

Her Majesty the Queen in right of Ontario as
represented by the Minister of Health and Long-
Term Care

(the “MOHLTC” or the “Ministry”)

and

Mental Health Centre Penetanguishene, a
non-share capital corporation incorporated
under the laws of Ontario

(the “Hospital”)

Hospital Service Accountability Agreement for
2008-10

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MOHLTC and the Mental Health Centre Penetanguishene Hospital Service Accountability Agreement for 2008-10

BACKGROUND

1.1. Goal

- (a) In accordance with the terms of the Transfer Agreement, the MOHLTC will transfer the Mental Health Centre Penetanguishene, including the provision of the Hospital Services, to the Hospital on the Closing Date.
- (b) The MOHLTC seeks to enter into a Hospital Service Accountability Agreement (“H-SAA”) with the Hospital. The H-SAA reflects that to the extent one party succeeds, the other party will also succeed as the parties share a common interest in supporting “... a health care system that keeps people healthy, gets them good care when they are sick and will be there for our children and grandchildren”.
- (c) In addition to the terms of this Agreement, the MOHLTC and the Hospital intend to establish a separate, interim three-year process governing the review and right-sizing of the Hospital’s annualized Base Budget Allocation. For greater certainty, if this Agreement is assigned to a LHIN, the review and right-sizing commitment of the MOHLTC shall not be assigned.

1.2. Roles

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

1.2.2 MOHLTC, LHIN and Hospital Shared Roles It is intended that the MOHLTC, the LHIN and the Hospital will work collaboratively, in accordance with their roles set out under this Agreement, and will cooperate to facilitate the achievement of this Agreement. The parties will work together to enhance the efficiency and effectiveness of Hospital Services using a continuous improvement framework.

1.2.3 LHIN’s Role The LHIN leads, plans, coordinates, integrates and funds the local health system. The LHIN also monitors, evaluates, reports on and addresses the performance of health service providers and the local health system.

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

1.3. Governance

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

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

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

all based on the practice of early notice.

1.5. Legal Context

1.5.1 Background Under the Local Health System Integration Act (the “Act”), the MOHLTC may assign to a LHIN the MOHLTC’s rights and obligations under all or part of an agreement between the MOHLTC and a health service provider. The Act also provides that the LHIN is required to enter into a service accountability agreement with each of the health service providers that it funds.

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

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

2.0 DEFINITIONS

2.1. Definitions Capitalized terms not otherwise defined below have the meanings set out in the Transfer Agreement:

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

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

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

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

Base Funding means the funding set out in **Schedule C** in this document on the lines labeled , "Budget Allocation for Receiving Hospital" and "Budget Allocation Remaining for Transfer";

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

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

CEO means Chief Executive Officer;

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

Days means calendar days;

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

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

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

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

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

Hospital Services means the clinical services provided by the Hospital, and the operational activities that support those clinical services, as set out in more detail in Schedule I;

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

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

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

MOHLTC means Her Majesty the Queen in right of Ontario as represented by the Minister of Health and Long-Term Care;

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

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

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

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

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

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

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

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

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

Schedule A: Planning and Funding Timetable;

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

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

3.0 APPLICATION AND TERM OF AGREEMENT

3.1. A Service Accountability Agreement

This Agreement is a SAA for the purpose of Part III of the CFMA and, if assigned to a LHIN, will be a SAA for the purposes of subsection 20(1) of the Act and Part III of the CFMA. This Agreement sets out the parties' respective obligations as set out in *section 4.0*.

3.2. Term

This Agreement will commence on the Closing Date and will terminate on March 31, 2010.

3.3. Schedules

Each Schedule will clearly specify the fiscal period or periods to which it applies.

3.4. Application

This Agreement does not apply to or supersede other funding or contractual arrangements that the Hospital may have with the provincial Crown, Cancer Care Ontario or the federal Crown.

4.0 OBLIGATIONS OF THE PARTIES

4.1. The MOHLTC

The MOHLTC will fulfill its obligations under this Agreement in accordance with the terms of this Agreement, Applicable Law and Applicable Provincial Policies.

