

~~THIS Public Health~~ **PUBLIC HEALTH FUNDING AND ACCOUNTABILITY AGREEMENT** effective as of the first day of January, 2014

B E T W E E N :

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

(the “Province”)

- and -

[Legal Name of Board of Health]

(the “Board of Health”)

Background:

The Province provides grants to boards of health under the *Health Protection and Promotion Act* (Act) pursuant to section 76 of that Act.

By receiving the grant provided to boards of health under section 76 of the Act, each board of health is expected to deliver programs and services that meet the Ontario Public Health Standards and other requirements of the Act.

It is acknowledged that boards of health may provide additional programs and services in response to local needs as indicated in the Ontario Public Health Standards published under section 7 of the Act and in section 9 of the Act. Provincial funding, however, is intended to support those programs that all boards of health are required to provide under the Act (and other programs only if specifically authorized by the Ontario Government) and is not intended to cover the potential total scope of public health programming.

Under section 81.2 of the Act, the Minister of Health and Long-Term Care may enter into an agreement with the board of health of any health unit for the purpose of setting out requirements for the accountability of the board of health and the management of the health unit.

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 this Agreement, the following terms shall have the following meanings:

“**Act**” means the *Health Protection and Promotion Act*.

“**Admissible Expenditures**” are those considered by the Ministry to be reasonable and necessary for boards of health to achieve and/or maintain compliance with the Ontario Public Health Standards, the Organizational Standards, this Agreement, and other requirements of the Act and, as such, are eligible for reimbursement by the Ministry. These expenditures must be authorized in accordance with the policies of the Board of Health, consistent with government policies, and related to the ~~implementation of Organizational Standards and the~~ delivery of mandatory and related programs.

“**Agreement**” means this agreement entered into between the Province and the Board of Health and includes all of the schedules to the agreement listed in section 25.1 and any amending agreement entered into pursuant to section 3.4.

“**Compliance Variance**” means any of: a) non-compliance with any aspect of the Act, the regulations, the Ontario Public Health Standards, or the Organizational Standards; or, b) any other matter that could significantly affect the Board of Health’s ability to perform its obligations under this Agreement.

“**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.

“**Funding Year**” means:

- (a) in the case of the first Funding Year, the period commencing on the Effective Date and ending on the following December 31st; and
- (b) in the case of Funding Years subsequent to the first Funding Year, the

period commencing on January 1st following the end of the previous Funding Year and ending on the following December 31st.

“**Grant**” means the grant provided to the Board of Health by the Province pursuant to section 76 of the Act and this ~~Accountability~~ Agreement.

“**Indemnified Parties**” means her Majesty the Queen in right of Ontario, her ministers, agents, appointees and employees.

“**Ministers**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care, and “Ministry” shall refer to the Ministry of Health and Long-Term Care and the Minister of Health Promotion and Sport, and “Ministries” shall refer to both ministries ~~Where necessary in the Schedules to this Agreement to differentiate Programs under the responsibility of each Ministry, MOHLTC is used to describe the Ministry of Health and Long-Term Care, and MHPS is used to describe the Ministry of Health Promotion and Sport.~~

~~“**Negative Performance Variant**” means any of: a) the inability to achieve a result within the range of results for a Performance Indicator as set out in Schedule D; b) any matter that could significantly affect the Board of Health’s ability to achieve a Performance Target as set out in Schedule D; c) non-compliance with any other aspect of the Act, the regulations, the Ontario Public Health Standards, or the Organizational Standards; d) non-compliance with the budget approval and financial reporting processes; or, e) any other matter that could significantly affect the Board of Health’s ability to perform its obligations under this Agreement.~~
“**Non-Admissible Expenditures**” are those considered by the ~~Ministry~~ies to be unrelated to the provision of mandatory and related programs, the Ontario Public Health Standards, the Organizational Standards, the requirements of this Agreement, and other requirements of the Act or that are not compatible with applicable government directives. Examples of expenditures that are not admissible include, but are not limited to: sick time and vacation accruals, donations to individuals or organizations, capital fund reserves, and depreciation on capital assets/amortization, gym membership fees, alcoholic beverages, and providing administrative services on behalf of third parties.

