

AGREEMENT BETWEEN TRILLIUM GIFT OF LIFE NETWORK AND ORNGE FOR THE PROVISION OF ORGAN AND TISSUE TRANSPORTATION SERVICES

THIS AGREEMENT is made and executed on this 15 day of August, 2013, between Ornge, having offices at 5310 Explorer Drive Mississauga, Ontario L4W 5H8 and Trillium Gift of Life Network ("TGLN"), having offices at 522 University Avenue, Suite 900, Toronto, Ontario M5G 1W7.

Background

- A. TGLN, a not-for-profit corporation, is Ontario's central Organ and Tissue (each as defined herein) donation agency. TGLN's mandate includes: planning, promoting, coordinating and supporting activities relating to the donation of Organs and Tissue for transplant; planning, promoting, coordinating and supporting activities relating to education or research in connection with the donation of Organs and Tissue; and advising the Minister of Health and Long-Term Care on matters relating to the donation and transplant of Organs and Tissues.
- B. TGLN requires Ornge to provide Organ and Tissue recovery flight services and certain other services related thereto as further defined in this Agreement.
- C. Ornge is a non-profit corporation that provides air and land ambulance services under an agreement with the Ministry of Health and Long-Term Care. In addition to these services, Ornge provides Organ and Tissue recovery flight services.
- D. Ornge intends to provide transportation services to TGLN, and TGLN agrees to reimburse Ornge in full for expenses relating to transportation services, on the terms and conditions set out in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

Agreement – means this agreement entered into between TGLN and Ornge and includes all of the schedules attached hereto.

Applicable Laws - means all statutes, treaties, codes, ordinances, orders, decrees, rules, standards, regulations, and by-laws enacted or adopted by a governmental authority or regulator and all policies, practices, guidelines and directives of any governmental authority or regulatory body that, although not actually having the force of law, are considered by such governmental authority or regulatory body as requiring compliance as if having the force of law, that are binding upon either of the Parties and that are applicable to this Agreement, the Services, or any portion thereof.

Approved Organ Transport Vendors – means an air carrier that has successfully met the requirements for the provincial standards for air operators and has signed, and met the criteria set out in, the Organ transport vendors contract issued by Ornge and is able to provide transport services for Organ and surgical and Organ Recovery Teams to hospitals and transplant centres throughout North America.

Business Day – means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

Commencement Date – means the date on which this Agreement is effective, which is the date first set out above.

Donor - means an individual who is, or has the potential to be, a donor of Organs or Tissues for transplantation.

Emergency Medical Services – means a network of services coordinated by upper tier municipalities and designated delivery agents of the Ministry to provide aid and medical assistance from primary response to definitive care, involving personnel trained in the rescue, stabilization, transportation, and advanced treatment of traumatic or medical emergencies.

FIPPA - means the *Freedom of Information and Protection of Privacy Act*, R.S.O 1990, c.F.3.1.

FBO – means a fixed-base operator, which is a primary provider of support services to general aviation operators at a public-use airport either located on airport leasehold property or, in rare cases, adjacent to airport leasehold property.

LHSC – means London Health Sciences Centre.

Ministry – means the Ministry of Health and Long-Term Care.

Notice - means any communication given or required to be given pursuant to this Agreement.

Organ – refers to one of the following parts of a living or dead human body: heart, lungs, pancreas, pancreas islets, kidney and small bowel.

Organ Recovery Team – means the group of individuals who are directly involved in the recovery of Organs for the purposes of an Organ donation, including relevant surgeons and perfusionists.

Ornge - a not-for-profit corporation incorporated under the *Canada Corporations Act*, RSC 1970, cC-32.

Party - refers to one of the parties to this Agreement, and "**Parties**" shall refer to both of the parties to this Agreement together.

Performance Agreement – means the amended performance agreement dated March 19, 2012 between Her Majesty the Queen in Right of Ontario, as represented by The Minister of Health and Long-Term Care and Ornge, the full text of which can be found at the following website: <http://www.ornge.ca/AboutOrnge/Pages/PerformanceAgreements.aspx>.

Performance Metrics – means those measures or indicators of performance as are set out in Schedule C to this Agreement.

Personal Information – has the meaning ascribed to such term in FIPPA, and shall be interpreted to include Personal Health Information.

Personal Health Information – has the meaning ascribed to such term in PHIPA.

PHIPA - means the *Personal Health Information Protection Act*, S.O 2004, c3, Sch A.

PRC – means the Provincial Resource Centre, which is TGLN's call centre responsible for coordinating all aspects of Organ and Tissue donation for transplantation.

Services – means the medical transportation services to be provided to TGLN by Ornge pursuant to the terms of this Agreement, including those services specifically identified in Schedule A of this Agreement.

Term – means the period of time from the Commencement Date to the Termination Date.

Termination Date – means the date on which this Agreement is terminated in accordance with the terms of this Agreement.

TGLN Designate – means LHSC, unless Ornge is otherwise notified by TGLN in writing.

Tissue - means one or more of the following parts of a living or dead human body: eyes, skin, muscular-skeletal tissue and heart valves.

Tissue Recovery Team – means the group of individuals who are directly involved in the recovery of Tissues for the purposes of Tissue donation, including relevant surgeons, technologists and such other personnel as may be required for the recovery of Tissue.

Transplant Program – may refer to any one of the entities listed in Schedule E to this Agreement, each of which is designated as a Class E facility under the *Trillium Gift of Life Network Act*.

1.2 Interpretation

In this Agreement:

- a) unless the context otherwise requires, the singular shall include the plural and vice versa, and in particular the definitions of words and expressions set forth in Section 1.1 shall be applied to such words and expressions when used in either the singular or the plural form;
- b) unless the context otherwise requires, words importing a particular gender shall include the other gender;
- c) the division of this Agreement into articles and sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and are not to affect the construction or interpretation of this Agreement;
- d) any reference to a statutory provision or other government or agency standard shall include that provision as from time-to-time modified or re-enacted providing that in the case of modifications or re-enactments made after the date of this Agreement the same shall not have effected substantive change to that provision;
- e) “in writing” or “written” means and includes printing, typewriting or any electronic means of communication capable of being permanently reproduced in alphanumeric characters at the point of reception; and
- f) the words “include” and “including” mean “include, without limitation,” and “including, without limitation,” throughout this Agreement.

1.3 Entire Agreement

- a) This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral between Ornge and TGLN. There are no conditions, covenants, agreements, representations, warranties or other provisions, expressed or implied, collateral, statutory or otherwise, relating to the subject matter except as provided in this Agreement.
- b) In the event of a conflict or inconsistency between any provisions of the main body of the Agreement and the schedules attached hereto, the provisions of the main body of the Agreement shall take precedence.

- c) Notwithstanding any other term of this Agreement, this Agreement is contingent upon: (i) TGLN's receipt of an appropriate level of funding for the Services from the Ministry; and (ii) TGLN accepting all of the terms and conditions on which such funding is to be provided by the Ministry.

1.4 Modification of Agreement

This Agreement may not be amended or modified in any respect except by written instrument signed by duly authorized signatories of each Party.

1.5 Schedules

The following schedule(s) are attached to and form an integral part of this Agreement.

