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TO:	CHAIR AND MEMBERS COMMUNITY AND NEIGHBOURHOODS COMMITTEE MEETING ON SEPTEMBER 13, 2011
FROM:	CINDY HOWARD INTERIM ADMINISTRATOR, DEARNESS HOME
SUBJECT:	FOR ONTARIO TELEMEDICINE NETWORK MEMBERSHIP AGREEMENT AND ONE NETWORK ORDER AGREEMENT WITH eHEALTH ONTARIO FOR DEARNESS HOME

RECOMMENDATION

That, on the recommendation of the Interim Administrator of Dearness Home, with the concurrence of the Executive Director of Community Services, the attached proposed By-Law (Appendix A) **BE INTRODUCED** at the Municipal Council Meeting of September 19, 2011:

- (a) **TO APPROVE** the Ontario Telemedicine Network Membership Agreement for Dearness Home; and
- (b) **TO APPROVE** the ONE@Network Order Agreement with e-Health for Ontario Telemedicine Network Services for Dearness Home; and
- (c) **TO AUTHORIZE** the Mayor and City Clerk to execute the agreements authorized and approved in sections (a) and (b) above.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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None

BACKGROUND

The Ontario Telemedicine Network (OTN) is an independent, not-for-profit organization funded by the Government of Ontario to provide services allowing videoconferencing, webcasting and tele-diagnostic practices. The Ontario Telemedicine Network (OTN) currently delivers programs and services in over 925 sites across the Province and there are over 100 agencies within the boundaries of the South West LHIN who are signed up for these services. OTN is now expanding the network to include Long Term Care facilities.

eHealth Ontario is a corporation without share capital and is an agent of Her Majesty the Queen in Right of Ontario, pursuant to the Development Corporations Act and provides the broadband network management. OTN's service is distributed through the eHealth One@Network and a membership with OTN is dependent upon installation of the One® Health Network.

The Membership Agreement between Ontario Telemedicine Network (OTN) and The Corporation of the City of London (Dearness Home) (Schedule B) has been reviewed by Civic Administration. The Membership Agreement includes a disclaimer in Section 6.4 indicating that the video conferencing is provided on an "as is" basis and "any material and/or data downloaded or otherwise obtained through the use of the Videoconferencing Network and/or Services shall be done at the member's own discretion and risk". Ontario Telemedicine Network (OTN) does not have control over the network and therefore cannot guarantee performance; however, in their experience, downtime has been minimal and services restored promptly.

Section 6.5 of the Agreement provides for dispute resolution up to and including arbitration. OTN advises that this clause has not been invoked in the ten years that OTN have been operating.

Section 8.1 provides OTN with the right to amend the agreement at its sole discretion on 60 days written notice. According to OTN, in their history this clause has been invoked only three times; two instances were related to technology updates and the other was regarding a change in the

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membership policy as required by the Ministry of Health and Long-Term Care (MOHLTC). If the City is not satisfied with a contract amendment under this section the option is to terminate the agreement under section 7.2 with 30 days written notice.

The Ontario Telemedicine Network (OTN) acts as an agent for Dearness Home to specify and order an appropriate network connection from eHealth Ontario. The Order Agreement for the ONE@Network, Ontario Telemedicine Network (OTN) Services (Schedule A) is with eHealth Ontario. The agreement was reviewed by the Technical Services Division (TSD) and they agreed that they could comply with the required implementation and will liaise with OTN on the installation of the equipment and software.

The use of this system will include the exchange of personal health information. To ensure compliance with the Personal Health Information Protection Act, 2004 and article 5 of the ONE@Network Order Agreement and OTN Membership Agreement Dearness Home will ensure their privacy policy is in compliance with applicable privacy legislation including ensuring that technical and physical safeguards are in place to protect privacy of information.

Engaging the community is an important part of the Dearness Home's efforts to contribute to community vitality. The use of OTN technology will be geared to a multi-disciplinary approach to meet the varying needs of the Dearness Home. OTN services will allow Dearness Home to:

- Consult with agencies such as Regional Mental Health
- Permit clinicians to observe resident's behaviours first-hand and provide advice as part of the "Senior's with Responsive Behaviours" initiative
- Teleconference with other Long Term Care providers in our area who meet on a regular basis
- Participate in on-site training webinars hosted by groups such the Registered Nurses Association of Ontario

FINANCIAL IMPACT

The Ontario Telemedicine Network (OTN) technology equipment is valued at \$24,000.00 and is being transferred as an asset to the Corporation of the City of London at no cost. Included in the Ontario Telemedicine Network (OTN) membership is unlimited service, site implementation, training on the equipment, technical support and software upgrades. Site and system fees have been waived for this project through negotiation between the Local Health Integration Network (LHIN) and OTN for the first wave of sites joining the project.

The Dearness Home will be responsible for the one time network cabling cost of about \$4,000.00 and will assume the maintenance warranty cost estimated at \$1,000.00 annually after a three year period. These costs and any other costs associated with this project will be accommodated within our existing departmental budget.

SUBMITTED BY:
ROBERT DRAGE BUSINESS MANAGER, DEARNESS HOME DEPARTMENT OF COMMUNITY SERVICES

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RECOMMENDED BY:	CONCURRED BY:
CINDY HOWARD INTERIM ADMINISTRATOR, DEARNESS HOME DEPARTMENT OF COMMUNITY SERVICES	ROSS FAIR EXECUTIVE DIRECTOR DEPARTMENT OF COMMUNITY SERVICES

cc. L. Marshall
J. Jackson

APPENDIX A

Bill No.
2011

By-law No.

A By-law to authorize and approve: (1) a ONE Network Order Agreement with eHealth Ontario for Ontario Telemedicine Network Services; (2) a Membership Agreement with Ontario Telemedicine Network (OTN); and (3) to delegate authority to the Mayor and City Clerk to execute the agreements.

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* S.O. 2001, c.25 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS sections 9 and 10 and 23.1 through 23.5 of the *Municipal Act, 2001* authorize a municipality to delegate its powers and duties under this or any other Act to a person or body;

AND WHEREAS eHealth Ontario is a corporation without share capital and is an agent of Her Majesty the Queen in right of Ontario, pursuant to Ontario Regulation 43/02 made under the *Development Corporations Act*;

AND WHEREAS Ontario Telemedicine Network is non-share corporation funded by the Province;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The ONE Network Order Agreement to be entered into between The Corporation of the City of London and eHealth Ontario, attached as Schedule A to this by-law, regarding the use of Ontario Telemedicine Network Services, is hereby authorized and approved.
2. The Membership Agreement to be entered into between The Corporation of the City of London and Ontario Telemedicine Network (OTN), attached as Schedule B to this by-law, regarding the use of Ontario Telemedicine Network Services, is hereby authorized and approved.
3. The Mayor and the City Clerk are authorized to execute the agreements authorized and approved under sections 1 and 2 above.
4. The Executive Director of Community Services is delegated the authority to designate in writing a "Telemedicine Coordinator", an administrative and technical contact, and a "Designated Officer" for the purposes of the agreement approved in paragraph 2 above.
5. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council

, 2011

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading –
Third reading –

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Schedule A



ONE® Network Order Agreement
Ontario Network for e-Health – For OTN Services ONLY

SCHEDULE A

eHealth Ontario Mandate

eHealth Ontario is the provincial agency mandated to improve patient care and safety by harnessing innovation and technology. Its priorities are the creation of a Diabetes Registry, establishing an e-prescribing system, and developing an ehealth portal. It will also oversee the development of a province-wide electronic health record system by 2015.

eHealth Ontario Obligations

eHealth Ontario agrees to provide network connectivity, including network interface equipment, to the Client in fulfillment of its mandate. eHealth Ontario also agrees to provide a support structure to assist the Client in resolving eHealth Ontario network-related issues. eHealth Ontario will bear the cost of providing and managing the network connectivity to the Client.

Client Obligations

The Client agrees to provide an appropriate and secure environment for eHealth Ontario to install the network and locate its network interface equipment, and reasonable access to the site to deliver, install, maintain, inspect, disconnect or remove its network interface equipment. The Client will bear the local infrastructure cost of interfacing to and using the provided network services. Upon termination of the service, the Client agrees to return all eHealth Ontario-provided equipment to eHealth Ontario.

Shared Obligations

Both eHealth Ontario and the Client have an obligation to provide appropriate management, governance and oversight to protect the confidentiality and security of health-related information exchanged by health care providers.

Detailed Terms and Conditions and attached schedules, being the *Acceptable Use Policy* and *Security Policy*, have been provided.

Please Refer to: Instructions for Completing ONE® Network Order Agreement and What You Need to Know before completing this form. Please complete the entire form; incomplete forms or incorrect information will result in processing delays.

eHEALTH ONTARIO USE ONLY

Order Number:

Part A – Acknowledgement (Mandatory)

1. The ONE Network Order Agreement or "Agreement" consists of this order form and the attached Terms and Conditions including any schedules thereto. By signing below, the Client acknowledges that it has read, understands and agrees to be bound by the Agreement as of the ____/____/____ (the "Effective Date") (yyyy-mm-dd).

Signature:	Business Legal Name: The Corp. of the City of London (Dearness Home)
Printed Name:	
Title:	Date:

2. Site Address (Mandatory)

The street address of the site where the circuit will be installed; (not the mailing address). Refer to ONE Network - What You Need to Know for further information regarding the location of the circuit.

Number and Street Name 710 Southdale Rd. East		Suite/Unit/Floor	
Building Name (for multi-building sites)	City/Town London	Province ON	Postal Code N6E 1R8
Site Telephone No. (include extension) (519) 661-2500 x8268	Site Fax No. (519) 661-0446	Is this fax secure? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <small>*The fax machine must be located in a secure area where it can be used and monitored only by authorized personnel.</small>	
Site Name/Group Name Dearness Home	Circuit Location (IT Room? – see section 6b on page 3): Floor 3 Room Number/ 3CA28 Description Data Communications Rm.		

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Schedule A

PART B: Technical Information

It is recommended that you consult your technical support person to complete the remainder of this form.