“**Notice**” means any communication given or required to be given under this Agreement, as described in Article 16.

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

“**Ontario Public Health Standards**” means the Ontario Public Health Standards published by the Minister of Health and Long-Term Care pursuant to section 7 of the Act.

“**Organizational Standards**” means the Ontario Public Health Organizational Standards as released by the ~~Ministry~~ies and former Ministry of Health Promotion and Sport on February 18, 2011 or as updated and as provided to the Board of Health.

“Parties” means the Province and the Board of Health.

“Party” means either the Province or the Board of Health.

~~“Performance Corridor” means the calculated range of results respecting a Performance Target for a Performance Indicator based on the technical variance of the data and other contextual factors.~~ “Performance Indicator” means a measure of board of health performance for which a Performance Target is set, and to which the Board of Health will be held accountable for achieving results under the terms of this Agreement.

“Performance Target” means a planned result for a Performance Indicator against which actual results can be compared (as further specified in Table A of Schedule D).

~~“Performance Variance” means a) the inability to achieve a Performance Target as set out in Schedule D, as identified by the Province.~~ “Positive Performance Variant” means a successful achievement beyond the range of results for a Performance Indicator as set out in Schedule D.

“Program(s)” means:

- (a) Mandatory Program(s): the health programs and services boards of health must provide to their local communities in accordance with section 5 of the Act and the Ontario Public Health Standards.
- (b) Related Program(s): the programs described in Schedule “B”.
- (c) The Organizational Standards.

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

~~“Tangible Capital Asset” is a physical asset (e.g., building and land, information technology and telecommunications equipment, vehicles, furniture and other equipment) that has a useful life of more than one year and is used on a continuing basis for the delivery of mandatory and related programs.~~

“Wind-Down Amount” means the amount the Province sets if the Agreement is terminated under sections 12.3(c) or 13.2(c).

ARTICLE 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 **General.** The Board of Health 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; and,

- (b) unless otherwise provided for in this Agreement, any information the Board of Health provided to the Province in support of its requests for a Grant (including information relating to any eligibility requirements) was true and complete at the time the Board of Health provided it and shall continue to be true and complete for the term of this Agreement, unless otherwise reported in writing by the Board of Health to the Province.

2.2 Execution of Agreement. The Board of Health represents and warrants that:

- (a) it has the full power and authority to enter into the Agreement;
- (b) it will fulfill the obligations set out in the sSSchedules to this Agreement in accordance with their terms;
- (c) it will deliver Programs and services that meet the Ontario Public Health Standards published under section 7 of the Act, and will comply with the Organizational Standards; and,
- (d) it has taken all necessary actions to authorize the execution of the Agreement including, where required, passing a board resolution or municipal by-law authorizing the Board of Health to enter into the Agreement with the Province.

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

- (a) procedures to ensure compliance with the Organizational Standards;
- (b) a code of conduct and ethical responsibilities for all persons at all levels of the Board of Health's organization;
- (c) procedures to ensure the ongoing effective functioning of the Board of Health;
- (d) decision-making mechanisms;
- (e) procedures to provide for the prudent and effective management of the Grant;
- (f) procedures to enable the successful completion of the obligations set out in the sSSchedules to this Agreement;
- (g) procedures to enable the timely identification of risks to the Board of Health's ability to perform its obligations under this Agreement and strategies to address the identified risks;
- (h) procedures to enable the preparation and delivery of all Reports required pursuant to Article 8; and,

- (i) procedures to deal with such other matters as the Board of Health considers necessary to ensure that the Board of Health carries out its obligations under the Agreement.
- 2.4 **Supporting Documentation.** Upon request, the Board of Health shall provide the Province 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, subject to section 3.2, expire on December 31st, 2013~~ shall continue unless terminated ~~earlier~~ pursuant to Article 12, Article 13 or Article 14.