Schedule A – Services

Schedule B – Required Information from TGLN

Schedule C – Performance Metrics

Schedule D – Form of Trip Summary Report

Schedule E – List of Transplant Programs

Schedule F – Payment of Fees and Expenses

Schedule G – Dispute Resolution Processes under this Agreement

ARTICLE 2 – PROVISION OF SERVICES

- 2.1 Services.** Ornge hereby agrees to provide to TGLN the Services for the purposes of supporting TGLN's activities related to the donation and transplantation of Organs and Tissue. All Services shall be provided when requested by TGLN in accordance with the terms of this Agreement.
- 2.2 Availability.** Ornge will provide the Services throughout the Term on a 24-hours per day, seven day per week basis, including weekends and statutory holidays, in accordance with the Performance Agreement.
- 2.3 Representations, Warranties and Covenants.** Ornge represents, warrants and covenants to TGLN as follows, and acknowledges that TGLN is relying on such representations, warranties and covenants:
 - a) Ornge has, and shall continue to have throughout the Term, the experience and expertise necessary to provide the Services in accordance with the terms of this Agreement and Applicable Laws.
 - b) Ornge is, and shall continue to be throughout the Term, a validly existing legal entity with full power and legal right to enter into this Agreement and to fulfill all of its obligations under the Agreement.
 - c) Neither the execution and delivery of this Agreement by Ornge, nor the performance of Ornge's obligations hereunder, will conflict with, or result in a breach of, or constitute a default under any provision of its incorporating documents or by-laws, any Applicable Law, any decree of any court, arbitrator or governmental agency, or any contract, agreement or instrument to which it is a party or subject to, or by which its property is bound or affected.
 - d) No authorization, approval or consent of any person is required in connection with Ornge's execution and delivery of this Agreement or the performance of its obligations hereunder.
 - e) There is no proceeding in progress, or pending or threatened against, related to, or affecting Ornge which might be expected to have a materially adverse effect on the Services or impact Ornge's ability to meet its obligations under this Agreement.

- f) Ornge does, and throughout the Term shall, hold all permits, licenses, consents, registrations and authorizations required by it to provide the Services in accordance with Applicable Laws and the Performance Agreement.

2.4 Covenants of Ornge. Ornge covenants that it shall:

- a) coordinate the Services in accordance with: (i) all applicable ground and aviation safety principles for patient care; and (ii) its obligations under the Performance Agreement;
- b) continue throughout the Term to seek to improve the effectiveness and efficiency of its provision of the Services;
- c) ensure that Approved Organ Transport Vendors provide Services in accordance with applicable laws, such service standards as are applicable to Ornge under the Performance Agreement and relevant policies and procedures of Ornge;
- d) report on its performance of the Services as required by Schedule C of this Agreement and as reasonably requested by TGLN from time to time; and
- e) provide notice, on a timely basis, to TGLN in the event of: (i) any updates or modifications to the Performance Agreement that may impact on the performance of Ornge's obligations under this Agreement; or (ii) the receipt by Ornge of a notice of termination of the Performance Agreement provided by the Ministry in accordance with sections 21 or 22 of the Performance Agreement.

2.5 System Downtime. In the event of telecommunications or information system malfunction or transportation downtime, Ornge shall continue to provide Services under this Agreement in accordance with Ornge's contingency plan and procedures, as approved and audited by the Ministry, as well as required by the Performance Agreement. Ornge's contingency plan and procedures shall ensure the uninterrupted 24/7 continuance of all of the Services.

2.6 Continuity of Operations. Ornge has established and shall maintain throughout the Term a secondary facility from which Ornge communication services may be provided in the event of a service disruption at the primary communication centre. The location of the secondary facility has been approved by the Ministry and will not be relocated without Ministry approval.

2.7 Priority of Calls. In the event of telecommunications or information system malfunction or transportation downtime, all Ornge stakeholders, including TGLN, not requiring emergent care shall maintain their respective priority status. The Parties agree that throughout the Term, TGLN requests shall be considered "Code 4" calls, which calls are the highest priority calls pursuant to Ornge's operational policies. Should Ornge's operational policies change in respect of the classification of calls, TGLN calls shall continue to be included in the classification that is of the highest priority.

2.8 Operational Changes Notification. Ornge shall provide 90 days' prior written notice to TGLN if it intends to make any operational changes that may have a material adverse effect on the Services or Ornge's provision thereof. TGLN will respond promptly within ten (10) Business Days of its receipt of any such notice and the Parties shall promptly meet thereafter to discuss Ornge's continued performance of the Services.

2.9 Escalation of Service Issues. In the event that any conflicts, disputes or disagreements arise between the Parties in respect of the provision of the Services ("**Service Issues**"), the Parties shall attempt to resolve such Service Issues as quickly as possible in accordance with the following escalation process:

- a) A TGLN Coordinator, or an authorized designate, shall attempt to resolve the Service Issues through dialogue with the Ornge personnel providing the relevant Services.
- b) If the Service Issues cannot be resolved between the TGLN Coordinator or designate and the relevant Ornge personnel, the TGLN Coordinator or designate, as applicable, shall notify, and provide all relevant information to, the TGLN manager-on-call (“**MOC**”).
- c) The MOC shall contact the Operations Manager (“**OM**”) of the Ornge Communication Centre (the “**OCC**”) to discuss the Service Issues and at such time shall provide to the OM a summary of TGLN’s understanding of the Service Issues and the actual and expected impact of such Service Issues. The MOC and the OM shall work with one another to attempt to resolve the Service Issues.
- d) Subsequent to the meeting of the MOC and the OM: (i) the MOC shall provide the TGLN Coordinator with direction in respect of the Service Issues; and (ii) the OM shall provide all relevant Ornge personnel with direction in respect of the Service Issues.
- e) If the meeting between the OM and the MOC is unable to resolve a Service Issue and the inability to resolve such issue may result in the loss of an Organ or may compromise the integrity of an Organ or result in loss of life of an individual, the OM and the MOC shall escalate the issue to the Director of the Operations Control Centre for Ornge and to management for TGLN.
- f) If the Director of the Operations Control Centre for Ornge and the management for TGLN are unable to resolve a Service Issue, the Service Issue shall be escalated to members of senior management of each Party, which members of senior management shall have such authority as is necessary to make a final decision on the relevant Service Issue.
- g) Each Party shall ensure that its on-call support physician is available for consultation with the other Party as required throughout the escalation process described above. The on-call support physicians shall be available to provide advice and counsel on the impact of transportation selection on donation and/or transplantation outcomes.

The Parties agree that the escalation process described above may occur in full, and that each of the above Party representatives shall be available, on a 24-hour basis during any day of the week. Upon execution of this Agreement, TGLN shall provide to Ornge in writing the names and contact information for the TGLN representatives who should be contacted during each stage of the above escalation process.

ARTICLE 3 – OBLIGATIONS OF TGLN

- 3.1 Recovery Team Information.** TGLN will provide to Ornge the information set out in Schedule B. This information shall be used by Ornge only to the extent necessary for Ornge to carry out its obligations under this Agreement. All such information will be protected by Ornge in accordance with the confidentiality obligations set out in Article 5 of this Agreement.
- 3.2 Payment of Fees and Expenses.** Costs and expenses incurred in connection with the Services and the performance of this Agreement shall be allocated in accordance with the terms of Schedule F to this Agreement.

ARTICLE 4 – JOINT RESPONSIBILITIES

- 4.1 Communications between Parties.** Communication planning and coordination between TGLN and Ornge will be based on policies and procedures jointly established by TGLN and Ornge, and shall be addressed to the responsible representatives of TGLN and Ornge as set out in Article 10. Such designated representatives will be responsible to approve, make decisions and update any agreed upon changes on behalf of their respective organizations. Both Parties agree to work collaboratively with one another to promote efficiencies in the performance of each Party’s obligations under this Agreement.

