

COMMUNITY INTEGRATION DATA SHARING AGREEMENT

This Agreement is made as of DATE THE AGREEMENT WAS SIGNED

between the parties listed in Schedule “A” to this Agreement, as amended from time to time, each of which have entered into a Participation Agreement in the form of Schedule “B” to this Agreement.

RECITALS

- A. Each of the Participants provides healthcare or related services.
- B. The Participants have agreed to use an electronic information system known as the Health Partner Gateway (“HPG”) that is owned and operated by Ontario Health (“Shared Services”), to disclose and collect PHI to and from other Participants where the Participants are both providing services to the same patient or client.
- C. Pursuant to section 40 of the *Local Health System Integration Act, 2006*, the Minister of Health and Long-Term Care issued an order, effective March 1, 2017, pursuant to which all assets, liabilities, rights and obligations, employees and all records relating thereto, including all contracts of the Ontario Association of Community Care Access Centres were transferred to Health Shared Services Ontario (“HSSOntario”).
- D. Pursuant to section 40(1) of the *Connecting Care Act, 2019*, the Minister of Health issued an order, effective December 2, 2019, pursuant to which all assets, liabilities, rights and obligations, employees and all records relating thereto, including all contracts of HSSOntario were transferred to Shared Services.
- E. Each Participant has entered into a Community Integration Information Management and Network Services Agreement (“Services Agreement”) with Shared Services that permits the Participant to use the HPG.
- F. PHI made available through the HPG may only be collected by a Participant for the purpose of more efficiently and effectively providing or assisting in the provision as applicable, of the health care or community services provided by the Participant, among other terms and conditions.
- G. This Agreement describes all of the terms and conditions upon which the Participants have agreed to disclose and collect PHI through the HPG.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency is acknowledged by each party, the parties covenant and agree as follows:

1. Definitions, Interpretation

In this Agreement:

- (1) “agent”, “collect”, “disclose”, “health care” and “use” will each have the meaning ascribed thereto in PHIPA.
- (2) “Agreement” means this agreement including any recitals and schedules to this agreement, as amended, supplemented or restated from time to time.
- (3) “Applicable Law” means PHIPA and/or FIPPA, or any law of Ontario, or law of Canada applicable in Ontario, superseding either or both of PHIPA and FIPPA or otherwise governing PHI, including its collection, use and disclosure.

- (4) **“Business Day”** means any day except Saturday, Sunday or any statutory holiday in the Province of Ontario.
- (5) **“Custodian”** in connection with PHI means the Participant that is the Health Information Custodian of the PHI or where the Participant is not a Health Information Custodian, the Participant that collected or compiled the PHI, is responsible for it at law and accountable to the individual to whom the PHI relates.
- (6) **“FIPPA”** means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (7) **“Originating Participant”** in relation to PHI, means the Custodian disclosing the PHI.
- (8) **“Patient”** means a patient or client, receiving health care or community services, as applicable, from a Participant and in respect of PHI, the individual to whom it relates.
- (9) **“PHI”** means information that is defined as personal health information in PHIPA, or defined as personal information in FIPPA, or that relates to an identifiable individual (depending on the Custodian), and in the custody or under the control of a Participant; and disclosed and collected by means of the HPG.
- (10) **“PHIPA”** means the *Personal Health Information Protection Act, 2004* (Ontario).
- (11) **“Privacy Officer”** means the individual responsible for a Participant’s compliance with its legal and other responsibilities in relation to PHI.
- (12) **“Recipient Participant”** means a Participant collecting PHI from an Originating Participant.

In this Agreement, unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

2. Participants

Each Participant will designate and/or identify a Privacy Officer to act as a single point of contact for the Participant in connection with all matters arising from or connected to this Agreement. The name, address, telephone number, facsimile number, and e-mail address (“Contact Information”) of the Privacy Officer will be provided on the Participation Agreement executed by the Participant. Shared Services will maintain, update and make available to each Participant and the Committee, a list of the Contact Information for each Participant. Any Participant may at any time change its Privacy Officer and/or Contact Information upon written notice to Shared Services and the Committee.