6. Space/Power: Uninterruptible Power Supply/ UPS (Mandatory)

eHealth Ontario strongly recommends installation of a UPS of adequate size, prior to eHealth Ontario circuit installation.

6a. Check (x) ONE ONLY

- Site currently has a UPS that can accommodate up to 2 eHealth Ontario router(s).
- Site will install a UPS of adequate capacity prior to eHealth Ontario circuit installation.

6b. Requirements for Router(s)

- A 18" x 18" shelf that can support 50 pounds
- Location for router(s) should be secure and away from regular working area (routers' cooling fan is a bit noisy) and Ontario Telemedicine conferencing equipment.
- Available power supply and ventilation

7. QoS Requirements (Mandatory)/ For OTN use Only.

7a. Please complete table below with the following information:

Please enable router port for OTN Videoconferencing according to the following requirements:

OTN Videoconferencing Port Request:

Indicate number of videoconferencing devices to be used at site:

Indicate number of videoconferencing sessions to be conducted concurrently:

Required QoS bandwidth per session:

832 kbps (If connection is routed, please multiply 832 times the number of videoconferencing sessions to be conducted concurrently):

640 kbps (If connection is routerless, please multiply 640 times the number of videoconferencing sessions to be conducted concurrently):

7b. If connection is routerless please provide:

IP address range to be used:

Subnet mask:

8. Comments

8a. Please enter any comments/questions/notes below. (Refer to the instructions for completing this form, for things you may wish to include.)

Schedule A



ONE® Network

Order Agreement Terms and Conditions

OTN Services

ARTICLE 1 BACKGROUND

1.1 Purpose. This Agreement sets out the terms and conditions under which eHealth Ontario will provide the Services to Client.

1.2 Representatives. "Representatives" means, in the case of eHealth Ontario or Client, any directors, officers, employees, agents, consultants or subcontractors, as well as the directors, officers, employees or agents of any subcontractor, of each such party.

ARTICLE 2 TERM AND TERMINATION

2.1 Term. This Agreement shall be effective as of the Effective Date and shall continue until terminated in accordance with the terms and conditions set out in this Article 2.

2.2 Material Breach. In the event of a breach of this Agreement, the non-breaching party may terminate this Agreement upon written notice to the other party provided that the non-defaulting party has given the breaching party prior written notice of the breach which describes the nature of the breach and the breaching party has failed to cure the breach within thirty (30) days of the prior written notice.

2.3 For Convenience. At any time more than six (6) months after the Effective Date, Client or eHealth Ontario may terminate this Agreement upon ninety (90) days written notice to the other party.

2.4 Change to Policies. "eHealth Ontario Policies" means eHealth Ontario's Acceptable Use Policy attached as Schedule One and eHealth Ontario's Security Policy attached as Schedule Two. Each is a "eHealth Ontario Policy". For a period of ten (10) Business Days following any date on which eHealth Ontario issues a notice of any change to the eHealth Ontario Policies to Client, if that change is unacceptable to Client, Client may terminate this Agreement upon thirty (30) days written notice to eHealth Ontario.

2.5 Survival. Those sections which by their nature should survive the termination or expiration of this Agreement, including but not limited to sections 2.5, 3.5(e), 3.5(f), 3.7 and 3.8 and Articles 5, 6, 7 and 8 will remain in full force and effect following the expiration or termination of this Agreement.

ARTICLE 3 SERVICES

3.1 (a) Services. Subject to the other provisions of this Agreement, eHealth Ontario agrees to provide to Client, a network circuit connected to eHealth Ontario's technology infrastructure and any related services described in the following provisions of this Article 3 (the "Services").

(b) Plain Language Descriptions. Client acknowledges receiving from eHealth Ontario the plain language descriptions of the Services, including a description of the safeguards pertaining to the Services, attached hereto as Schedule Three (the "Plain Language Descriptions"). eHealth Ontario may amend the Plain Language Descriptions from time to time. A current copy of the Plain Language Descriptions is available at the eHealth Ontario website (www.eHealthOntario.on.ca).

3.2 Service Level Commitment. eHealth Ontario will use commercially reasonable efforts to provide the Services, but eHealth Ontario makes no service level commitments in this Agreement.

3.3 Authorization Letter. In order to perform certain activities related to the Services, eHealth Ontario or its subcontractors may require letter(s) of authorization from Client. If such a letter is required, eHealth Ontario shall be relieved of any obligation to provide the affected Services until Client provides that letter to eHealth Ontario or its subcontractor (as applicable).

3.4 End Users. Client shall cause any individual who is an employee, agent, consultant or other representative of Client and who is authorized by Client to use all or part of the Services that are intended for individual use (its "End Users") to comply with this Agreement and is responsible for the acts and omissions of its End Users as if such acts and omissions were the acts and omissions of Client.

3.5 Service Equipment. The provision of Services may include the provision of Service Equipment. "Service Equipment" means any equipment or software selected by and provided by eHealth Ontario (or any Representative of eHealth Ontario) to Client in conjunction with any Services including without limitation servers, routers, modems, cables, fibre optic cable, panels or switching equipment but not including any equipment that has been purchased by Client. With respect to any Service Equipment:

(a) Provision. Client acknowledges that the provision of any item of Service Equipment is in eHealth Ontario's sole discretion.

(b) Access. Client shall ensure that eHealth Ontario or its Representatives may access any site where the circuit provided under this Agreement terminates ("Authorized Site") to deliver, install, maintain, inspect, disconnect or remove any Service Equipment located or to be located at such site.

(c) Service Equipment. Client will ensure that any Service Equipment is installed, used, stored and maintained in a manner and in an environment which conforms to the relevant manufacturer's specifications, any specifications provided by eHealth Ontario and this Agreement. Client will be responsible for the loss of and risk or damage to the Service Equipment, except where caused by the negligence or willful misconduct of eHealth Ontario.

(d) Modifications. eHealth Ontario in its sole discretion may replace or modify any item of Service Equipment, so long as doing so does not have a material adverse impact on the Services in connection with which that item of Services Equipment was originally provided.

(e) Ownership. Service Equipment remains the property of eHealth Ontario or its suppliers, and Client shall not acquire any interest in, nor file or permit any liens or other encumbrances upon the Service Equipment.

(f) Return. Upon the termination of any Service in connection with which any Service Equipment was provided, Client is responsible for ensuring the return

of that Service Equipment to a location in the Province of Ontario designated by eHealth Ontario.

(g) Equipment. Except for Service Equipment, Client is responsible for providing any equipment, software or services required by Client to access and use all or part of the Services.

3.6 Support. eHealth Ontario will provide Client with technical support and assistance relating to the Services through a help desk available by telephone. eHealth Ontario may change the applicable telephone number from time to time. eHealth Ontario does not guarantee that it will be able to verify or resolve all problems presented by Client to the help desk. Client acknowledges that Client and not eHealth Ontario is responsible for resolving any problems with Client's own technology infrastructure.

3.7 Intellectual Property. No intellectual property rights are transferred by eHealth Ontario to Client by this Agreement. Client will not remove any confidentiality, copyright or other proprietary rights notices from any materials provided by eHealth Ontario or its Representatives.

3.8 IP Addresses. Client acknowledges that Client has no right, title or interest in or to any IP addresses assigned to Client by eHealth Ontario or its Representatives in connection with any Services. If a fixed IP address is assigned to Client, eHealth Ontario or its Representatives may change any such address upon notice to Client.

3.9 Additional Services. Any additional services related to the Services that are requested by Client and that eHealth Ontario in its sole discretion provides are deemed to be Services provided pursuant to the terms and conditions of this Agreement.

ARTICLE 4 SECURITY AND ACCEPTABLE USE

4.1 Compliance. Client acknowledges that it has read the eHealth Ontario Policies and agrees to comply with the eHealth Ontario Policies. Client will cause its End Users to read and to comply with the eHealth Ontario Policies. Any violation of any eHealth Ontario Policy or any laws by Client (or by any End User) is a material breach of this Agreement by Client and eHealth Ontario may, in its sole discretion, restrict, suspend or terminate the Services, upon written notice, without an opportunity to cure notwithstanding section 2.2. When exercising its rights under this section, eHealth Ontario will respond in a manner proportional to the severity of the violation.

4.2 Revisions to eHealth Ontario Policies. eHealth Ontario may revise any of the eHealth Ontario Policies, from time to time, in its sole discretion, and Client agrees to abide by the eHealth Ontario Policies as amended from time to time. eHealth Ontario will give Client notice of any such changes to the eHealth Ontario Policies. CLIENT'S CONTINUED USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF SUCH CHANGES.

ARTICLE 5 PRIVACY AND CONFIDENTIALITY

5.1 "Confidential Information" means any and all information and materials, which: (i) are designated in

Schedule A

writing, as confidential at the time of disclosure, or (ii) if disclosed orally or visually, are designated in writing, as confidential, within thirty (30) days of disclosure, or (iii) a reasonable person, having regard to the circumstances and the information, would regard as confidential.

5.2 "Personal Information" means any personal information including personal health information which is required to be protected pursuant to the Personal Health Information Protection Act, 2004 ("PHIPA") or the Freedom of Information and Protection of Privacy Act ("FIPPA") (each as amended from time to time) or any other laws, regulations or judicial decisions applicable in the Province of Ontario pertaining to the protection of personal information as are in effect at this time or may be in effect during the term of this Agreement ("Privacy Laws"). Personal Information is a subset of Confidential Information.

5.3 Confidential Information. Both parties recognize that the protection of Confidential Information by the receiving party (the "Recipient") is of vital importance to the party disclosing that information (the "Disclosing Party"). As between the Disclosing Party and the Recipient, the Disclosing Party is the owner of its Confidential Information, and except to the extent set out in this Agreement, no interest, license or other right in or to that Confidential Information is granted to the Recipient or implied simply by the disclosure of that Confidential Information.

