

THE AGREEMENT effective as of the 24th day of February, 2012

B E T W E E N :

ONTARIO AGENCY FOR HEALTH PROTECTION AND PROMOTION

(“Public Health Ontario”)

- and -

BOARD OF HEALTH FOR THE MIDDLESEX-LONDON HEALTH UNIT

(the “Recipient”)

Background:

1. Public Health Ontario funds projects similar to the project described in Schedule “A”; and
2. The Recipient has applied to Public Health Ontario for funds to assist the Recipient in carrying out the Project and Public Health Ontario wishes to provide such funds.

Consideration:

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

**ARTICLE 1
INTERPRETATION AND DEFINITIONS**

1.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency shall be to Canadian dollars and currency; and
- (e) “include”, “includes” and “including” shall not denote an exhaustive list.

1.2 **Definitions.** In the Agreement, the following terms, in addition to any other terms defined herein, shall have the following meanings:

“Act” means the *Ontario Agency for Health Protection and Promotion Act, 2007*, c. 10, Schedule K, as amended or replaced from time to time.

“Agreement” means this agreement entered into between Public Health Ontario and the Recipient and includes all of the schedules listed in section 27.1 and any amending agreement entered into pursuant to section 34.2.

“BPSAA” means the *Broader Public Sector Accountability Act, 2010* (Ontario), including any directives issued pursuant to that Act.

“Budget” means the budget attached to the Agreement as Schedule “B”.

“Conditions Precedent” means the conditions precedent to the provision by Public Health Ontario of Funds pursuant to this Agreement as set out in Article 4;

“Effective Date” means the date set out at the top of the Agreement.

“Event of Default” has the meaning ascribed to it in section 14.1.

“Force Majeure” has the meaning ascribed to it in Article 25.

“Funding Year” means:

- (a) in the case of the first Funding Year, the period commencing on the Effective Date and ending on the following March 31; and
- (b) in the case of Funding Years subsequent to the first Funding Year, the period commencing on April 1 following the end of the previous Funding Year and ending on the following March 31.

“Funds” means the money provided by Public Health Ontario to the Recipient pursuant to the Agreement, and **“Funding”** shall have the corresponding meaning.

“Indemnified Parties” means the Ontario Agency for Health Protection and Promotion, its directors, officers, agents, appointees and employees.

“Maximum Funds” means \$180,000.00

“Notice” means any communication given or required to be given pursuant to the Agreement.

“Notice Period” means the period of time within which the Recipient is required to remedy an Event of Default, and includes any such period or periods of time by which Public Health Ontario considers it reasonable to extend that time.

“Parties” means Public Health Ontario and the Recipient.

“Party” means either Public Health Ontario or the Recipient.

“Project” means the undertaking described in Schedule “A”.

“Reports” means the reports described in Schedule “D”.

“Timelines” means the Project schedule set out in Schedule “A”.

ARTICLE 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 **General.** The Recipient represents, warrants and covenants that:

- (a) it is, and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project; and
- (c) unless otherwise provided for in the Agreement, any information the Recipient provided to Public Health Ontario in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and shall continue to be true and complete for the term of the Agreement.

2.2 **Execution of Agreement.** The Recipient represents and warrants that:

- (a) it has the full power and authority to enter into the Agreement; and
- (b) it has taken all necessary actions to authorize the execution of the Agreement.

2.3 **Governance.** The Recipient represents, warrants and covenants that it has, and shall maintain, in writing, for the period during which the Agreement is in effect:

- (a) a code of conduct and ethical responsibilities at all levels of the Recipient’s organization;

- (b) procedures to ensure the ongoing effective functioning of the Recipient;
- (c) decision-making mechanisms;
- (d) procedures to provide for the prudent and effective management of the Funds;
- (e) procedures to enable the successful completion of the Project;
- (f) procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
- (g) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7; and
- (h) procedures to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.

2.4 **Supporting Documentation.** Upon request, the Recipient shall provide Public Health Ontario with proof of the matters referred to in this Article 2.

ARTICLE 3 TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall expire on April 30, 2013 unless terminated earlier pursuant to Article 12, Article 13 or Article 14.