- 4.2 Incident/Occurrence Reporting and Investigation.** Following the execution of this Agreement, the Parties shall engage in good faith negotiations with one another to establish rules and processes for the reporting and investigation of incidents that occur in connection with this Agreement or the Services described herein. Such rules and processes, including definition of what shall constitute an "incident" for the purposes of this Agreement, shall be included in an amendment to this Agreement, which shall be agreed to, and executed by, the Parties by no later than October 31, 2013. If the Parties are unable to establish rules and processes for reporting and investigation of incidents by October 31, 2013, the Parties shall mutually agree upon a revised date and notify the Ministry as soon as possible.
- 4.3 Relationship.** The Parties shall at all times be and remain independent contractors with respect to the subject matter of this Agreement. Ornge shall perform the Services as an independent contractor and shall have exclusive control and direction of the persons operating its equipment or otherwise engaged in such Services. Ornge assumes full responsibility for the acts and omissions of such persons and shall have exclusive liability for the payment of local, state, provincial and federal payroll taxes or contributions or taxes for unemployment insurance, WSIB-related fees, old age pensions, or other social security and related protection with respect to the persons engaged in the performance of the Services and agrees to comply with all applicable rules and regulations pertaining thereto. It is understood and agreed between the Parties that this Agreement is a non-exclusive agreement and that Ornge shall be free to accept freight for transportation for shipping entities other than as required by this Agreement.
- 4.4 Use of Emergency Medical Services.** When Emergency Medical Services are deemed necessary for the provision of land transport with lights and siren capability, Ornge shall endeavor to the best of its ability to retain such services. If Ornge is unable to retain appropriate land transport services within one hour of receipt of a transport request from TGLN, Ornge shall immediately provide notice of such inability to TGLN. The Parties acknowledge that Ornge does not have the authority to bind the Emergency Medical Services of any city or municipality.
- 4.5 TGLN Designates.**
- a) Each TGLN Designate may request and receive the Services from Ornge pursuant to the terms of this Agreement for the purposes of Organ recovery.
 - b) Ornge acknowledges and agrees that Ornge shall provide the Services to a TGLN Designate if requested by such TGLN Designate or TGLN in accordance with the terms of this Agreement.
 - c) TGLN agrees that it shall inform each TGLN Designate that each TGLN Designate must abide by the terms and obligations applicable to TGLN under this Agreement when requesting, or receiving the benefit of, the Services from Ornge.
 - d) Ornge acknowledges and agrees that should the escalation process set out in Section 2.9 be invoked by any of TGLN, Ornge or a TGLN Designate in connection with any Services that are provided to a TGLN Designate by Ornge, the escalation process shall be carried out by representatives of Ornge and TGLN only.

ARTICLE 5 – CONFIDENTIALITY AND PRIVACY

- 5.1 Confidentiality Obligations.** In order to carry out the obligations set out in this Agreement, the Parties may disclose to one another confidential or proprietary information related to their respective businesses and Personal Information of passengers (collectively, "**Confidential**

Information). Information will be deemed to be confidential if: (i) it is reduced to writing and clearly marked "CONFIDENTIAL" (or a similar marking, such as "Proprietary" or "Secret"); (ii) it is communicated verbally and is confirmed in writing as being confidential within ten (10) Business Days of such verbal communication; (iii) by its nature it could reasonably be considered as being of a confidential nature or (iv) it includes any Personal Information of passengers. Each party agrees to take reasonable and prudent precautions and at least the same precautions which each uses for its own confidential information in order to protect the Confidential Information disclosed by the other Party. The obligations of confidentiality set forth above shall, however, not apply to information which:

- a) is already known to the Party to which it is disclosed and that Party can show by written records that it is already known;
- b) is or becomes part of the public domain without breach of this Agreement as evidenced by written records; is obtained from a third party having a right to disclose it as evidenced by written records; or is required to be disclosed by law or a regulatory authority; or
- c) to the extent required by law or government authority with appropriate jurisdiction, are required to be disclosed, but the Party being required to disclose the Confidential Information shall: (1) notify the Party from whom the Confidential Information was received, to the extent reasonably possible; and (2) otherwise keep the Confidential Information confidential.

5.2 Personal Information and Personal Health Information. Each of the Parties shall ensure that their employees, agents, and subcontractors shall comply with the obligations of this Agreement in respect of Personal Information. The Parties acknowledge that this Agreement constitutes an agreement under Section 8.20 of the *Trillium Gift of Life Network Act* for the purposes of TGLN collecting, using or disclosing Personal Information from or to Ornge. The Parties shall comply with PHIPA, including in respect of the collection, use, disclosure and storage of a passenger's Personal Health Information, as well as any other applicable federal or provincial privacy legislation. Personal Health Information disclosed from one Party to the other shall only be used by the receiving Party to the extent necessary to fulfill its obligations under this Agreement.

5.3 Theft, Loss or Unauthorized Access of Personal Information. In the event that Ornge becomes aware that Personal Information has been stolen or lost, or a person has obtained unauthorized access to Personal Information, or Ornge has used, disclosed or disposed of the Personal Information other than as contemplated in this Agreement, Ornge shall at the first reasonable opportunity notify TGLN's privacy officer of such theft, loss or unauthorized access by telephone and, subsequently, by written notice.

5.4 TGLN's Review of Ornge's Practices and Procedures. TGLN may, upon reasonable notice, assess and review Ornge's practices and procedures for receiving and processing Personal Information under this Agreement, for the purposes of ensuring that Ornge is in compliance with the privacy and security terms and conditions of this Agreement. For these purposes, Ornge shall provide TGLN with reasonable access to relevant policies, procedures and protocols and any other documents that may be relevant.

5.5 Cooperation with Privacy Assessment or Audit. Ornge will cooperate, at its own expense, with any privacy assessment or audit conducted by TGLN or any third party retained by TGLN.

- 5.6 Complaint by TGLN.** In the event that TGLN makes a complaint to Ornge in respect of Ornge's compliance with the privacy and security terms and conditions of this Agreement, Ornge shall, within five (5) Business Days of receipt of the complaint, investigate the matter and provide TGLN with an oral report stating the cause of the deficiency, if any, and the steps taken to prevent a recurrence, if required. Within a further five (5) Business Days, Ornge shall provide TGLN with a written report documenting the complaint, investigation, deficiency, if any, and the steps taken to prevent a recurrence, if required.
- 5.7 Cooperation with Complaint to TGLN.** Ornge shall cooperate with TGLN in responding to any complaints about Personal Information that may relate to Ornge's obligations under this Agreement.
- 5.8 Injunctive Relief.** Ornge hereby recognizes that any breach of the privacy and security terms and conditions of this Agreement could result in irreparable harm to TGLN that cannot be calculated or fully or adequately compensated by the recovery of damages. As a result, TGLN shall, in addition to any other relief available to it, be entitled to the remedy of injunction without having to establish the inadequacy of any other remedy available to it. Ornge hereby undertakes not to make any defense in proceedings regarding the granting of an injunction or specific performance based on the availability to TGLN of other remedies.