5.4 Unless it is also Personal Information, Confidential Information does not include information which:

- (a) is or at any time becomes in the public domain other than by a breach of this Agreement or breach of any agreement between the Disclosing Party and a third party;
- (b) is known to the Recipient (as substantiated by cogent and reliable written evidence in the Recipient's possession) free of any restrictions at the time of disclosure;
- (c) is independently developed by the Recipient through individuals who have not had either direct or indirect access to the Disclosing Party's Confidential Information; or
- (d) is disclosed to the Recipient by a third party who had a right to make such disclosure.

5.5 As Is. ALL CONFIDENTIAL INFORMATION PROVIDED BY A DISCLOSING PARTY IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND.

5.6 Obligations. The Recipient will:

- (a) use the Disclosing Party's Confidential Information only in accordance with this Agreement and only for the purpose of fulfilling its obligations and exercising its rights under this Agreement, and will not use, manipulate or exploit the Disclosing Party's Confidential Information for any other purpose;
- (b) use the same degree of care to protect the Disclosing Party's Confidential Information as the Recipient would protect its own confidential information of a like nature and in any event using a standard no less than a reasonable degree of care;
- (c) disclose the Disclosing Party's Confidential Information only to the Recipient's employees, subcontractors or agents who have a need to know and are bound by a written contract to keep the Confidential Information of third parties confidential at

least to the same extent as set forth in this Agreement; and

(d) notify the Disclosing Party immediately upon becoming aware of any unauthorized use, access or disclosure of the Disclosing Party's Confidential Information.

5.7 Termination. Upon the termination of this Agreement, the Recipient will: (i) return all Confidential Information disclosed to it by the Disclosing Party and all copies thereof, regardless of form; or (ii) securely destroy any such Confidential Information that cannot be returned. Notwithstanding the foregoing in this section 5.7:

- (a) eHealth Ontario may retain any back-up tapes or disks produced in conjunction with the Services until such time as they are scheduled to be destroyed in accordance with eHealth Ontario's policies and procedures with respect to the retention of back-ups.
- (b) Either party may retain any Confidential Information of the other party that it is required to keep pursuant to any law applicable in the Province of Ontario for so long as it is required to do so.

5.8 By Law. Neither party shall be liable for disclosure of Confidential Information if disclosure is required by the laws of the Province of Ontario, provided that the Recipient, to the extent permitted by law, notifies the Disclosing Party of any such requirement as soon as legally permissible, so that the Disclosing Party may seek a protective order or other relief.

5.9 Injunctions. The Recipient agrees that the unauthorized access, use or disclosure of the Disclosing Party's Confidential Information will cause irreparable injury to the Disclosing Party, and the Disclosing Party is entitled to seek injunctive and other equitable relief, as a matter of right.

5.10 Privacy. Each party agrees to comply with all Privacy Laws to which it is subject. PHIPA applies to eHealth Ontario. For clarification, eHealth Ontario provides services in the capacity of a "health information network provider" under this Agreement. As a health information network provider, eHealth Ontario will comply with section 6(3) of Ontario Regulation 329/04, made under PHIPA as amended from time to time (the "PHIPA Regulation"). The obligations of the PHIPA Regulation are satisfied by the provisions of this Agreement.

5.11 Authorization. By Ontario Regulation 43/02 (amended to Ontario Regulation 54/05) (as amended from time to time), eHealth Ontario is authorized to collect Personal Information for purposes connected with the registration and authentication of its clients and as otherwise necessary for the administration of eHealth Ontario's authorized activities.

5.12 Unauthorized Access or Disclosure. eHealth Ontario shall notify Client as the first reasonable opportunity if: a) eHealth Ontario accessed, used, disclosed, or disposed of personal health information other than in accordance with PHIPA; or b) an unauthorized person accessed personal health information. In the event that eHealth Ontario is obliged to notify the Client pursuant to this section, eHealth Ontario shall provide notice in accordance with the following procedures: (1) eHealth Ontario shall notify the Authorized Representative as soon as reasonably practicable; (2) The contents of the notice will include: (a) the date and time of the unauthorized access, use, disclosure or disposal; (b) a description in reasonable detail of the personal health information

subject to the unauthorized access, use, disclosure or disposal; (c) the circumstances surrounding the incident, including who accessed, used, disclosed, or disposed of the personal health information; and (d) the actions taken to contain and to prevent similar unauthorized access, use, disclosure or disposal; and (3) eHealth Ontario shall, to the extent reasonably practical, and in a manner that is reasonably practical, keep and make available to the Client, on the written request of the Client, an electronic record of: a) all accesses to all or part of the personal health information associated with Client being held in equipment controlled by eHealth Ontario, which record shall identify the person who accessed the information and the date and time of the access; and b) all transfers of all or part of the personal health information associated with Client by means of equipment controlled by eHealth Ontario, which record shall identify the person who transferred the information and the person or address to whom it was sent and the time it was sent. Notwithstanding the foregoing, in general eHealth Ontario does not store any personal health information on any equipment that is part of the eHealth Ontario network. With respect to accesses, eHealth Ontario firewalls and routers only maintain the following information: firewall rules, firewall routing tables, and firewall address translation tables. This information consists of source IP addresses, destination IP addresses, and the port number specific to the application being used. With respect to transfers, eHealth Ontario is only able to track the IP addresses of the source, destination and application port. eHealth Ontario is only able to identify the client organization.

5.13 Client Obligations to Notify and Co-operate. Client will immediately report to eHealth Ontario all security or privacy incidents of which they are aware involving the Services. When reporting any such incident, Client will provide all information that it is reasonably able to provide with respect to the incident. Further, Client will provide reasonable assistance and co-operation to eHealth Ontario to investigate, verify and resolve the incident.

5.14 Security and Privacy Assessments. eHealth Ontario shall provide to Client the results of any assessments of the Services done by or at the direction of eHealth Ontario with respect to: a) threats, vulnerabilities and risks to the security of Personal Information; and b) how the Services affect the privacy of individuals who are the subject of that information. eHealth Ontario shall provide a copy of the foregoing summaries within a reasonable period of time after the summary is completed by eHealth Ontario. Such reports shall set out the scope, limitations, and associated risks of the assessments. The Client is responsible for assessing and managing any privacy and security risks associated with the use of the Services.

5.15 FOI Requests. With respect to requests for access to information under FIPPA:

- (a) Client acknowledges that all records that are in the custody or under the control of eHealth Ontario are subject to the access provisions of FIPPA and that eHealth Ontario cannot guarantee that the confidentiality of any such records will be preserved if a request for access to it is made under FIPPA.
- (b) To the extent permitted under FIPPA, eHealth Ontario will inform Client of any request made of eHealth Ontario under FIPPA for any records related

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Schedule A

to this Agreement that may reveal a trade secret or scientific, technical, commercial, financial or labour relations information supplied in confidence by Client to eHealth Ontario so that Client may make representations to eHealth Ontario with respect to the proposed disclosure.

ARTICLE 6 PRICING, PAYMENT, AND COST ALLOCATION

6.1 eHealth Ontario. eHealth Ontario will bear the cost of delivering the Services.

6.2 Client. Client will bear the cost and responsibility of engaging and using the Services, including but not limited to acquiring, installing and maintaining any equipment (other than Service Equipment) and telecommunications facilities required by Client to obtain the Services and interconnect with eHealth Ontario's technology infrastructure.

ARTICLE 7 WARRANTIES AND LIMITATION OF LIABILITY

7.1 Warranty. eHEALTHONTARIO WILL PROVIDE THE SERVICES IN A PROFESSIONAL AND WORKMAN-LIKE MANNER.

7.2 Disclaimer. CLIENT ACKNOWLEDGES THAT THE SERVICES MAY NOT ALWAYS BE AVAILABLE, AND WITH THE EXCEPTION OF ANY EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, eHEALTH ONTARIO EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS, WARRANTIES, OR CONDITIONS WITH RESPECT TO THE SERVICES OR OTHERWISE ARISING FROM THIS AGREEMENT WHETHER EXPRESS OR IMPLIED, PAST OR PRESENT, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, SECURE OR ERROR FREE.

7.3 Limit. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF eHEALTH ONTARIO (INCLUDING ITS REPRESENTATIVES AND SUPPLIERS) TO CLIENT, ITS END USERS OR ITS PATIENTS, FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCEED AN AMOUNT EQUAL TO THE SERVICE FEES PAID OR TO BE PAID BY eHEALTH ONTARIO TO ITS SUPPLIER(S) FOR THE AFFECTED CIRCUIT(S) DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE OF THE FIRST CLAIM MADE BY CLIENT.

7.4 Indirect Damages. eHEALTH ONTARIO (INCLUDING ITS REPRESENTATIVES) SHALL NOT BE LIABLE TO CLIENT, ITS END USERS OR ITS PATIENTS IN ANY WAY WHATSOEVER, FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF DATA, REVENUE OR PROFIT RESULTING FROM OR ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OR USE OF THE SERVICES OR THE PROVISION OR USE OF ANY SERVICE EQUIPMENT. THIS LIMITATION SHALL APPLY WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE, OR WHETHER THE DEFAULTING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.5 Exclusions. THE LIMITATIONS OF LIABILITY SET OUT IN THIS ARTICLE 7 DO NOT APPLY TO ANY CLAIM ARISING FROM WILFUL MISCONDUCT

OF eHEALTH ONTARIO OR CLIENT. OTHERWISE, THE FOREGOING PROVISIONS LIMITING THE LIABILITY SHALL APPLY REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), OR A BREACH OF A FUNDAMENTAL TERM OR CONDITION OR A FAILURE OF ESSENTIAL PURPOSE.

ARTICLE 8 MISCELLANEOUS

8.1 Governing Law. This Agreement will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to the conflict of laws provisions. The parties consent to the jurisdiction of the courts of Ontario.

8.2 Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control that could not have been avoided by the exercise of reasonable foresight provided that such party gives the other party prompt notice of such cause, and uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If eHealth Ontario is unable to provide Services for a period of thirty (30) consecutive days as a result of a continuing force majeure event, either party may terminate this Agreement upon written notice to the other party without any further liability or obligation of either party hereunder.

8.3 Notice. Notices sent to eHealth Ontario shall be sent to eHealth Ontario's head office and to the attention of the Vice President of Client Services. Notices sent to Client will be sent to the Authorized Site to the attention of the Primary Contact identified on the order form at the start of this Agreement.