ARTICLE 4 CONDITIONS PRECEDENTS, FUNDS AND CARRYING OUT THE PROJECT

4.1 **Conditions Precedent to First Payment.** The obligation of Public Health Ontario to make its first payment of Funds under this Agreement is subject to satisfaction by the Recipient of each of the following conditions:

- (a) Public Health Ontario shall have received the insurance certificate or other documents provided for in section 11.2;
- (b) the representations and warranties of the Recipient set forth in Article 2 shall continue to be true and correct; and
- (c) no Event of Default or event or condition which, with notice or lapse of time, or both, would constitute an Event of Default shall have occurred or be continuing.

4.2 **Conditions Precedent to Subsequent Payments.** The obligation of Public Health Ontario to make each subsequent payment of Funds under this Agreement is subject to satisfaction by the Recipient of each of the following conditions:

- (a) the representations and warranties of the Recipient set forth in Article 2 shall continue to be true and correct;
- (b) no Event of Default or event or condition which, with notice or lapse of time, or both, would constitute an Event of Default shall have occurred or be continuing; and
- (c) Public Health Ontario shall have received the applicable quarterly Reports (both financial and those documenting the progress of the Project) as set forth in Schedule “D”.

4.3 **Satisfaction of Conditions Precedent.** The Recipient shall notify Public Health Ontario as soon as is reasonably practicable of the satisfaction of the applicable Conditions Precedent described in sections 4.1 and 4.2 and such notification shall include, as an attachment, all relevant information and documentation evidencing the satisfaction of such Conditions Precedent.

4.4 **Waivers.** The Conditions Precedent set out in Article 4 are for the sole benefit of Public Health Ontario, and may be waived by Public Health Ontario in whole or in part in respect of any particular payment of Funds, without prejudicing Public Health Ontario’s right to assert them in whole or in part in respect of any other payment of Funds.

4.5 **Funds Provided.** Public Health Ontario shall:

- (a) provide the Recipient up to the Maximum Funds for the purpose of carrying out the Project;
- (b) provide the Funds to the Recipient in accordance with the payment schedule attached to the Agreement as Schedule “C”; and
- (c) deposit the Funds into an account designated by the Recipient provided that the account:
 - (i) resides at a Canadian financial institution; and
 - (ii) is in the name of the Recipient.

4.6 **Limitation on Payment of Funds.** Despite anything in this Agreement, Public Health Ontario:

- (a) is not obligated to provide instalments of Funds until it is satisfied with the progress of the Project; and
- (b) may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon Public Health Ontario’s assessment of the information provided by the Recipient pursuant to section 7.1.

4.7 **Funding Contingent on Appropriation.** Pursuant to the *Financial Administration Act* (Ontario), if Public Health Ontario does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, Public Health Ontario shall not be obligated to make any such payment, and, as a consequence, Public Health Ontario:

- (a) may reduce the amount of the Funds and, in consultation with the Recipient, change the Project; or
- (b) may immediately terminate the Agreement pursuant to section 13.1.

4.8 **Use of Funding and Project.** The Recipient shall:

- (a) carry out the Project:
 - (i) in accordance with the terms and conditions of the Agreement; and
 - (ii) in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Project;
- (b) use the Funds only for the purpose of carrying out the Project;
- (c) spend the Funds only in accordance with the Budget; and
- (d) not use the Funds or any portion thereof to offset any expenses respecting the Project incurred by the Recipient in a previous Funding Year.

4.9 **No Changes.** The Recipient shall:

- (a) not make any changes to the Project, the Timelines and/or the Budget without the prior written consent of Public Health Ontario; and

4.10 **Interest Bearing Account.** If Public Health Ontario provides Funds to the Recipient prior to the Recipient's immediate need for the Funds, the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

4.11 **Interest.** If the Recipient earns any interest on the Funds:

- (a) Public Health Ontario may deduct an amount equal to the interest from any further instalments of Funds; or
- (b) the Recipient shall pay an amount equal to the interest to Public Health Ontario as directed by Public Health Ontario.

