

HEALTH PARTNER INTEGRATION DATA SHARING AGREEMENT

BETWEEN

Central East Local Health Integration Network operating as Home and Community Care Support Services

LOCAL HEALTH INTEGRATION NETWORK

(referred to as the “LHIN”)

AND

Corporation of the City of Kawartha Lakes

(referred to as “Health Partner”)

BY MEANS OF ONTARIO HEALTH (“SHARED SERVICES”) APPLICATIONS

This Data Sharing Agreement is made as of

DATE THIS AGREEMENT WAS SIGNED

(the “Effective Date”), between the LHIN and Health Partner.

RECITALS

- A. Each Party provides healthcare or related services and is subject to the provisions of the *Personal Health Information Protection Act, 2004*, and its regulations, as may be amended from time to time (“**PHIPA**”);
- B. Each Party is a “health information custodian” as defined in section 3 of PHIPA, and as such, each Party has the implied consent of individuals to collect, use or disclose their PHI in its custody or under its control for the purposes of providing health care or assisting in providing health care to another health information custodian for the purposes of providing health care or assisting in providing health care to such individuals.
- C. Pursuant to section 34.2 of the *Local Health System Integration Act, 2006*, the Minister of Health and Long-Term Care issued an order dated April 3, 2017, pursuant to which all assets, liabilities, rights and obligations, employees, and all records relating thereto, including all contracts of the Community Care Access Centre were transferred to the LHIN. Each Party has agreed to use one or more of the electronic means listed in Schedule B (collectively, the “**Applications**”), that are owned and operated by Shared Services to disclose and collect PHI to and from the other Party where the Parties are both providing or assisting in providing health care services to the same patient or client, as applicable, to whom the PHI relates.
- D. The Health Partner has entered into a Health Partner Integration Information Management and

Network Services Agreement (“Services Agreement”) with Shared Services that permits the Health Partner to use the Applications.

- E. The current and intended users of the Applications include hospitals within the geographic region of the LHIN, each of which will have separately entered into a Health Partner Integration Data Sharing Agreement with the LHIN substantially in the form of this Agreement prior to using the Applications.
- F. The Parties wish to enter this Agreement to define the terms and conditions that govern the collection, use and disclosure of the PHI through the Applications.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency and receipt of which is acknowledged by each Party, the Parties covenant and agree as follows:

1. Definitions

In this Agreement, the terms below have the meaning attributed to them below and any capitalized terms not defined below have the meaning attributed to them in the recitals or the body of this Agreement.

- (1) **“Agreement”** means this agreement including any recitals and any schedules to this agreement, as amended from time to time.
- (2) **“Applicable Law”** includes PHIPA and the regulations made thereunder and any other legislation in force from time to time that is applicable to a Party and includes legislation, the purpose of which is to protect personal information, including without limitation personal health information.
- (3) **“Business Day”** means any day except Saturday, Sunday, the Civic Holiday in Ontario, or any statutory holiday in the Province of Ontario.
- (4) **“Client”** or **“Patient”** means in respect of PHI, the individual to whom it relates.
- (5) **“collect”, “disclose”, “health care”, “information practices”** and **“use”** shall each have the meaning ascribed thereto in PHIPA.
- (6) **“Custodian”** and **“HIC”** means a health information custodian as defined in PHIPA.
- (7) **“FIPPA”** means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended from time to time;
- (8) **“IPC”** means the Information and Privacy Commissioner of Ontario;
- (9) **“PHI”** has the same definition as in section 4 of PHIPA, as may be amended from time to time;
- (10) **“Privacy Officer”** means the person assigned primary responsibility for managing a Party’s privacy program;
- (11) **“Substitute Decision-Maker”**, with respect to the collection, use, and disclosure of PHI, has the same meaning ascribed thereto in PHIPA.

2. Relationship of the Parties

The Parties acknowledge and agree that:

- (1) in giving effect to this Agreement, no Party shall be or be deemed to be a partner, agent or employee of the other Party for any purpose and that the relationship of each Party to the other Party shall be that of independent contractors;
- (2) without limiting the generality of the preceding, nothing in this Agreement shall constitute a joint venture between the Parties;
- (3) the receipt of PHI by a Party under this Agreement constitutes the collection of that PHI by the Party and the disclosure of the PHI by the Party who made the PHI available through the Applications;
- (4) in accordance with the preceding, the Party collecting PHI shall be the HIC for the version of the PHI it collects, subject to all of the duties and obligations of a HIC under Applicable Law and this Agreement in respect of such PHI and with custody and control of that version of the PHI;
- (5) the Party that makes PHI available through the Applications remains the HIC of the version of the PHI within its custody and under its control.

3. Authorized Purposes

The Parties shall only collect, use and disclose PHI, and shall cause its agents to only collect, use and disclose PHI, as the case may be:

- (1) for the purposes of providing health care or assisting in providing health care; or
- (2) where the collection, use or disclosure is otherwise required or permitted by Applicable Law.

