

This Physician Agreement (this “**Agreement**”) provides CPSO members with active certificates of registration to practice medicine, with:

- (i) access to and use of the electronic health records (the “**EHR**”), maintained by Ontario Health; and
- (ii) a credential (your “**ONE ID Credential**”) to access and use the EHR (collectively, the “**Services**”), subject to the terms and conditions contained in this Agreement.

## **1 DEFINITIONS, INTERPRETATION AND OBLIGATIONS**

1.1 Unless otherwise defined in the body of this Agreement, the following words have the following meanings:

The words “**agent**”, “**health care**”, “**health care practitioner**”, “**health information custodian**” and “**personal health information (PHI)**” have the meanings given to such terms in the *Personal Health Information Protection Act (PHIPA)*.

“**Acceptable Use Policy**” means the “use” policies of Ontario Health, available at [www.ehealthontario.on.ca/docs](http://www.ehealthontario.on.ca/docs).

“**Applicable Laws**” means any laws, orders, judgements or other requirements having the force of law that are applicable in Ontario to the Services or to you, including *PHIPA*.

“**Computer Application**” means any software program approved by Ontario Health and used by you to enable your access to and use of the Services.

“**CPSO**” means the College of Physicians and Surgeons of Ontario;

“**EHR**” means the electronic health records created or maintained by Ontario Health, which is comprised of applications, systems, registries, databases and files, together with the portal applications, tools and services that provide secure user access. A list of databases that comprise the EHR is available at [www.ehealthontario.on.ca/en/initiatives](http://www.ehealthontario.on.ca/en/initiatives).

“**EHR Information**” means any PHI, personal information or other confidential information relating to individuals made available by Ontario Health through the EHR, but excludes information that has become part of the records that you maintain on the Computer Application for the provision of health care.

“**Health Care Provider Guide**” means the toolkit of materials, guides and information about the EHR made available to you with this Agreement and available at [www.ehealthontario.on.ca/docs](http://www.ehealthontario.on.ca/docs).

“**ONE ID Credential**” means the health care provider credential issued to you by Ontario Health to allow authentication of your identity. You must obtain a ONE ID Credential in order to access the EHR. Should your ONE ID Credential be cancelled or suspended for any reason, you will not be able to access the EHR.

“**personal information**” means all recorded information about an identifiable individual or that is defined as or deemed to be personal information pursuant to any Applicable Laws.

“**Physician Agreement Security Requirements**” means the document that outlines the minimum security requirements for individual physicians who sign this Agreement and connect to or access the EHR maintained by Ontario Health, made available to you with this Agreement and available at [www.ehealthontario.on.ca/docs](http://www.ehealthontario.on.ca/docs).

“**you**” and “**your**” means the individual physician entering into this Agreement.

1.2 **Statement of Information Practices.** A current copy of the *Statement of Information Practices* (the Ontario Health plain language description about the EHR) is available at [www.ehealthontario.on.ca/privacy](http://www.ehealthontario.on.ca/privacy).

1.3 **Your Obligations.** You agree:

- (a) to comply with all Applicable Laws applicable to the Services, including those pertaining to the protection and confidentiality of PHI, such as EHR Information;
- (b) to comply with the current version of the *Acceptable Use Policy* and *Physician Agreement Security Requirements* when accessing or using the Services;
- (c) to be solely responsible for arranging access to and use of a Computer Application, including any costs related thereto. Any issues with access to or use of the Computer Application will be directed to the Computer Application provider;
- (d) to ensure that the information you use in connection with your use of and access to the Services is complete and accurate, including the CPSO number under which you access the EHR;
- (e) to access the EHR only in accordance with Applicable Laws, including *PHIPA*;
- (f) to access EHR Information solely for the purpose of providing or assisting in the provision of health care to your patients;
- (g) to access the EHR only in a manner that is consistent with any restrictions imposed upon you by the CPSO and to cease accessing the EHR if you are no longer authorized by the CPSO to provide health care;