4.2. The Hospital

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

5.0 FUNDING

5.1. Annual Funding

The MOHLTC will provide the Hospital with the Funding specified in **Schedule C** in equal installments twice monthly unless otherwise agreed. The MOHLTC is not responsible for any commitment or expenditure by the Hospital in excess of the Funding that the Hospital makes in order to meet its commitments under this Agreement nor does this Agreement commit the MOHLTC to provide additional funds during or beyond the term of this Agreement. The MOHLTC agrees that, pursuant to this Agreement, the annualized Base Budget Allocation for 2008/09 shall not be reduced during the term of this Agreement. If this Agreement is assigned to the LHIN, it shall be conditional on the LHIN's additional agreement that pursuant to the Transfer Agreement, the annualized Base Budget Allocation for 2008/09 shall not be reduced also for the third year following the Closing Date, which commitment shall be reflected in the H-SAA entered into with the LHIN for 2010-12.

For greater certainty, the MOHLTC may provide additional funds to the Hospital pursuant to the terms governing the budget review process set out in the Transfer Agreement. If this Agreement is assigned to the LHIN, it shall be conditional on the LHIN's acknowledgement that the Hospital may receive additional funds from the MOHLTC pursuant to the terms of the Transfer Agreement and that any such funds directed through the LHIN shall be dedicated to the Hospital.

5.2. Planning Allocations

The Hospital acknowledges that the planning allocations specified in **Schedule C** are targets only, provided solely for the purposes of planning and is subject to confirmation. Funding and the confirmation of **Schedule C** is conditional upon an appropriation of moneys by the Legislature of Ontario to the MOHLTC and, if the Agreement is assigned to the LHIN, funding of the LHIN by the MOHLTC under the Act.

5.3. Revisions

If actual Funding is different than what is specified in **Schedule C**, the parties will negotiate and revise the requirements for Performance Indicators, Performance Standards or Service Volumes, as necessary.

5.4. Adjustments

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

5.5. Funding Increases

Before the MOHLTC can make an allocation of additional funds to the Hospital, the parties will: (i) agree on the amount of the increase; (ii) agree on any terms and

conditions that will apply to the increase; and (iii) execute an amendment to this Agreement that reflects the agreement reached.

5.6. Funding Recovery

5.6.1 Recovery of Funding.

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

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

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

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

5.6.2 Process of Recovery

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

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

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

5.6.3 Full Consideration

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

5.6.4 Hospital's Retention of Operating Surplus

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

5.7. Consideration of Weighted Cases

Where a settlement and recovery is primarily based on volumes of cases performed by the Hospital, the MOHLTC may consider the Hospital's actual total weighted cases.

5.8. MOHLTC Discretion Regarding Case Load Volumes

The MOHLTC may consider, where appropriate, accepting case load volumes that are less than a Service Volume or Performance Standard, and the MOHLTC may decide not to settle and recover from the Hospital if such variations in volumes are: (i) only a small percentage of volumes; or (ii) due to a fluctuation in demand for the services.

5.9. Settlement and Recovery of Funding for Prior Years

The Hospital acknowledges that settlement and recovery of Funding can occur up to seven years after the provision of Funding. All such settlements and recoveries will be subject to the terms applicable to the original provision of funding.

5.10. Debt Owing to the Crown

Where the Hospital is required to repay the MOHLTC any amount of the Funding, the amount is a debt owing to the Crown and the MOHLTC may:

- (i) set-off the amount owing against any further payment under this Agreement or under any other agreement with the MOHLTC; or
- (ii) require the Hospital to immediately pay the amount to the MOHLTC.

6.0 HOSPITAL SERVICES

6.1. Funding Conditions

6.1.1 Funding

The Hospital will ensure that the Funding is:

- (i) used to provide Hospital Services in accordance with *subsection 6.2*;
- (ii) used in accordance with **Schedules B – H**, where applicable; and
- (iii) not used for major building renovation or construction.

For greater certainty the Funding may be used by the Hospital to fund research, notwithstanding any MOHLTC policy to the contrary.