3. Relationship of the Participants, Disclosure and Collection of PHI

It is understood and agreed that:

- (1) in giving effect to this Agreement, no Participant will be or be deemed to be a partner, agent or employee of another Participant for any purpose and that the relationship of each Participant to the other Participants will be that of independent contractors;
- (2) nothing in this Agreement will constitute a partnership or a joint venture between the Participants;
- (3) for the purposes of this Agreement,
 - (a) receipt of PHI by a Receiving Participant constitutes a collection of that PHI by the Receiving Participant and a disclosure of that PHI by the Originating Participant;
 - (b) for greater certainty, a Receiving Participant will be deemed to have collected PHI even if it does not make a copy of the PHI or otherwise incorporate it into its own records for the Patient;

- (c) the Receiving Participant will have all of the obligations of a Custodian in relation to PHI that it collects under this Agreement, including obligations to protect the privacy of the Patient;
- (d) without limiting the generality of the preceding subsection, the Receiving Participant has no obligation to return to the Originating Participant or to destroy PHI on the termination or expiry of this Agreement.

4. Authorized Purposes

Participants will only collect PHI, and will cause their agents to only collect PHI:

- (1) where the Participant is a Health Information Custodian, for the purposes of providing health care or assisting in providing health care;
- (2) where the Participant is not a Health Information Custodian, if the Patient has consented to the collection for designated purposes and the Participant only uses the PHI for those designated purposes; or
- (3) where the collection is otherwise required or permitted by Applicable Law.

5. Compliance with Patient Instructions

To the extent that a Receiving Participant has been made aware by a Patient or by the Originating Participant that the Patient has restricted the collection, use or disclosure of PHI, the Receiving Participant will not collect, use or disclose such PHI except in accordance with the Patient's instructions unless otherwise required or permitted by Applicable Law.

6. Obligations of Participants

- (1) Each Participant will ensure that PHI is as accurate, complete and up-to-date as required for the purpose for which it is disclosed and used, as the case may be. For clarity, both Originating Participants and Receiving Participants will take the steps that in their professional judgment are necessary to ensure that the PHI that they are disclosing or using is as accurate as necessary for the purpose for which it is being disclosed or used.
- (2) Without limiting the generality of the preceding, where an Originating Participant has received instructions not to disclose PHI that it considers reasonably necessary for the purpose of providing health care, the Originating Participant will give the Receiving Participant Notice of same.
- (3) Participants will comply with Applicable Law when collecting, using and disclosing PHI and to facilitate same, will: (a) designate a Privacy Officer; and (b) advise its agents of their duties under Applicable Law and this Agreement;
- (4) Participants will have in place systems, policies and procedures, including without limitation administrative, technological and physical safeguards, to protect PHI against theft, loss and unauthorized access, use, disclosure and destruction.
- (5) Participants will collaborate and cooperate with other Participants, to the extent reasonably required, to investigate and address any privacy or security breaches that are affecting or that are likely to affect PHI.
- (6) Participants will complete and submit to the Committee, on an annual basis, a "Privacy and Information Security Compliance Checklist" developed by the Committee and designed to verify that each Participant is maintaining a privacy program that will allow it to comply with its obligations under this Agreement.

- (7) Nothing in the preceding subsection shall be interpreted or construed to require a Participant to provide information in such detail that its disclosure could reasonably threaten the security of the Participant's electronic information system.

7. Governance

A Community Integration Steering Committee (the "Committee") will be established to assist the Participants and Shared Services with the delivery and use of the HPG and the services of Shared Services, matters involving PHI and any other matters arising out of this Agreement or the Services Agreement.

The membership of the Committee will include one or more representatives of Shared Services and each Participant sector, including but not limited to LHINs, hospitals, long term care and primary care. Shared Services and each Participant sector will determine the process for selecting its representatives. The initial terms of reference of the Committee will be made available to each Participant and Shared Services. The Committee will have the discretion to amend its terms of reference and will determine the process by which it will do so and conduct its business.

8. Dispute Resolution

Any disagreement or dispute between the Participants with respect to the performance of this Agreement or the interpretation of any provision of this Agreement ("Dispute") will be:

- (1) first referred to the Chief Executive Officers of the affected Participants; and
- (2) failing resolution of the Dispute within thirty (30) Business Days of the referral, or such other period as agreed to by the affected Participants, to the Committee.

The Participant that is seeking relief will provide the Participant from which it is seeking relief with Notice setting out the matters in dispute, a concise statement of the facts on which it relies and the resolution that it is seeking.

9. Injunctive Relief

Notwithstanding the dispute resolution process set out above, any Participant may seek injunctive or other interim relief from a court of competent jurisdiction from a breach or reasonably likely breach of this Agreement that has or may reasonably threaten the confidentiality of PHI and/or the privacy of the Patient to whom it relates.