8.4 Entire Agreement. The Agreement constitutes the complete agreement between eHealth Ontario and Client with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous discussions and agreements regarding such subject matter.

8.5 No waiver of any part of this Agreement will be deemed to be a waiver of any other provision. No term of this Agreement will be deemed to be waived by reason of any previous failure to enforce it. No term of this Agreement may be waived except in a writing signed by the party waiving enforcement.

8.6 Assignment. Client may not assign this Agreement, either in whole or in part, without the prior written consent of eHealth Ontario which will not be unreasonably withheld.

Schedule A

SCHEDULE ONE - ACCEPTABLE USE POLICY

1. SUMMARY. This policy establishes the acceptable use requirements for eHealth Ontario ("eHealth Ontario") products, services and the technology infrastructure used by eHealth Ontario to provide them. eHealth Ontario may revise this policy from time to time in its sole discretion. Revised versions of this policy will be posted at www.ontario.ca/eHealth, and notice of the revision will be given to you in accordance with the agreement pursuant to which eHealth Ontario provides products or services to you.

2. Scope and Application. This policy applies to all users. Any person who accesses or uses the technology infrastructure or uses a product or service provided by eHealth Ontario is a "user". A "person" includes any individual, person, estate, trust, firm, partnership or corporation, government or any agency or ministry of any government, and includes any successor to any of the foregoing.

3. Accountability. Each client organization is responsible for any access or use of the technology infrastructure or any product or service provided by eHealth Ontario made by any user who is an individual and who obtained his or her user ID and password to access the technology infrastructure and any product or service provided by eHealth Ontario from that client organization or at the direction of that client organization.

4. Acceptable Use. Users are permitted to use eHealth Ontario's products, services and technology infrastructure for health care-related business activities. Unacceptable use refers to any illegal use or any inappropriate use as defined in this policy. Users must not use the products, services or technology infrastructure in any manner that constitutes an unacceptable use.

5. Inappropriate and Illegal Use.

5.1 Illegal use is the creation, collection, transmission, storage or exchange of any material in violation of any applicable law or regulation. Illegal use includes but is not limited to:

- (a) defaming other persons (e.g., spreading false allegations or rumours about others);
- (b) unlawfully accessing, destroying, encrypting or altering information;
- (c) making, possessing or distributing computer programs that are designed to assist in obtaining unlawful access to computer systems unless authorized by eHealth Ontario;
- (d) wilfully promoting hatred against any identifiable group or individual by communicating such statements outside of private conversations;
- (e) harassing other persons electronically (e.g., making threats to a person's safety or property);

(f) possessing, viewing, downloading, transmitting, or storing any child pornography or any involvement whatsoever with the traffic of such material;

(g) using another user's password, secure token, digital certificates, or any other identifier to engage in any illegal activity; and

(h) breaching copyright, trade secret, or other intellectual property rights (e.g., breaching software licences, pirating recorded music or movies or stealing trade secrets).

5.2 Inappropriate use includes, but is not limited to, any of the following behaviours or any other behaviour that may jeopardize eHealth Ontario's products, services, technology infrastructure or ability to operate or expose eHealth Ontario to civil liability:

(a) wilfully bypassing or subverting eHealth Ontario physical, logical or procedural safeguards such as firewalls, web-filtering software or other access controls;

(b) vandalism, which is defined as any malicious attempt to harm or destroy the information of another user, the Internet or other networks;

(c) harassment, including but not limited to persistent non-work related contact with another user when such contact is unwelcome or creating a poisoned work environment by accessing, displaying, storing, downloading or transmitting any content which is offensive;

(d) the sending of unwanted e-mail or unsolicited commercial or advertising material to any other person;

(e) deliberate unauthorized access to information, facilities or services accessible through the eHealth Ontario infrastructure;

(f) unauthorized use, destruction, encryption, alteration or disclosure of personal information, business trade secrets, or sensitive eHealth Ontario information;

(g) sending anonymous messages or impersonating any other person;

(h) selling, sharing or otherwise redistributing eHealth Ontario products or services without written authorization from eHealth Ontario; or

(i) electronic gambling over the Internet.

6. Security. Users must ensure that passwords, secure tokens, digital certificates and any other identifiers used by the user to directly or indirectly gain access to the products, services or technology infrastructure are safeguarded.

7. Breaches of This Policy.

7.1 Users and client organizations must report all breaches of this policy of which they are aware to eHealth Ontario. Users must do so through the help desk from which they receive technical support, and client organizations must contact eHealth Ontario directly.

7.2 eHealth Ontario reserves the right to investigate suspected breaches of this policy, and users and client organizations will cooperate when asked to assist in any such investigation.

7.3 eHealth Ontario may, in its sole discretion, suspend or revoke a user's access to eHealth Ontario's products, services, or technology infrastructure should such user breach this policy.

7.4 Client organizations will co-operate with eHealth Ontario on the management of breaches of this policy. This responsibility includes, but is not limited to, assisting with the development and distribution of communications regarding breaches or incidents.

7.5 Breaches of this policy may result in criminal prosecution or civil liability.

7.6 Although eHealth Ontario is not obligated to monitor content and assumes no responsibility for any information or material that is transmitted by users of the products, services, technology infrastructure or Internet, eHealth Ontario reserves the right, subject to all applicable laws relating to the protection of personal information, to investigate content posted to or transmitted over eHealth Ontario's technology infrastructure and may block access to, refuse to post, or remove any information or material that it deems to be in breach of this policy.

7.7 eHealth Ontario may report breaches of this policy committed by a user to the client organization responsible for that user's actions.

7.8 eHealth Ontario assumes no liability for enforcing or not enforcing this policy, and any failure by eHealth Ontario to enforce any part of this policy shall not constitute waiver by eHealth Ontario of any right to do so at any time.

7.9 If any provision of this policy is found to be invalid or unenforceable, then that provision will be enforced to the extent permissible, and all other provisions will remain in full force and effect.

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Schedule A

SCHEDULE TWO – SECURITY POLICY

1. Additional Definitions. In addition to those definitions set out elsewhere in this Agreement, the following definitions apply to this Schedule:

(a) "Client Equipment" means any equipment or software in the possession or control of Client that Client uses in conjunction with the Services that is not Service Equipment.

(b) "Client Network" means any network(s) operated or controlled by Client up to the demarcation point where such network(s) interconnect with eHealth Ontario's technology infrastructure.

(c) "ONE Network Remote" means the remote virtual private network.

(d) "ONE Network" means the managed private network operated by eHealth Ontario.

2. eHealth Ontario Safeguards. eHealth Ontario has designed and implemented the ONE Network as a secure private network to be used by health care professionals when communicating with each other. For further information on the types of safeguards that eHealth Ontario uses, please contact eHealth Ontario.

3. Client Data. Client is responsible for any materials that Client transmits over the ONE Network and determining whether such materials can appropriately be transmitted over the ONE Network without encryption or other safeguards (given the nature and sensitivity of the materials being transmitted). If Client determines that any safeguard is required when transmitting such materials, Client will implement such safeguard. As well, Client is responsible for verifying the accuracy of any data that it receives over the ONE Network.

4. Equipment. Client is responsible for the security of the Service Equipment and Client's own tangible assets, including but not limited to Client Equipment, premises and utilities. This obligation includes maintenance of an inventory of Client's assets forming part of the Client Network, identification of possible risks and implementation of administrative, physical and technical means to secure such assets.

5. Safeguards. Client is responsible for managing the security of Client Equipment to reasonably limit the risk that Client Equipment will be accessed and used to attack the eHealth Ontario ONE Network or systems connected to it. This obligation includes but is not limited to establishing security policies and implementing appropriate physical, procedural and technical controls to prevent, detect and respond to security violations.

6. No Changes. Client will not connect to, modify, reconfigure, or alter the Service Equipment in any manner without the prior written approval of eHealth Ontario.

7. Infrastructure and Environment. Client will provide the infrastructure and environment necessary for the safe operation of the Service Equipment such as locating the Service Equipment in a dry, clean, well ventilated, and temperature controlled location and providing an appropriate uninterrupted power supply. All Service Equipment must be placed on a rack or appropriate shelf and positioned to provide ample working space in and around it.

8. Compatibility. From time to time, eHealth Ontario may provide to Client certain guidelines with respect to Client Equipment. Client acknowledges that it may not be able to receive and use the Services (because of compatibility issues) should its Client Equipment not conform to such guidelines.

9. Client Network Security. Client is responsible for the security and operation of Client Network, and Client will use organizational, administrative, physical and technical means to limit physical and virtual access to any computer terminal or other device interconnected with the ONE Network. Client will:

(a) implement and regularly up-date reasonable anti-virus and anti-spam software on the Client Network;

(b) regularly monitor the Client Network for security breaches;

(c) implement such controls as are reasonably necessary to prevent security breaches relating to the Client Network and, in any event, use commercially reasonable efforts to minimize the impact of any security breaches on the Client Network; and

(d) regularly monitor the Client Network and applications used on the Client Network in a manner consistent with good network administration practices.

10. Access Control. Client will use organizational, administrative, physical and technical means to protect any user identifications, passwords, secure tokens or other authentication credentials assigned to Client or Client's End Users that enable them to connect to the ONE Network or obtain services over the ONE Network.

11. Passwords. Should Client determine that a password or any other user authentication credential has been or may have been compromised, Client's Primary Contact (as set out in the order form at the start of this Agreement) will report that incident or concern to the help desk from which Client receives technical support.

12. Program. Client will establish its own security program that includes an incident response approach and risk management process. At a minimum, Client will, and shall cause its End Users to, immediately report all actual or potential security incidents affecting the ONE Network or any network connected to the ONE Network of which they are aware to Client's Primary Contact who will immediately report them to the help desk from which Client receives technical support. When reporting any such incident, Client will provide all information that it is reasonably able to provide with respect to that security incident and reasonable assistance to enable eHealth Ontario to verify and resolve that security incident. eHealth Ontario will use commercially reasonable efforts to resolve each such security incident.