6.1.2 Provision for the Recovery of Funding

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

6.1.3 Balanced Budget

- (a) **Basic Requirement.** The Hospital will achieve and maintain a Balanced Budget.
- (b) **Facilitating a Balanced Budget.** The parties will work together to identify budgetary flexibility and manage in-year risks and pressures to facilitate the achievement of a Balanced Budget for the Hospital and, if the Agreement is assigned to the LHIN, a balanced budget for the LHIN.
- (c) **Waiver.** The obligation to achieve a Balanced Budget may be waived by the MOHLTC as follows:

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- (i) Where the Hospital has the capacity to fund a negative margin, it can request a different target. The MOHLTC may consider the request based upon the overall financial health of the Hospital (as measured by its Current Ratio), the Hospital's commitment to use its working capital to fund its deficit and the Hospital's plan to achieve a Balanced Budget within an agreed upon timeframe; or
- (ii) The MOHLTC may consider accepting a proposed deficit where the MOHLTC has determined that achievement of a Balanced Budget position is not feasible in such cases the MOHLTC may agree to a reasonable deficit in the first Fiscal Year of the H-SAA as long as a Balanced Budget will be achieved within a timeframe acceptable to the MOHLTC.

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

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

6.2. Hospital Services

The Hospital will:

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

6.3. E-health; Interoperability of Ontario's Health System

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

7.0 PLANNING

7.1. Planning Cycle

If the Agreement is assigned to the LHIN, the parties will use, and meet the due dates in, the planning cycle in Part II of **Schedule A** ("Planning Cycle") for Fiscal Years 2010/11 and 2011/12.

7.2. Community Engagement

If the Agreement is assigned to the LHIN, the Hospital acknowledges that it is required by subsection 16(6) of the Act to engage the community of diverse persons and entities in the area where it provides health services when developing plans and setting priorities for the delivery of health services.

7.3. System Planning

The parties will collaborate and cooperate in matters that affect them concerning health system improvement. If the Hospital is planning to significantly reduce, stop, start, expand, cease to provide or transfer the provision of Hospital Services to another hospital or to another site of the Hospital, it will inform the MOHLTC.

7.4. Process for System Planning.

If:

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

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

7.5. Capital Projects

7.5.1 Capital Initiatives.

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

continue to be responsible for the approval and funding of approved Capital Initiatives notwithstanding the assignment of this Agreement to the LHIN.

7.5.2 Own-Funds Capital Projects.

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

7.5.3 Not Used.

- 7.6. Reviews and Approvals** The MOHLTC will respond to Hospital submissions requiring a response from the MOHLTC in a timely manner and, in any event, within the time period set out in Schedule B.

8.0 REPORTING AND DOCUMENT RETENTION

8.1. General Reporting Obligations

The Hospital will provide to the MOHLTC, or to such other entity as the parties may reasonably agree, in the form and within the time specified by the MOHLTC, the plans, reports, financial statements or other information ("Information"), other than personal health information as defined in subsection 31(5) of the CFMA, that: (i) the MOHLTC requires for the purposes of exercising its powers and duties under this Agreement, the Act or for the purposes that are prescribed under the Act; or (ii) that may be requested under the CFMA.

8.2. Specific Reporting Obligations

Without limiting the foregoing, the Hospital will fulfill the specific reporting requirements set out in **Schedule B**. The Hospital will ensure that all reports are in a form satisfactory to the MOHLTC, are complete, accurate, signed on behalf of the Hospital by a person authorized to sign them and provided to the MOHLTC in a timely manner.

8.3. Confidential Information

If any Information submitted by the Hospital under this Agreement contains information that is of a confidential nature, then the MOHLTC will treat that Information as confidential and will not disclose the Information except with the consent of the Hospital, or except pursuant to the *Freedom of Information and Protection of Privacy Act* or the order of a court or tribunal.

8.4. Disclosure of Information

The MOHLTC may disclose information that it collects under this Agreement in accordance with the Act, the CFMA, the *Freedom of Information and Protection of Privacy Act*, the order of a court or tribunal, or subpoena.