- 4.12 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.
- 4.13 **Rebates, Credits and Refunds.** The Recipient acknowledges that the amount of Funds available to it pursuant to the Agreement is based on the actual costs to the Recipient, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

**ARTICLE 5
ACQUISITION OF GOODS AND SERVICES, AND DISPOSAL OF ASSETS**

- 5.1 **Acquisition.** Subject to section 32.1, if the Recipient acquires supplies, equipment or services with the Funds, it shall do so through a process that promotes the best value for money.
- 5.2 **Disposal.** The Recipient shall not, without Public Health Ontario’s prior written consent, sell, lease or otherwise dispose of any asset purchased with the Funds or for which Funds were provided, the cost of which exceeded \$1000.00 at the time of purchase.

**ARTICLE 6
CONFLICT OF INTEREST**

- 6.1 **No Conflict of Interest.** The Recipient shall carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.
- 6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:
- (a) the Recipient; or
 - (b) any person who has the capacity to influence the Recipient’s decisions,
- has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient’s objective, unbiased and impartial judgment relating to the Project and the use of the Funds.
- 6.3 **Disclosure to Public Health Ontario.** The Recipient shall:
- (a) disclose to Public Health Ontario, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and
 - (b) comply with any terms and conditions that Public Health Ontario may prescribe as a result of the disclosure.

ARTICLE 7
REPORTING, ACCOUNTING AND REVIEW

7.1 Preparation and Submission. The Recipient shall:

- (a) submit to Public Health Ontario at the address provided in section 18.1, all Reports in accordance with the timelines and content requirements set out in Schedule “D”, or in a form as specified by Public Health Ontario from time to time;
- (b) submit to Public Health Ontario at the address provided in section 18.1, any other reports as may be requested by Public Health Ontario in accordance with the timelines and content requirements specified by Public Health Ontario;
- (c) deliver to Public Health Ontario a report setting out the amounts and sources of third party funds, including grants, which the Recipient has received or expects to receive in respect of the Project, at such times as may be specified by Public Health Ontario,
- (d) ensure that all Reports and other reports are completed to the satisfaction of Public Health Ontario; and
- (e) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

7.2 Record Maintenance. The Recipient shall keep and maintain:

- (a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Project.

7.3 Inspection. Public Health Ontario, its authorized representatives or an independent auditor identified by Public Health Ontario may, at its own expense, upon twenty-four hours’ Notice to the Recipient and during normal business hours, enter upon the Recipient’s premises to review the progress of the Project and the Recipient’s expenditure of the Funds and, for these purposes, Public Health Ontario, its authorized representatives or an independent auditor identified by Public Health Ontario may:

- (a) inspect and copy the records and documents referred to in section 7.2; and
- (b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or Project.

- 7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient shall disclose any information requested by Public Health Ontario, its authorized representatives or an independent auditor identified by Public Health Ontario, and shall do so in a form requested by Public Health Ontario, its authorized representatives or an independent auditor identified by Public Health Ontario, as the case may be.
- 7.5 **No Control of Records.** No provision of the Agreement shall be construed so as to give Public Health Ontario any control whatsoever over the Recipient's records.
- 7.6 **Auditor General.** For greater certainty, Public Health Ontario's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

ARTICLE 8 CREDIT, OWNERSHIP AND USE OF MATERIALS

- 8.1 **Acknowledge Support.** Unless otherwise directed by Public Health Ontario, the Recipient shall, in a form approved by Public Health Ontario, acknowledge the support of Public Health Ontario in any publication of any kind, written or oral, relating to the Project.
- 8.2 **Publication.** The Recipient shall indicate, in any of its publications of any kind, written or oral, relating to the Project, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of Public Health Ontario.
- 8.3 **Public Health Ontario Entitled to Disclose.** Public Health Ontario shall be entitled to disclose the name of the Recipient and any general information about the Project in Public Health Ontario forums, website and publications.
- 8.4 **Notice of Proposed Publication.** Despite section 8.4, the Recipient shall notify Public Health Ontario at least 45 days before it publishes any material relating to the Project and produced by the Recipient and provide a copy of the material it proposes to publish to Public Health Ontario at that time.
- 8.5 **Material Provided by Public Health Ontario.** Any information and/or material provided to the Recipient by Public Health Ontario or received by the Recipient of behalf of Public Health Ontario, including all copyright and other intellectual property rights in such material, shall continue to belong to Public Health Ontario and shall be kept confidential by the Recipient.

