

Section 1 – Sample Partnering Agreement between Health Service Providers on Voluntary Integration Initiatives

Introduction

In this Toolkit, reference has been made to the importance a Partnering Agreement plays in the implementation of voluntary integration initiatives.¹

A Partnering Agreement legally creates the partnering arrangement through the process of contract, and identifies the major rights, duties and obligations of the parties to the arrangement.

The actual content of a Partnering Agreement will vary from one arrangement to another; however, the key components of any Partnering Agreement would include:

- the purpose of the arrangement,
- the contribution, roles and responsibilities of each participant,
- the governance, management, performance and monitoring of obligations, and
- the financial, record-keeping and reporting requirements.

The nature, size and complexity of the voluntary integration initiative together with the sophistication of the parties will determine the detail in which the Partnering Agreement is prepared.

This section provides a checklist for a Partnering Agreement, which is meant only as a guide to putting a Partnering Agreement together.

A sample Partnering Agreement for the integration of mental health services in the Erie-St. Clair LHIN geographic area is found in Appendix 2.6.1.

The appropriate professional services, such as qualified legal counsel, should be consulted when developing a Partnering Agreement.

¹ See pages **Error! Bookmark not defined.**, **Error! Bookmark not defined.**, **Error! Bookmark not defined.** and **Error! Bookmark not defined.** of this Toolkit.

Checklist

- ✓ The date as of which the Agreement is effective

Sample Language: *This Agreement is made as of April 1, 2008....*

- ✓ The name and identification of each party

Sample Language: *This Agreement is made as of April 1, 2008 between ABC, a corporation incorporated under the Corporations Act (Ontario) and DEF, a corporation incorporated under the Corporations Act (Ontario).*

- ✓ The background to the Agreement, including a brief introduction of the parties, their integration goals and details of the proposed integration

Sample Language: *[Introduce parties, their guiding principles and goals. If desired, mention ongoing autonomy of the Boards and joint policy direction through an accountable Joint Board Task Force. Describe details of the integration.] ... Whereas, after careful study, the parties wish to form an Alliance that promotes the provision of appropriate, coordinated, effective and efficient Services to the Community, upon the terms and conditions set out in this Agreement.*

- ✓ The definitions of terms used in the Agreement

For example, define Agreement, Alliance, Community, Joint Board Task Force, Joint Quality Committee, Key Performance Indicators, Services, etc.

- ✓ The establishment of the arrangement

Sample Language: *The parties agree to form an Alliance to be effective as of the date of this Agreement, and each party agrees to take all necessary steps to establish and implement the Alliance, in accordance with the provisions of this Agreement.*

- ✓ The name under which the Alliance will provide the Services, if appropriate

Sample Language: *The Alliance shall provide the Services under the name • or such other name or names as the parties may determine from time to time.*

- ✓ The purpose and scope of authority of, and accountability for, the Alliance

Sample Language: *The purpose of the Alliance is: • [Insert description of integration, scope of authority of Alliance and description of accountability for Services.] Any party may merge, amalgamate or otherwise integrate services with other health service providers or other persons or entities, provided that [insert preconditions, e.g. prior notice, consultation, etc.].*

- ✓ The governance and operation of the Alliance

Sample Language: *The Alliance shall be governed and managed by the • and • in the manner and to the extent set out in this Agreement. [Insert description of Board roles and responsibilities concerning the Alliance. Establish governance and management structure and processes for the Alliance. If a new governance and operating Committee are established, insert provisions re a regular meeting schedule, notice of meetings, quorum and voting.]*

- ✓ The record-keeping and reporting requirements for the Alliance

Sample Language: *Insert provisions concerning regular financial, statistical, administrative and progress reporting for the appropriate control and management of the Services. Insert provisions re preparation and approval of joint operating plan for the Service.*

- ✓ The minimum requirements concerning quality and quantity of Services
- ✓ The key performance indicators of the Alliance

Sample Language: *Each of the parties understands and is committed to the Key Performance Indicators described in Schedule • of this Agreement.*

- ✓ The relevant provisions for quality assurance, quality improvement and risk management purposes

Sample Language: *The Alliance will maintain, monitor and keep current, to the satisfaction of the board of directors of each party, a common quality assurance, quality improvement and risk management program for the Services and related activities. The Alliance will report regularly to the board of directors of each party, through the Joint Quality Committee on quality assurance, quality improvement and risk management issues.*