ARTICLE 6 – DISPUTE RESOLUTION

- 6.1** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between officials or representatives who have authority to settle the controversy and who are at a higher level of management or responsibility than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written notice of any dispute not resolved in the ordinary course of business.
- 6.2** Within fifteen (15) days after delivery of a notice as described in Section 6.1, the receiving Party shall submit a written response to the notifying Party. The notice and the response shall include:
- a) a statement of each Party's position and a summary of arguments supporting that position; and
 - b) the name and the title of the official or representative who will represent that Party in respect of the dispute and any other party that will accompany the official representative.
- 6.3** Within thirty (30) days after delivery of the disputing Party's notice, the Parties shall meet at a mutually acceptable time and place and thereafter as often as they reasonably deem necessary to attempt to resolve the dispute. All reasonable requests for information made by one party to the other party will be honored.
- 6.4** All negotiations carried out in accordance with this Section 6 are confidential and shall be treated as compromise and settlement negotiations and, therefore, deemed to be off the record and without prejudice.
- 6.5** If the dispute has not been resolved by negotiation within forty-five (45) days of the initial notice requesting that the dispute be resolved by negotiation, the Parties shall endeavor to settle the dispute by mediation. The mediator shall be agreed upon by the Parties, failing which any Party may apply to ADR Chambers, 48 Yonge Street, Suite 100, Toronto, Ontario, to appoint a mediator. The mediation shall occur only if all Parties concur in the mediation. Otherwise a Party

may proceed directly to arbitration. The mediation process shall be commenced by any Party serving a notice requesting mediation after the expiry of the forty-five (45) day period referred to above. If a Party does not object to the mediation within five (5) days after receiving the said notice, the Parties agree, within a further five (5) day period, to speak to ADR Chambers by conference telephone call to appoint a mediator, unless the Parties are able to agree on the identity of the mediator. The mediation shall occur within thirty (30) days of the notice demanding mediation, and the Parties commit to at least six (6) hours with the mediator in an attempt to resolve the dispute.

- 6.6** All disputes arising out or relating to this Agreement which cannot be settled by the mutual consent of the Parties or mediation as set out in section 6.5 shall be subject to arbitration. The arbitrator shall be jointly agreed on by the Parties within ten (10) days of the notice demanding arbitration. Failing agreement, either Party may apply to the Ontario Superior Court of Justice, on notice to the other, to appoint an arbitrator. The arbitration shall take place in Toronto, Ontario within forty-five (45) days of the notice demanding arbitration. The arbitration award shall be final and conclusive and there will be no appeal from the award on a question of law or otherwise. The arbitrator shall have power to award costs as the arbitrator shall see fit.
- 6.7** Each Party shall continue the performance of its respective obligations during the resolution of any dispute or disagreement, including during any period of arbitration pursuant to this Section 6, unless and until this Agreement is terminated or expires in accordance with its terms and conditions.

Any legal proceeding brought by a third party is not subject to the dispute resolution process set out above in this Section 6.

ARTICLE 7 – TERM AND TERMINATION

- 7.1 Term.** This Agreement shall be effective as of the date first set out above and shall continue in full force and effect until terminated in accordance with the terms of this Agreement.
- 7.2 Termination.**
- a) Either Party may terminate this Agreement by providing ninety (90) days' written notice to the other Party.
 - b) TGLN shall be entitled to terminate this Agreement, without liability, cost or penalty:
 - i) on at least thirty (30) days' written notice to Ornge, following the occurrence of any material change in TGLN's requirements for Services that results from regulatory or funding changes or recommendations issued by any relevant government or regulatory body;
 - ii) if any representation or warranty by Ornge in this Agreement was false, materially inaccurate or materially misleading when made and the same has either: (i) a material adverse effect on the performance of any material part of the Services; or (ii) in the opinion of TGLN, acting reasonably, a material adverse effect on the reputation of TGLN, and is not cured or rectified within thirty (30) days after Ornge's receipt of notice thereof; or
 - iii) on at least thirty (30) days' written notice to Ornge, if Ornge is in breach of any of its covenants under this Agreement or is in material breach of the Performance Agreement.

7.3 Transition. In the event that this Agreement is terminated, Ornge shall, at the reasonable request of TGLN, assist and cooperate with the transition/handover of Services, if any, to TGLN, to any one or more of the Approved Organ Transport Vendors or another service provider selected by TGLN for a period of time reasonably requested by TGLN to accommodate such transition/handover. TGLN agrees to reimburse Ornge for any transition costs reasonably incurred by Ornge while assisting TGLN with the transition/handover of Services.

ARTICLE 8 – INSURANCE, LIABILITY AND INDEMNITY

8.1 Indemnity. Each of the Parties (each an “**Indemnitor**”) shall indemnify, defend and save harmless the other Party and its respective trustees, officers, directors, medical and professional staff, appointees, students, employees, independent contractors and agents (the “**Indemnities**”) from and against all claims, losses, damages, costs, demands, expenses (including legal fees and expenses), actions and other proceedings, made, sustained, brought, prosecuted, or threatened to be brought or prosecuted, in any manner by any third party based upon, occasioned by or attributable to anything done or omitted to be done on the part of the Indemnitor, its directors, officers, employees, independent contractors, subcontractors, or agents in connection with this Agreement or the Indemnitor’s obligations under this Agreement.

8.2 Limitation of Liability. No Party shall be liable for any indirect, special, incidental or consequential damages, or for punitive or exemplary damages, even if that Party has been advised of the possibility of such loss or damage in advance. The foregoing disclaimer of liability shall apply regardless of whether such liability is based on breach of contract, tort (including without limitation negligence), strict liability, breach of a fundamental term, fundamental breach, or otherwise.

8.3 Liability Insurance. Each Party shall obtain and maintain in good standing during the Term, and thereafter as may be required to cover any claims arising in connection with this Agreement, professional and general liability insurance, including third party liability coverage in the amount of not less than five million dollars (\$5,000,000), and shall provide the other Party with proof of such insurance coverage upon request. Each insurance policy shall include a clause requiring the insurer to provide at least 30 days’ written notice to the other Party of any cancellation or expiration of the insurance. The foregoing insurance provisions shall not limit the amount or type of insurance otherwise required by law. It shall be the sole responsibility of each Party to determine the nature and extent of any additional insurance coverage, that may be necessary and advisable for its own protection or to fulfill its obligations under this Agreement.

8.4 Proof of Insurance: On the Commencement Date and upon the replacement, renewal, amendment or extension of any part of its insurance, a Party shall provide the other Party with proof of its insurance coverage in the form of a certificate of insurance issued by the relevant insurance provider.

ARTICLE 9 –SERVICE RECORDS AND AUDITS

9.1 Records. Both parties shall maintain, throughout the Term and for a period of 7 years from the date of termination of the Agreement, or for such longer period of time as may be required by any Applicable Law, records, either in writing or by means of audio recording, of Services requested by TGLN and performed by Ornge, which shall include, at a minimum, for each TGLN request: (i) the date and time of such request; (ii) the name of any passenger being transported; (iii) any relevant communications between Ornge and TGLN; (iv) any adverse incidents that occurred in

the course of the transport; and (v) such other information as may be required in order to evaluate compliance with the Performance Metrics, including those measurements specifically attributed to each Party in Schedule C. In addition to the foregoing items, Ornge shall maintain, throughout the Term and for a period of 7 years from the date of termination of the Agreement, or for such longer period of time as may be required by any Applicable Law, detailed records with respect to: (A) all costs related to requested transports; (B) locations and times of pick-up and delivery of the individuals, Organs or Tissues being transported; and (C) any relevant communications between Ornge and Approved Organ Transport Vendors.

9.2 Audits. TGLN, its authorized representatives or an independent auditor identified by TGLN, may, at its own expense, enter upon Ornge's premises at a permissible and agreed time to review Ornge's records of the performance of its obligations under the Agreement including Ornge's provision of Services, and for these purposes TGLN, its authorized representatives, or an independent auditor identified by TGLN, may, subject to Applicable Laws, inspect and copy all records related to Ornge's obligations hereunder.