**ARTICLE 9
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

- 9.1 **FIPPA.** The Recipient acknowledges that Public Health Ontario is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to Public Health Ontario in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

**ARTICLE 10
INDEMNITY**

- 10.1 **Indemnification.** The Recipient hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of Public Health Ontario.

**ARTICLE 11
INSURANCE**

- 11.1 **Recipient's Insurance.** The Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence. The policy shall include the following:
- (a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
 - (b) a cross-liability clause;
 - (c) contractual liability coverage; and
 - (d) a 30 day written notice of cancellation, termination or material change.
- 11.2 **Proof of Insurance.** The Recipient shall provide Public Health Ontario with certificates of insurance pursuant to section 4.1(a), or other proof as may be requested by Public Health Ontario, that confirms the insurance coverage as provided for in section 11.1. Upon the

request of Public Health Ontario, the Recipient shall make available to Public Health Ontario a copy of each insurance policy.

**ARTICLE 12
TERMINATION ON NOTICE**

- 12.1 **Termination on Notice.** Public Health Ontario may terminate the Agreement at any time upon giving at least 30 days Notice to the Recipient.
- 12.2 **Consequences of Termination on Notice by Public Health Ontario.** If Public Health Ontario terminates the Agreement pursuant to section 12.1, Public Health Ontario may:
- (a) cancel all further instalments of Funds;
 - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
 - (c) determine the reasonable costs for the Recipient to wind down the Project, and:
 - (i) permit the Recipient to offset the costs determined pursuant to section 12.2(c) against the amount owing pursuant to section 12.2(b); and/or
 - (ii) subject to section 4.12, provide Funds to the Recipient to cover the costs determined pursuant to section 12.2(c).

**ARTICLE 13
TERMINATION WHERE NO APPROPRIATION**

- 13.1 **Termination Where No Appropriation.** If, as provided for in section 4.7, Public Health Ontario does not receive the necessary appropriation from the Ontario Legislature for any payment Public Health Ontario is to make pursuant to the Agreement, Public Health Ontario may terminate the Agreement immediately by giving Notice to the Recipient.
- 13.2 **Consequences of Termination Where No Appropriation.** If Public Health Ontario terminates the Agreement pursuant to section 13.1, Public Health Ontario may:
- (a) cancel all further instalments of Funds;
 - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
 - (c) determine the reasonable costs for the Recipient to wind down the Project and permit the Recipient to offset such costs against the amount owing pursuant to section 13.2(b).

- 13.3 **No Additional Funds.** For purposes of clarity, if the costs determined pursuant to section 13.2(c) exceed the Funds remaining in the possession or under the control of the Recipient, Public Health Ontario shall not provide additional Funds to the Recipient.

ARTICLE 14
EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

- 14.1 **Events of Default.** Each of the following events shall constitute an “**Event of Default**”:
- (a) in the opinion of Public Health Ontario, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
 - (i) carry out the Project;
 - (ii) use or spend Funds; and/or
 - (iii) provide, in accordance with section 7.1, Reports or such other reports as may have been requested pursuant to section 7.1(b);
 - (b) the nature of the Recipient’s operations, or its organizational structure, changes such that it no longer meets one or more of the applicable eligibility requirements of the Project under which Public Health Ontario provides the Funds;
 - (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;
 - (d) the Recipient ceases to operate; and
 - (e) an event of Force Majeure that continues for a period of 60 days or more.
- 14.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, Public Health Ontario may, at any time, take one or more of the following actions:
- (a) initiate any action Public Health Ontario considers necessary in order to facilitate the successful continuation or completion of the Project;
 - (b) provide the Recipient with an opportunity to remedy the Event of Default;
 - (c) suspend the payment of Funds for such period as Public Health Ontario determines appropriate;

- (d) reduce the amount of the Funds;
- (e) cancel all further installments of Funds;
- (f) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand the repayment of an amount equal to any Funds the Recipient used but did not use in accordance with the Agreement;
- (h) demand the repayment of an amount equal to any Funds Public Health Ontario provided to the Recipient; and/or
- (i) terminate the Agreement at any time, including immediately, upon giving Notice to the Recipient.

