5.3 The Chair is responsible for ensuring that members of the Board are informed of the conflict of interest rules to which they are subject, including the rules on political activity and protected disclosure of wrongdoing that apply to the Agency under the *Public Service of Ontario Act, 2006*.

1.5.4 The CEO is responsible for ensuring that Agency employees are informed of the conflict of interest rules to which they are subject, including the rules on political activity and protected disclosure of wrongdoing that apply to the Agency under the *Public Service of Ontario Act, 2006*.

1.6 Duration of Memorandum

1.6.1 The Minister shall provide this Memorandum to Management Board of Cabinet for approval. The Parties shall not execute this Memorandum until it has received the approval of Management Board of Cabinet.

1.6.2 This Memorandum shall take effect on the date of the signature of the last Party to execute it and shall be in effect for a period not exceeding five (5) years. This Memorandum shall be renewed or revised at least six (6) months prior to its expiry date.

1.6.3 Notwithstanding section 1.6.2, this Memorandum shall remain in effect for no more than 6 months following its expiry or until a subsequent signed Memorandum has been approved by Management Board of Cabinet, executed by the Chair and the Minister, and a copy of which has been provided to the Secretary, Management Board of Cabinet.

1.7 Process for Review and Amendment

1.7.1 This Memorandum shall be reviewed upon appointment of a new Minister or a new Chair. The purpose of the review is to ensure that the Minister or the Chair, as the case may be, is aware of this Memorandum and to give the Minister or the Chair the opportunity to initiate discussions on amending this Memorandum. Where the Minister and the Chair agree to continue this Memorandum without requiring any amendment, both parties must affirm the continuance in writing. A copy of the letter of affirmation between the Minister and Chair must be provided to the Secretary, TB/MBC within six (6) months.

1.7.2 This Memorandum may be amended from time to time with the agreement of the Minister and the Agency. Either the Minister or the Chair may propose amendments to this Memorandum. All amendments must be in writing and

approved by the Agency and, if necessary, Management Board of Cabinet, before a revised Memorandum of Understanding can be executed.

1.8 Periodic Review of Agency

- 1.8.1 The Agency is subject to periodic review initiated at the discretion and direction of the Minister or TB/MBC. The Agency shall co-operate with a periodic review directed by the Minister or TB/MBC, if any.
- 1.8.2 In requiring a review under section 1.8.1, the Minister or TB/MBC, as the case may be, shall determine the timing and responsibility for conducting the review, the roles of the Chair and the Deputy Minister, and how any other parties shall be involved. The results of the periodic review may include options for changes to the mandate, consolidation or termination of the Agency.
- 1.8.3 In the event of a review initiated at the direction of the Minister, the Minister shall submit any recommendations regarding the Agency to Management Board of Cabinet for approval.

2.0 GUIDING PRINCIPLES

2.1 Management Principles

- 2.1.1 The principles outlined below have guided the identification of the respective roles and responsibilities of the Ministry and the Agency under the accountability relationship between them.
 - (a) Policy Directions and Implementation
 - (i) The Minister represents the interests of the people of Ontario and may set out public interest expectations for the Agency's operations by issuing written policy directions to the Agency.
 - (b) Operation of the Agency
 - (i) Pursuant to subclause 13(3)(b) of the Act, the Agency is committed to ensure accountability and transparency in the Ontario health care system and accepts all of the responsibilities that arise out of and from being a classified agency and a Crown agent which includes the Agency's full commitment and undertaking to conduct its day-to-day operations in compliance with the accountability framework of the Government;

- (ii) The Minister and the Agency agree, in principle, that the Agency operates separately from the Ministry in carrying out its statutory obligations under s. 12 of the Act and in these matters, the affairs of the Agency are under the management and control of the Board; and
- (iii) The Board is accountable to the Minister for the Agency's use of public funds and the results in terms of goals, objectives, performance and strategic direction for the Agency within its mandate as set out in the Act, the Regulation, and the Memorandum.

2.1.2 The Agency, as represented by the Chair, acknowledges that it is accountable to the Minister and the Government in fulfilling its mandate.

2.1.3 As an agency of the Government, the Agency shall conduct itself according to the management principles of the Government. These principles include ethical behaviour, accountability, excellence in management, wise use of public resources, value for money, equitable access to high quality service and openness and transparency.

2.1.4 The Agency and the Minister shall commit to avoid duplication of services and agree to ensure that all services are consistent with the Government's policy direction.

2.1.5 The Board shall, for all Board meetings:

- a) permit one (1) representative of the Ministry to attend meetings of the Board;
- b) provide the Ministry's representative with notice of meetings of the Board as well as information relevant to such meetings in the same way that members of the Board receive such notice and information; and
- c) provide the Ministry's representative with an opportunity to discuss matters of interest to the Ministry and to present information to members of the Board in respect of any matter that may be relevant to the mandate of the Agency.

2.1.5 Despite section 2.1.5, the Chair of the Board may, acting reasonably, exclude the Ministry representative from all or part of a Board meeting or not provide the Ministry representative with notice of a Board meeting where:

- (a) the receipt of notice of a Board meeting and/or the attendance by the Ministry representative for all or part of a Board meeting could, in the reasonable opinion of the Chair, create a conflict of interest for any member of the Board and/or the Ministry representative; or
- (b) the Board plans to discuss complex issues related to the Ministry-Agency relationship.

3.0 THE ACCOUNTABILITY RELATIONSHIP

3.1 Minister

- 3.1.1 The Minister is accountable to Cabinet and the Legislature for the performance of the Agency in the fulfillment of its mandate and compliance with applicable Government administrative policies.
- 3.1.2 The Minister is also accountable to Cabinet for the performance of the Agency and its compliance with this Memorandum, the Act and Regulation.
- 3.1.3 The Minister is responsible for attesting, reporting and responding to Cabinet on the Agency's performance and compliance with applicable Government Directives.

3.2 Deputy Minister

- 3.2.1 The Deputy Minister is accountable to the Secretary of Cabinet and the Minister for the performance of the Ministry in respect of this Memorandum and for carrying out the roles and responsibilities assigned to him or her by the Minister and by TB/MBC Directives.

3.3 Agency Board

3.3.1 The Agency Board, through the Chair, is accountable to the Minister for the Agency's use of public funds, oversight and governance of the Agency, as well as for setting the goals, objectives, and strategic directions for the Agency within its mandate as set out in the Act. Further, the Board is accountable to the Minister for the performance of the Agency in fulfilling its mandate within the context of the Act and Regulation, this Memorandum, the approved Annual Business Plan, Directives, and any other agreement(s) with the Ministry.

3.4 Chair of the Agency

3.4.1 The Chair, on behalf of the Board, is accountable and shall report to the Minister with respect to the performance of the Agency in fulfilling its mandate within the context of the Act and Regulation, this Memorandum, the approved Annual Business Plan, applicable TB/MBC Directives and any other agreement with the Ministry.

3.5 CEO

3.5.1 The CEO is accountable to the Board for the leadership of the Agency, for the management of the Agency's business, resources and business processes, for the management of its staff and consultants, and for the effective implementation of the Agency's mandate within the parameters set by the Act, Regulation, this Memorandum, and the Annual Business Plan.

3.5.2 The CEO works under the direction of the Board in implementing Board policies and decisions and must report performance results to the Board, at least every 90 days. The Chair and the Board of the Agency shall ensure that the CEO's performance contract includes the CEO's responsibilities, reporting obligations to the Chair and the Board, and the standards to be met in performing those responsibilities and obligations.