~~3.2 Agreement to Continue. The Parties shall negotiate a new, successor agreement to this Agreement to be effective January 1, 2014. Despite section 3.1, this Agreement shall continue according to its terms until such time as a new agreement is agreed to between the Parties, unless terminated earlier pursuant to Article 12, Article 13, or Article 14.~~

~~3.33.2~~ **3.3 Application of Schedules during Term.** A schedule, or parts of a schedule, may apply for only part of the Term of this Agreement. Where a schedule, or part of a schedule, applies for only part of the Term of this Agreement, it shall be so indicated in the schedule.

~~3.34~~ **Amendments to Schedules during Term.** The Parties agree that amendments to the ~~S~~Sschedules may be made, on the written consent of both parties, during the Term of this Agreement. Without limiting the generality of the foregoing, the ~~S~~Sschedules may be amended to reflect:

- (a) updated allocations in Schedule A;
- (b) new polices and guidelines in Schedule B;
- (c) new reporting requirements in Schedule C;
- (d) updated Performance indicators, baselines and targets in Schedule D; and,
- (e) updated financial controls in Schedule E.

~~3.45~~ **Annual Review of Schedules.** The Parties agree to review the schedules to this Agreement on an annual basis, at the end of each Funding Year, to determine if amendments are appropriate.

~~3.56~~ **Additional Schedules during Term.** The Parties agree that additional ~~S~~Sschedules may be added to this Agreement on the written consent of both parties during the Term of this Agreement.

3.6 Review of Agreement. The Parties agree to review this Agreement every five (5) years to determine if amendments are necessary and/or appropriate.

ARTICLE 4 GRANT

4.1 **Grant Provided.** The Province shall:

- (a) provide the Board of Health a Grant for the purpose of carrying out the obligations set out in the Act, the regulations under the Act, the Ontario Public Health Standards, the Organizational Standards, and this Agreement including the ~~S~~schedules to this Agreement; and,
- (b) deposit the Grant into an account designated by the Board of Health provided that the account resides at a Canadian financial institution.

4.2 **Limitation on Payment of the Grant.** Despite section 4.1, the Province:

- (a) is not obligated to provide any Grant to the Board of Health until the Board of Health provides a valid certificate of insurance or other proof as provided for in section 11.2;
- (b) is not obligated to provide instalments of the Grant until it is satisfied with the progress of the obligations set out in this Agreement and the ~~S~~schedules;
- (c) may adjust the amount of the Grant it provides to the Board of Health in any Funding Year based upon the Province's assessment of the information provided by the Board of Health pursuant to section 8.1;
- (d) if, pursuant to the provisions of the *Financial Administration Act* (Ontario), the Province does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, the Province shall not be obligated to make any such payment, and, as a consequence, the Province may:
 - (i) reduce the amount of the Grant; or
 - (ii) terminate the Agreement pursuant to section 13.1 and cease providing Grant funding for a period or periods specified by the Province; and,
- (e) may withhold 1% of the bi-weekly Grant payments from the Board of Health which are specified in Schedule A if the Board of Health's complete quarterly financial reports and settlement reports (consisting of Audited Financial Statements, Auditor's Questionnaire with Auditor's Report, and a Certificate of Settlement) are not submitted by the deadline ~~of June 30th -specified in~~ any Funding Year ~~, or such other deadline as~~

~~the Province specifies in writing,~~ until such time as all the ~~settlement financial~~ reports are provided.

4.3 Use of Grant Funding. The Board of Health shall:

- (a) use the Grant only for the purposes of the Act and to provide or to ensure the provision of the health programs and services in accordance with sections 4, 5, 6, and 7 of the Act and for the purposes of carrying out the obligations in the ~~s~~Schedules;
- (b) use the Grant only for the provision of the Programs described in this Agreement and the schedules;
- (c) carry out the obligations in the ~~S~~Schedules:
 - (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 Programs; ~~and,~~
- (d) ~~s~~Spend the Grant only on Admissible Expenditures.

~~4.4 **User Fees.** As the Province provides Grants for the delivery of public health programs and services, the Board of Health agrees that the Province is eligible to receive its current cost share percentage of the net revenue from any user fees charged by the Board of Health.~~

~~4.45~~ **No Changes.** The Board of Health shall not make any changes to ~~S~~Schedules, the timelines and/or the use of the Grant without the prior written consent of the Province.