14.3 **Opportunity to Remedy.** If, in accordance with section 14.2(b), Public Health Ontario provides the Recipient with an opportunity to remedy the Event of Default, Public Health Ontario shall provide Notice to the Recipient:

- (a) of the particulars of the Event of Default; and
- (b) the Notice Period.

14.4 **Recipient not Remediating.** If Public Health Ontario has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.2(b) and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to Public Health Ontario that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to Public Health Ontario,

Public Health Ontario may extend the Notice Period, or initiate any one or more of the actions provided for in sections 14.2 (a). (c). (d), (e), (f), (g), (h) and (i).

14.5 **When Termination Effective.** Termination under this Article shall take effect as set out in the Notice.

**ARTICLE 15
FUNDS AT THE END OF A FUNDING YEAR**

- 15.1 **Funds at the End of a Funding Year.** Without limiting any rights of Public Health Ontario under Article 14, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, Public Health Ontario may:
- (a) demand the return of the unspent Funds; or
 - (b) adjust the amount of any further instalments of Funds accordingly.

**ARTICLE 16
FUNDS UPON EXPIRY**

- 16.1 **Funds Upon Expiry.** The Recipient shall, upon expiry of the Agreement, return to Public Health Ontario any Funds remaining in its possession or under its control.

**ARTICLE 17
REPAYMENT**

- 17.1 **Debt Due.** If:
- (a) Public Health Ontario demands the payment of any Funds or any other money from the Recipient; or
 - (b) the Recipient owes any Funds or any other money to Public Health Ontario, whether or not their return or repayment has been demanded by Public Health Ontario,
- such Funds or other money shall be deemed to be a debt due and owing to Public Health Ontario by the Recipient, and the Recipient shall pay or return the amount to Public Health Ontario immediately, unless Public Health Ontario directs otherwise.
- 17.2 **Interest Rate.** Public Health Ontario may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by Public Health Ontario of Ontario on accounts receivable.
- 17.3 **Payment of Money to Public Health Ontario.** The Recipient shall pay any money owing to Public Health Ontario by cheque payable to the “Ontario Agency for Health Protection and Promotion” and mailed to Public Health Ontario at the address provided in section 18.1.

**ARTICLE 18
NOTICE**

18.1 **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by email, postage-prepaid mail, personal delivery or facsimile, and shall be addressed to Public Health Ontario and the Recipient respectively as set out below:

To Public Health Ontario:

Public Health Ontario
480 University Ave., Suite 300
Toronto, Ontario
M5G 1V2

Attention: *Beata Pach
Manager, Library Services*

Fax: (647) 260-7600

To the Recipient:

Middlesex-London Health Unit
50 King Street
London ON
N6A 5L7

Attention: *Louise Tyler
Director, Human Resources & Labour Relations*

Fax: (519) 663-5086

18.2 **Notice Given.** Notice shall be deemed to have been received:

- (a) in the case of postage-prepaid mail, seven days after such Notice is mailed; or
- (b) in the case of email, personal delivery or facsimile, on the day such Notice is received by the other Party.

18.3 **Postal Disruption.** Despite section 18.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail shall not be deemed to be received; and
- (b) the Party giving Notice shall provide Notice by email, personal delivery or by facsimile.

**ARTICLE 19
CONSENT BY PUBLIC HEALTH ONTARIO**

19.1 **Consent.** Public Health Ontario may impose any terms and/or conditions on any consent Public Health Ontario may grant pursuant to the Agreement.

**ARTICLE 20
SEVERABILITY OF PROVISIONS**

20.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other

provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

**ARTICLE 21
WAIVER**

- 21.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 18. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

**ARTICLE 22
INDEPENDENT PARTIES**

- 22.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of Public Health Ontario and the Recipient shall not take any actions that could establish or imply such a relationship.

**ARTICLE 23
ASSIGNMENT OF AGREEMENT OR FUNDS**

- 23.1 **No Assignment.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of Public Health Ontario.
- 23.2 **Agreement to Extend.** All rights and obligations contained in the Agreement shall extend to and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

**ARTICLE 24
GOVERNING LAW**

- 24.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of Public Health Ontario of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.