3.6 Agency Employees

3.6.1 The Agency employees report to and are accountable to the CEO or his/her delegates for their performance.

4.0 ROLES AND RESPONSIBILITIES

4.1 Roles and Responsibilities of the Minister

4.1.1 The Minister is responsible for:

- a) reporting and responding to the Legislature on the affairs of the Agency for which the Minister is responsible;

- b) reporting and responding to Cabinet on the Agency's performance and compliance with the Government's operational policies and the Minister's written policy directions;
- c) reporting and responding to TB/MBC on the Agency's performance, compliance with applicable TB/MBC Directives, the Government's operational policies and policy directions;
- d) receiving the Yearly Report under section 13 of the Act, and tabling it in the Legislature within thirty (30) days of receipt;
- e) receiving the Annual Report from the Agency and tabling it in the Legislature;
- f) approving the Agency's by-laws and resolutions;
- g) ensuring that the Annual Report is made available to the public after tabling it in the Legislature;
- h) informing the Agency's Chair of the Government's priorities and broad policies relating to the delivery of health services;
- i) consulting, as appropriate, with the Chair and other third parties on significant new policy directions and when the Government is considering regulatory or legislative changes for the Agency;
- j) when a change in the existing mandate of the Agency is being proposed, reviewing the proposal and recommending to TB/MBC the powers to be given to the Agency;
- k) reviewing and recommending to TB/MBC any change to the Agency's mandate that requires a corresponding change to the Act;
- l) reviewing and recommending to TB/MBC the provincial funding to be given to the Agency through the Ministry;
- m) when directing a periodic review of the Agency, making subsequent recommendations to TB/MBC; and
- n) reviewing and approving the Agency's Annual Business Plan.

4.2 Roles and Responsibilities of the Deputy Minister

4.2.1 The Deputy Minister is responsible for:

- a) advising, supporting and assisting the Minister regarding the Minister's responsibilities for the Agency;
- b) advising the Minister on the requirements of the AEAD;
- c) recommending to the Minister the evaluation or review, including a risk-based review, of an Agency program or the Agency, or changes to the Agency's management or operations;
- d) facilitating regular briefings and consultations between the Chair and Minister as well as between Ministry staff and Agency management and staff;
- e) attesting to TB/MBC as required, on the Agency as to its compliance with the mandatory requirements of the AEAD;
- f) ensuring that the Ministry and the Agency has the capacity and systems in

- place for ongoing risk-based management for the Agency, including appropriate oversight;
- g) supporting the Minister in reviewing the performance measures and results of the Agency;
 - h) submitting to the Minister as part of the annual planning process, a risk management plan including risk assessment and management plans for each risk category in relation to each objective for the Agency;
 - i) providing a process and framework for reviewing and assessing whether the Agency's mandate, business planning, and goals comply with the Directives as well as with its Act and regulations;
 - j) analysing reports and other sources to identify performance issues of concern to the Ministry;
 - k) undertaking timely risk-based reviews of the Agency, its management or operations, as directed by the minister or TB/MBC;
 - l) co-operating with any periodic review of the Agency directed by the Minister or TB/MBC;
 - m) consulting with the CEO or Chair as needed on matters of mutual importance, including application and requirements of TB/MBC Directives and Ministry policies pursuant to subsection 1.3.3 of this Memorandum;
 - n) facilitating regular briefings and consultations between the Chair and Minister as well as between Ministry staff and Agency management and staff;
 - o) informing the Agency pursuant to subsection 1.3.3 of this Memorandum, of new TB/MBC Directives and any exceptions to or exemptions from TB/MBC Directives or Ministry administrative policies, procedures, and guidelines;
 - p) advising and assisting the Minister in meeting assigned ministerial responsibility with respect to the Agency, including ensuring that the Minister is advised of the requirements of TB/MBC Directives and the operation of the Agency;
 - q) monitoring the Agency on behalf of the Minister, while respecting its mandate and where warranted, identifying any need for corrective action and recommending to the Minister ways to resolve any issues that are identified;
 - r) maintaining an open and cooperative working relationship with the Agency through meetings with the Chair as required or directed;
 - s) developing a mutually-agreed-to communications and issues management protocol with the Agency for responding to media issues or other issues or events relating to the Agency that may reasonably be expected to concern the Minister in the exercise of his or her responsibilities; and
 - t) ensuring that the Agency has an appropriate risk management framework and a risk management plan in place for managing risks that the Agency

may encounter in meeting its program or service delivery objectives.

4.2.2 The Deputy Minister may, in writing, delegate authority to an assistant deputy minister, chief administrative officer, or any other appropriate person for matters that fall under the purview of the Deputy Minister under the AEAD, subject to the limitations, conditions and requirements that the Deputy Minister sets out in a delegation.

4.3 Roles and Responsibilities of the Board

4.3.1 *The Board is responsible for:*

- a) establishing the goals, objectives, and strategic directions for the Agency within its mandate as defined by the Act, Regulation and this Memorandum;
- b) setting overall priorities for the Agency;
- c) ensuring controls are in place for proper management of the affairs of the Agency;
- d) approving the Agency's Annual Business Plan and Annual Reports for recommendation to the Minister;
- e) ensuring compliance with Directives (including financial and accounting policies);
- f) establishing such Board committees as are required for effective management, governance, and accountability, such as audit or governance committees, to advise the Board on Agency affairs;
- g) directing the affairs of the Agency so as to fulfill the Agency mandate and responsibilities as set out in its Act and Regulation, Agency by-laws, Minister-approved Annual Business Plan, risk assessment and management plans, as well as relevant Directives;
- h) passing by-laws or resolutions regulating Agency procedures;
- i) establishing guidelines, policies, and practices under which the Agency operates;
- j) monitoring the use of Funds and assets and setting policies to ensure that Funds and assets are used for their intended purposes with integrity and honesty and according to applicable legislation, regulations, Directives, and the principles of value for money, fairness, transparency, and effective controllership;
- k) ensuring that the Agency operates within its TB/MBC-approved allocations and Minister-approved Annual Business Plan;
- l) ensuring that the Agency develops effective performance measures, targets, and management systems for assessing the Agency's

- performance;
- m) directing preparation of, and submitting to the Minister, an Annual Report within the applicable timelines established by the Act, the Regulation and/or the AEAD;
- n) arranging for risk-based reviews and audits of the Agency as needed;
- o) directing corrective action be taken, when needed, and undertaking any corrective action as required by the Minister;
- p) co-operating on and sharing relevant information for any risk-based or periodic review directed by the minister or TB/MBC;
- q) appointing and evaluating the CEO further to a Board-approved performance review system;
- r) holding the CEO responsible and accountable for providing leadership, under the direction of the Board, for the Agency and for the effective management of the Agency and the implementation of the Annual Business Plan;
- s) ensuring that payment of a portion of compensation for the CEO is linked to achievement of the performance measures and targets as set out in the Annual Business Plan;
- t) ensuring that the CEO establishes effective performance measures and targets for the Agency;
- u) approving conflict of interest rules for Board appointees and Agency employees where the Board wants Agency-specific conflict of interest rules, which must also be approved by the Conflict of Interest Commissioner in accordance with the *Public Service of Ontario Act, 2006*;
- v) appointing advisory committees of the Board as required;
- w) selecting and appointing non-Board members to committees of the Board;
- x) proposing changes to the mandate of the Agency to the Minister as required;
- y) providing policy advice to the Government, through the Minister, concerning issues within or affecting the Agency's mandate; and
- z) informing and seeking prior approval from the Ministry when the activities of the Agency may diverge from those established in the Agency's Annual Business Plan.