ARTICLE 10 –NOTICES

All notices, requests, directions, reports, or other documents that any of the Parties hereto are required or may desire to deliver to any other Party hereto must be in writing and may be delivered only by personal delivery or by registered or certified mail, or courier or facsimile, all postage and other charges prepaid, at the address for such Party set forth below or at such other address as any Party may hereinafter designate in writing to the others. Any notices personally delivered or sent by fax shall be deemed to have been given or received at the time of delivery or faxing. Any notice mailed as aforesaid shall be deemed to have been received on the expiration of five (5) days after it is posted, provided that if there shall be at the time of mailing or between the time of mailing and the actual receipt of the notice a mail strike, slow down or labour dispute which might affect the delivery of the notice by the mail, then the notice shall only be affected if actually received.

To Ornge:

Legal Counsel
Ornge
5310 Explorer Drive
Mississauga, ON L4W 5H8

To TGLN:

Ronnie Gavsie
President & CEO
Trillium Gift of Life Network
522 University Avenue, Suite 900
Toronto, ON M5G 1W7
Phone: 416 619-2280
Fax: 416 363-4002

ARTICLE 11 – COMPLIANCE WITH APPLICABLE LAWS

Each of the Parties shall comply with all Applicable Laws in exercising its rights and performing its obligations hereunder, including, to the extent applicable to each Party, the *Trillium Gift of Life Network Act*, the *Occupational Health and Safety Act* (Ontario), the *Human Rights Code* (Ontario), the *Pay Equity Act* (Ontario), the *Ambulance Act*, R.S.O. 1990, c. A.19, the *Canada Labour Code*, the *Aeronautics Act*

(Canada), the *National Transport Act* (Canada), FIPPA, all relevant privacy laws (including the *Personal Information Protection and Electronic Documents Act* (Canada) and PHIPA), and any regulations passed under any of the foregoing. The Parties shall also comply, to the extent applicable to each, with the Canadian Aviation Regulations and the Standards and Requirements for the Government of Ontario Approved Air Operators.

ARTICLE 12 – PERFORMANCE MANAGEMENT

12.1 Designated Contacts. For the purposes of this Article 12, the designated contact for Ornge shall be the Vice President, Logistics of Ornge, and the designated contact for TGLN shall be the Vice President, Clinical Affairs of TGLN.

12.2 Concerns.

- a) If either Party has any concerns about the quality of performance of the Services, the TGLN concerned Party's designated contact shall advise the non-concerned Party's designated contact with sufficient detail for the non-concerned Party to investigate the performance issue and report back to the concerned Party within ten (10) Business Days of the concerned Party's initial notice.
- b) If, at any time during the Term, either Party has any significant concerns about its obligations under this Agreement or the performance by the other Party of its obligations hereunder, such Party may request, with reasonable notice, a meeting of both Parties and their Ministry representatives in order to discuss such concerns.

12.3 Quarterly Reviews. Unless otherwise agreed between the Parties, the designated contacts shall meet on a quarterly basis to discuss any performance issues with respect to the Services, including a review of the reports made by Ornge under Section 4.2 and a review of all measurements recorded with respect to the Performance Metrics within the previous quarter. These meetings can either be in person or on the telephone.

12.4 Annual Performance Review.

- a) The designated contacts shall conduct an annual review of performance under this Agreement, which shall include, among other things, a review of: (i) TGLN's satisfaction with the Services; (ii) each Party's compliance with its obligations under this Agreement, including the Performance Metrics; and (iii) how improvements may be made by each Party.
- b) Within 30 days of the completion of the annual performance review described in subsection (a), the Parties shall together meet with the Ministry representatives of both Parties to discuss each Party's satisfaction with the Agreement and how improvements may be made by each Party.

12.5 Revisions to Performance Metrics. The Performance Metrics may be amended from time to time throughout the Term provided that the designated contact of each party, as set out in Section 12.1, approves such amendment, which approvals shall be evidenced in writing.

ARTICLE 13 – GENERAL PROVISIONS

13.1 Successors and Permitted Assigns.

- a) Each Party's rights and obligations under this Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party may assign its rights under this Agreement without the prior written consent of the other Party.

b) Notwithstanding subsection (a) of this Section 13.1, Ornge may assign its rights and obligations under this Agreement to Her Majesty the Queen in Right of Ontario represented by the Minister of Health and Long-Term Care without the consent of TGLN.

- 13.2 Waiver.** No condoning, excusing or overlooking by any Party of any default, breach or nonobservance by any other Party at any time or times in respect of any covenants, provisos, or conditions of this Agreement shall operate as a waiver of such Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance, so as to defeat in any way the rights of such party in respect of any such continuing or subsequent default or breach and no waiver shall be inferred from or implied by anything done or omitted by such Party, save only an express waiver in writing.
- 13.3 Remedies Cumulative.** No exercise of a specific right or remedy by any Party precludes it from or prejudices it in exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.
- 13.4 Headings.** Marginal headings as used in this Agreement are for the convenience of reference only and do not form a part of this Agreement and are not be used in the interpretation hereof.
- 13.5 Severability.** In the event that any part, Article, clause, paragraph or subparagraph of this Agreement shall be held to be invalid, illegal or otherwise voidable or unenforceable, the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.
- 13.6 Survival.** The terms and provisions, covenants and conditions contained in this Agreement which by the terms hereof require their performance by the Parties hereto after the completion or termination of this Agreement shall be and remain in force notwithstanding such completion or other termination of this Agreement for any reason whatsoever.
- 13.7 Subcontractors/Agents.** Ornge will engage Approved Organ Transport Vendors to provide aviation transport to TGLN. Ornge will remain responsible for obligations under this Agreement performed by any Approved Organ Transport Vendors to the same extent as if such obligations were performed by Ornge and for any acts and/or omissions of such Approved Organ Transport Vendors or their staff to the same extent as if such acts and/or omissions were those of Ornge. Ornge shall ensure that Approved Organ Transport Vendors are bound to terms and conditions that are as protective of TGLN as those contained in this Agreement.
- 13.8 Available Methods of Dispute/Incident Resolution.** For the avoidance of doubt with respect to the use of the dispute resolution processes provided under this Agreement, the Parties shall use the table in Schedule G as a guideline for the selection of appropriate dispute resolution mechanisms.
- 13.9 Force Majeure.** Neither Party to this Agreement shall be liable to the other for any failure to perform, or any delay in the performance of, any obligation under this Agreement caused by circumstances beyond its reasonable control, including: infectious diseases, riots and civil disorder, storm, flood, earthquake, acts of God, fire, war, strikes, lockouts and other labour actions, lawful act by a public authority, or governmental action. It is agreed that the time for performance by either Party shall be extended by the period of such uncontrollable circumstances.

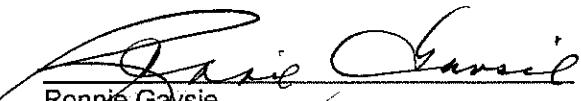
13.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein. Each of the Parties hereto agrees irrevocably to attorn to the non-exclusive jurisdiction of the courts of Ontario.

13.11 Whistle Blower Process. Concerns regarding Ornge's business practices or ethical conduct may be forwarded to <https://ornge.grantthorntoncare.ca>.

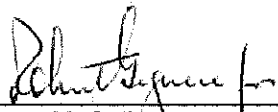
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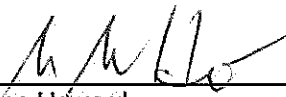
IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers as of the day and year first above written.