**ARTICLE 25
FURTHER ASSURANCES**

- 25.1 **Agreement into Effect.** The Recipient shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to its full extent.

ARTICLE 26
CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY

26.1 **Force Majeure Means.** Subject to section 26.3, “**Force Majeure**” means an event that:

- (a) is beyond the reasonable control of a Party; and
- (b) makes a Party’s performance of its obligations under the Agreement impossible, or so impracticable as reasonably to be considered impossible in the circumstances.

26.2 **Force Majeure Includes.** Force Majeure includes:

- (a) infectious diseases, war, riots and civil disorder;
- (b) storm, flood, earthquake and other severely adverse weather conditions;
- (c) lawful act by a public authority; and
- (d) strikes, lockouts and other labour actions,

if such events meet the test set out in section 26.1.

26.3 **Force Majeure Shall Not Include.** Force Majeure shall not include:

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

26.4 **Failure to Fulfil Obligations.** Subject to section 14.1(e), the failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

**ARTICLE 27
SURVIVAL**

27.1 **Survival.** The provisions in Article 1, any other applicable definitions, sections 4.11(b), 5.2, 7.1 (to the extent that the Recipient has not provided the Reports or other reports as may be requested by Public Health Ontario to the satisfaction of Public Health Ontario), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8 and 10, sections 12.2, 13.2, 13.3, 14.1, 14.2 (d), (e), (f) (g) and (h), Articles 16, 17, 18, 20, 24, 27, 28, 30, 31 and 34, and all applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.

**ARTICLE 28
SCHEDULES**

28.1 **Schedules.** The Agreement includes the following schedules:

- (a) Schedule “A” - Project Description and Timelines;
- (b) Schedule “B” - Budget;
- (c) Schedule “C” - Payment Schedule; and
- (d) Schedule “D” - Reports.

**ARTICLE 29
COUNTERPARTS**

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

**ARTICLE 30
JOINT AND SEVERAL LIABILITY**

30.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities shall be jointly and severally liable to Public Health Ontario for the fulfillment of the obligations of the Recipient under the Agreement.

**ARTICLE 31
RIGHTS AND REMEDIES CUMULATIVE**

- 31.1 **Rights and Remedies Cumulative.** The rights and remedies of Public Health Ontario are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

**ARTICLE 32
BPSAA**

- 32.1 **BPSAA.** For the purposes of clarity, if the Recipient is subject to the BPSAA and there is a conflict between any of the requirements of the Agreement and the requirements of the BPSAA, the BPSAA shall prevail.

**ARTICLE 33
FAILURE TO COMPLY WITH OTHER AGREEMENTS**

- 33.1 **Other Agreements.** If the Recipient:
- (a) has failed to comply (a “Failure”) with any term, condition or obligation under any other agreement with Public Health Ontario;
 - (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
 - (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
 - (d) such Failure is continuing,

Public Health Ontario may suspend the payment of Funds for such period as Public Health Ontario determines appropriate.

**ARTICLE 34
ENTIRE AGREEMENT**

- 34.1 **Entire Agreement.** The Agreement, together with the attached schedules listed in s.28.1, 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.
- 34.2 **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

[Signature page immediately follows]

The Parties have executed the Agreement on the dates set out below.

ONTARIO AGENCY FOR HEALTH PROTECTION AND PROMOTION

Name: Vivek Goel Date _____
Title: President and Chief Executive Officer

BOARD OF HEALTH FOR THE MIDDLESEX-LONDON HEALTH UNIT

Name: Date _____
Position:

Name: Date _____
Position:

I/We have authority to bind the Recipient.

SCHEDULE “A”

PROJECT DESCRIPTION AND TIMELINES

Background

Following the transfer of the provincial share of funding for the former Public Health Research, Education and Development (PHRED) program to Public Health Ontario in January 2011, Public Health Ontario introduced a new program model to support applied research and program evaluation, education and professional development, and knowledge exchange for public health. Library services are a key area of focus under this program, which provides funding to support equitable access to library services, resources, and professionals for health units that currently do not have a library included in their business model.