4.3.2 The Board is further responsible for:

- a) approving the Memorandum for the Agency in a timely manner and for authorizing the Chair to sign this Memorandum on behalf of the Agency;
- b) directing the preparation of the Agency's Yearly Report under section 13 of the Act;
- c) directing the preparation and submission of the Agency's Annual Business Plan, Annual Report and other reports to the Ministry in keeping with the requirements of Management Board of Cabinet and this Memorandum;

- d) approving, for submission to the Minister, the Agency's plans, reports, and reviews within the timelines set by the Ministry;
- e) consulting, as appropriate, with stakeholders on the Agency's goals, objectives, and strategic directions in accordance with this Memorandum;
- f) ensuring that the Agency has a process in place for responding to complaints about the quality of services received by customers of the Agency that are consistent with the Government's service standards; and
- g) ensuring that Agency policies are in place which ensure legal, financial and other interests of the Government in any Intellectual Property Rights are protected in any agreement, including Agency I & IT Contracts, that the Agency may enter into with a third party that involves such Intellectual Property Rights.

4.4 Roles and Responsibilities of the Chair

4.4.1 The Chair is responsible for, on behalf of the Board:

- a) providing strategic leadership and overall direction to the Agency;
- b) ensuring the implementation of actions which support the goals, objectives, and strategic directions of the Agency;
- c) seeking strategic policy direction from the Minister, where appropriate;
- d) keeping the Minister, or her or his delegate, advised of issues or events that concern or can reasonably be expected to concern him or her in the exercise of ministerial responsibilities and, for urgent or emerging issues, advising the Minister of these issues or events within forty-eight hours of the event having occurred or the issue having arisen in addition to any requirements listed in Schedule "C" of this Memorandum;
- e) bringing to the Board's attention the requirement that the Agency comply with the Directives listed in Schedule A and any other Government or Ministry Directives, policies or guidelines that the Agency may be subject to in the future;
- f) developing with the Minister a Memorandum of Understanding for the Agency and signing it as directed by the Agency;
- g) providing leadership in regard to conflict of interest, and ensuring that all Agency Board members are informed of and comply with relevant conflict of interest rules under the *Public Service of Ontario Act, 2006* and all other applicable Directives, including requiring all Board members to file a conflict of interest declaration with the Chair;
- h) undertaking on behalf of the Board to make sure that public funds are

used for the purpose intended and according to applicable legislation, regulations, Directives, and the principles of integrity and honesty, and ensuring value for money;

- i) reviewing the Agency's proposed Annual Business Plan, budget, and financial reports
- j) in accordance with subsection 2.1.5 of this Memorandum, ensuring that the Deputy Minister or his/her delegate, is given notice of Board meetings and, upon request, receives all board meeting materials; and
- k) recommending to the Minister proposals affecting the Agency's mandate, management, operations, and Funding.

4.4.2 The Chair is further responsible for:

- a) submitting to the Minister the Agency's Yearly Report under section 13 of the Act as directed by the Agency;
- b) submitting to the Minister the Agency's proposed Annual Business Plan, multi-year business plan and budget as directed by the Board in accordance with submission dates established by the Ministry;
- c) communicating Board policy and strategic direction to the CEO;
- d) notifying the Deputy Minister of appointment vacancies on the Agency's Board;
- e) advising the Minister annually on any outstanding audit recommendations in accordance with this Memorandum;
- f) ensuring that payment of a portion of compensation for the CEO is linked to achievement of the performance measures and targets as set out in the Annual Business Plan;
- g) co-operating on and sharing any relevant information for any risk-based or other periodic review directed by the Minister or TB/MBC;
- h) consulting with the Minister in advance, and receiving the Minister's approval regarding any activity which may have an impact on the Government and/or the Ministry's Directives, policies guidelines and procedures, or on the Act;
- i) reporting to the Minister, as requested, on the Agency's activities; and
- j) communicating to the Board on mutually agreed-upon communications and issues management protocols for responding to media issues or other issues or events relating to the Agency that may reasonably be expected to concern the Minister in the exercise of his or her responsibilities.

4.5 Roles and Responsibilities of the CEO

4.5.1 The CEO is responsible for:

- (a) managing the business, resources and business processes of the Agency in accordance with the mandate of the Agency, all Directives, accepted business and financial practices, and this Memorandum;
- (b) meeting performance objectives approved by the Board;
- (c) managing the operations of the Agency within the approved Annual Business Plan and establishing and applying a financial management framework to support decision-making;
- (d) coordinating preparation of the Yearly Report under s. 13 of the Act under the direction of the Board and the Chair;
- (e) preparing, for approval by the Board, a performance review system for Agency employees, and implementing the system;
- (f) providing strategic and operational leadership and management to Agency employees, including human and financial resources management and translation of the goals, objectives, and strategic directions of the Board into operational plans and implementation activities;
- (g) managing, retaining, and supervising, directly or through his/her delegate, employees, agents and subcontractors of the Agency;
- (h) applying policies to ensure that public Funds are used with honesty and integrity and in accordance with applicable Minister of Finance controllership Directives, policies and guidelines;
- (i) ensuring that the Agency has the oversight capacity for monitoring its management and operations;
- (j) ensuring proper conduct of the financial business of the Agency in accordance with applicable Ministry of Finance controllership directives, policies and guidelines;
- (k) providing strategic and operational leadership to the day to day operations of the Agency and the fulfillment of its mandate in accordance with the Act and Regulation, with accepted business and financial practices and standards and within applicable TB/MBC Directives;
- (l) implementing a system of performance measures for the Agency and reporting on them to the Chair and to the Board;
- (m) at the Board's direction, undertaking responsibility for any advisory committees referred to in section 4.3.1 of this Memorandum
- (n) supporting the Chair and the Board in meeting their responsibilities;
- (o) advising the Chair and the Board on applicable TB/MBC Directives and Ministry policy and procedures, as well as the Agency's own policies and by-laws;
- (p) ensuring that the Agency has an appropriate risk management framework and risk management plan in place as directed by the Agency;
- (q) seeking advice and support from the Ministry, as appropriate;

- (r) keeping the Ministry and Chair advised of issues or events, including contentious matters, that may materially concern the Minister, the Deputy Minister, and the Chair in the exercise of their responsibilities;
- (s) maintaining effective communications with the Deputy Minister, pertinent Ministry staff, and key stakeholders and consult with the Deputy Minister, as required, on matters of mutual importance including on any services provided by the Ministry and on applicable TB/MBC Directives and Ministry policies;
- (t) as directed by the Board, co-operating, in any periodic review of the Agency directed by the Minister or TB/MBC, and with any identified corrective action;
- (u) undertaking timely risk-based reviews of the Agency;
- (v) establishing a system for the retention of formal Agency documents, for appropriately making such documents publicly available, and for complying with the *Freedom of Information and Protection of Privacy Act*, and the *Archives and Recordkeeping Act, 2006* ; and
- (w) ensuring the Agency meets the requirements of the AEAD and abides by all applicable federal, provincial and municipal laws, rules, orders, regulations and by-laws which, by law, apply to it including those statutes listed in Schedule “B”.

5.0 CONSULTATION AND COMMUNICATIONS

5.1 Obligation to Consult and Provide Effective Information Exchange, Communications, and Issues Management

5.1.1 The Parties agree that the timely exchange of information and consultation is essential to success in discharging their respective responsibilities.