8.5. Document Retention

The Hospital will retain all records (as that term is defined in the *Freedom of Information and the Protection of Privacy Act*) related to the Hospital's performance of its obligations under this Agreement for seven years after the expiration of the term of this Agreement.

9.0 PERFORMANCE MANAGEMENT AND IMPROVEMENT

9.1. General Approach

The parties will follow a proactive, collaborative and responsive approach to performance management and improvement. Either party may request a meeting at any time. The parties will use their best efforts to meet as soon as possible following a request.

9.2. Notice of a Performance Factor

Each party will notify the other party, as soon as reasonably possible, of any Performance Factor. The notice will:

- (i) describe the Performance Factor and its actual or anticipated impact;
- (ii) include a description of any action the party is undertaking, or plans to undertake, to remedy or mitigate the Performance Factor;
- (iii) indicate whether the party is requesting a meeting to discuss the Performance Factor; and
- (iv) address any other issue or matter the party wishes to raise with the other party, including whether the Performance Factor may be a Factor Beyond the Hospital's Control.

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

9.3. Performance Meetings

Where a meeting has been requested under *subsection 9.2(iii)*, the parties will meet to discuss the Performance Factor within 14 Days of the Date of the Notice. The MOHLTC can require a meeting to discuss the Hospital's performance of its obligations under this Agreement, including but not limited to a result for a Performance Indicator or a Service Volume that falls outside the applicable Performance Standard.

9.4. Performance Meeting Purpose

During a performance meeting, the parties will:

- (i) discuss the causes of the Performance Factor;
- (ii) discuss the impact of the Performance Factor and the relative risk of non-performance; and
- (iii) determine the steps in the performance improvement process to be taken to remedy or mitigate the impact of the Performance Factor.

9.5. Performance Improvement Process

The purpose of the performance improvement process is to remedy or mitigate the impact of a Performance Factor. The performance improvement process may include:

- (i) a requirement that the Hospital develop an Improvement Plan; or
- (ii) an amendment of the Hospital's obligations as mutually agreed by the parties.

9.6. Factors Beyond the Hospital's Control

If the MOHLTC, acting reasonably, determines that the Performance Factor is, in whole or in part, a Factor Beyond the Hospital's Control:

- (i) The MOHLTC will collaborate with the Hospital to develop and implement a mutually agreed upon joint response plan which may include an amendment of the Hospital's obligations under this Agreement;
- (ii) the MOHLTC will not require the Hospital to prepare an Improvement Plan; and
- (iii) the failure to meet an obligation under this Agreement will not be considered a breach of the Agreement for the purposes of paragraph 5 of subsection 24(1) of the CFMA, to the extent that failure is caused by a Factor Beyond the Hospital's Control.

9.7. Hospital Improvement Plan

9.7.1 Development of an Improvement Plan.

If, as part of a performance improvement process, the MOHLTC requires the Hospital to develop an Improvement Plan, the process for the development and management of the Improvement Plan is as follows:

- (i) The Hospital will submit the Improvement Plan to the MOHLTC within 30 Days of receiving the MOHLTC's request. In the Improvement Plan, the Hospital will identify remedial actions and milestones for monitoring performance improvement and the date by which the Hospital expects to meet its obligations.

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- (ii) Within 15 business Days of its receipt of the Improvement Plan, the MOHLTC will advise the Hospital which, if any, remedial actions the Hospital should implement immediately. If the MOHLTC is unable to approve the Improvement Plan as presented by the Hospital, subsequent approvals will be provided as the Improvement Plan is revised to the satisfaction of the MOHLTC.
- (iii) The Hospital will implement all aspects of the Improvement Plan for which it has received written approval from the MOHLTC, upon receipt of such approval.
- (iv) The Hospital will report quarterly on progress under the Improvement Plan, unless the MOHLTC advises the Hospital to report on a more frequent basis. If Hospital performance under the Improvement Plan does not improve by the timelines in the Improvement Plan, the MOHLTC may agree to revisions to the Improvement Plan.