This access will be achieved through the creation of a shared library services partnership that will build on the existing library capacity within the public health system in Ontario. Selected public health units in Ontario that have their own in-house libraries will act as hubs to provide access to library services and resources for “client” public health units in Ontario that currently do not have in-house libraries. This model is predicated on a system that already has 15 operational libraries with library staff that function as a community of practice through the Ontario Public Health Libraries Association (OPHLA). The existing library system will be maintained and enhanced and all health units will have access to library services.

This “library hub” model draws on previous experiences from the PHRED program and was selected by the Shared Library Services Partnership Working Group as the model that will provide the highest Return on Investment and will be beneficial to both service recipients and service providers.

The scope of services and responsibilities as outlined below are based on the strong recommendations developed by the Shared Library Services Partnership Working Group.

Project Overall Objective

The objective of this project is to build capacity in selected health units that expressed interest in becoming a hub in the Shared Library Services Partnership by providing funding for staff and resources acquisition. It is envisioned that hub libraries which will support several client health units that are designated to each hub based on geographical location and the number of staff (i.e. potential clients) within each client unit. Funds are being provided for hub libraries to hire one additional FTE devoted to serving client health unit staff.

Specific Project Objectives

- As a hub library, the Recipient will provide library services as outlined below to the following Ontario public health units: Elgin-St. Thomas Public Health, Chatham-Kent Public Health Unit, Haldimand-Norfolk Health Unit, Niagara Region Public Health, and Windsor Essex County Health Unit (collectively, “Client Health Units”).

- The Recipient will enter into appropriate agreements with their assigned Client Health Units outlining mutual responsibilities.
- The Recipient will provide library service only to its designated Client Health Units (and staff of the Recipient health unit).
- The Recipient will collaborate with other hub libraries, Public Health Ontario and the Ontario Public Health Libraries Association (OPHLA) in the purchasing of resources, development of training sessions, and creation of processes and common/standard forms and policies related to operations of the partnership.
- The Recipient will work with Public Health Ontario to identify staffing requirements for its respective hub.
- The Recipient will maintain their current funding for their own library services and resources.

1.0 Library Services

1.1 Core hub library services

- a) The Recipient will provide its Client Health Units with access to the following services in the first year of the Project:
 - Article retrieval/document delivery
 - Comprehensive literature searches conducted on behalf of Client Health Units
 - Response to reference questions
 - Library-related training for Client Health Unit staff
 - Help desk (related to technical issues when using library resources and services)
 - Book loans
- b) Additional requirements may be phased in after the first year and evaluation of hub operations (depending on workload and funding). These services could include:
 - Current awareness service (includes table of contents services)
 - Research assistance (differentiated from training and literature searching as being more consultative in nature; part of a research team)

Any expansion of service within the first year of hub operation is at the discretion of the Recipient.

- c) The Recipient will attempt to provide Client Health Units with desktop access to resources, copyright and licencing permitting.

1.2 Training for Client Health Unit staff

- a) The Recipient will collaborate with Public Health Ontario and other hub libraries and OPHLA, to develop two training sessions to cover the following topics in the first year of the Project:
 - How to do a basic literature search and find articles
 - How to use the Virtual Library

Both sessions will include introductory information about library services (what they are, how to access them, etc.)

- b) Other training sessions will be developed at the discretion of the Recipient, and will be tailored to the needs of Client Health Units whenever possible (i.e. use health unit examples for literature searching training, etc.).
- c) Training schedules will be negotiated directly with Client Health Units.
- d) The Recipient will deliver a minimum of one training session **in person** per year to each Client Health Unit.
- e) The Recipient will provide training to Client Health Units using the following methods:
 - In-person to Client Health Units (minimum of one per year)
 - Webinars, OTN videoconferencing
 - Modules and tools delivered via the Internet

2.0 Library Resources

2.1 Core hub library resources

- a) Resources purchased for all health units (i.e. Virtual Library additions) will be recommended by the Ontario Public Health Libraries Association (OPHLA).
- b) The Recipient will collaborate with other hub libraries on their own collection development whenever possible to take advantage of consortial pricing.
- c) The Recipient will prioritize journal subscriptions for purchasing and will coordinate the development of special (subject area) journal collections with hub libraries.