For greater certainty, the Agency and the Ministry shall adhere to the Information Exchange, Communications and Issues Management Protocol set out as Schedule C to this Memorandum.

5.1.3 The Minister shall ensure that the Agency, through the Chair, is consulted, as appropriate, on initiatives proposed to amend the Act or Regulation or which otherwise have significant impact on the operations of the Agency.

5.1.4 The Agency, through its Chair, may recommend appropriate amendments to the Act or Regulation to the Minister.

5.1.5 The Parties shall use reasonable efforts to arrange to meet quarterly, but shall meet at least once every twelve (12) months. The meetings shall be between the

Minister or the Minister's delegate and the Chair or his/her respective delegate to discuss issues relating to the delivery of the Agency's mandate.

- 5.1.6 The Parties shall establish a joint liaison committee which shall meet at least every three (3) months to address issues of mutual interest as the parties may determine from time to time. The committee shall be chaired by the responsible Assistant Deputy Minister from the Ministry and the CEO of the Agency and shall be composed of senior representatives of the Ministry and the Agency as determined by each Party respectively.
- 5.1.7 The Agency shall ensure that recommendations on standards of care in the health system as set out in subparagraph 12(1)(c)(i) of the Act are made available to health care organizations and other entities as prescribed in the Act as they become available throughout the year in accordance with provisions set out in Schedule C of this Memorandum.
- 5.1.8 The Agency may issue public statements in connection with objective, evidence-based recommendations made under subparagraph 12(1)(c)(ii) of the Act provided that the Agency provides the Minister with reasonable advanced written notice of its plans along with the content of such statements.

6.0 REPORTING REQUIREMENTS

6.1 Yearly Reports

- 6.1.1 The Agency, through the Chair, shall ensure that the Yearly Reports are prepared, approved by the Agency, and submitted to the Minister for tabling in the Legislature in accordance with subsections 13 (1)-(5) of the Act.
- 6.1.2 The Agency shall not release its Yearly Reports in conjunction with any other organization except with prior approval of the Minister.
- 6.1.3 The Agency shall provide the Yearly Reports in both English and French.

6.2 Performance Measurement and Annual Business Plan

- 6.2.1 The Board shall ensure that the Agency implements a system of performance measurement including, but not limited to annual baseline reporting and quarterly monitoring systems on areas to be mutually agreed to by the Ministry and the Agency, through the Chair. The system shall include commitments to attaining specific performance goals within specified time frames. The system of

performance measurement and reporting is to be included in the Annual Business Plan.

6.2.2 The Board shall ensure that the Annual Business Plan is prepared and , that it includes a financial budget covering a minimum of three years from the current fiscal year and a risk management plan approved by the Agency. The Board shall submit the Annual Business Plan to the Minister for review and approval no later than four months prior to the beginning of the fiscal year to enable the Minister to meet Annual Business Plan and estimate requirements.

6.2.3 The Board shall ensure that the Annual Business Plan is prepared, approved, and submitted to the Minister for review and approval pursuant to subsection 13(6) of the Act.

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6.2.4 The Deputy Minister shall review the Agency's Annual Business Plan and will advise the Agency as to whether or not he or she will recommend that the Minister approve the directions proposed by the Agency.

6.3 **Annual Business Plan**

6.3.1 The Annual Business Plan shall be prepared in accordance with subsection 13(6) of the Act and the AEAD and shall include, in addition to the items set out in the AEAD:

- a) a description of Agency activities during the fiscal year reported on including a business plan which covers the next three fiscal years following the current fiscal year including activities associated with:
 - the Agency's monitoring and reporting function under sub clause 12(1)(a) of the Act;
 - the Agency's quality improvement support function under sub-clause 12(1)(b) of the Act; and
 - the Agency's function in promoting evidence-based care under sub-clause 12(1)(c) of the Act.
- b) a description of achievements during the fiscal year reported on relating to
- c) objectives and planned results set out in the next three fiscal years;
- d) a performance measures report establishing targets for the coming year
 - and explaining significant variances between planned and actual result or
 - performance in the preceding year;
- e) a financial budget covering a minimum of three years from the current fiscal year;

- f) planned sales and/or disposal of assets purchased using the Funds and the corresponding value of those asset transactions;
- g) a communications plan as described in Schedule C of this Memorandum;
- h) projected revenues and their sources and capital and operating expenditures;
- i) yearly reporting requirements consistent with the multi-year reporting framework;
- j) a description of the following items:

- Agency's vision and mission statements;
- Corporate governance structure;
- Confirmation of Agency's mandate;
- Strategic directions of the Agency;
- Resources required to meet objectives of mandate and strategic directions;
- Environmental scan;
- Summary of staff numbers;
- Impact of Annual Business Plan on human resources;
- Employee compensation strategy;
- Implementation plan; and
- Any other requirements imposed under the Directives or as otherwise required by the Minister.

6.3.2 The Annual Business Plan shall also include a risk assessment and risk management plan to assist the Ministry in developing its risk assessment and risk management plan information in accordance with the requirement of the AEAD, to assess risks, develop and maintain necessary records and report to TB/MBC.

6.4 **Annual Reports**

6.4.1 The Agency, through the Chair, shall ensure that the Annual Reports required under subsection 15(1) of the Regulation and under the AEAD are prepared and approved by the Agency and submitted to the Minister for tabling in the Legislature in accordance with the Act.

6.4.2 The Annual Report shall, among other things, include the following:

- analysis of operational performance;
- analysis of financial performance;
- discussion of performance targets achieved and of action to be taken when not achieved;
- names of persons appointed to the board of directors of the Agency, including date when first appointed and when the current term of appointment expires; and
- audited financial statements or, where an audit is not practical, financial statements subject to another appropriate level of external assurance with actual results, variances, and explanations of the variances against estimates.

6.5 Financial Reports

6.5.1 The Agency shall submit to the Minister an audited annual financial report on or before the thirtieth day of September of every year during which this Memorandum is in effect.

6.5.2 The audited annual financial report required under section 6.5.1 shall clearly describe the Agency's expenditures and revenues and shall categorize them in accordance with accounting principles generally accepted in Canada as recommended by the Public Sector Accounting Board ("PSAB") of the Canadian Institute of Chartered Accountants.

6.5.3 The Agency shall also prepare and submit quarterly financial statements detailing budget-to-actual expenditures to the Ministry. These statements should be signed by the designated financial officer of the Agency and include an explanation of variances and report any changes made to the Budget. A report on interest earned on Funding should be included in the final expenditure statement for each fiscal year of the Funding period.

6.6 Other Reports

6.6.1 The Agency shall submit to the Minister any other reports as may be requested by the Ministry from time to time, within the timeframe established by the Ministry.

6.7 Intellectual Property Rights

6.7.1 Throughout the term of this Memorandum, and subject to legislation including but not limited to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 and the *Personal Health Information Protection Act, 2004*, S.O.

2004, Chapter 3, Schedule A, as either may be amended or replaced from time to time, all Intellectual Property Rights, Agency I&IT Assets and Agency I&IT Contracts, now held or held in the future, shall become the property of Her Majesty the Queen in right of Ontario in the event of the wind-up of the business and affairs of the Agency.

6.7.2 All Intellectual Property Rights now held or acquired by the Agency throughout the known universe in the future, shall be and shall become the property of Her Majesty the Queen in right of Ontario at all times; provided, however, that this Memorandum is not intended to effect the assignment or transfer to Her Majesty the Queen in right of Ontario of any existing right, title, interest, licence or permission that by its existing terms, cannot be assigned or transferred to Her Majesty the Queen in right of Ontario without the consent of a third party unless and until such consent has been obtained.