13. Third-Party Networks. Client is responsible for: (i) putting in place safeguards (such as security gateways and firewalls) to prevent any network traffic originating in a third party network from being routed through the Client Network directly to the ONE Network; and (ii) maintaining appropriate configuration and security controls over the Client Network to reasonably ensure that no person who has accessed the Client Network from a third party network may use any computing device forming part of the Client Network to gain unauthorized access to the ONE Network. If eHealth Ontario acting reasonably (after having given Client an opportunity to improve its security safeguards) determines that Client is unable to secure the Client Network as described in this section 13, Client agrees to relinquish such connections between the Client Network and any network other than the ONE Network as are needed to secure the Client Network in such a manner.

14. Remote Access. Client will not connect remotely (other than from Authorized Site) to eHealth Ontario's technology infrastructure other than through the ONE Network Remote or other technological means approved by eHealth Ontario. Client will not, and will ensure that its End User's do not, modify or change any configurations or topologies of any ONE Network Remote or means of remote access approved by eHealth Ontario other than with the prior written approval of eHealth Ontario. Client's Primary Contact is responsible for managing which End Users are allowed to access eHealth Ontario's technology infrastructure remotely.

15. IP Forwarding. Client will not enable IP forwarding on any server or workstation deployed within the Client Network.

16. DNS or DHCP. Client will not run alternative domain name service ("DNS") or dynamic host control protocol ("DHCP") in connection with any circuits forming part of the ONE Network.

17. Additional Firewall. eHealth Ontario does not recommend that Client deploy any firewall between any small office firewall appliance provided by eHealth Ontario (if applicable) and Client Network. However, should Client wish to provide its own additional firewall service, Client will:

(a) be responsible for creating and administering its own remote virtual private network solution;

(b) be responsible for managing its own local area network address space including the potential use of a DHCP service and use of DNS;

(c) be responsible for ensuring that its additional firewall service performs network address translation (NAT) and stateful inspection; and

(d) not enable IP forwarding on any server or workstation deployed within the Client Network.

18. Tools. Client will not run network contouring, vulnerability assessment, hacking tools, or configuration tools against any Service Equipment or any network circuits provided pursuant to this Agreement.

19. Client Contact. Client's Primary Contact is responsible for coordinating all matters relating to End User access (including password changes and the addition, modification or removal of End Users with eHealth Ontario) and shall be the sole representative of Client who is authorized to communicate any related requests to eHealth Ontario.

20. Compliance. Upon the request of eHealth Ontario acting reasonably, Client will provide to eHealth Ontario evidence of its compliance with all or part of this Security Policy.

Schedule A

SCHEDULE THREE – PLAIN LANGUAGE DESCRIPTIONS

1. Network Services. ONE Network allows health care providers to confidentially share information over a high-speed network built for health care. When eHealth Ontario provides Network Services to Client, eHealth Ontario is providing one or more telecommunications circuits to Client which will result in one or more networks under the control of Client being interconnected with eHealth Ontario's technology infrastructure. A circuit may be based on any one of a number of technologies such as a digital subscriber line, cable or satellite. Where circumstances warrant, fibre optic connectivity may also be used.

2. Security and Privacy Safeguards.

2.1 All eHealth Ontario Products and Services. eHealth Ontario's security program is based on two standards from the International Organization for Standardization (ISO), as recommended by the Government of Canada:

- ISO/IEC 17799:2005, – Code of Practice for Information Security Management, and
- ISO/IEC 27001:2005, – Information Security Management Systems – Requirements.

and is in compliance with the *Personal Health Information Protection Act* and the *Freedom of Information and Protection of Privacy Act*. Security of information and protection of privacy within, and by use of, eHealth Ontario's products and services is achieved by collaboration of all parties who are partners in providing or using these services. For its part, eHealth Ontario has implemented the following safeguards:

(i) Administrative Safeguards

- eHealth Ontario regularly reviews and enhances its security policies and is in the process of developing supporting governance documentation. (e.g. Information Security Operating Directives) Staff and contractors read the relevant policies and sign that they have read and understood them.
- eHealth Ontario has mandatory security staff awareness and training programs.
- eHealth Ontario Staff and contractors generally have no ability or permission to access personal health information. If access to personal health information is required in the course of providing eHealth Ontario services, individuals are prohibited from using or disclosing such information.
- All staff and contractors must sign confidentiality agreements and undergo criminal background checks prior to joining eHealth Ontario. eHealth Ontario has a security screening policy that requires staff to have an appropriate level of clearance for the sensitivity of the information they may access.
- Client obligations, for their part in maintaining security, are detailed in individual contracts and Service Level Agreements (SLAs).
- eHealth Ontario ensures, through formal contracts/SLAs, that any third party it retains to assist in providing services to health information custodians will comply with the restrictions and conditions necessary for eHealth Ontario to fulfill its legal responsibilities.
- eHealth Ontario staff, consultants, suppliers and clients must promptly report any security breaches to eHealth Ontario for investigation.
- Security risk assessments are conducted as part of both product/service development and client deployments. Mitigation activities are well established and tracked as part of each assessment.

- eHealth Ontario provides a written copy of the results of a security risk assessment to the affected health information custodians.
- eHealth Ontario has established a formal risk management program, including an enterprise risk management policy and guidelines.
- eHealth Ontario conducts regular independent vulnerability assessments of technical configurations and operational security practices.

(ii) Technology Safeguards

- For access to sensitive systems, strong passwords, secure tokens, and other authenticators are required.
- Administrative access to all IT equipment is controlled via strong, two-factor authentication, and is recorded.
- eHealth Ontario monitors and manages network traffic using security mechanisms such as routers, switches, network firewalls, intrusion detection systems, and anti-virus programs.
- eHealth Ontario encrypts all data stored on staff computers.

(iii) Physical Safeguards

- The eHealth Ontario datacentres are purpose-built facilities, physically secured against unauthorized access, and are staffed and monitored continuously by security personnel.
- Datacentre physical security controls have been validated by an independent third party in accordance with federal government standards.
- eHealth Ontario requires escorted access at all times for third party vendors and maintenance personnel who require access to the datacentre.

2.2 ONE Network Safeguards. In addition to the generic safeguards which apply to all eHealth Ontario products and services, the following security safeguards are in place for ONE Network:

(i) Core Network Safeguards

- ONE Network Enterprise is segregated from the Internet, and is protected by a defence-in-depth approach against threats originating from external networks.
- Clients are expected to take appropriate measures to segregate their own internal network(s) from untrusted networks.
- ONE Network Enterprise equipment is deployed for exclusive use by eHealth Ontario to provide the ONE Network service, and is operated in accordance with eHealth Ontario practices and policies.
- ONE Network Enterprise is implemented province-wide via dedicated optical fibre links, where possible, providing a high level of protection against interception or modification of network traffic. Where fibre is not available, eHealth Ontario makes use of carrier networks and employs IPsec tunnels.
- All Clients sign agreements that they will ensure ONE Network Enterprise equipment on their premises will be located in physically secure environments that will be controlled and monitored.
- eHealth Ontario is developing and implementing network monitoring capabilities and a full enterprise security and privacy incident management program.
- All changes to the network are controlled by eHealth Ontario and subject to formal eHealth Ontario change management practices.
- Administrative personnel have no access to the e-Health data flowing through the ONE network.

(ii) ONE Network Access Safeguards

Because ONE Network Access is provisioned via 3rd-party network service providers, eHealth Ontario does not have the same degree of control over these networks as it does for the core network. To maintain the security of e-

Health communications flowing through the access networks, eHealth Ontario implements additional security safeguards:

- All communications to and from eHealth Ontario-hosted e-Health applications are automatically encrypted when traversing the access networks.
- Every network point of access has controls for protecting the network from security threats, whether malicious or unintentional.
- eHealth Ontario optionally provides clients with a secure means of accessing their office network from a remote location (via the ONE Network Remote service).
- eHealth Ontario optionally provides encrypted private communications between client sites (e.g. for geographically separated offices belonging to the same organization).

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OTN MEMBERSHIP AGREEMENT

THIS AGREEMENT made as of the 1st day of May 2011 (the "Effective Date"), between **Ontario Telemedicine Network ("OTN")**, a corporation incorporated under the laws of Ontario, of 105 Moatfield Drive Suite 1100, Toronto ON M3B 0A2 and **The Corporation of the City of London (Dearness Home)** of 710 Southdale Road East London ON N6E 1R8 (the "Member").

In consideration of the mutual covenants contained herein and the receipt of other good and valuable consideration, which the Parties acknowledge, this Agreement provides as follows:

ARTICLE 1 - INTERPRETATION

1. Definitions - In this Agreement, the following terms shall have the meanings set out below:

"Agreement" means this agreement, including all attached schedules and appendices and all documents specifically referred to herein as forming part hereof and available at www.otn.ca, as the same may be supplemented, amended, restated or replaced from time to time;

"Business Day" means any day other than Saturday, Sunday or any statutory or civic holiday observed in Toronto, Ontario;

"eHO" means eHealth Ontario, an agency of the Provincial Crown or any successor thereto;

"HIC" means a Health Information Custodian as set out under PHIPA;

"including" means "including without limitation" and the term "including" shall not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;

"Live Site Notice" means an email that is created and issued by OTN advising that the Member's site or system is live on the Videoconferencing Network and is available to participate in telemedicine activity for which the Member has been trained and authorized to carry out;

"Member" has the meaning set out above;

"Ministry" means the Ministry of Health and Long-Term Care (Ontario) or any successor Ministry having responsibilities for OHIP;

"Network Equipment" means data communications hardware and networking equipment, including routers and switches, access to which is provided by OTN to the Member pursuant to this agreement;

"normal business hours" means the hours between 8:30 a.m. and 5:00 p.m. on a Business Day;

"OTN" means Ontario Telemedicine Network;

"OTN's RMSS" means OTN's Referral Management and Scheduling Service, accessible through a toll-free telephone number;

"OHIP" means the Ontario Health Insurance Plan;

"Party" means OTN or the Member; **"Parties"** means both of them;