2.2 Delivery of resources to clients

- a) The Recipient will commit to following all guidelines and procedures developed collaboratively with other hub libraries (e.g. service delivery timelines and prioritization of service requests)
- b) The Recipient will use only those methods of document delivery that fall within copyright and licencing constraints.

3.0 Library Staff

- a) The Recipient will have at least one librarian (ALA accredited Masters' degree) on staff—either as the existing staff person or hired through transfer payment funds.
- b) The qualifications of the new hub library staff will be based on the needs of the Recipient, but the Recipient will consult with Public Health Ontario on such qualifications if the current library staff is not a qualified librarian (i.e. does not hold a Master's degree in Library Science).
- c) The primary role of PHO-funded library hub personnel is to serve hub operations and will follow Shared Library Services Partnership processes and procedures (even if these procedures vary from those of the Recipient).
- d) PHO-funded library hub personnel will participate in professional development and new skills enhancement opportunities provided by PHO to ensure equitable service across the hubs.

4.0 Library Processes and Procedures

- a) Client Health Units will access the Recipient's library staff directly by phone or email in a barrier-free fashion (no intermediary forms or procedures).
- b) The Recipient will use DOCLINE as the primary system of requesting and delivering interlibrary loans.
- c) Using DOCLINE, The Recipient will first borrow from OPHLA libraries in order to minimize costs of for-fee interlibrary loans.
- d) The Recipient will negotiate with vendors in an effort to construct licence agreements that allow for delivery of resources to Client Health Units.
- e) The Recipient, in collaboration with other hub libraries and Public Health Ontario, will coordinate the development of standard tools related to hub operations and processes.

5.0 Hub library service tracking & monitoring

- a) The Recipient will be responsible for tracking, monitoring and reporting of service delivery targets and indicators.
- b) The Recipient will collaborate with Public Health Ontario and OPHLA to develop a standard tool for collecting required library statistics across the system.

SCHEDULE "B"

BUDGET

Signing of agreement-March 31, 2012

1 FTE, Librarian or Library Technician (wages + benefits)	\$6,250.00
Collections and operations (may include supplies and equipment, interlibrary loan fees, acquisitions and subscriptions, travel to clients, communications)	\$63,750.00

April 1, 2012-March 31, 2013

1 FTE, Librarian or Library Technician (wages + benefits)	\$75,000.00
Collections and operations (may include supplies and equipment, interlibrary loan fees, acquisitions and subscriptions, travel to clients, communications)	\$35,000.00

SCHEDULE “C”

PAYMENT SCHEDULE

PAYMENT DATE OR MILESTONE	AMOUNT
Upon signing of Agreement	\$70,000.00
April 16, 2012	\$22,000.00
July 16, 2012	\$20,000.00
October 15, 2012	\$47,000.00
January 14, 2013	\$21,000.00

SCHEDULE “D”

REPORTS

Name of Report	Due Date
1. Interim Activity Report (February-March)	April 30, 2012
2. Interim Activity & Financial Report (April-June)	July 31, 2012
3. Interim Activity Report (July-September)	October 30, 2012
4. Interim Activity & Financial Report (October-December)	January 31, 2013
5. Final Activity & Audited Financial Report	April 30, 2013
6. Reports specified from time to time	On a date or dates specified by Public Health Ontario.

Report Details

The Recipient will follow the reporting guidelines and processes set out by Public Health Ontario and will collect the required data in order to track and monitor service provision and usage by clients.

1. and 3.: Interim Activity Reports

- usage statistics, broken down by client health unit:
 - # of literature search requests received
 - # of literature searches completed
 - # of documents delivered
 - # of book loans
 - # of interlibrary loans received
 - # of interlibrary loans delivered
 - # of reference questions answered
 - # of training sessions delivered
 - # of research consultations delivered
 - # of new acquisitions

Tracking templates will be provided by Public Health Ontario.

2. and 4.: Interim Activity & Financial Reports

- usage statistics, broken down by client health unit (as detailed above)
- summary of expenditures

5. Final Activity and Audited Financial Report

- usage statistics, broken down by client health unit (as detailed above)
- summary of expenditures of the last quarter (January to March)
- summary of expenditures for the duration of the transfer payment agreement
- snapshot of services delivered to clients
- snapshot of custom tools developed
- general feedback about hub and partnership operations