6.7.3 Without limiting subsection 6.7.2, any reports and other documents published by the Agency (or its employees, agents and subcontractors), and all copyright and other Intellectual Property Rights in those publications and any Material that forms part of them shall belong to, or where necessary, licensed to Her Majesty the Queen in right of Ontario and shall be provided to the Ministry upon its written request. For the purpose of this section, “**Material(s)**” includes, but is not limited to graphics, promotional materials, databases, data, research, work in progress, technology, prototypes, inventions, working papers, reports and/or confidentiality agreements in any form whatsoever including compact disk, floppy disk, chip, memory tape, or print. The Agency shall place a copyright notice on any reports or other documents captured by this section 6.7.3 in the following form:

“© Queen’s Printer for Ontario, 201X ”

6.7.4 The Agency acknowledges and agrees that:

- (a) all Agency I&IT Assets and Agency Data is held for the benefit of Her Majesty the Queen in right of Ontario except that nothing in this section shall limit or interfere with the Agency’s ability to sell, transfer, dispose or otherwise deal with any Agency I&IT Assets or Agency Data as required by the Agency in its ordinary course of business until such time as the Agency is wound up pursuant to section 16 of the Regulation; and
- (b) any provision established by the Agency regarding ownership of Intellectual Property Rights in Software must not affect Her Majesty the Queen in right of Ontario’s ownership rights to information, materials, data, or other content accessed, collected, used, manipulated, processed,

retained, and stored through software, suppliers, or any third parties (irrespective of source and/or network destination).

6.7.5 The Agency will take such actions and grant such rights as may be necessary so that Her Majesty the Queen in right of Ontario will have, both now and in the event of the winding up of the business and affairs of the Agency pursuant to section 16 of the Regulation, the full right, title and interest to the Agency's Intellectual Property Rights, Agency Data and each Agency I&IT Asset under each Agency I&IT Contract entered into, amended or renewed by the Agency from this day forward. For greater certainty, the Agency will take such actions as may be necessary so that:

- (a) all right, title and interest of the Agency in any Agency I&IT Assets and Agency I & IT Contracts entered into, amended or renewed from this day forward, including all Intellectual Property Rights, licences and permissions acquired by the Agency under them; and
- (b) all right, title and interest of the Agency in any Agency I&IT Asset, Software or Agency Data acquired by the Agency under any Agency I & IT Contract entered into, amended or renewed from this day forward, including all Intellectual Property Rights, licences and permissions acquired by the Agency under the Agency I & IT Contracts;

can be transferred to the benefit of Her Majesty the Queen in right of Ontario without any further consent from any third party. The Agency undertakes to use reasonable efforts to determine whether the Agency is permitted to transfer the full right, title and interest of each Agency I & IT Contract entered into by the Agency prior to the effective date of this Memorandum to Her Majesty the Queen in Right of Ontario upon the winding up of the business and affairs of the Agency pursuant to section 16 of the Regulation without the consent or approval of any third party to such Agency I & IT Contract. In the event that consent or approval is required in respect of such an Agency I & IT Contract, then the Agency shall make reasonable efforts to renegotiate the applicable Agency I & IT Contract with the applicable third party so that the transfer contemplated in the preceding sentence may be made without third party consent or approval.

6.7.6 The Agency shall, at its own expense, promptly do any and all acts and cause to be executed and deliver to the Queen's Printer for Ontario, in respect of any copyright, but otherwise to Her Majesty the Queen in right of Ontario, any and all assignments, documents and instruments relating to Intellectual Property Rights and any other right, title or interest, which the Queen's Printer for Ontario or the Minister may request at any time or from time to time to carry out the intent of this

section 6.7.

- 6.7.7 During the term of this Memorandum, the Agency will be subject to the *Managing, Distributing and Pricing Government Information (Intellectual Property) Directive* referenced in Schedule A (and its successor, if any) unless and until the Minister and TB/MBC, as the case may be, either exempts the Agency or approves such other policy that describes how the Agency manages intellectual property or Intellectual Property Rights.
- 6.7.8 For any Intellectual Property Rights that belong to Her Majesty the Queen in right of Ontario pursuant to this section 6.7, Her Majesty the Queen in right of Ontario hereby grants to the Agency and the Agency accepts a non-exclusive, royalty-free, worldwide license to use, modify, distribute, copy, and/or use in any form, format, and/or state (hardcopy, electronic, or otherwise) all or any parts of the Intellectual Property Rights as the Agency deems necessary in order to further its functions, purpose, and mandate.

7.0 AUDIT ARRANGEMENTS

7.1 Statutory Audit

- 7.1.1 In accordance with the subsection 14(1) of the Regulation the Agency is required to appoint one or more auditors licensed under the *Public Accounting Act, 2004* to audit annually the accounts and financial transactions of the corporation.
- 7.1.2 **The Agency shall** give a copy of every auditor's report to the Minister within six months after the end of the fiscal year to which the report relates, and shall make available to the Provincial Auditor, on his or her request, the auditor's report and all accounts, records and other documents relating to the audit.

7.2 Additional Audits

- 7.2.1 In addition to the annual financial audit provided for under the Regulation, the Agency shall be subject to such other audits relating to any aspect of its affairs as the Minister may determine to be appropriate. The Ministry shall bear the cost of the auditor's salary for any such other audits.
- 7.2.2 The Agency is also subject to periodic review and value-for-money audits conducted by the Auditor General of Ontario under the *Auditor General Act* or by the Ontario Internal Audit Division. The Ontario Internal Audit Division may also

carry out an internal audit, if approved to do so by the Ministry's Audit Committee or by the Corporate Audit Committee.

7.2.3 The Agency may request an external audit of the financial affairs or the management controls of the Agency at the Agency's expense.

7.3 Audit Results

7.3.1 The results of any audit conducted by either the Ministry or Government staff, or both, will be shared with the Agency and with the Minister in relation to any material audit. The Agency, through the Chair, will be accorded an opportunity to enter comments into the audit record.

7.3.2 The Agency, through the Chair, shall provide a copy of every report from an audit to the Minister and the Minister of Finance within five (5) days of the Agency's receipt of the audit report.

7.3.3 The Agency, through the Chair, shall provide a copy of its response to the audit report to the Minister and the Minister of Finance within thirty (30) days of the Agency's receipt of the audit report.

7.3.4 The Agency, through the Chair, shall advise the Minister annually on any outstanding audit recommendations.

8.0 FINANCIAL ARRANGEMENTS

8.1 Agency Funding

8.1.1 The Agency is funded out of the Consolidated Revenue Fund pursuant to an appropriation authorized by the Legislature, unless otherwise provided. Unless otherwise provided for in an Accountability Agreement, the Ministry shall, in a timely manner and keeping in mind the Agency's budget and financial processes, notify the Agency of any changes to its Funding and/or operating expenditures.

8.1.2 The Agency receives all Funding through transfer payments from the Ministry.

8.1.3 The Agency shall use all Funding only for the purpose of carrying out the roles and responsibilities defined in the Act, Regulation and this Memorandum and shall spend the Funding only in accordance with the budget that is included as part of the Agency's Annual Business Plan and/or with any other agreement as between the Ministry and the Agency.