4. Compliance with Client/Patient or Substitute Decision-Maker Instructions

To the extent that a Party collecting PHI has been made aware that a Client or Patient, or the Substitute Decision-Maker, if applicable, has placed conditions on the collection, use or disclosure of that PHI, the Party shall not collect, use or disclose such PHI, except in accordance with the conditions imposed by the Client or Patient, or the Substitute Decision-Maker, if applicable, or as permitted by Applicable Law.

5. Obligations of the Parties

Each Party shall:

- (1) comply with Applicable Law, including when collecting, using or disclosing PHI; and
- (2) designate a Privacy Officer to:
 - (a) facilitate the Party's compliance with Applicable Law and this Agreement;
 - (b) ensure that all agents of the Party are appropriately informed of their duties under Applicable Law and this Agreement;
 - (c) communicate with the other Party about matters arising out of or in connection with this Agreement and respond to inquiries from Clients or Patients, or the Substitute Decision-Maker, if applicable, about the Party's information practices.
 - (d) respond to requests by a Client or Patient, or the Substitute Decision-Maker, if applicable, for access to or correction of the Client's or Patient's PHI for which the Party has within its custody or control; and

- (e) receive complaints from Clients or Patients, or the Substitute Decision-Maker, if applicable, and the other Party about the management of PHI;
- (3) enforce compliance with the Party's Privacy Policy and the privacy procedures implemented by that Party.
- (4) maintain policies, procedures, and systems for the retention and destruction of PHI held by it in connection with the authorized purposes and related applications in accordance with Applicable Law;
- (5) have in place protocols, policies, controls, procedures and systems, including without limitation administrative, technological and physical safeguards, which shall include the following requirements:
 - (a) only authorized access to PHI shall be permitted;
 - (b) copying, modification, use, disclosure, or disposal of PHI shall be done in a manner that meets or exceeds industry and regulatory requirements and standards including without restriction IPC PHIPA Orders, and
 - (c) the Parties may put in place additional minimum common baselines by mutual agreement.
- (6) ensure that all of such PHI is accurate, complete and up-to-date, or if unable to do so, the disclosing Party shall promptly notify the receiving Party as to any limitations on the accuracy, completeness, and up-to-date character of such PHI where the provision of such notice is required under PHIPA.

6. Dispute Resolution

Any disagreement or dispute between the Parties with respect to the performance of this Agreement or the interpretation of any provision of this Agreement ("**Dispute**") shall be resolved as follows:

- (1) all Disputes shall first be referred to the Privacy Officers of the Parties who shall make all reasonable efforts to resolve the Dispute within thirty (30) Business Days of its referral, or such other period as agreed by the Parties; and
- (2) if the Privacy Officers are unable to resolve the Dispute within the period set out above, the Dispute will be escalated to the Chief Executive Officer (CEO) of each Party, or his or her delegate.

The Party that is seeking relief under this Section will provide the other Party with written notice setting out the matters in dispute, a concise statement of the facts on which it relies and the resolution that it is seeking.

7. Injunctive Relief

Notwithstanding the dispute resolution procedure described in the preceding section, either Party may seek injunctive or other interim relief from a court of competent jurisdiction in the case of a breach of this Agreement by the other Party resulting in a threat to Patient safety or the security or integrity of PHI or where PHI is used in a manner or threatened to be used in a manner that is inconsistent with the terms of this Agreement or Applicable Law.

8. Limitation of Liability

A Party shall not be liable to the Party for any damage, loss, cost, claim or demand (including any third party claims) resulting from this Agreement, except to the extent caused by a Party's own negligence or willful misconduct. No Party hereto shall be responsible for any lost profits, lost opportunities, or other indirect or consequential damages suffered by another Party hereto as a result of this Agreement.

9. Insurance

(1) Each Party shall maintain in full force and effect general liability insurance that shall name the other Party as an additional insured but only with respect to this Agreement, and shall include at least the following:

- (a) products and completed operations;
- (b) data liability;
- (c) personal injury;
- (d) cross liability; and
- (e) contractual liability.

(2) The amount of the general liability insurance for each Party required under this Agreement shall be a minimum of two million Canadian dollars (\$2,000,000) per occurrence.

(3) Each Party shall give the other Party at least thirty (30) days' prior written notice of material change to, cancellation, or non-renewal of any insurance policies providing the coverage required under this Agreement, and shall provide to the other Party evidence of such insurance coverage upon request.

10. Term

- (1) This Agreement will commence on the Effective Date and remain effective until:
- (a) terminated by a Party as provided below; or
 - (b) termination of the Services Agreement, as provided below.

11. Termination

Either Party may terminate this Agreement on one (1) month's prior written notice to the other Party. Upon any termination of the Services Agreement with respect to the Party who is a Participant under the Services Agreement, this Agreement will be deemed to have been terminated, effective as of the date of the termination of the Services Agreement.