10. Limitation of Liability

- (1) Each Participant acknowledges that use of the HPG is discretionary and that the Participant will have control over the Participants to which it discloses PHI through the HPG. Each Originating Participant has the right to request a copy of any other Participant's Privacy and Information Security Compliance Checklist as a component of conducting its due diligence regarding the privacy program of that Participant.
- (2) No Participant will seek recourse, except through the dispute resolution process provided for in Section 8 above or the injunctive relief provided for in Section 9 above, against another Participant for any claim or damages arising out of or connected to this Agreement unless due to the negligence, intentional or malicious conduct of the Participant from which it is seeking recourse and except to the extent that the claim or damages arise from or are connected with its own negligence, intentional or malicious conduct.

11. Indemnification

Notwithstanding anything else in this Agreement, a Local Health Integration Network (LHIN) as defined under the *Local Health Systems Integration Act, 2006* acting in its capacity as a Participant under this Agreement shall not be subject to any indemnity obligation in this Agreement and for clarity, shall be excluded from the indemnity rights and obligations in the paragraph that follows below in this Section 11.

Each Participant, excluding any LHIN, individually and not jointly and severally (an “Indemnitor”), agrees to indemnify, defend and hold the other Participants, excluding any LHIN, (each an “Indemnified Party”) harmless from any and all loss, damages, costs, liabilities, expenses and settlement amounts, which the Indemnified Party may incur or suffer or be required to pay arising out of or in any way relating to any claim by a Participant or any third party made in respect of this Agreement, where the claim is due to the negligence, intentional or malicious conduct of the Indemnitor. The indemnification obligations of the Indemnitor will be subject to the following:

- (1) the Indemnified Party notifying the Indemnitor in writing within ten (10) Business Days after its receipt of Notice of any claim;
- (2) the Indemnitor having sole control of the defence and all settlement negotiations and agreements related thereto so long as no unilateral actions are taken by the Indemnitor which are likely to have a material adverse effect upon the Indemnified Party; and
- (3) the Indemnified Party providing the Indemnitor with reasonable assistance, information and authority necessary to perform its obligations under this Section.

12. Insurance

- (1) While a Participant, each Participant will maintain in full force and effect general liability insurance in an amount that a prudent organization in its place would maintain having consideration for its obligations under this Agreement.
- (2) Each Participant, will provide the Committee with written documentation in relation to its insurance coverage upon request.

13. Term, Termination

- (1) This Agreement will remain effective until:
 - (a) terminated by a Participant, in relation to itself;
 - (b) terminated by the Committee in relation to a Participant;
 - (c) terminated by all of the Participants; or
 - (d) the termination of the Services Agreement, as further described below.
- (2) Any Participant may terminate this Agreement in respect of itself on one (1) month’s prior written notice to Shared Services and the Committee. Upon any termination of the Services Agreement with respect to a Participant, this Agreement will be deemed to have been terminated in respect of that Participant, effective as of the date of the termination of the Services Agreement.
- (3) The Committee may terminate this Agreement in respect of a Participant where the Participant has failed to comply with this Agreement or its acts or omissions are a threat to the security and/or integrity of PHI. Where the Committee terminates this Agreement in connection with a Participant, that Participant may make written submissions to the Committee and the Committee will reconsider the decision to terminate. Where the Committee, on reconsideration, decides not to

terminate this Agreement in connection with the Participant, the Committee may impose terms and conditions on the Participant in addition to those in this Agreement and may limit the term of the Agreement with the Participant.

14. Additional Participants

A Health Information Custodian or provider of community services that has been recommended as a Participant or has applied to the Committee and meets terms and conditions established by the Committee, will become a Participant upon the execution of a Participation Agreement in the form attached hereto as Schedule "B" and a Services Agreement.

15. Survival

Except as otherwise provided herein, those sections of this Agreement which, by the nature of the rights or obligations set out therein, might reasonably be expected to survive any termination or expiry of this Agreement shall survive any termination or expiry of this Agreement.

16. Notice

All notices, requests, demands or other communications (collectively, "**Notices**") to be given by a Participant under this Agreement will be given in writing by personal delivery or by email or facsimile transmission to the address for each Participant or the Committee or such other address as may be provided in writing by a Participant or the Committee to the Participants from time to time. If delivered or transmitted before 4:30 p.m. on a Business Day, Notices shall be deemed to have been received on that Business Day and otherwise at the opening of business on the following Business Day.