- 8.1.4 Changes to the budget must be reported in the financial statements.
- 8.1.5 The Agency shall place any Funds not required for immediate use in an interest bearing account, and any interest earned on the Funds shall be used by the Agency for the sole purpose of furthering its functions.
- 8.1.6 Financial procedures of the Agency must be in accordance with applicable legislation including the *Financial Administration Act* and all applicable Directives, including those listed in Schedule A.
- 8.1.7 Without limiting the foregoing but subject to section 8.1.8 below, the Agency shall negotiate its banking arrangements and any other investments held by it only through the Ontario Financing Authority.
- 8.1.8 The Ministry shall obtain the approval of the Ministry of Finance to permit the Agency to:
- (a) Make any necessary banking arrangements, including credit cards in respect of its day-to-day business; and
 - (b) Issue cheques in respect of its day-to-day business;

8.2 **Acquisition of Goods and Services and Real Property**

- 8.2.1 The Agency shall comply with TB/MBC Directives concerning the acquisition of goods and services and shall act in a manner that is consistent with those Directives. The Agency shall report on planned sales, and/or disposals of assets purchased using the Funds as part of its Annual Business Plan.
- 8.2.2 The Agency shall comply with the TB/MBC Directive entitled *Real Property and Accommodation*, and shall adhere to the principle of Value for Money which is outlined in it. In compliance with the *Real Property and Accommodation Directive*, the Agency shall use a competitive process to acquire real property and accommodation, maximizing the return to the Crown when disposing of surplus assets, and shall act in a manner that reflects the basic principles on which the *Real Property and Accommodation Directive* is based.
- 8.2.3 The Agency shall not acquire, hold or dispose of any interest in real property, facilities or buildings without the prior written approval of the Lieutenant-Governor-in-Council.

8.2.4 The Agency shall, prior to seeking approval from the Lieutenant-Governor-in-Council for the acquisition, holding and/or disposition of any interest in real property, facilities or buildings, consult with the Ministry, TB/MBC and/or the Ontario Realty Corporation as required by the Act, the Regulation and all applicable Directives as set out in Schedule A.

8.3 Recovery of Unspent Ministry Funds

8.3.1 Pursuant to the *Financial Administration Act*, the Minister of Finance on behalf of the Government is entitled to recover any unspent Funds (included any interest earned as contemplated in subsection 8.1.5 herein) provided by the Minister to the Agency.

8.3.2 The Agency shall not receive funds from sources other than the Government, unless it has received the prior consent of both the Ministry and the Ministry of Finance, either of which may attach such conditions on the receipt, expenditure and handling of such funds as it deems advisable.

8.4 HST Liability

8.4.1 The Agency and Ministry will jointly work with the Ontario Ministry of Finance to determine the status of the Agency with regard to the applicability of the Harmonized Sales Tax (HST).

9.0 AGREEMENTS WITH OTHERS

9.1 Agreements with Research and Other Organizations

9.1.1 The Agency shall ensure that any agreements that it enters into with research or other organizations are consistent with the TB/MBC Directives, the Agency's mandate and also serve the public good.

9.1.2 On request, the Agency shall provide the Minister with copies of any written agreements entered into by the Agency, within the timelines set by the Minister.

9.1.3 The Agency shall not sell any analysis of the information it has collected, or any of its services, without the approval of the Lieutenant Governor in Council.

10.0 CREATION, COLLECTION, MAINTENANCE AND DISPOSAL OF RECORDS

- 10.1 The Agency is prescribed as an institution, and the Chair is prescribed as the head of the institution pursuant to Regulation 460 under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). As such, the Agency shall handle all of its records in a manner that is consistent with FIPPA.
- 10.2 The Agency shall keep and maintain all financial records, invoices and other financially related documents relating to Funding provided by the Ministry or otherwise to the activities of the Agency in a manner consistent with generally accepted accounting principles and clerical practices. The Agency shall maintain such records and keep them available for review by the Ministry for a period of seven (7) years from the date of the creation of the records.
- 10.3 The Agency shall maintain and manage all non-financial documents and records relating to Funding received from the Ministry or otherwise related to the activities of the Agency, including any records it receives or creates relating to report subjects, in a confidential manner consistent with all applicable laws including the obligations of a public body under the *Archives and Recordkeeping Act, 2006* and in accordance with the *Management of Recorded Information Directive*.
- 10.4 In accordance with the Regulation, the Agency may only collect de-identified personal health information for the purposes of carrying out its functions and making its reports. The Parties agree to review within twelve (12) months of the effective date of this Memorandum this section and its impact on the Agency's ability to carry out its functions in accordance with its mandate.
- 10.5 When preparing reports, Agency may only procure information from sources determined by the Agency to be reliable. The Ministry retains the right to review the type of sources the Agency is procuring information from and advising the Agency if it believes that the quality of information procured may be compromised or unreliable.
- 10.6 The Agency shall permit the Ministry, upon reasonable notice, to inspect and copy any financial records, invoices and other financially related documents, or any non-financial documents and records in the possession or under the control of the Agency which relate to Ministry Funding or otherwise to the activities of the Agency.
- 10.7 In the event that the Agency's mandate in relation to information management expands subsequent to the execution of this Memorandum, the Agency shall, upon request from the Ministry, submit to a Privacy Impact Assessment.

10.8 In circumstances where the Agency commissions the creation of information that entails or involves collection, use, or disclosure of personal information, *the Agency shall ensure that each such contract it enters into for data collection and which involves the potential collection, use, or disclosure of personal information is specific with respect to sources, entities and transfer from collection to destruction, and made subject to a Threat Risk Assessment and a Privacy Impact Assessment before execution.*

11.0 ADMINISTRATIVE ARRANGEMENTS

11.1 Management and Accounting Principles

11.1.1 The Agency is responsible for conducting all of its business and operations in accordance with applicable Government policy and generally accepted management and accounting principles.

11.2 Sharing Data

11.2.1 The Agency, through the Chair will, at the request of the Minister or the Deputy Minister, supply specific data and other information that may be required from time to time for the purposes of Ministry administration.

11.2.2 The Agency and Ministry will enter into a data sharing agreement, in accordance with all applicable privacy laws, to support the Agency's mandate.

11.3 Personal Information

11.3.1 The Agency, as represented by the Chair, warrants and agrees that any personal information, as defined under the Freedom of Information and Protection of Privacy Act, collected by the Agency shall be used and disclosed only pursuant to the mandate of the Agency, and for no other purposes. The Agency further warrants that it will have reasonable measures in place to ensure the security and confidentiality of personal information it holds in accordance with the requirements of all applicable legislation.

11.4 Legal Services

11.4.1 Legal services to the Agency shall be provided to the Agency in accordance with the Ministry of the Attorney General's Corporate Operating Policy on Acquiring and Using Legal Services.

11.5 Service Standards

11.5.1 The Chair will ensure that the Agency carries out its mandate at a quality standard that reflects the principles and requirements of the OPS Service Directive.

11.6 Notices

11.6.1 Notices in this Memorandum shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery, facsimile or electronic mail (email) and shall be addressed to, respectively, the Minister and the Agency as set out below:

To the Minister:

Ministry of Health and Long-Term
Care
80 Grosvenor Street, 5th Floor
Toronto, Ontario
M7A 1R3

Attention:
Susan Fitzpatrick
Assistant Deputy Minister –
Negotiations and Accountability
Management Division

Fax: 416-327-5186
Email:
Susan.Fitzpatrick@ontario.ca

To the Agency:

Ontario Health Quality Council
130 Bloor Street West, Suite 702
Toronto, Ontario
M5S 1N5

Attention:
President and Chief Executive
Officer

Fax: 416-323-9261
Email: Ben.Chan@ohqc.ca

Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; (b) in the case of personal delivery or facsimile one (1) Business Day after such notice is received by the other Party, or (c) in the case of electronic mail, one (1) Business Day after such notice is sent to the other Party. In the event of a postal disruption,

notices must be given by personal delivery, facsimile or by electronic mail. Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph. Each Party shall notify the other pursuant to this section forthwith of any change to the information contained in this section 11.6.1 and shall include with such notice, any new or additional information, as applicable. For the purposes of this Section 11, "Business Day" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Ministry has elected to be closed for business.