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

9.7.2 Peer/MOHLTC Review of Improvement Plan.

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

9.7.3 Costs.

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

10.0 ISSUE RESOLUTION

10.1. Principles to be Applied

The parties will use their best efforts to resolve issues and disputes in a collaborative manner. This includes avoiding disputes by clearly articulating expectations, establishing clear lines of communication, and respecting each party's interests.

10.2. Informal Resolution

The parties will use their best efforts to resolve all issues and disputes through informal discussion and resolution. To facilitate and encourage this informal resolution process, the parties will use their best efforts to jointly develop a written issues statement. The issues statement will describe the facts and events leading to the issue or dispute and will list potential options for its resolution. If the issue or dispute cannot be resolved at the level at which it first arose, either party may refer it to their senior management for resolution.

10.3. Formal Resolution

If the issue or dispute remains unresolved 30 Days after the issue has been taken to senior management for resolution, then the MOHLTC will either: (a) provide the Hospital with its decision to resolve the issue or dispute; or (b) provide the Hospital with notice under subsection 24(1) of the CFMA.

10.4. CFMA Resolution

If the MOHLTC provides notice under subsection 24(1) of the CFMA, then the resolution of the issue or dispute will thereafter be governed by the dispute resolution provisions of the CFMA.

11.0 INSURANCE AND INDEMNITY

11.1. Insurance.

The Hospital shall maintain Comprehensive Professional and General Liability insurance against claims for bodily injury, death or property damage or loss arising out of the performance of the Hospital's obligations under this Agreement, including the provision of Hospital Services, indemnifying and protecting the MOHLTC and, if the Agreement is assigned to the LHIN, the LHIN, but only with respect to liability arising from this Agreement, to an amount of not less than the maximum limit of liability maintained under the Hospital's Comprehensive Professional and General Liability Insurance coverage, in respect of any one accident or occurrence. Any and all such policies of such insurance shall be for the mutual benefit of the Hospital, the LHIN, if the Agreement is assigned to the LHIN, and MOHLTC and shall include coverage providing for cross liability and severability of interest. The Hospital agrees to include the LHIN, if the Agreement is assigned to the LHIN, and MOHLTC as additional insureds.

11.2. Indemnity.

The Hospital will indemnify and save harmless the LHIN and its officers, employees, directors, independent contractors, subcontractors, agents, and assigns, if the Agreement is assigned to the LHIN, and MOHLTC and her Ministers, employees, directors, independent contractors, subcontractors, agents and assigns (together the "Indemnified Persons"), from all costs, losses, damages, judgments, claims, demands, suits, actions, causes of action or other proceedings of any kind or nature (a "Claim"), based on, occasioned by, or attributable to anything done or omitted to be

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done by the Hospital or the Hospital's directors, agents, employees and/or students related to or arising out of this Agreement, including all legal expenses and costs incurred by an Indemnified Person in defending any legal action pertaining to the Claim, except to the extent that the Claim arose as a direct result of the gross negligence or willful misconduct of the LHIN or MOHLTC.

12.0 REMEDIES FOR NON-COMPLIANCE

12.1. Planning Cycle

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

- (i) If the MOHLTC fails to meet an obligation or due date in **Schedule A**, the MOHLTC may do one or all of the following:
 - (a) adjust funding for Fiscal Year 2009/10 to offset a material adverse effect on Hospital Services resulting from the delay; and/or
 - (b) work with the Hospital in developing a plan to offset any material adverse effect on Hospital Services resulting from the delay, including providing MOHLTC approvals for any necessary changes in Hospital Services.
- (ii) At the discretion of the MOHLTC, the Hospital may be subject to a financial reduction if the Hospital's:
 - (a) quarterly performance reports are not provided when due; or
 - (b) financial and/or clinical data requirements are late, incomplete or inaccurate.

If assessed, the financial reduction will be as follows:

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

13.0 DENOMINATIONAL HOSPITALS

- 13.1. For the purpose of interpreting this Agreement, nothing in this Agreement is intended to, and this Agreement will not be interpreted to, unjustifiably, as determined under section 1 of the *Canadian Charter of Rights and Freedoms*, require a Hospital with a

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denominational mission to provide a service or to perform a service in a manner that is contrary to the denominational mission of the Hospital.