- (h) to not access the EHR Information of any individual who has exercised his or her rights under *PHIPA* to withdraw consent to the collection, use or disclosure of his or her PHI unless the individual's withdrawal of consent is overridden in accordance with the procedures set out in the applicable *Health Care Provider Guide*;
- (i) to follow the relevant procedures set out in the *Health Care Provider Guide* including those with respect to: (i) communicating to Ontario Health any changes in your status; (ii) overriding a consent directive; (iii) privacy complaints and enquiries; (iv) reporting a privacy or security breach; and (v) correction and access requests;
- (j) that Ontario Health may suspend or terminate the Services, your access to the EHR, or this Agreement, for any breach of this Agreement or Applicable Laws by you or your agent;
- (k) to only use your ONE ID Credential, and not any other person's credentials, in connection with your access to and use of the EHR or to access other health care related solutions in Ontario where the entity that runs that solution has notified Ontario Health that you are entitled to access that solution. For clarity, you cannot use your ONE ID Credential for any purpose not listed herein.
- (l) that you are solely responsible for the use of your ONE ID Credential, whether used by you or an agent of yours, and for ensuring that your ONE ID Credential is only used in accordance with Applicable Laws, including *PHIPA*;
- (m) that you, and any agent of yours, will take all reasonable steps to protect the confidentiality of your ONE ID Credential, such as ensuring that access to the EHR using your ONE ID Credential has been logged out after each session;
- (n) that any breach of this Agreement by an agent of yours is a breach by you, so you will ensure that any agent you authorize to access the Services on your behalf is made aware of and agrees to comply with the terms and conditions of this Agreement, including the procedures set out in the *Health Care Provider Guide* and the *Acceptable Use Policy* before they access the Services on your behalf;
- (o) to not intentionally insert into any part or component of the systems operated by Ontario Health any virus, disabling device or code, and to ensure that any agent of yours agrees to comply with this restriction;
- (p) to co-operate with any reasonable reporting, evaluation, audit or monitoring program required by Ontario Health with respect to the EHR, the Services or the EHR Information, and to ensure that any agent of yours agrees to likewise co-operate; and
- (q) that if you suspect that the security of your ONE ID Credential has been compromised, or if it is known or suspected that there has been unauthorised access to or collection, use, disclosure, copying, modification or disposal of EHR Information or that EHR Information has been stolen or lost, you will immediately notify Ontario Health in accordance with section 2.3, provide such information as required, and co-operate with and provide all such assistance as Ontario Health may request in connection with any such occurrence. For clarity, notification to Ontario Health is in addition to any other notification obligations that you may have under *PHIPA* in these circumstances.

#### 1.4 **Ontario Health Obligations.** Ontario Health will:

- (a) subject to your continued compliance with this Agreement, provide you with access to the Services, provided that, if Ontario Health is notified that your certificate of registration to practice medicine has been suspended or terminated, your access to the EHR will be suspended or terminated, as applicable;
- (b) comply with all Applicable Laws, including those pertaining to the protection and confidentiality of PHI;
- (c) operate the Services in accordance with business practices reasonably applicable to the provision of health care services, and use reasonable efforts to make access to and use of the Services available during published service hours. From time-to-time, the Services may not be available due to conditions beyond the reasonable control of Ontario Health;
- (d) manage, in a secure manner, any devices, codes or other security measures it creates for enabling access to the Services, including access to the EHR; and
- (e) operate and manage the processes and technologies it has in place to detect and monitor unauthorized access to the EHR and unauthorized use or disclosure of EHR Information.

#### 1.5 **Suspension of Services.** Ontario Health may suspend your access to and use of the Services: (a) with notice to you if you or any agent of yours is not in compliance with any provisions of this Agreement and such non-compliance has not been fixed within 30 days of your receipt of written notice; or (b) immediately if Ontario Health has reasonable grounds to believe there has been unauthorised access to the EHR through your interface, provided that Ontario Health will promptly investigate such event and will use all reasonable efforts to reinstate your access to and use of the EHR as soon as possible.

#### 1.6 **Termination of Services.**

- (a) You may terminate this Agreement upon 30 days' written notice to Ontario Health.

- (b) In addition to any other right to suspend or terminate your access to the Services as set out in this Agreement, Ontario Health may terminate this Agreement and your access to and use of the Services upon 30 days' notice to you.