12.0 STAFFING, REMUNERATION AND APPOINTMENTS

12.1 Agency employees are selected and appointed by the CEO or his/her delegate. For greater certainty, Agency employees are not public servants employed for the purposes of Part III of the *Public Service of Ontario Act, 2006*.

12.2 In developing its own human resources policies and practices, the Agency shall reflect the principles of the *Public Service of Ontario Act, 2006* and the Directives including:

- (a) Key principles to guide policy direction on compensation;
- (b) A requirement that the Board be responsible for putting in place a performance management system for the CEO and other staff;
- (c) A requirement for merit-based competitive processes and fair treatment; and
- (d) A requirement to put in place a Workplace Discrimination and Harassment Prevention policy and related resolution processes.

12.3 Agency employees shall receive remuneration and benefits similar to those received by the OPS for comparable duties and responsibilities.

12.4 The Agency may enter into arrangements (e.g. consultants) with persons other than those appointed under section 12.1 of this Memorandum to provide professional, technical or other assistance to or on behalf of the Agency, and the Agency may prescribe their duties and other terms of engagement and provide for payment of their remuneration and expenses in compliance with all applicable Directives.

- 12.5 The Lieutenant Governor in Council, pursuant to the Act, appoints the Chair of the Agency and a Vice-Chair of the Agency.
- 12.6 The members of the Board are appointed by the Lieutenant Governor in Council. The Agency consists of not fewer than nine (9) and not more than twelve (12) Board members, the composition of which shall be as set out in the Act and the Regulation.

13.0 INSURANCE AND LIABILITY PROTECTION

- 13.1 The Agency, as represented by its Chair acknowledges that the Agency shall put into effect and maintain for the period during which this Memorandum is in effect with insurers that are licensed to write in Ontario, insurance coverage which is satisfactory to the Ministry.
- 13.2 Section 11 of the Act provides that no action or proceeding for damages may be instituted against a member of the Agency or anyone acting on behalf of the Agency for any act done in the execution or intended execution in good faith of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the dates indicated.

ONTARIO HEALTH QUALITY COUNCIL
operating as HEALTH QUALITY ONTARIO

Chair of the Ontario Health Quality Council

Date

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented by the Minister of Health and Long-Term Care

Minister

Date

APPROVED BY MANAGEMENT BOARD OF CABINET ON:

SCHEDULE “A”

The Ontario Health Quality Council is subject to and shall comply with all Government Directives, policies and guidelines (including those from Management Board of Cabinet, Ministry of Finance, Ministry of Government Services, Ministry of Health and Long-Term Care etc.) that may exist from time to time, including those listed below.

The Parties acknowledge and agree that the Agency has access to the Directives electronically through AGNES but that the Ministry shall notify the Agency of any applicable new/amended Directives by written notification to the Agency.

1. Accountability Directive
2. Advertising Content Directive
3. Agency Establishment & Accountability Directive
4. Business Planning and Allocation Directive
5. Cash Management Directive
6. Communications in French Directive
7. Corporate Operating Policy on Acquiring and Using Legal Services
8. Delegation of Authority – Key Directive
9. Disclosure of Wrongdoing Directive – for employees/appointees of public bodies, including Questions and Answers
10. Emergency Evaluation Planning Directive
11. Enhancing Privacy: Computer Matching of Personal Information Directive
12. Enhancing Privacy: Computer Matching of Personal Information Guideline
13. Expenditure Management Directive
14. Freedom of Information and Privacy Directive
15. Government Appointees Directive
16. Government Publications Directive
17. Information and Information Technology Directive
18. Information and Information Technology Security Directive
19. Information Security & Privacy Classification Policy
20. Information Security & Privacy Classification Operating Procedures
21. Internal Audit Directive
22. Management of Recorded Information Directive
23. Managing, Distributing and Pricing Government Information (Intellectual Property)
24. Privacy Impact Assessment Guidelines
25. Procurement Directive
26. Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services
27. Real Property and Accommodation
28. Transfer Payment Accountability Directive
29. Travel, Meal and Hospitality Expenses Directive
30. Visual Identity Directive

Please use the following link for Agency access to Directives and other associated documents:

<http://www.agnes.gov.on.ca/>

-End of Page -

SCHEDULE “B”

Statutes of Particular Application Applicable to the Ontario Health Quality Council

The Ontario Health Quality Council is subject to and shall comply with all applicable provincial statutes, as amended or replaced from time to time, including the following:

1. *Accessibility for Ontarians with Disabilities Act, 2005;*
2. *Archives and Recordkeeping Act, 2006;*
3. *Broader Public Sector Accountability Act, 2010;*
4. *Financial Administration Act;*
5. *Freedom of Information and Protection of Privacy Act;*
6. *French Language Services Act;*
7. *Management Board of Cabinet Act;*
8. *Ministry of Treasury and Economics Act;*
9. *Ontario Human Rights Code;*
10. *Pay Equity Act;*
11. *Personal Health Information and Protection of Privacy Act, 2004;*
12. *Public Sector Compensation Restraint to Protect Public Services Act, 2010;*
13. *Public Sector Expense Review Act, 2009;*
14. *Public Sector Salary Disclosure Act, 1996;*
15. *Public Service of Ontario Act, 2006.*

-End of Page -

SCHEDULE “C”

INFORMATION EXCHANGE, COMMUNICATION AND ISSUES MANAGEMENT PROTOCOL

General Agreement

The Parties recognize that the timely exchange of information and consultation is essential to success in discharging their respective responsibilities.

Duty to Advise Minister

The Board, through its Chair, shall keep the Minister advised of issues or events that concern or can be reasonably expected to concern the Minister in the exercise of his or her responsibilities. These issues or events will be communicated by the Chair to the Minister within the timeframes required in this Memorandum.

Communications

Communications between the Agency and the Ministry’s Communications and Information Branch (CIB) regarding matters that fall within advertising, marketing communications, public relations, communications planning and issues management will be between the Communications Director of the Agency (or his or her designate) and the Assistant Deputy Minister Communications (or his or her designate) of CIB, as required. These Parties or their designates will liaise on all communications activities.

Advertising, Marketing Communications, Public Relations and Positioning

Major Agency communications products and plans, including positioning statements and key messaging, will be shared with the CIB to ensure alignment and consistency with the government’s overall communications objectives, strategies and key messages. These products and plans will be subject to the review and approval process established for the CIB in support of the Minister. It is understood that any scientific findings produced by the Agency, the interpretations of these findings and any recommendations made by the Agency, based on these findings, would not be subject to approval by CIB.

Guiding Principles

1. The Parties acknowledge that a professional and effective communications program is critical to the success of the Agency in Ontario. The Agency and CIB will work collaboratively to develop a communications strategy, which

encompasses both public and provider-focused communications initiatives that support the Agency's mandate as well as ensure alignment in overall positioning, messaging and timing of activities, where applicable. This communications strategy will be contained in the Agency's Annual Business Plan.