"PHI" means personal health information;

"PHIPA" means the *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, Sched. A and the regulations thereunder;

"Services" means the various services offered from time to time by OTN to the Member hereunder primarily to permit the

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Member to render Telemedicine Services and includes the services more specifically described under Section 2.1 including the technical services set out under the TSLA;

“**Standard Equipment and Systems**” means the equipment and systems supported by OTN from time to time, as set out under the TSLA;

“**Telemedicine Coordinator**” means the person designated by the Member pursuant to Section 3.2(a);

“**Telemedicine Services**” means the use of videoconferencing and other information and communication technology to connect health care providers and patients in ways that enable them to overcome the barriers created by time and distance;

“**Third Party**” means any individual, organization or entity that is not directly associated with a Member of OTN and that the Member permits to access and use the Videoconferencing Network;

“**TSLA**” means the technical service level agreement posted at www.otn.ca which forms a part of this Agreement and which outlines the technical services available to the Member and delineates the mutual roles, responsibilities, performance targets and constraints associated with the provision of these technical services by OTN to the Member;

“**User**” or “**Users**” means (a) an individual, organization or entity affiliated with the Member (including, without limitation, employees, volunteers, students, agents or independent contractors of the Member) that the Member permits to access and use the Videoconferencing Network, or (b) a Third Party, as applicable;

“**Videoconferencing Equipment**” means all hardware and, as applicable, software (including videoconferencing platforms, codecs, medical devices, but excluding all Network Equipment) that facilitates the ability of the Member to use the Videoconferencing Network for the provision of Telemedicine Services.

“**Videoconferencing Network**” means the point-to-point and multi-point electronic technologies operated by OTN that enable the Member to provide the Telemedicine Services through videoconferencing and which may also be used by the Member for administrative, educational or other clinical purposes.

1.2 Headings – The division of this Agreement into articles, sections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. All uses of the words “hereto”, “herein”, “hereof”, “hereby” and “hereunder” and similar expressions refer to this Agreement and not to any particular section or portion of it. References to an Article, Section or Schedule refer to the applicable article, section or schedule of this Agreement.

1.3 Number and Gender; Extended Meanings

Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.4 Schedules – The Parties acknowledge that the schedules attached hereto and the documents specifically referred to as forming part of this Agreement and form an integral part of this Agreement and agree to be bound thereby.

1.5 Inconsistencies – In the event of a conflict between:

- a) the main body of this Agreement and the Schedules, the Schedules will prevail; and
- b) the TSLA and this Agreement, this Agreement shall prevail.

ARTICLE 2 – OTN OBLIGATIONS

2.1 Services – OTN will make all reasonable efforts to provide the Member with the following services:

- a) new site set up and technology deployment;
- b) technical support provided through a toll-free help desk;
 - c) account management support including: Telemedicine Services adoption support, regional leadership and program development;
- d) Telemedicine Services training;
- e) referral management and scheduling of services through OTN’s RMSS;
- f) warranty management;
- g) web-streaming;

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- h) gateway services (which provide access to videoconferencing sites across North America); and
- i) technical support services such as bridging and network services as detailed in the TSLA.

2.2 Broadband Network Management – In the event that the Member does not have appropriate broadband connectivity, OTN shall, at the request of the Member, act as an agent of the Member to specify and order an appropriate network connection from eHO. In the event that an eHO circuit is not made available to the Member, the Member shall provide the appropriate broadband IP connectivity and shall make all reasonable efforts to ensure that such IP broadband connectivity is compatible with Standard Equipment and Systems.

2.3 Network and Videoconferencing Equipment

a) Network Equipment

OTN shall loan the Member the necessary Network Equipment for new or modified installations when necessary and appropriate. Such equipment will be selected, configured and installed by or on behalf of OTN in its sole discretion; provided that where the Member employs technical staff OTN will, where possible, consult with such staff as appropriate. The Network Equipment will be owned, operated and maintained by OTN and, at OTN's option, shall be returned by the Member to OTN, upon the termination of this Agreement in the same condition as when received save and except for reasonable wear and tear. During normal business hours, the Member shall provide OTN with on-site and remote access to all Network Equipment on the Member's premises as may be required by OTN from time to time. OTN shall make all reasonable efforts to provide the Member with advance notice prior to accessing such equipment.

b) Videoconferencing Equipment

The Member shall provide OTN with remote access and, during normal business hours, on-site access, to all Videoconferencing Equipment on the OTN Network, as may be required by OTN from time to time. OTN shall make all reasonable efforts to provide the Member with advance notice prior to accessing such equipment.

c) At the discretion of OTN, Videoconferencing Equipment may be (i) granted or loaned to the Member pursuant to the conditions, obligations and requirements set out in, as applicable, the equipment loan agreement (the "**Equipment Loan Agreement**") or the equipment grant agreement (the "**Equipment Grant Agreement**") as they currently exist and as they may be developed and posted at <http://www.otn.ca/en/resource-library>, and Member agrees to comply with each of the applicable agreements; or (ii) purchased directly by the Member from the vendor and/or integrator (the "**Purchased Equipment**").

d) Member agrees that in order to avail itself of the Membership benefit of enhanced technical services

- (i) the Member hereby appoints OTN as its agent to act on its behalf with the applicable vendor and/or integrators in matters relating to ongoing warranty-support of (x) Videoconferencing Equipment granted pursuant to an Equipment Grant Agreement or loaned in accordance with an Equipment Loan Agreement, in accordance with the terms set out in the Equipment Grant Agreement or the Equipment Loan Agreement, as applicable, and (y) Purchased Equipment (collectively, "**Warranty Support**");
- (ii) OTN shall (x) carry out the ordinary course of administrative responsibilities related to the provision of Warranty Support, including without limitation managing first and second tier support for such equipment and generating service requests in connection with same, and (y) take such other actions as OTN may reasonably require for the due and proper performance of the foregoing; and
- (iii) Member shall indemnify and hold harmless OTN, its affiliates and representatives (including employees, consultants and others retained by OTN from time to time to perform) from all losses, expenses and damages (including reasonable legal fees) which any of them may suffer or incur resulting from or arising out of such agency appointment, provided that OTN acted within the scope of its authority as set out hereunder and was not guilty of wilful misconduct in connection with such actions. For greater certainty, in no event shall OTN be liable for any acts, defaults or liabilities of Member, its representatives or any User.

2.4 Physician and Dental Surgeon Billing

In respect of Telemedicine Services that the Member's physicians provide to patients over the Videoconferencing Network,

- (a) prior to using the Telemedicine Services, each physician must be properly registered with OHIP by completing the required documentation with OTN which will be forwarded by OTN to OHIP for its records, and
- (b) upon OTN forwarding such documentation, each physician's billing and payment arrangements with respect to the Telemedicine Services will be carried on between the physician and OHIP directly, which will include the requirement that each physician submit bills regarding the Telemedicine Services directly to OHIP.

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ARTICLE 3 – MEMBER OBLIGATIONS

3.1 Membership and One-Time Set-up Fees

In consideration for the OTN obligations hereunder, the Member shall pay OTN the applicable fees, if any, as set out in Schedule “A”.

3.2 Ongoing Member Obligations – The Member agrees to comply with and discharge the following requirements and obligations throughout the term of this Agreement, and agrees that the provision of the Services by OTN and access to and use of the Videoconferencing Network by the Member are subject to such compliance and discharge:

- a) designating an individual as the Telemedicine Coordinator who shall: act as the primary OTN contact person; dedicate time to this role as set out in Schedule A, where specified; and, meet all of the responsibilities set out herein;
- b) assigning an administrative and technical contact to interact with OTN in the event that the Telemedicine Coordinator is not responsible for overseeing administrative matters in addition to technical matters related to the Videoconferencing Network;
- c) participating in technical, telemedicine process and/or clinical training initiatives that OTN deems essential to maintain the integrity of the Videoconferencing Network and to ensure that the Member and Users operate the Videoconferencing Equipment over the Videoconferencing Network according to best practices;
- d) participating in one or more site readiness assessments to enable OTN to review various processes and ensure that the staffing, training, connectivity and room space for providing Telemedicine Services is appropriate;
- e) ensure that the Videoconferencing Network and the Services are only used for the purpose of rendering Telemedicine Services and for other health related, clinical, administrative and educational purposes unless mutually agreed upon in writing with OTN;
- f) scheduling all non-emergency uses of the Videoconferencing Network solely and exclusively through OTN’s RMSS or through OTN’s scheduling portal or through another mutually agreed scheduling process;
- g) assuming sole and exclusive responsibility:
 - i) for any applicable costs related to videoconferencing calls made by the Member and/or Users through OTN’s ISDN gateway or OTN’s Internet Protocol gateway to connect to sites outside OTN’s Internet Protocol network; and
 - ii) for any fees charged by persons or entities that are not members of OTN, that the Member and/or Users connect to through OTN’s ISDN gateway or OTN’s Internet Protocol gateway;
- h) maintaining all of its records in respect of its utilization of Telemedicine Services for the maximum period of time required by all applicable law and ensuring maintenance of such records by Users and submitting the Member’s and User’s records to OTN, if so requested, for the purpose of conducting utilization studies and developing mutually agreed utilization targets
- i) with respect to “**Purchased Equipment**”, maintaining, at the cost of the purchasing Member, up-to-date warranty coverage on Purchased Equipment, as well as warranties on parts and software on such equipment, all in accordance with the TSLA;
- j) complying with the technical service standards guidelines, obligations, processes and policies as set out in this Agreement and under the TSLA and ensuring such compliance by Users;
- k) confirming that it has, on the date hereof, printed a copy of the TSLA and has ensured and shall ensure that each of its Users are and shall be appropriately apprised of any provisions of the TSLA that apply to their usage of the Network before accessing the Network. For greater certainty, the Member agrees to be bound by all supplements or amendments to the TSLA provided that the Member is provided with a copy of any such supplements or amendments or notified of the website where such supplements or amendments are available 60 days or more before the Member is bound to comply with them; and
- l) without limitation, determining the extent to which a health professional is required to attend a Telemedicine encounter where clinical activity is taking place and the patient is attending the site.

3.3 Member Acknowledgements and Agreements - The Member acknowledges, understands and agrees that:

- a) in the event that the Member wishes to receive the Services and access the Videoconferencing Network at more than one of its sites, the Member shall ensure that each such site is certified by OTN as having met all relevant OTN criteria and passed OTN standard testing, in addition to paying any fees as may be applicable and determined by OTN for each additional site in accordance with Schedule A;
- b) in the event that the Member (i) utilizes non-Standard Equipment and Systems or connects Standard Equipment and Systems other than as authorized or advised by OTN, (ii) does not enable OTN to monitor the Videoconferencing Equipment and related Network Equipment or (iii) does not provide network access to the Videoconferencing Equipment and related Network Equipment, then the Member will be assigned a

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- technical service level that will entitle it to less than the full range of Services that would otherwise be available to it. For greater certainty, to the extent that the Member is not entitled to the full range of Services, the Member will be responsible for providing its own support as may be required by the Member from time to time;
- c) the availability, capability and use of the Videoconferencing Network by the Member is subject to the availability, capacity and capabilities of the electronic network made available to the Member by eHO or any other network, as applicable, and OTN disclaims all responsibility for such third party networks;
 - d) where the Member directly acquires one or more videoconferencing units, related medical and educational peripheral equipment and such other Videoconferencing Equipment as required by the Member from time to time, the Member is responsible for ensuring that such equipment is compatible with OTN's Standard Equipment and Systems; and
 - e) Videoconferencing Equipment and systems once categorized as Standard Equipment and Systems which cease to be so categorized, including in circumstances where the manufacturer ceases to support it or where it is otherwise deemed to be obsolete by OTN, may, in the sole discretion of OTN, no longer be supported by OTN hereunder or receive the benefit of the Services.

ARTICLE 4 - JOINT RESPONSIBILITIES

- 4.1 Promotion of Telemedicine** - The Member agrees to reasonably promote and support the role of telemedicine in clinical, administrative and educational activities in its organization and, where applicable, in its community and to collaborate with OTN in its efforts related thereto.
- 4.2 Telemedicine Signage** - Upon OTN's request, the Member shall post such signage as OTN may reasonably request and provide and shall ensure that such signage is visible to each User and/or patient who receives Telemedicine Services.
- 4.3 Network and Studio Rental and Revenue-Sharing**
 - a) At the Member's discretion, the Videoconferencing Network may from time to time be made available for Third Party use provided that this activity does not interfere with the core mandate of the Videoconferencing Network, i.e., the delivery of Telemedicine Services, health professional education and administrative functions. For greater certainty, commercial exploitation of other than as described in b) below, or the allocation to a Third Party to a substantial amount of usage of the Videoconferencing Network or the Videoconferencing Equipment, is deemed to so interfere with such core mandate and is therefore prohibited.
 - b) In the event the Member agrees to Third Party requests for use of the Videoconferencing Network, including its ISDN gateway, Internet Protocol gateway, point to point or bridging services, the Member shall refer such Third Party to OTN's RMSS. OTN shall invoice the Third Party for use of the Videoconferencing Network, using its standard rental rates. The fees collected from such rentals shall be shared with the Member and other OTN members involved in the event as follows:
 - i) OTN will retain the scheduling, network connectivity and bridging component of the fee charged for such event; and
 - ii) OTN shall distribute the studio rental fee charged for such event to the Member and, to the extent applicable, such other OTN members involved in the event.
 - c) As well, if required, OTN shall invoice Third Party users for the Member's on-site technical support where required and reimburse the Member for such amounts as per OTN's policies and procedures then in effect.
- 4.4 Policies and Best Practices**
 - a) The Member acknowledges that OTN has developed and made available to it and that it will continue to develop and make available to it policies to be adhered to by the Member in its use of the Videoconferencing Network and that such policies provide greater specificity than is set out in this Agreement.
 - b) The Member agrees to abide by all such policies as they currently exist and any additional policies and any amendments of any previously provided policies from and after the 60th day on which the Member has been provided with a copy of any such additional policies or amendments or notice that a copy of such additional policies or amendments may be obtained at a specified website.
 - c) The Member confirms that it has printed a copy of all such policies posted at <http://www.otn.ca/members/resource-library/> and <http://www.otn.ca/privacy-toolkit/resource-library/> on the Effective Date and agrees to ensure that a current and complete hard copy of all policies in effect from time to time is maintained by the Member and to make all reasonable efforts to ensure that all Users are aware of and comply with them.

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- d) The Member agrees to make all reasonable efforts to review and, where feasible, to follow any guidelines, best practices and processes posted at <http://www.otn.ca/members/resource-library/> on the Effective Date and as they may be developed and posted by OTN from time to time and make all reasonable efforts to ensure that all Users are aware of and comply with them.
- e) Nothing in this Section 4.4 shall relieve the Member of its own duties and obligations in the provision of Telemedicine Services.

ARTICLE 5 - COMPLIANCE WITH PHIPA

5.1 Member Agreement - The Member acknowledges and agrees that:

- a) OTN is only responsible for providing certain equipment and technology required for the transmission of PHI through the Videoconferencing Network and, in light of the foregoing and without limitation:
 - i) OTN cannot be responsible for other purposes for which the Videoconferencing Network is used; and
 - ii) the Member is responsible for ensuring that the collection, use and disclosure of PHI transmitted through anything other than the Videoconferencing Network is done in accordance with applicable law and regulations;
- b) to the extent that the Member is a HIC, it is aware of, and agrees to comply with, the obligations of a HIC under PHIPA insofar as it may, in connection with consultations through the Videoconferencing Network, collect, use or disclose information about individuals that is PHI;
- c) the Member shall not hold PHI in equipment provided by OTN, within the meaning of clause 6(3)4.i of Regulation 329 under PHIPA (such regulation, as amended or replaced from time to time, the "Regulation");
- d) in light of the nature of the Videoconferencing Network and its operation, all transfers of all or part of such PHI by means of the Videoconferencing Equipment made by the Member are known to the Member and that accordingly it is neither necessary nor reasonably practical for OTN to make available to the Member the electronic record referred to in paragraph 6(3)4 of the Regulation; and
- e) in the event that the Member is able to access, through OTN's RMSS, PHI and confidential data that does not relate to the Member or its patients, the Member agrees not to access such information. The Member acknowledges that failure to comply with this provision, without limiting any other remedies of OTN, shall be grounds for immediate termination of this Agreement notwithstanding Article 7.

5.2 OTN Acknowledgement - OTN and the Member acknowledge that:

- a) OTN is a "health information network provider" within the meaning of PHIPA; and
- b) transmissions over the Videoconferencing Network (and communications to OTN in connection with arrangements for such transmissions) may include PHI.

5.3 OTN Agreements - OTN agrees that it will comply with PHIPA and the Regulation. Without limiting the generality of the foregoing, OTN shall:

- a) notify the Member of any unauthorized access through the Videoconferencing Network to any PHI provided by the Member;
- b) provide on its web site, and deliver to the Member on request:
 - i) a plain language description of the Services that are appropriate for sharing with patients of the Member to whom the PHI relates, including a general description of the safeguards in place to protect against unauthorized use and disclosure, and to protect the integrity of the PHI; and
 - ii) a written copy of the results of an assessment of the Services that OTN provides to the Member as such Services relate to:
 - A) threats, vulnerabilities and risks to the security and integrity of the PHI; and
 - B) how such Services may affect the privacy of the individuals who are the subjects of the PHI.

5.4 Regulators - For purposes of paragraph 6(3)(7)(ii) of the Regulation and this Article 5, the following are the administrative, technical and physical safeguards relating to the confidentiality of the PHI:

- a) the network design deployed by OTN protects PHI during videoconferences by ensuring that the electronic signal is secure through the industry specific and standard encryption technology while travelling between the site of the Member and/or User and other OTN member certified sites over eHO's network or other networks; and
- b) OTN uses physical, administrative and technological safeguards to protect PHI. Secure entrance systems, locked offices and filing cabinets are used to secure physical PHI data. OTN restricts access to PHI to those who require it to fulfill their duties. Every OTN staff member, contracted worker and student signs a confidentiality agreement. Policies, procedures and guidelines provide direction for data protection for those who access PHI to fulfill their job responsibilities. Technology safeguards including authentication, authorization and accounting servers; industry standard encryption technology; firewalls; and intrusion detection and denial of service technologies, to protect PHI travelling over the Videoconferencing Network.

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ARTICLE 6 - OTHER COVENANTS

6.1 Limitation of Liability

- a) Notwithstanding anything contained herein, none of OTN, its affiliates or any of their respective directors, officers, employees, servants and agents shall be held liable or responsible in any way for:
- i) any loss or interruption of business, or any indirect, special, incidental or consequential damages of any kind suffered by the Member, a User, a patient or any other third -party;
 - ii) without limiting Section 6.1(a)(i), any claims or demands for damages, costs, expenses or losses of any kind by the Member, a User, a patient of the Member or of a User, or any other third -party, for or arising out of or in any way related to clinical uses of, clinical outcomes or decision-making processes relating to the use of, or lack of access to, the Services, the Videoconferencing Equipment or the Videoconferencing Network; or
 - iii) any and all claims, damages, costs, expenses or losses (including punitive damages, court costs, arbitration fees, penalties, fines, amounts paid in settlement of claims, legal fees and expenses of investigation), which the Member may incur, suffer or become liable for as a result of, or in connection with, any third-party claim asserted against the Member to the extent such claim is based upon a contention that the Services, Videoconferencing Equipment or the Videoconferencing Network, or any portion thereof, used within the scope of this Agreement infringes, directly or indirectly, any valid and enforceable patent, copyright, trade secret, trademark or other intellectual property right of any third-party.
- b) OTN reserves the right to modify the Services or Videoconferencing Network, or both, or any portion thereof, at any time, with or without notice to the Member. OTN shall not be liable to the Member, or to any third-party should OTN exercise its right to modify the Services or Videoconferencing Network.
- c) In the event that it becomes aware of a third-party claim against a member of OTN of the nature described in Section 6.1(a)(iii), OTN shall notify the Member and OTN may, at its sole election, seek to procure or negotiate a license, for the benefit of all of its members, to perform or use any aspect, element, component, method, process, procedure or mode of operation alleged to infringe in either (i) the performance of the Services or any portion thereof; or (ii) the use of the Videoconferencing Equipment, the Videoconferencing Network or any portion thereof.