## **2. DISCLAIMERS, LIABILITY AND GENERAL**

### **2.1. Disclaimers.**

- (a) All information and content on the EHR is provided to Ontario Health by third parties, is not verified by Ontario Health, and may not necessarily contain all of the clinical information of an individual.
- (b) Ontario Health will use commercially reasonable efforts to prevent the loss, corruption or alteration of EHR Information after it has been received by Ontario Health from third parties, however, Ontario Health expressly disclaims all representations, warranties and conditions in respect of the accuracy, completeness and timeliness of such information and content to the extent caused by a third party that contributed such information or content.
- (c) Ontario Health will not be liable for access to or disclosure of any personal information associated with this Agreement if such access or disclosure is required by any Applicable Laws.
- (d) The Services incorporate complex software systems, which may malfunction from time to time, so Ontario Health does not guarantee or warrant that the Services will operate at all times on an error-free basis or without interruption from time to time.
- (e) Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control that could not have been avoided by the exercise of reasonable foresight.

2.2 **Liability.** Ontario Health assumes no liability for any diagnostic, treatment, health care or other decision or action taken by any person using the EHR Information or the Services. In no event will Ontario Health, or its directors, officers, employees, or personnel be held liable for any losses, expenses, costs, damages or liabilities or any causes of action, actions, claims, demands, lawsuits, inquiries, investigations or other proceedings (collectively, "**Claims**") in any way based upon, occasioned by, attributable to, or arising out of access to the EHR, use of EHR Information, or use of the Services, whether such claim arises in contract, tort (including negligence) or otherwise, even if it has been advised of the possibility of such damages in advance; provided that, such losses, expenses, costs, damages or liabilities are not caused by the negligence of Ontario Health. In no event will you be held liable for any such Claims in any way based upon, occasioned by, attributable to, or arising out of access to the EHR, use of EHR Information, or use of the Services, whether such claim arises in contract, tort (including negligence) or otherwise, even if you been advised of the possibility of such damages in advance; provided that such losses, expenses, costs, damages or liabilities are not caused by the negligence of you or an agent of yours.

### **2.3 Notices.**

- (a) Any notices required or permitted to be given by you to Ontario Health in connection with this Agreement will be given to its service desk (the "**Service Desk**") at: Tel.: 1-866-250-1554; email: [servicedesk@ehealthontario.on.ca](mailto:servicedesk@ehealthontario.on.ca).
- (b) Any notices required or permitted to be given by Ontario Health to you in connection with this Agreement may be given by: (i) its Service Desk, which will be deemed to be given when communicated; (ii) by email to any email address that you provide to Ontario Health, which will be deemed to be given when sent; or (iii) by forwarding it to you by postal mail, courier or other method of personal delivery to the address maintained on file for you by Ontario Health. Notices given by postal mail will be deemed to have been given five business days after mailing. Notices given by courier or other method of personal delivery will be deemed to have been given on the next business day.

2.4 **Assignment.** Except for the access and use rights granted by Ontario Health under this Agreement, nothing in this Agreement assigns to you or any of your agents the intellectual property rights in or to the EHR Information. You may not assign any of your rights or obligations under this Agreement.

2.5 **Governing Law, Attornment and Severability.** This Agreement and the rights, obligations and relations of you and Ontario Health hereunder will be governed by the laws in effect in the Province of Ontario, without regard to choice or conflicts of law rules. You and Ontario Health irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the Province of Ontario with respect to all matters arising out of or relating to this Agreement. Any provision of this Agreement which in any way contravenes the law or which is void, illegal or unenforceable will be deemed to not be a part of this Agreement and will be severable from this Agreement. The remainder of this Agreement will remain in full force and effect.

2.6 **Entire Agreement, Survival.** This Agreement, including any policies, guides or other documents referenced in this Agreement, constitutes the entire agreement between you and Ontario Health relating to its subject matter, supersedes any prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties, and is effective as of the date written below. In the event of any conflict between the appendices, policies or guides referenced

in this Agreement and any term or condition of this Agreement, the terms and conditions of this Agreement will prevail. The provisions of this Agreement, which by their nature extend beyond its expiration or termination, will survive and remain in effect until all obligations are satisfied.

- 2.7 **Amendments:** Ontario Health may amend this Agreement and the referenced Policies, Statement of Information Practices, Guides etc. from time-to-time. In such event, Ontario Health will provide you with notice of such amendment along with its effective date and a link to the amended Agreement, at [www.ehealthontario.on.ca/docs](http://www.ehealthontario.on.ca/docs), (or other referenced website) and such amendment will be binding on you unless you refuse its terms. If you refuse the terms of any amended Agreement you must promptly stop using the Services and advise Ontario Health of your decision.

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