- ✓ The relevant provisions on health human resources and employee matters
- ✓ The relevant provisions on joint medical staffs, if appropriate
- ✓ Provisions concerning a budget, funding, banking, books and records, financial reporting, financial statements, audits, and assets to be used, acquired or disposed of by the Alliance, prohibitions against transfers and encumbrances on the assets, etc.
- ✓ The term of the Alliance and when and how the Alliance is to be terminated

Sample Language: *The term of this Agreement shall be unlimited, subject to termination as provided herein. [Consider and insert appropriate Event of Default provisions, including Ministerial order, LHIN decisions, bankruptcy or insolvency of a party, etc. Insert provisions concerning winding up, final performance and financial statements for the Alliance.]*

- ✓ The required representations and warranties of the parties

Sample Language: *ABC represents and warrants as follows and acknowledges and confirms that DEF is relying on such representations and warranties in entering into this Agreement: [for example only] ABC is a corporation duly incorporated and organized and subsisting under the laws of the Province of Ontario; ABC has the power and authority to enter into and be bound by this Agreement; the execution and delivery of this Agreement and all of the terms and conditions provided for herein have been duly authorized.*

- ✓ Provisions concerning MOHLTC approval, if required

Sample Language: *The parties agree that if Ministerial approval is required, the Agreement shall be conditional upon obtaining this approval.*

- ✓ Provisions concerning liability, indemnification and insurance; specify the type of insurance to be carried and clearly define the liabilities that are to be insured against by each party
- ✓ Provisions concerning confidentiality and conflicts of interest
- ✓ Provisions concerning community engagement, public disclosures and press releases
- ✓ Provisions concerning dispute resolution
- ✓ A statement about the relationship of the parties

Sample Language: *This Agreement does not constitute a party to be an agent, legal representative, joint venturer, partner or employee of the other party for any purpose whatsoever and it is deemed understood between the parties that each party shall be an independent contractor of the other. Nothing contained in or arising from this Agreement shall be construed to confer on any party any authority or power to act for, or to undertake any obligation or responsibility on behalf of, any other party, except as otherwise provided in this Agreement.*

- ✓ General contract provisions:

- further assurances

Sample Language: *Each party agrees to perform all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of all such acts and will cause the execution of all such further documents as are within its power to cause the doing or execution of, as the other parties may from time to time reasonably request be done and/or executed as may be required to consummate the transactions contemplated under this Agreement or as may be necessary or desirable to effect the purpose of this Agreement or any document, agreement or instrument delivered under this Agreement and to carry out their provisions or to better or more properly or fully evidence or give effect to the transactions contemplated under this Agreement, whether before or after the execution of this Agreement by the parties.*

- entire agreement

Sample Language: *This Agreement, including the Schedules, together with the agreements and other documents to be delivered under this Agreement, constitutes the entire agreement between the parties relating to the Alliance and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, among the parties with respect thereto.*

- amendments

Sample Language: *No amendment of this Agreement shall be binding unless in writing and signed by the parties.*

- severability

Sample Language: *If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby and such invalid, illegal or unenforceable provision shall be severable from the remainder of this Agreement.*

- waiver

Sample Language: *No waiver by a party of any breach of any of the provisions of this Agreement by any other party shall be binding upon the party unless in writing and signed by the party.*

- assignment

Sample Language: *Neither this Agreement nor any rights or obligations under this Agreement shall be assignable by any party without the prior written consent of the other parties. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.*

- notices

- excusable delay (if appropriate)

Sample Language: *Where a party is delayed in performing an obligation under this Agreement that is to be performed by a specified date or within a particular time by reason of “excusable delay”, the date or period of time by which the party is to perform the obligation will be extended by a period of time equal to the duration of the delay. “Excusable delay” means any delay in a party’s performance of an obligation that occurs as a consequence of or attributable to any circumstance that is beyond the reasonable control of the party and that is not caused by an act or omission of the party and is not avoidable by the exercise of reasonable effort or foresight by the party and includes strikes, labour or industrial disturbances, civil disturbances, acts, orders, legislation, regulation or directives of any governmental or other public authorities, acts of public enemies, war, riots, sabotage, shortages of materials and suppliers, shortages of health human resources or labour, lightning, fire, storms, floods, acts of God and delays caused by any other party.*

- counterparts

Sample Language: This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original and all such counterparts shall together constitute one and the same instrument.

- ✓ Insert signature lines