TRILLIUM GIFT OF LIFE NETWORK

By: 
Name: Ronnie Gavsie
Title: President & CEO
Date:

ORNGE

By:  15-8-13
Name: Andrew McCallum
Title: President & CEO
Date:

By: 
Name: Wayne Howard
Title: VP, Finance
Date: 08-15-2013

SCHEDULE A SERVICES

The following Services shall be provided by Ornge to TGLN in accordance with the terms and conditions of the Agreement:

- (a) **Organ Recovery Team Aviation Transport** – Following a request for Organ Recovery Team transport from TGLN, Ornge will solicit suitable aircraft for the requested transport from the list of Approved Organ Transport Vendors. Ornge will select an aircraft from the vendor bid responses based on cost and priority considerations (as further described in Appendix 2 to this Schedule A) and such other terms as may be specified by TGLN and as agreed to by Ornge at the time of the request. Ornge will continue to seek an appropriate aircraft until the request is either (i) completed in accordance with the terms of this Agreement, or (ii) cancelled by TGLN.
- (b) **Organ Only Aviation Transport** – Should TGLN determine, acting reasonably, that aviation transportation is required for an Organ, TGLN shall make a request for Organ only transportation to Ornge. Following a request for Organ transport from TGLN, Ornge will solicit a suitable aircraft for the requested transport from the list of Approved Organ Transport Vendors. Ornge will select an aircraft from the vendor bid responses based on cost and priority considerations (as further described in Appendix 2 to this Schedule A) and such other terms as may be specified by TGLN and as agreed to by Ornge at the time of the request.
- (c) **Land Transport** – Where a transport is arranged by Ornge pursuant to items (a) or (b) above, Ornge will endeavor to arrange the associated land transport with lights and sirens capability for all land based transits within Ontario.
- (d) **Recipient Transport** – Ornge will discuss with the Ministry the implications for Ornge under the Performance Agreement of Ornge supporting the transport of Organ recipients. Ornge will continue to transport Organ recipients for life-saving or life-enhancing Organ transplantation while a formal policy and process is developed with the Ministry and with input from TGLN.
- (e) **Flight Management Services** – Ornge shall monitor and manage all aviation transport missions requested by TGLN under this Agreement. Ornge shall communicate with engaged Approved Organ Transport Vendors throughout a mission and shall report the progress of all such missions to TGLN in accordance with the terms of this Agreement. Ornge's obligations in respect to mission communication are further described in Appendix 1 to this Schedule A.
- (f) **Sourcing Third Party Carriers** – Ornge will source from the open market Approved Organ Transport Vendors to aid in the fulfillment of the Services.
- (g) **Transport of Tissue Recovery Teams** - When required, Ornge will coordinate the transport of Tissue Recovery Teams to relevant recovery hospitals along with the Organ Recovery Team. Return transportation for the Tissue Recovery Team will be coordinated by the tissue bank. Ornge shall advise TGLN if the accommodation of such a request would necessitate a change in aircraft requirements.
- (h) **Transportation of Donors** - When required, Ornge will transport, or coordinate the transport of, Donors to relevant recovery and/or testing hospitals. Ornge shall perform this portion of the Services in accordance with its standard air ambulance procedures and protocols.

For the avoidance of doubt, the Parties hereby acknowledge and agree that all transport requests for Organ Recovery Teams or Tissue Recovery Teams shall be requests for transportation not only for the relevant recovery teams but also for the equipment required by such teams.

Additional Services

Should TGLN request from Ornge any reasonable services to facilitate the donation or transplantation of Organs or Tissues that are not contemplated in this Agreement, Ornge shall make best efforts to

accommodate such requests provided that: (i) the performance of such services would not cause Ornge to be in violation of the Performance Agreement; and (ii) TGLN approves in writing the estimated cost for such services, which estimate shall be provided to TGLN by Ornge. Except as otherwise stated herein or agreed to in writing by the Parties, any such additional services that are agreed to as described in this section shall be carried out in accordance with the terms and conditions of this Agreement.

Service Delivery Process

The provision of a transport mission will involve the completion of each of the following steps: (a) Request for Transport; (b) Arrangement of Transport; (c) Launch of Transport Vehicle; (d) Progress of Transport; and (e) Completion of Transport. The process for completion of a transport mission is further described in Appendix 1 to this Schedule A.

**APPENDIX 1
to
SCHEDULE A**

STEPS TO COMPLETE A MEDICAL TRANSPORT MISSION

Request Transport

1. Upon the identification of a need for transport services, TGLN will make best efforts to provide Ornge with notice at least three (3) hours prior to flight commencement for transportation coordination. When notifying Ornge of the need for a transport mission, TGLN will provide to Ornge the information listed in Schedule B, to the extent such information is available to TGLN at the time of the transport request. TGLN shall provide Ornge with the remainder of the information listed in Schedule B as soon as it is available to TGLN. TGLN acknowledges that the information listed in Schedule B is required by Ornge prior to aircraft takeoff.

Arrangement of Transport Vehicle

2. Ornge is responsible for issuing a bid for all air transport required for a requested mission. Ornge shall communicate all relevant mission benchmarks to all Approved Organ Transport Vendors. Ornge shall select appropriate aircraft for all portions of a mission in accordance with the aircraft selection requirements set out in this Agreement (see Appendix 2 to Schedule A).
3. If requested by TGLN, Ornge shall request the carrier to provide meals for the recovery team members.
4. Within one hour of a transport request, Ornge will provide to TGLN: (i) details related to the transport that has been arranged for the mission; (ii) notice that Ornge has not yet been able to secure transport for the mission; or (iii) confirmation that Ornge will not be able to fulfill the mission and an explanation for such inability. If Ornge is able to secure transport after one (1) hour, Ornge will provide the transport details to TGLN as soon as possible. The transport details provided to TGLN by Ornge shall include: flight number, tail number, airport, FBO of departure and arrival, pilot duty time constraints, planned flights stops, and confirmation of all required land transport with lights and sirens capability (subject to the terms and conditions of this Agreement). Ornge will notify TGLN of accurate estimates of flight times. For flights that are greater than 400 miles in distance, Ornge will endeavor to provide a full duty crew for the mission.
5. Within Ontario, Ornge will attempt to coordinate land transport with lights and sirens capability for the recovery teams and their equipment from: (i) airport to the donor hospital, (ii) donor hospital to airport, and (iii) airport to recipient hospital.
6. TGLN and Ornge will each notify the other Party of any expected delays greater than 30 minutes.

Launch

7. TGLN will ensure that recovery team members arrive at the airport at least 30 minutes prior to the scheduled time for take-off for international flights and at least 15 minutes prior to the scheduled time for take-off for domestic flights.
8. Each Party shall inform the other of any changes to the mission plan or its timing.
9. Ornge will ensure that: (i) the carrier and the required aircraft are at the airport and ready to load the recovery team and its equipment at least 30 minutes prior to expected take-off time.

Transport Progress

10. Ornge will call the PRC and provide updates as required throughout the mission but, at a minimum, shall provide updates to the PRC:
 - (a) at the estimated time of wheels-up; and
 - (b) once Ornge has an accurate estimated time of arrival (having taken into consideration all necessary fuel stops).
11. On the return journey, TGLN recovery team members will attempt to provide 30 minutes' notice to Ornge prior to returning to the aircraft. Upon notification, Ornge will attempt to contact the pilots with the estimated time of arrival of the recovery team to FBO.
12. Ornge will call the PRC and provide updates as required throughout the return transport but, at a minimum, shall provide updates to the PRC:
 - (a) at the estimated time of wheels-up; and
 - (b) once Ornge has an accurate estimated time of arrival (having taken into consideration all necessary fuel stops).