6.2 Indemnification

- ~~a) The Member agrees to indemnify, hold harmless and, as applicable, defend (at OTN's request) OTN, its affiliates and each of their respective directors, officers, employees, servants and agents from and against any damages, costs, expenses or losses of any kind, including reasonable legal fees, and any claims or demands therefor, for or arising out of or in any way related to,~~
- ~~i) the breach of this Agreement by the Member, a User or anyone for whom the Member or a User is responsible hereunder or at law;~~
 - ~~ii) clinical uses of, clinical outcomes or decision-making processes relating to the use of, or lack of access to, the Services, the Videoconferencing Equipment or the Videoconferencing Network by the Member, a User, a patient of the Member or of a User, or anyone for whom the Member or a User is responsible hereunder or at law; or~~
 - ~~iii) any matter relating to or arising from the provision of the Services, the Videoconferencing Equipment or the Videoconferencing Network to the Member, in respect of which OTN has no liability under Section 6.1.~~
- ~~b) OTN agrees to indemnify and hold harmless the Member, its affiliates and each of their respective directors, officers, employees, servants and agents from and against damages, costs, expenses or losses due to, arising out of or in any way related to the failure of OTN to comply with its obligations under Article 2, except as limited by the provisions of Section 6.1.~~

6.3 Insurance – During the term of this Agreement, OTN and the Member shall each maintain in full force and effect general liability insurance for a minimum of \$2,000,000 for any one occurrence. Such insurance shall name the other Party as the additional insured but only with respect to this Agreement and shall include at least the following:

- a) products and completed operations;
- b) personal injury;
- c) cross liability;
- d) contractual liability; and
- e) 30 days' prior written notice of material change to, cancellation, or non-renewal of the policy.

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Each Party shall provide the other Party with evidence of such insurance upon request.

6.4 Ontario Telemedicine Network Disclaimer

- a) OTN shall provide the Videoconferencing Network and Services on an "as is" and "as available" basis and the Member agrees that the use of the Videoconference Network and the Services shall be at its sole risk.
- b) OTN makes no warranty that the Videoconferencing Network and/or Services will meet the Member's requirements, or will be uninterrupted, timely, secure or error-free. OTN makes no warranty as to the results that may be obtained from the use of the Videoconferencing Network and/or Services.
- c) OTN does not guarantee any level of service availability, service quality or problem resolution time. However, with respect to the Videoconferencing Network, OTN will use all reasonable efforts to proactively anticipate and prevent system failures, promptly respond to service outages, expedite problem resolution, communicate problem resolution plans and recommend and support alternative service provision modes as described in the TSLA.
- d) OTN expressly disclaims all warranties whether express, implied or statutory, including, implied warranties of title, merchantability, fitness for a particular purpose and non-infringement of any third-party intellectual property right and no advice or information, whether oral or written, obtained by the Member through use of the Videoconferencing Network and/or Services shall create any such warranty on the part of OTN.
- e) Any material and/or data downloaded or otherwise obtained through the use of the Videoconferencing Network and/or Services shall be done at the Member's own discretion and risk, and OTN shall not be responsible for any damage or loss of data that may result from the download of such material and/or data.

6.5 Dispute Resolution

- a) All disputes between the Parties concerning any matter arising under this Agreement shall be submitted for resolution to the chief executive officer of OTN and chief executive officer of the Member (or the President or a senior management officer, designated by the member) (the "Designated Officers").
- b) If the Designated Officers cannot resolve the dispute within a period of 10 days after submission of the dispute to them for resolution, either Party may notify the other Party in writing that it wishes to refer the matter to arbitration in accordance with the *Arbitrations Act, 1991* (Ontario) (such act, as amended or replaced, from time to time, the "Act") within a further period of 30 days.
- c) If either Party serves a notice pursuant to Section 6.5(b), then such matter shall be determined by arbitration by a single arbitrator to be selected by the Parties and failing such selection the arbitrator shall be appointed pursuant to the Act.
- d) Any arbitration hereunder shall be held at Toronto, Ontario unless the Parties otherwise agree.

ARTICLE 7 - TERM AND TERMINATION

7.1 Term - The term of this Agreement shall be one year from the date that OTN issues the Live Site Notice. Provided that all fees as set out in this Agreement have been paid, this Agreement shall continue from time to time thereafter for successive one-year periods based on the anniversary date of the Live Site Notice unless terminated prior thereto pursuant to Section 7.2.

7.2 Termination

- a) Notwithstanding the term of this Agreement, either OTN or the Member may terminate this Agreement with or without cause at any time, upon 30 days written notice to the other Party upon which all of the terms of this Agreement shall be at an end, save and except those which expressly or by their nature are intended to survive termination. OTN shall not be liable to the Member for costs or losses arising from termination of this Agreement.
- b) Upon the termination of this Agreement, OTN shall reimburse to the Member the balance of its annual membership fee paid to OTN in respect of the year of such termination, if any, calculated on a pro rata basis. Upon the request of OTN, Member shall promptly return to OTN in good working order all equipment granted or loaned by OTN at the Member's site(s).

ARTICLE 8 - MISCELLANEOUS

8.1 Amendments - This Agreement may be amended, modified or supplemented only by a written agreement signed by each Party; provided that OTN reserves the right to amend this Agreement at any time and at its sole discretion, upon 60 days written notice to the Member including by adding, replacing or repealing one or more schedules or appendices hereto. Any such amendments shall take effect 60 days after such notice has been given. Unless the Member provides OTN with notice to the contrary, the Member will be deemed to be bound by any such amendments.

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8.2 Notice

- a) Any notice, demand or other communication (in this Section, a “notice”) required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if: (i) delivered in person (including by commercial courier) during normal business hours on a Business Day and left with a receptionist or other responsible employee of the relevant Party at the applicable address; (ii) sent by prepaid first class mail; or (iii) sent by any electronic means of sending messages, including facsimile transmission and e-mail, which produces a paper record (in this Section, “**Electronic Transmission**”) during normal business hours of the recipient on a Business Day, in each case to the address set out on the first page of this Agreement or at such other address as a Party notifies the other, for this purpose.
- b) Each notice sent in accordance with this Section shall be deemed to have been received: (i) on the day it was delivered; (ii) on the third Business Day after it was mailed (excluding each Business Day during which there existed any general or rotating interruption of postal services due to strike, lockout or other cause); or (iii) on the same day that it was sent by Electronic Transmission, or on the first Business Day thereafter if it was sent other than during normal business hours on a Business Day.

8.3 Governing Law - This Agreement shall for all purposes be governed by and interpreted in accordance with the laws in effect in Ontario. Subject to Section 6.5, the Parties hereby attorn to the jurisdiction of the Courts of Ontario.

8.4 Assignment - No right, duty or responsibility may be assigned or delegated, by either Party under this Agreement, except with the written consent of the other Party. Any attempted assignment without such consent shall be void and without effect. This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assignees.

8.5 Relationship - Except as specifically provided for in this Agreement, neither Party is, nor shall it be deemed to be, a partner, joint venturer or an agent or legal representative of the other Party for any purpose. The Member is not a member of OTN as a Corporation, except as within the meaning of the *Corporations Act* (Ontario) and has none of the rights of a member thereunder.

8.6 Users - The Member acknowledges and understands that it is responsible for ensuring that all of its Users comply with all applicable duties (including professional duties) and obligations of the Member under this Agreement. The fact that Users are specifically referred to in certain but not all sections of this Agreement shall not derogate from the generality of the foregoing.

8.7 Severability – If any provision of this Agreement is determined to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the invalidity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby so long as the economic or legal substance of the matters contemplated hereby is not affected in any manner materially adverse to any Party.

8.8 Waiver - Any express or implied waiver by either Party of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach. No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

8.9 Compliance With Law - Each Party agrees to comply with all applicable laws in the performance of its obligations under this Agreement. In particular, the Member acknowledges and agrees that its access to and use of the Videoconferencing Network shall comply with all federal, provincial and municipal laws, regulations and enactments including those set out under Article 5.

8.10 Entire Agreement - This Agreement, together with each applicable Equipment Loan Agreement and Equipment Grant Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written, oral, express or implied, between the Parties with respect thereto.

8.11 Counterparts - This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Receipt of a facsimile version of an executed signature page by a Party shall constitute satisfactory evidence of execution of this Agreement by such Party.

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TO WITNESS THEIR AGREEMENT, the Parties have duly executed this Agreement by the signatures of their proper officers on that behalf.



Ontario Telemedicine Network

Date: April 26, 2011

**Edward M. Brown, MD
Chief Executive Officer**

The Corporation of the City of London (Dearness Home)

Date: _____

Signature: _____
Authorized Signing Officer (with the authority to bind the Member)

Name (please print): Joe Fontana

Title: Mayor

Signature: _____
Authorized Signing Officer (with the authority to bind the Member)

Name (please print): Catharine Saunders

Title: City Clerk

Phone: (519) 661-2500 Ext. 4937

E-mail: csaunders@london.ca

Att: Schedule A (24)

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Schedule A (24)

Organizations Funded by the Ministry of Health and Long Term Care (> 50% of base operations) or LHIN Accountable

1. Annual Membership Site Fee

The Member shall not be required to pay an annual site or system membership fee.

2. Site and System Set-up Fees

The Member shall be required to pay a set-up fee for: (a) each site and (b) each system added to the Videoconferencing Network in an amount determined by OTN from time to time and posted in the Policies section of the Member Resource Library at <http://www.otn.ca/en/members/resource-library>

3. Telemedicine Coordinator

The Member shall designate a Telemedicine Coordinator who shall act as the primary OTN contact and will dedicate the appropriate amount of time required to fulfill this role. The role may be shared amongst more than one individual.