~~4.56~~ **Interest Bearing Account.** If the Province provides the Grant to the Board of Health prior to the Board of Health's immediate need for the Grant, the Board of Health shall place the Grant in an interest bearing account in the name of the Board of Health at a Canadian financial institution.

~~4.67~~ **Interest.** If the Board of Health earns any interest on the Grant, it must be reported. If interest income is not reported in the manner specified by the Province, 1% of the Board of Health's cash flow may be withheld through future payments.

~~4.78~~ **No Interest Payable by Province.** The Board of Health agrees that the Province shall not pay interest on any amount to which the Board of Health may otherwise be entitled under this Agreement.

~~4.89~~ **Rebates, Credits and the Grant.** The Board of Health shall not use the Grant for any costs, including taxes, for which it has received, will receive, or is eligible to receive, a rebate, credit or refund.

4.9 Revenues. All revenues collected by the Board of Health for programs or services provided under the terms of this Agreement must be reported in accordance with the direction provided in writing by the Province.

ARTICLE 5 PERFORMANCE IMPROVEMENT

- 5.1 **Performance Improvement.** The Parties agree to adopt a proactive and responsive approach to performance improvement (“Performance Improvement Process”), based on the following principles:
- (a) a commitment to continuous quality improvement;
 - (b) a culture of information sharing and understanding; and,
 - (c) a focus on risk-management.
- 5.2 **Performance Obligations.** The Board of Health shall use best efforts to achieve agreed upon Performance Targets ~~within the established Performance Corridors~~ for the Performance Indicators specified in Schedule “D”.
- 5.3 **Elements of Performance Improvement Process.** The Board of Health’s Performance Improvement Process shall include, but is not limited to:
- (a) ~~m~~Measuring the Board of Health’s performance according to Performance Indicators set out in Schedule D; ~~and and,~~
 - (b) ~~t~~The use of ~~continuous quality improvement~~ tools including, but not limited to those specified in sections 5.4, 5.5, and 5.6. **Negative Performance Variant Reports.** ~~If a Negative Performance Variant is identified by either the Province or Board of Health, the Board of Health shall immediately submit in writing a Negative Performance Variant Report to the Province which shall include:~~
- 5.4 **Compliance Reports.** If a Compliance Variance is identified by either the Province or Board of Health, the Board of Health shall immediately submit in writing a Compliance Report to the Province which shall include:
- (a) a description of the ~~Negative Performance~~Compliance Variance Variant;
 - (b) the cause of the Compliance Variance ~~Negative Performance Variant~~;
 - (c) an assessment of the impact of the Compliance Variance ~~Negative Performance Variant~~ on achieving the obligations set out in this Agreement; and,
 - (d) a description of how the Board of Health plans to resolve the Compliance Variance ~~Negative Performance Variant~~ and the timeline within which the Board of Health expects to resolve it.

5.5 Performance Reports If a Performance Variance is identified by the Province, the Board of Health shall submit in writing a Performance Report upon request by the Province. The Performance Report to the Province shall include:

- (a) the cause of the Performance Variance;
- (b) an assessment of the impact of the Performance Variance on program and service delivery;
- (c) a description of how the Board of Health plans to resolve the Performance Variance and the timeline within which the Board of Health expects to resolve it; and

~~—a description of how the Board of Health plans to resolve any impacts on program and service delivery and the timeline within which the Board of Health expects to resolve them.~~

- ~~(a) **Positive Performance Variant Reports.** If a Positive Performance Variant is identified by either the Province or Board of Health, the Board of Health may be asked to submit in writing a Positive Performance Variant Report to the Province which shall include:~~

~~a description of the Positive Performance Variant and contributing success factor(s);~~

~~an assessment of the lessons learned; and~~

- ~~(b)(d) a description of how the Board of Health plans to maintain or enhance success~~