14.0 NOTICE

14.1. Notice

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

MOHLTC
Carrie Hayward, Director
LHIN Liaison Branch
80 Grosvenor Street, 5th Floor
Toronto, ON M7A 1R3
Fax: 416-326-0018

Mental Health Centre Penetanguishene
Carol Lambie, Interim CEO
500 Church Street
Penetanguishene, ON
L9M 1G3
Fax: 705.549.3446

14.2. Effective Date

All notices will be effective at the time the delivery is made when the notice is delivered personally, by courier or by fax provided that the sender of the notice has a written confirmation that the notice was received during the recipient's ordinary business hours. If delivered outside ordinary business hours, the notice will be effective at 9 a.m. at the start of the next business Day.

14.3. MOHLTC Representative

The MOHLTC's representative for the purposes of implementing any adjustments to Funding may be a person other than the person named in this section.

15.0 ADDITIONAL PROVISIONS

15.1. Interpretation

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

15.2. Transparency

As required by the CFMA, the Hospital will post a copy of this Agreement in a conspicuous public place at its sites of operations to which this Agreement applies and on its public website

15.3. Amendment

The parties may amend this Agreement (including any amendment that adds additional Schedules or amends existing Schedules) and amendments will be in writing and executed by duly authorized representatives of each party.

15.4. Severability

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

15.5. Assignment and Assumption

The Hospital requires the prior written consent of the MOHLTC to assign this Agreement. The MOHLTC may, at its sole discretion, assign this Agreement or any of its rights and obligations under the Agreement, to any LHIN named in the assignment, and the LHIN shall perform the rights and obligations that are assigned on behalf of the MOHLTC, except for any matter that has already been referred at the time of assignment to resolution under Section 10. For further clarity, despite any assignment or assumption under this section, the Hospital and LHIN will require the approval of the MOHLTC for the purposes of paragraph 6.1.1(iii) of this Agreement (ie., Funding may not be used for major building renovation or construction without the MOHLTC providing approval to the Hospital) despite any assignment to a LHIN.

15.6. Contingent Liability.

Notwithstanding anything else in this Agreement, any express or implied reference to the MOHLTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the MOHLTC, whether at the time of execution of the Agreement or at any time during the term of the Agreement, will be void and of no legal effect.

15.7. Relationship of the Parties

The Hospital will have no power or authority to bind the MOHLTC or to assume or create any obligation or responsibility, express or implied, on behalf of the MOHLTC. The Hospital will not hold itself out as an agent, partner or employee of the MOHLTC. Nothing in the Agreement will have the effect of creating an employment, partnership or agency relationship between the MOHLTC and the Hospital (or any of the Hospital's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors).

15.8. Survival

The provisions in *sections 2.1, 5.1, 5.4, 5.6, 5.9, 6.1.1, 6.1.2, 6.1.3(c), 6.2(i), 7.4, 8.3, 8.4, 8.5, 9.5, 9.6, 9.7, 10.0, 11.2, 12.1, 13.1, 14.0, 15.1, 15.6 and 15.12* will survive the termination or expiry of this Agreement.

15.9. Waiver

The MOHLTC or the Hospital may waive in writing any of the other party's obligations under this Agreement. A waiver of any failure to comply with any term of this Agreement will not have the effect of waiving any subsequent failures to comply.

15.10. Counterparts

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

15.11. Further Assurances

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

15.12. Governing Law

This Agreement and the rights, obligations and relations of the parties hereto will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

15.13. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements, except as otherwise set out herein.

[The remainder of this page is intentionally left blank.]

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Hospital Service Accountability Agreement for 2008-10**

IN WITNESS WHEREOF the parties have executed this Agreement made effective as of December 15th, 2008.

MENTAL HEALTH CENTRE PENETANGUISHENE

By:

Name: John Barrett-Hamilton
Chair of the Board of Directors

Date

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

And By:

Name: Carol Lambie
Interim CEO

Date

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

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

By:

Name: Carrie Hayward
Director, LHIN Liaison Branch

Date

And By:

Name: Ron Sapsford
Deputy Minister

Date

Facility No.