Completion of Transport

13. For arrivals in Ontario, Ornge will notify the PRC upon receipt of flight crew's de-planeing notification and, to the extent that it is able to arrange land transport, confirm land transport with lights and sirens capability to the recipient hospital.
14. For arrivals outside Ontario, Ornge will notify the PRC upon receipt of flight crew's de-planeing notification.
15. Within 14 days of the completion of a mission, Ornge shall provide to TGLN a trip summary report in respect of such mission, which report shall be in the form attached hereto as Schedule D.

**APPENDIX 2
to
SCHEDULE A**

AIRCRAFT SELECTION

For each transport requested by TGLN, Ornge shall select, and arrange for, an aircraft based on best cost, availability and the preferred and maximum times for completion of the mission, as determined by TGLN, acting reasonably, based on the circumstances of the mission. The time constraints for a mission shall be determined in part based on an understanding of the cold ischemic times for the relevant Organs. Typical cold ischemic times for the Organs most commonly involved in transplantations are included in the chart below. The cold ischemic times provided in the below chart are typical times only and will be used only as a general guide for mission requirements.

Organ	Typical Cold Ischemic Times (hours)
Heart	4
Lungs	4-6
Small Bowel	6-8
Liver	6-8
Pancreas	6-8
Kidneys	12-24
Multi-Visceral	6-8

The following charts set out a "Recommended Mode" and an "Exception Mode" of transport for a mission based on the one-way distance of a mission. The outward and return portions of a mission are each addressed in separate charts.

OUTWARD MISSION

Mission Distance	Recommended Mode	Exception Mode
Under 100 miles	Land transportation (Non-Lights and Sirens)	N/A
100 - 150 miles	Land transportation (Non-Lights and Sirens)	Propeller/Turbo Prop Aircraft
150-400 miles	Propeller/Turbo-Prop Aircraft	Jet Aircraft
Over 400 miles	Jet Aircraft	Propeller/Turbo-Prop Aircraft (If no jet available)

RETURN MISSION

Mission Distance	Recommended Mode	Exception Mode
Under 100 miles	Land transportation (Lights and Sirens Required)	N/A
100 - 150 miles (All organs except Heart and Lungs)	Land transportation (Lights and Sirens Required)	Propeller/Turbo Prop Aircraft
100 - 150 miles (Heart and Lungs)	Propeller/Turbo Prop Aircraft	N/A
150-400 miles	Propeller/Turbo-Prop Aircraft	Jet Aircraft
Over 400 miles	Jet Aircraft	N/A

The "Recommended Mode" reflects the transport mode that would be most preferred by the Parties. "Exception Mode" transport will be utilized by the Parties if (i) the aircraft/vehicles required for "Recommended Mode" are not available; or (ii) TGLN, at its reasonable discretion, has escalated the priority of the mission. TGLN may escalate a mission's priority due to extenuating circumstances, including issues related to weather, traffic, Donor or recipient health, inability to secure land transport with lights and sirens capability, or such other circumstances as may affect the timing requirements of the mission.

SCHEDULE B

REQUIRED INFORMATION FROM TGLN

TGLN shall provide to Ornge the following information to facilitate the provision of the Services by Ornge:

1. **Flight Team Information:** TGLN shall provide to Ornge the following in respect of each member of an Organ Recovery Team who will be transported by Ornge:

For Domestic Travel: One piece of valid government-issued photo ID that shows name, date of birth and gender (*e.g.*, driver's license or passport). Passenger weight communicated at time of booking.

For Travel to United States: A scan copy of all passengers' valid Canadian or US passport page, showing name, date of birth, gender, passport number, and issuing country is to be provided for conveyance to the carrier. Passenger weight provided at time of booking. A letter from the sending health facility on its letterhead outlining the nature and purpose of the individual's visit into the US (per US Border Services).

TGLN shall ensure that each Transplant Program that TGLN services is aware that each such program is responsible for ensuring that each member of its recovery teams has all information sets required by US Border Services to allow entry into the US for an Organ or Tissue recovery mission. Neither Ornge nor TGLN shall be responsible for consulting US Border Services to confirm entry requirements for recovery team members who are visiting Canada from a non-US country.

2. **Recovery Team Equipment**

The number of pieces and the dimensions and weight of each piece of recovery team equipment shall be communicated to Ornge. To the extent possible, the Parties shall work together to develop standard equipment kits for common missions.

3. **Organs**

Ornge shall be informed of the number of and type of Organs accepted.

4. **Destination Hospital**

Ornge shall be informed of the name and location of each destination hospital.

**SCHEDULE C
PERFORMANCE METRICS**

Each of the Parties agrees to monitor, calculate and record throughout the Term those Performance Metrics for which its system has been identified as the "Data Source" in the below table.

Performance Metric Description	Calculation	Data Source
Number of cases where TGLN does not provide 3 hours' notice of Organ acceptance, where transportation will be required.	Numerator - Total # of flights where 3 hours of notice is not given by TGLN to ORNGE after organ acceptance for organ retrieval Denominator - Total # of flights arranged for organ retrieval	TGLN System
Number of cases where ORNGE does not confirm booking 1 hour after being notified of Organ acceptance by TGLN.	Numerator – Total # of flights where ORNGE does not confirm booking of organ retrieval flight 1 hour after flight request from TGLN Denominator- Total number of flights requested by TGLN	TGLN System
Number of cases where ORNGE is not able to coordinate air transportation.	Numerator – count of all requests where an approved carrier is not able to fulfill the request. Denominator – count of all requests from TGLN excluding cancelled trips.	Ornge System
Number of cases where the air carrier is not at the airport 30 minutes prior to departure.	Exception report of all cases where carriers do not report in 30 minutes prior to scheduled departure.	Ornge System
Number of Organ and recipient trips requested.	Count for all requests to Ornge for transport.	Ornge System
Number of requests fulfilled with Recommended Mode.	Numerator – count of all trips using recommended aircraft. Denominator – count of all trips fulfilled	Ornge System

Number of requests fulfilled with Exception Mode.	Numerator – count of all trips using exception aircraft. Denominator – count of all trips fulfilled	Ornge System
Number of requests not serviced.	Count of all requests not serviced.	Ornge System
Number of requests cancelled.	Count of all requests cancelled after request was made.	Ornge System

**SCHEDULE D
FORM OF TRIP SUMMARY REPORT**



Ornge Trip Report

Trip ID	Initial Entry	Base	Report Time
Aircraft ID		Medic 1	
Carrier Name		Medic 2	
Captain		Total landings	Total Miles
First Officer			

Legs

Leg	Origin	Planned Departure	Actual Departure	Destination	Planned Arrival	Actual Arrival	M	Call Number	ES	Billing

Trip Report generated from Archive System

SCHEDULE E
LIST OF TRANSPLANT PROGRAMS

1. Toronto General Hospital
2. St. Joseph's Healthcare Hamilton
3. Ottawa Heart Institute
4. The Ottawa Hospital
5. The Hospital for Sick Children
6. London Health Sciences Centre
7. St. Michael's Hospital
8. Kingston General Hospital