2. All communications activities will be conducted in a systematic manner, according to this Information Exchange, Communication, and Issues Management Protocol and a communications plan that involves a review and approval process by each Party.
3. Government of Ontario protocols, including: Advertising Review Board criteria, the *Government Advertising Act*, visual identity standards and the requirement of sourcing to Ministry vendors of record, will apply in all cases.

Relevant Directives on Procurement and Content

The acquisition of communications services shall be conducted according to the Directives. This includes agencies providing advertising, creative, public relations, market research or media buying services. Any communication agencies retained by the Agency will be engaged through established Advertising Review Board processes and guidelines. Unless otherwise approved/stated, the Agency will be subject to all relevant Ministry of Government Services Directives governing communications, including:

- (i) Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services;
- (ii) Procurement Directive (*Public Opinion Polls and Market Research Studies*);
- (iii) Advertising Content Directive; and
- (iv) Visual Identity Directive

Communications Planning

The Agency shall develop and implement a communications plan each year. The communications plan will form part of the Agency's Annual Business Plan submission to the Ministry. This communications plan will be shared with the CIB and approved by the Agency's Board and the CEO, and shall be submitted annually by the Agency's communications director to CIB's Assistant Deputy Minister, or designate, for review, before final approval of the entire Business Plan by the Ministry.

Consistent with Annual Business Plan

The Agency will use best efforts to ensure that all products arising from the communication plan will be in keeping with the communications plan included in its Annual Business Plan submission to the Ministry.

Coordination of Communications Plan

The Agency's Communications Director and the Ministry's Assistant Deputy Minister (or designate) of CIB will work co-operatively to implement a comprehensive, multifaceted communications plan that is coordinated with Ministry efforts to support and facilitate the mandate of the Agency as described in section 1.5 of this Memorandum.

Market Research

This research will be undertaken by an approved vendor of record following the government procurement rules. The Agency agrees to follow an approved vendor of record research proposal and implementation process as agreed to by both Parties, in advance of any research expenditures and based on the approval of a business case. The Agency will provide, in a timely manner, the results of any public, provider, or other market research activities relating to measurement/evaluation of campaigns/programs or concerning the development of communications plans or strategies to CIB.

Evaluation

The Agency will provide CIB with communications program activities performance data, evaluation reports, and budgeting, quarterly, or as agreed to by both Parties.

Implementation Operations:

Notification of CIB

The Agency's Communications Director and/or designate will:

- (a) keep the Assistant Deputy Minister of CIB or designate fully apprised of developments and issues as soon as possible as outlined in the timelines below to ensure appropriate government review and response, and
- (b) prior to issuing any news release or other planned media communications, consult with the Assistant Deputy Minister of CIB or designate within the timelines set out below under "*Content of Timing and Communications*", for required timelines,
- (c) be accountable for notifying CIB of issues as soon as these come to the attention of the Agency.

Notification of OHQC

The CIB will be accountable to the Agency for:

- (a) ensuring that issues raised by the Agency are brought to the attention of the Minister's Office through established issue management protocols and procedures,
- (b) keeping it fully apprised of developments and issues as soon as possible as outlined in the timelines below to ensure appropriate Agency review and response, and
- (c) providing any required feedback to the Agency work as soon as possible or as agreed upon at the time of notification.

Issue Management Protocols

The Agency and the Ministry shall establish and follow issue management protocols and procedures for responding to media issues or other issues or events relating to the Agency that may be reasonably expected to concern the Government.

Publications and Web Design

The Agency's communications activities and branding shall be managed in accordance with this protocol and the Directives. Print and web-based publications (e.g., reports) and communications products (e.g., brochure, advertisement) will be developed and produced according to Directives on design, content and procurement of production services and will adhere to communications approval protocol by the CIB and utilize appropriate visual identity standards.

Consultation with/reporting to the MOHLTC

The Agency shall ensure that it consults with the Ministry's CIB on planned public communication strategies, major provider outreach activities and the release of publications (includes the Quality Monitor report) as set out in this Memorandum and will report on project status and development on a quarterly basis, or other timetable as agreed to by both Parties.

Reasonable Advance Notice

The Agency and the CIB shall provide each other with reasonable advance notice on the content and timing of any public announcement, news release or media communication.

Urgent or Emerging Issues

Despite the time frames set out below for specific types of communications, all public announcements and media communications related to urgent and/or emerging issues shall require either the CIB or the Agency, as the case may be, to provide the other Party with notice of such announcement or communication as soon as possible prior to release.

Content and Timing of Communications

The Agency and the CIB shall provide each other with reasonable advance notice on the content and timing of all communications pursuant to the parameters below, unless otherwise agreed to prior to release or implementation:

(a) Communications Products

- (i) News Releases – identify 5 business days before release and share materials 2 working days before release;
- (ii) Web designs – 10 working days before launching;
- (iii) Marketing communications materials (print collateral such as pamphlets, posters) - 10 working days prior to production and 20 working days prior to public release;
- (iv) Recommended advertising creative –15 working days prior to voluntary submission to Office of the Auditor General; or in the case of web, internet or social media prior to final production;
- (v) Final advertising creative – 10 working days prior to submission to Office of the Auditor General; or in the case of web, internet or social media prior to final production;
- (vi) Recommended media buying plan – 10 working days prior to submission to Office of the Auditor General and any media expenditures have been undertaken;

(b) Major Reports and Publications

- (i) Print (including Quality Monitor) and web-based reports – 20 working days prior to public release
- (ii) Publications, such as articles in trade publications (magazines, newsletters) – 20 working days prior to public release

(c) Implementation Strategies (supplementary to Annual Business Plan and communications plan)

- (i) Public relations plan – 15 working days prior to launch;
- (ii) Market research business case – 20 working days prior to the issuing of a *Request for Services* to suppliers on the government’s Vendor of Record list;
- (iii) Digital marketing strategy (including websites) – 10 working days prior to OHQC briefing;
- (iv) Paid advertising plans – 15 working days prior to production.

Notice of Public Consultations

The Agency and the CIB shall each ensure that it notifies the other party when either the Agency or the Ministry, as the case may be, undertakes public consultations that in the case of the Ministry, are relevant to the Agency and in the case of the Agency, that are related to its mandate.

Results of Public Consultations

The Agency and the CIB shall each inform the other Party of the results of stakeholder and other public consultations and discussions and will seek input into plans to implement same.

Review of Paid advertising and Public Notices

All plans for proposed paid advertising, including public notices or regulatory advertising, must be reviewed in advance by the CIB prior to creative development and/or the purchase of media, for compliance with the *Government Advertising Act, 2004* and its regulations, as amended (the “GAA”) along with any applicable communications-related directive.

Review under GAA

If an item is deemed reviewable under the GAA, the CIB will manage the submission with the Office of the Auditor General using the protocols established for submission, on behalf of the Agency. The Office of the Auditor General requires seven business days from receipt to review submissions. CIB requires 3 business days to review the submission.

Acknowledgement of Ministry

The Agency shall acknowledge the financial support of the Government through the Ministry in all its financial, educational and promotional and communications materials

and reports in accordance with the Directives, considering established visual identity standards of the Government of Ontario.

Principal Media Focus

The Agency will act as the principal media focus for Agency initiatives.

Duty to Respond

The Agency will respond to public inquiries, complaints and concerns with respect to the activities and operations of the Agency and will report any potential or foreseeable issues, as relevant, to CIB.

-End of Page -