12. Termination for Cause

Either Party may terminate this Agreement immediately upon written notice to the other Party in the event that the other Party commits a material breach of this Agreement and such breach is not remedied (if capable of remedy) within ten (10) days after the giving of the written notice thereof.

13. Intellectual Property

The Parties agree that nothing in this Agreement transfers as between them, any intellectual property or any other right, title and interest in and to any concepts, techniques, ideas, information and materials, however recorded.

14. Survival

Those sections of this Agreement which, by the nature of the rights or obligations they infer or create, might reasonably be expected to survive any termination or expiry of this Agreement shall survive any termination or expiry of this Agreement.

15. Notice

All notices, requests, demands or other communications (collectively, "Notices") to be given by a Party under this Agreement shall be given in writing by personal delivery, facsimile or electronic mail transmission to the address for each provided in Schedule A or such other address as may be provided in writing by a Party to the other Party 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.

16. Assignment

No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, not to be unreasonably withheld, except that either Party may without consent assign its rights under this Agreement to a successor entity.

17. Further Assurances

Each Party agrees that it shall do all such acts and execute all such further documents, 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 Party hereto may from time to time reasonably request in writing and as may be necessary or desirable to give effect to this Agreement.

18. Number and Gender

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

19. Entire Agreement

This Agreement, and any agreements and other documents to be delivered pursuant to it or referenced herein, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, oral or written, between the Parties. The execution of this Agreement has not been induced by, nor do either of the Parties 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.

20. Severability

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

21. Amendments

This Agreement may be amended, modified or supplemented only by written agreement signed by each of the Parties.

22. Governing Laws

This Agreement shall be interpreted, construed, and governed by and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario and shall be treated, in all respects, as an Ontario contract. The Parties agree to submit to the exclusive jurisdiction of the courts of Ontario.

23. Counterparts

This Agreement may be executed in counterparts and when each Party has executed an identical counterpart and delivered a copy thereof to the other Party (by personal delivery or facsimile transmission), then all the counterparts taken together shall be deemed to constitute a single identical agreement dated as of the date hereof.

24. Schedules

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

Schedule A – Addresses for Notice

Schedule B – Applications

In the event of a conflict or inconsistency between the body of this Agreement and a Schedule, the terms of the body shall prevail.

25. Waiver

No failure or delay on the part of any Party hereto to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof.

26. FIPPA

The Parties acknowledge that the LHIN is bound by FIPPA and that any information provided to the LHIN in connection with this Agreement may be subject to disclosure in accordance with FIPPA.

IN WITNESS WHEREOF the duly authorized officers of each of the Parties has executed and delivered this Agreement:

Central East Local Integration Network operating as Home and Community Care Support Services (

LHIN

Per: Central East Local Integration Network operating as Home and Community Care Support Servi

Name: FULL NAME OF SIGNING AUTHORITY OF LHIN

Title: TITLE OF SIGNING AUTHORITY OF LHIN

Signature: _____ Date: _____

I have the authority to bind the Corporation

Corporation of the City of Kawartha Lakes

Per: Corporation of the City of Kawartha Lakes

Name: FULL NAME OF SIGNING AUTHORITY OF HEALTH PARTNER

Title: TITLE OF SIGNING AUTHORITY OF HEALTH PARTNER

Signature: _____ Date: _____

I have the authority to bind the Corporation

Schedule A
Addresses for Notice

1. For
Central East Local Integration Network operating as Home and Community Care Support Ser
LHIN

Contact Name/Title: FULL NAME & TITLE OF CONTACT AT LHIN

Address: ADDRESS OF CONTACT AT LHIN

Telephone: TELEPHONE NUMBER OF CONTACT AT LHIN

Fax: FAX NUMBER OF CONTACT AT LHIN

Email: EMAIL ADDRESS OF CONTACT AT LHIN

2. For
Corporation of the City of Kawartha Lakes

Contact Name/Title: Corporation of the City of Kawartha Lakes

Address: ADDRESS OF CONTACT AT HEALTH PARTNER

Telephone: TELEPHONE NUMBER OF CONTACT AT HEALTH PARTNER

Fax: FAX NUMBER OF CONTACT AT HEALTH PARTNER

Email: EMAIL ADDRESS OF CONTACT AT HEALTH PARTNER

Schedule B Applications

The following are the Applications provided by Shared Services to which this Agreement may apply:

1. The eNotification Service, which is a secure system to system exchange that exchanges specific event notifications between the Parties.
2. The LHIN eReferral Service, which is a secure system to system exchange service that exchanges specific referral information between the Parties.
3. The Health Partner Gateway (HPG), which is a secure portal enabling access to LHIN health records.
4. Client Information Query - CHRIS WS2 is a web-service interface that enables authorized partner systems to query LHIN client health care information from CHRIS.