~~5.5.5.6 Action Plan.~~ The Province may request in writing, either before or after a Negative Performance Variant Compliance Report(s) specified in section 5.4, or Performance Report(s) specified in section 5.5, that the Board of Health submit an Action Plan to address the Negative Performance Compliance Variance(s) or Performance Variance(s). The Action Plan shall describe:

- (a) the remedial actions undertaken (or planned to be undertaken) by the Board of Health; and,
- (b) the timeframe when the remedial action ~~is~~are expected to be completed; ~~;~~

5.7 Approval of Action Plan. The Action Plan must be approved by both the Province and the Board of Health prior to its implementation. Any revisions to the Action Plan also require the approval of both the Province and the Board of Health. ~~Province Right to Request Information. The Province may request additional data or information, or may request meetings with the Board of Health to support performance improvement as specified in this Article.~~

ARTICLE 6 ACQUISITION OF GOODS AND SERVICES, AND DISPOSAL OF ASSETS

6.1 **Acquisition.** If the Board of Health acquires supplies, equipment or services with the Grant, it shall do so through a process that promotes the best value for money. All procurement of goods and services should be consistent with the Organizational Standards, good procurement practices, and applicable government directives.

~~6.2 **Asset Management.** The Board of Health shall maintain an inventory of all Tangible Capital Assets developed or acquired with a value exceeding \$5,000 or a value determined locally that is appropriate under the circumstances.~~

~~6.3~~6.2 **Disposal.** The Board of Health shall not, without the Province's prior written consent, sell, lease or otherwise dispose of any asset purchased with the Grant or for which the Grant was provided, the cost of which exceeded \$100,000 at the time of purchase.

ARTICLE 7 CONFLICT OF INTEREST

7.1 **No Conflict of Interest with Use of the Grant.** The Board of Health shall carry out the obligations set out in this Agreement and use the Grant without an actual, potential or perceived conflict of interest. Note: nothing in this agreement applies to any other local or municipal conflict of interest not dealing with the use of the Grant.

7.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

- (a) the Board of Health; or,
- (b) any person who has the capacity to influence the Board of Health's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Board of Health's objective, unbiased and impartial judgment relating to its obligations under this Agreement and the use of the Grant.

7.3 **Disclosure to Province.** The Board of Health shall:

- (a) disclose to the Province, 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 the Province may prescribe as a result of the disclosure. Note that the Province may determine that no further action is required if it determines that the conflict has been

adequately addressed in accordance with the Board of Health conflict of interest policies.

ARTICLE 8 REPORTING, ACCOUNTING AND REVIEW

8.1 Preparation and Submission. The Board of Health shall:

- (a) submit to the Province at the address provided in section 16.1 or at any other address specified by the Province, all Reports in accordance with the timelines and content requirements set out in Schedule “C”;
- (b) submit to the Province at the address provided in section 16.1, or at any other address specified by the Province, any other reports requested by the Province in accordance with the timelines and content requirements specified by the Province;
- (c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and
- (d) ensure that all Reports and other reports are signed on behalf of the Board of Health by an authorized signing officer.

8.2 Record Maintenance. The Board of Health shall keep and maintain:

- (a) all financial records (including invoices) relating to the Grant in a manner consistent with generally accepted accounting principles for a period of not less than seven (7) years; and
- (b) all non-financial documents and records relating to the Grant or otherwise in connection with Article 5 (Performance Improvement) and the Schedules in accordance with applicable law and Board of Health policies.

8.3 Inspection, Audit or Investigation. The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours’ Notice to the Board of Health and during normal business hours, enter upon the Board of Health’s premises to review the Board of Health’s expenditure of the Grant and/or assess compliance with Article 5 (Performance Improvement), for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may:

- (a) inspect and copy the records and documents referred to in section 8.2; and/or;

- (b) conduct an audit or investigation of the Board of Health in respect of the expenditure of the Grant, and/or compliance with Article 5 (Performance Improvement).
- 8.4 **Assessment.** The Province may carry out an assessment of the Board of Health under section 82 of the Act if the legal requirements for an assessment under that section have been met. An assessment may be conducted under the terms of that section irrespective of whether or not an inspection is conducted under section 8.3 of this Agreement.
- 8.5 **Disclosure.** To assist in respect of the rights set out in section 8.3, the Board of Health shall disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and shall do so in a form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be, subject to applicable law.
- 8.6 **Province Right to Request Information.** The Province may request additional information, or may request meetings with the Board of Health to support compliance with any aspect of this Agreement, subject to applicable law.
- 8.7 **No Control of Records.** No provision of the Agreement shall be construed so as to give the Province any control whatsoever over the Board of Health's records.
- 8.8 **Auditor General.** For greater certainty, the Province'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) and under the *Audit Statute Law Amendment Act*.

ARTICLE 9 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 9.1 **FIPPA.** The Board of Health acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) (FIPPA) and that any information provided to the Province in connection with the Agreement may be subject to disclosure in accordance with FIPPA.
- 9.2 **MFIPPA.** The Province acknowledges that the Board of Health is bound by the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) (MFIPPA) and that any information provided to the Board of Health in connection with the Agreement may be subject to disclosure in accordance with MFIPPA.
- 9.3 **Confidentiality of records.** The Board of Health shall ensure that all personal information or personal health information in its custody or under its control is managed in accordance with the provisions of the Act and its regulations, the *MFIPPA-Municipal Freedom of Information and Protection of Privacy Act* and its regulations, the *Personal Health Information Protection Act* (PHIPA) and any other applicable legislation.

ARTICLE 10 INDEMNITY

- 10.1 **Indemnification.** The Board of Health 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 Programs or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Province.

ARTICLE 11 INSURANCE

- 11.1 **Board of Health's Insurance.** The Board of Health 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 programs and services similar to the programs and services covered by this Agreement 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 Board of Health'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 Board of Health shall provide the Province with proof of insurance in the form of a valid certificate of insurance that confirms the insurance coverage as required in section 11.1. The Board of Health shall provide a copy of the certificate of insurance to the Province prior to the receipt of Grant funding under this Agreement.

ARTICLE 12 TERMINATION ON NOTICE

- 12.1 **Termination on Notice.** The Province may terminate the Agreement at any time upon giving at least 120 days' Notice to the Board of Health.

12.2 **Termination of Specific Program.** Despite section 12.1, the Province may terminate any Program that is funded by a Grant under this Agreement with 120 days' Notice. If a Program funded by a Grant under this Agreement terminates for any reason, the parties agree to amend the Agreement and Schedules to incorporate any necessary changes to the Agreement.

12.3 **Consequences of Termination on Notice by the Province.** If the Province terminates the Agreement or a specific Program pursuant to sections 12.1 or 12.2, the Province may:

- (a) cancel all further instalments of the Grant;
- (b) demand the repayment of any Grant remaining in the possession or under the control of the Board of Health; and/or,
- (c) assist the Board of Health to wind-down the Program, project, or other initiative purchased with the Grant, set the Wind-Down Amount; and
 - (i) permit the Board of Health to offset the Wind-Down Amount against any Grant amount remaining in the possession or under the control of the Board of Health; and/or
 - (ii) subject to section 4.7, provide ~~the a~~ Grant to the Board of Health to cover the Wind-Down Amount.

ARTICLE 13 TERMINATION WHERE NO APPROPRIATION

13.1 **Termination Where No Appropriation.** If, as provided for in section 4.2(d), the Province does not receive the necessary appropriation from the Ontario Legislature for any payment the Province is to make under the Agreement, the Province may terminate the Agreement immediately by giving Notice to the Board of Health.

13.2 **Consequences of Termination Where No Appropriation.** If the Province terminates the Agreement pursuant to section 13.1, the Province may:

- (a) cancel all further instalments of the Grant;
- (b) demand the repayment of any Grant funds remaining in the possession or under the control of the Board of Health; and/or,
- (c) ~~to to~~ assist the Board of Health to wind-down a Program, project or other initiative purchased with the Grant, set the Wind-Down Amount, and permit the Board of Health to offset such Wind-Down Amount against the amount owing pursuant to section 13.2(b).

- 13.3 **No Additional Grant Funding.** For purposes of clarity, if the Wind-Down Amount exceeds the Grant remaining in the possession or under the control of the Board of Health, the Province shall not be required to provide additional Grant funding to the Board of Health.

ARTICLE 14

EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

- 14.1 **Events of Default.** Each of the following events may constitute at the sole option of the Province an Event of Default:
- (a) the Board of Health 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 its obligations in the ~~S~~schedules;
 - (ii) use or spend the Grant; and/or,
 - (iii) provide, in accordance with section 8.1, Reports or such other reports as may have been requested pursuant to section 8.1(b);
 - (b) the Board of Health's operations, or its organizational structure, changes so that it no longer meets one or more of the applicable eligibility requirements of the Program under which the Province provides the Grant; ~~and/or, and,~~
 - (c) the Board of Health ceases to operate, is merged or otherwise dissolved.
- 14.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:
- (a) initiate any action the Province considers necessary in order to facilitate the successful continuation or completion of the Board of Health's obligations under this Agreement;
 - (b) provide the Board of Health with an opportunity to remedy the Event of Default;
 - (c) suspend the payment of the Grant for such period as the Province determines appropriate;
 - (d) reduce the amount of the Grant;
 - (e) cancel all further installments of the Grant;

- (f) demand the repayment of any amounts of the Grant remaining in the possession or under the control of the Board of Health that is not already promised by legal agreement that the Board of Health has with another person;
- (g) demand the repayment of an amount equal to any Grant the Board of Health used for purposes not agreed upon by the Province;
- (h) demand the repayment of an amount equal to any Grant the Province provided to the Board of Health; and/or,
- (i) terminate the Agreement at any time, including immediately, upon giving Notice to the Board of Health.

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

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

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

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

the Province 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.

14.6 **Ministry's Rights under the Act maintained.** Nothing in this Agreement shall limit the Province's or the Chief Medical Officer of Health's rights under section 82 of the Act to conduct an assessment of the Board of Health if the conditions under that section are met.

ARTICLE 15 RETURN OF THE GRANT

15.1 **Return of The Grant.** If the Province requests in writing the repayment of the

whole or any part of the Grant; due, for example, to an Event of Default; the amount requested shall be deemed to be a debt due and owing to the Province and the Board of Health shall pay the amount immediately.

- 15.2 **Method of Return.** The Province may recover the Grant requested in section 15.1 through a cash-flow adjustment. If a cash-flow adjustment is not possible, the Board of Health shall repay the amount payable by cheque payable to the Minister of Finance and mailed to the Province at the address set out in the Province's request for repayment.
- 15.3 **Interest on the Grant Payable.** The Province reserves the right to demand interest on any amount owing by the Board of Health at the then current rate charged by the Province on accounts receivable. Interest shall accrue 30 days after Notice has been provided under section 15.1 for repayment of the Grant.
- 15.4 **Unused Grant.** The Board of Health agrees that it shall report to the Province in writing any part of the Grant that has not been used or accounted for by the Board of Health, either 30 days prior to the end of the Funding Year, in the quarterly [financial](#) reports, or in a report provided as soon thereafter as possible, and when the amount of the unused Grant is known.
- 15.5 **Carry Over of Grant Not Permitted.** The Board of Health is not permitted to carry over the Grant from one calendar year to the next, unless pre-authorized in writing by the Province.
- 15.6 **Return of Unused Grant.** Without limiting any rights of the Province under Article 13, or sections 15.1 or 15.2, if the Board of Health has not spent all of the Grant allocated for the Funding Year as provided for in the [S](#)schedules, the Province may:
- (a) demand the return of the unspent Grant; or,
 - (b) adjust the amount of any further instalments of the Grant accordingly.

ARTICLE 16 NOTICE

- 16.1 **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by e-mail, postage-prepaid mail, personal delivery or facsimile, and shall be addressed to the Province and the Board of Health respectively as set out below or as either Party later designates to the other by Notice:

To the Province:

Ministry of Health and Long-Term Care

393 University Ave., Suite 2100
Toronto ON M7A 2S1

To the Board of Health:

[Legal Name of Board of Health]

[Board of Health address]

Attention:
Sylvia Shedden
Director, Public Health Standards, Practice
and Accountability Branch

Fax: 416-314-7078
E-mail: sylvia.shedden@ontario.ca

Attention:
[Medical Officer of Health/
Chief Executive Officer]

Fax: [insert]
E-mail: [insert]

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

- (a) in the case of postage-prepaid mail, seven (7) days after a Party mails the Notice; or,
- (b) in the case of e-mail, personal delivery or facsimile, at the time the other Party receives the Notice.

16.3 **Postal Disruption.** Despite section 16.2(a), in the event of a postal disruption:

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

ARTICLE 17 CONSENT BY PROVINCE

17.1 **Consent.** The Province may impose any terms and conditions on any consent the Province may grant pursuant to the Agreement.

ARTICLE 18 SEVERABILITY OF PROVISIONS

18.1 **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 19 WAIVER

19.1 **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 16. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

**ARTICLE 20
INDEPENDENT PARTIES**

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

**ARTICLE 21
ASSIGNMENT OF AGREEMENT OR THE GRANT**

- 21.1 **No Assignment.** The Board of Health shall not assign any part of the Agreement or the Grant without the prior written consent of the Province.
- 21.2 **Agreement to Extend.** All rights and obligations contained in the Agreement shall extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

**ARTICLE 22
GOVERNING LAW**

- 22.1 **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 the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.
- 22.2 **Conflicts - Ontario.** In the event of a conflict between this Agreement and the Ontario Public Health Standards, the Organizational Standards or the Act or its regulations, the Ontario Public Health Standards, Organizational Standards or the Act or its regulations prevail.
- 22.3 **Conflicts – Municipal.** In the event of a conflict between any requirement of this Agreement and any municipal or local requirement at law to which the Board of Health is subject, the Board of Health shall comply with the stricter requirement.

**ARTICLE 23
FURTHER ASSURANCES**

- 23.1 **Agreement into Effect.** The Parties 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 24 SURVIVAL

24.1 **Survival.** The provisions in Article 1, Article 4, Article 5, sections 8.1 (to the extent that the Board of Health has not provided the Reports or other reports to the satisfaction of the Province), 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, Articles 9, 10 and 11, sections 13.2, 14.2, 14.3, 14.4, Articles 15, 18, 19, 21, 26, 27, 28, and all applicable Definitions, 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 25 SCHEDULES

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

- (a) Schedule “A” – Program-Based Grants;
- (b) Schedule “B” – Related Program Policies and Guidelines;
- (c) Schedule “C” – Reporting Requirements; ~~s. 1.8.~~
- (d) Schedule “D” – Board of Health Performance; and
- ~~(d)~~(e) Schedule “E” – Board of Health Financial Controls.

25.2 **Purpose of Schedules.** The purpose of the schedules under the Agreement is to:

- (a) sSpecify the Grant to be allocated from the Province to the Board of Health to deliver public health pPrograms and services that meet the Ontario Public Health Standards, the Organizational Standards, and other requirements of the Act, ~~and the Organizational Standards~~;
- (b) pProvide the Board of Health with further information on expectations related to the Grant;
- (c) iImprove and strengthen the Province’s ability to effectively analyze the Board of Health’s expenditures and ensure accountability for the use of the Grant; and ~~s. 1.7~~
- (d) cContribute to a public health sector with a greater focus on performance improvement, accountability and sustainability.

ARTICLE 26 COUNTERPARTS

26.1 **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 27
JOINT AND SEVERAL LIABILITY**

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

**ARTICLE 28
ENTIRE AGREEMENT**

28.1 **Entire Agreement.** The 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.

28.2 **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

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

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

Name: Roselle Martino
Title: Executive Director
Public Health Division and
Office of the Chief Medical Officer of Health

Date

Name: Kate Manson-Smith
Title: Assistant Deputy Minister
Health Promotion Division

Date

[Legal Name of Board of Health]

I/We have authority to bind the Board of Health.

Name:
Position:

Date

Name:
Position:

Date