SCHEDULE F
PAYMENT OF FEES AND EXPENSES

- 1) **Intent and Conditions.** The Parties have agreed to state in this Schedule F their respective rights and obligations with regards to the financial aspect of the Services provided under the Agreement. The Parties agree that each Parties obligations under the Agreement are conditional upon: (i) TGLN receiving an appropriate level of funding for the Services from the Ministry; and (ii) TGLN accepting the conditions on which such funding is to be provided by the Ministry. Should the Ministry not approve the requested amount of funding or TGLN reject the conditions on which such funding is provided, the Parties agree to promptly meet to re-examine and amend all sections of the Agreement that are affected by such lack of funding.
- 2) **Reimbursement of Expenses.** The Parties agree that TGLN shall reimburse Ornge in full for expenses described in Appendix 1 hereto (the "**Reimbursable Expenses**") provided that (i) such expenses are incurred by Ornge in the course of providing the Services to TGLN; (ii) Ornge complies with the terms and conditions of the Agreement in requesting reimbursement for any such expenses; and (iii) TGLN has received funding from the Ministry for such expenses in an amount that is at least equal to the amount of such expenses.
- 3) **Management of Funding Amounts.** Each of the Parties understands and agrees that the funding amounts that are to be made available to TGLN for payment of Reimbursable Expenses shall be maintained in a managed fund established by the Ministry (the "**Managed Fund**"). The funds in the Managed Fund may be used only for such purposes specified by the Ministry in writing to TGLN. TGLN shall be responsible for identifying, and providing notice of, shortfalls in the funding to the Ministry so that such shortfalls can be addressed on a timely basis.
- 4) **Changes to Reimbursable Expenses.** If the scope of the Services is materially altered or there is a material change in the Parties' understanding of the applicability of any expenses, the Parties agree that Appendix 1 shall be reviewed by the Parties and, if deemed necessary by both Parties, amended by written agreement of the Parties.
- 5) **Obligations of Ornge.**
 - a) Ornge agrees that, when an Approved Organ Transport Vendor is required for the provision of Services in connection with the Agreement, it shall make all reasonable efforts to select such vendor in a manner that maximizes value for money in accordance with the Broader Public Sector Procurement Directive issued by the Ontario Ministry of Government Services. Ornge shall ensure that all requests for services made in connection with the Agreement are offered to the open market and awarded pursuant to competitive bidding processes.
 - b) Ornge shall maintain relevant financial records (*e.g.*, invoices and such other documentation as may be required to evidence the incurrence of expenses) in relation to the costs incurred for each mission completed in connection with the Agreement and will provide TGLN access to these records, as may reasonably be requested by TGLN.
 - c) Each invoice for Reimbursable Expenses will be submitted to TGLN by Ornge within 21 Business Days of the end of a month and shall set out the relevant expenses in sufficient detail such that TGLN may perform a reasonably complete financial analyses and review of such invoice, any associated documentation, and the expenses referred to therein.

- d) Ornge shall coordinate the provision of Services by Approved Organ Transport Vendors, which shall include, among other things, the following (i) reviewing all invoices submitted by third party service providers to ensure their accuracy; (ii) resolving any disputes with third party service providers; (iii) ensuring that third party service providers do not submit invoices for unreasonable expenses that were not contemplated in their bid and contract for the Services; and (iv) making all required payments to third party service providers.
- e) Ornge shall ensure that any expenses and payments incurred in connection with the Services are incurred in accordance with all Applicable Laws, including the *Broader Public Sector Accountability Act* and all directives issued thereunder.
- f) Ornge shall assist TGLN, to the extent reasonably requested by TGLN, in budgeting expenditures for the Services on an annual basis.
- g) Ornge shall communicate to TGLN at least on a quarterly basis, and otherwise as reasonably requested by TGLN, any budgetary/forecasting changes or concerns which may adversely impact delivery of the Services.

6) Obligations of TGLN.

- a) TGLN will endeavor to obtain and maintain an appropriate level of funding from the Ministry in order to reimburse Ornge for the Reimbursable Expenses. TGLN will communicate to the Ministry on a timely basis any budgetary changes or concerns that may adversely impact delivery of the Services.
- b) Provided that TGLN has received adequate and timely funding from the Ministry, TGLN will reimburse Ornge for all Reimbursable Expenses within 30 days of receipt of an invoice that is provided in respect of such Reimbursable Expenses in accordance with the terms of this Schedule.
- c) TGLN will be responsible for verifying that each invoice received from Ornge contains the following flight service information: (i) the applicable TGLN case number, (ii) the flight number and date, (iii) the name of the carrier; and (iv) the tail numbers of the relevant aircrafts used in respect of the Services.
- d) TGLN will provide to Ornge such information and data as is reasonably required by Ornge for the purposes of forecasting expenditures,

7) Late Payment and Interest. No interest will apply in the event of late payment from TGLN to Ornge.

8) Overpayment/Underpayment.

- a) In the case of any overpayment/underpayment of amounts invoiced, TGLN and Ornge agree to resolve any discrepancies on a timely basis. Upon resolution of any discrepancies, Ornge will adjust future invoices and/or issue credit/debit notes, as deemed appropriate.
- b) In the event that Ornge's Reimbursable Expenses exceed the amount of funding provided by the Ministry to TGLN, TGLN will seek additional funding to cover such excess expenses through subsequent funding requests to the Ministry, as discussed in Section 6(a).

9) Commodity Taxes. Ornge shall be responsible for paying Approved Organ Transport Vendors any government imposed taxes, surcharges, or fees that are applicable to the services provided by such vendors under the Agreement. To the extent tax rebates are available for any such taxes, Ornge shall

submit to the relevant tax authorities all documentation as may be required to realize such tax rebates. TGLN shall reimburse Ornge for expenses listed in Appendix 1 including the non-rebateable portion of any taxes surcharges, or fees paid by Ornge in respect of such expenses.

10) Continuation of Services.

- a) The Parties agree that despite any late payment of Reimbursable Expenses by TGLN for any reason, including as a result of any shortfall in funding from the Ministry, each of the Parties shall continue to perform its obligations under the Agreement.
- b) Notwithstanding the foregoing, a Party may suspend its performance of its obligations under the Agreement with sixty (60) days' notice to the other Party if either Party receives written confirmation from the Ministry that the Ministry has ceased its funding of the Services.
- c) Any suspension of the performance of obligations in connection with subsection (b) of this Section 10 shall cease immediately upon the receipt by either Party of written confirmation from the Ministry that funding of the Services by the Ministry shall resume.

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APPENDIX 1
to
SCHEDULE F

REIMBURSABLE EXPENSES

Ornge may request reimbursement from TGLN for the following categories of expenses provided that such expenses are incurred by Ornge in the performance of the Services:

- 1) carrier charges for hours flown;
- 2) detention charges;
- 3) aircraft fuel costs;
- 4) airport fees and other airport-related fees;
- 5) FBO fees, including: ramp, security, ground-power-unit, hangar, de-icing, snow removal, parking, and terminal fees;
- 6) overnight duty out charges;
- 7) carrier cancellation charges;
- 8) satellite phones (airtime charges used in connection with the provision of Services);
- 9) ground transportation charges (e.g., taxi charges, land ambulance fees);
- 10) costs, such as communication officer's time, aircraft preparation time, aircraft audit/compliance related costs and other costs incremental to the delivery of the Services;
- 11) all applicable taxes, except income taxes; and
- 12) other penalties or other charges related to the completion of services (e.g., cross-border charges), provided that such penalties or charges are not incurred by Ornge due to errors, mistakes or poor performance of the Services by Ornge or its personnel.

Schedule G – Dispute Resolution Processes under this Agreement

Issue to be Resolved	Dispute Resolution Process to be Followed
Disagreement about the manner in which a specific transport will be carried out	Section 2.9
Concern about general performance issues of either Party	Section 12.2
Concern about Performance Metrics being unsatisfactory	Section 12.3 or Section 12.4 (quarterly or annual review)
Concern about a specific adverse event or incident	Section 12.2 Section 4.2 (once developed)
Disagreement about interpretation of Agreement	Article 6
Disagreement about allocation of liability between parties under Agreement	Article 6
Disagreement about funding amounts or Reimbursable Expenses	Article 6