17. Assignment

No party may assign its rights or obligations under this Agreement without the prior written consent of the other parties, not to be unreasonably withheld, except that any party may without consent assign its rights under this Agreement to: (i) a successor entity; (ii) or an acquirer of all or substantially all of its assets; or (iii) following an approved transfer to another entity under the *Long-Term Care Homes Act, 2007* (Ontario).

18. Further Assurances

Each Participant agrees that it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and shall cause the doing of all such acts and the execution of all such further documents as are within its power to cause the doing or execution of, as the other Participants hereto may from time to time reasonably request in writing and as may be necessary or desirable to give effect to this Agreement.

19. Entire Agreement

This Agreement, and any agreements and other documents to be delivered pursuant to it or referenced herein, including without limitation the Services Agreement, constitutes the entire agreement between the Participants pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, oral or written, between the Participants. The execution of this Agreement has not been induced by, nor do any of the Participants rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgements not expressly made in this Agreement or in the agreements and other documents to be delivered pursuant hereto. This Agreement supersedes and replaces the Community Integration Data Sharing Agreement dated November 1, 2012.

20. Severability

Should any provision of this Agreement be found to be invalid by a court of competent jurisdiction, that provision will be deemed severed and the remainder of this Agreement will remain in full force and effect.

21. Amendments, Waivers

This Agreement may be amended, modified or supplemented only by written agreement signed by each of the Participants. No waiver, alteration, amendment, modification, or cancellation of any of the provisions of this Agreement will be binding upon a Participant unless made in writing and duly signed the Participant or Participants to be bound.

22. Governing Law

This Agreement will be interpreted, construed, and governed by and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (other than any conflict of law rules that would result in the choice of laws of another jurisdiction). The Participants agree to submit to the exclusive jurisdiction of the courts of Ontario.

23. Schedules

The following schedules are attached to and incorporated into this Agreement by reference and deemed to be part hereof:

Schedule A - Participants

Schedule B – Form of Participation Agreement

IN WITNESS WHEREOF, the parties have agreed to be bound by this Agreement and have executed this Agreement by executing a Participation Agreement.

Schedule A

I - Participants

The list of Participants to this Agreement will be managed by Ontario Health (Shared Services).

II - Address for Notice: Shared Services

Attn: Director of Privacy, Risk and Information Security Management (PRISM)
Address: 130 Bloor Street West, Suite 200, Toronto ON M5S 1N5
Phone: 416-750-1720
Fax: 416-750-3624
Email: privacy.officer@hssontario.ca

III - Address for Notice: Committee

Attn: Director of Privacy, Risk and Information Security Management (PRISM)
Address: 130 Bloor Street West, Suite 200, Toronto ON M5S 1N5
Phone: 416-750-1720
Fax: 416-750-3624
Email: privacy.officer@hssontario.ca

Schedule B Participation

Agreement

This Participation Agreement is entered into by

FULL NAME OF ORGANIZATION

("Participant") as of DATE THE AGREEMENT WAS SIGNED

1. The terms used in this Participation Agreement have the meaning attributed to them in the Community Integration Data Sharing Agreement (DSA) among the Participant and other healthcare providers or providers of community services that also have entered into Participation Agreements under the DSA dated March 1, 2015.
2. The DSA establishes the terms and conditions upon which each Participant may collect, use, disclose, exchange and access PHI for the purposes set out in the DSA.
3. The Participant has reviewed and agrees with all other Participants to be a party to and bound by the DSA, the terms and conditions of which are incorporated herein by reference.
4. The following is the contact information for the Participant for the purposes of Notice under the Agreement:

Name: FULL NAME OF ORGANIZATION

Contact Name/Title: FULL NAME & TITLE OF SIGNING AUTHORITY OF ORGANIZATION

Address: MAILING ADDRESS OF SIGNING AUTHORITY OF ORGANIZATION

Telephone: TELEPHONE NUMBER OF SIGNING AUTHORITY OF ORGANIZATION

Fax: FAX NUMBER OF SIGNING AUTHORITY OF ORGANIZATION

Email: EMAIL ADDRESS OF SIGNING AUTHORITY OF ORGANIZATION

Schedule B Participation

Agreement

In witness whereof, this Agreement has been executed by the Participant:

Per: FULL NAME OF ORGANIZATION

Name: FULL NAME OF SIGNING AUTHORITY

Title: TITLE OF SIGNING AUTHORITY

Signature: