

This **Services Agreement** (this “**Agreement**”) is made effective as of **<Insert effective date of service(s) or date of signing: MMMM, dd, yyyy>** (the “**Effective Date**”). It sets out certain terms and conditions that apply to the services that eHealth Ontario, a corporation under the *Development Corporations Act*, RSO 1990, c. D 10, provides to Client. The references to the “**Client**” in this Agreement are references to the client identified below who has agreed to be bound by this Agreement.

## Client Information

Full Name of Client

**<Insert full client name from CIF>**

|   |                                    |   |                                      |
|---|------------------------------------|---|--------------------------------------|
| Building Address ( <i>number and street name</i> )<br><b>&lt;Insert&gt;</b> |                                    |   | Suite No.<br>                        |
| Building Name ( <i>for multi-building sites</i> )<br>                       | City/Town<br><b>&lt;Insert&gt;</b> | Province<br><b>ON</b>   | Postal Code<br><b>&lt;Insert&gt;</b> |
| Name of Authorized Representative<br><b>&lt;Insert&gt;</b>                  |                                    | Title of Authorized Representative<br><b>&lt;Insert&gt;</b>         |                                      |
| Phone Number of Authorized Representative<br><b>&lt;Insert&gt;</b>          |                                    | Email Address of Authorized Representative<br><b>&lt;Insert&gt;</b> |                                      |

### 1. Definitions

This Agreement includes any Service Schedule accepted by Client and any documents incorporated by reference to this Agreement, as amended from time to time. Unless defined elsewhere, capitalised words have the following meanings:

“**Acceptable Use Policy**” means the acceptable use policy of eHealth Ontario as amended from time to time and available at <http://www.ehealthontario.on.ca/en/about>;

“**Applicable Laws**” means, with respect to any person, property, transaction, event or other matter, any laws, rules, statutes, regulations, orders, judgments, decrees, treaties or other requirements having the force of law applicable in the Province of Ontario and relating to or applicable to such person, property, transaction, event or other matter;

“**Authorized Representative**” means the primary contact of a party with respect to any matters relating to this Agreement appointed by that party;

“**Confidential Information**” means any and all information and materials, which: (i) are designated in writing, as confidential at the time of disclosure, or (ii) if disclosed orally or visually, are designated as confidential at the time of disclosure, or (iii) a reasonable person, having regard to the circumstances and the information, would regard as confidential;

“**End User**” means any Representative of the Client who accesses or uses the Services.

“**Personal Information**” means all recorded information that is about an identifiable individual or is defined as or deemed to be personal information pursuant to any Applicable Laws related to privacy or data protection, including personal health information (as that term is defined in the *Personal Health Information Protection Act*, 2004);

“**Primary Contact**” means a Representative of a party who will be appointed for each instance of any Service the primary contact for the other party with respect to all matters relating to that instance of the Services;

“**Privacy Representative**” means the Representative of a party responsible for privacy

**"Representatives"** means, in the case of eHealth Ontario or Client, any directors, officers, employees, agents, consultants or subcontractors (including service providers) to eHealth Ontario or Client, as the case may be, as well as the directors, officers, employees or agents of any subcontractor, of each such party.

**"Service(s)"** means the various information management and technology services provided to Client by eHealth Ontario and used by Client pursuant to this Agreement and in accordance with the terms and conditions of this Agreement.

**"Service Schedule(s)"** means the individual service schedule(s) between eHealth Ontario and Client governing the provision of specific information management and technology services to Client by eHealth Ontario, which schedules are incorporated by reference to this Agreement. Each Service Schedule consists of: (i) a description of the applicable service; (ii) the service level commitments which eHealth Ontario makes with respect to that service; and (iii) any additional terms and conditions which govern eHealth Ontario's provision of that service.

## 2. Service Request by Client

Client may order a Service from eHealth Ontario by completing the applicable Service Schedule and submitting it to eHealth Ontario.

## 3. Provision of Services

3.1 The Services are provided in accordance with the terms and conditions of this Agreement and the applicable Service Schedule.

3.2 eHealth Ontario warrants that the Services will be performed in a good and workmanlike manner in accordance with standards and practices reasonably applicable to services of a similar nature and that any Service provided pursuant to this Agreement will substantially comply with the applicable plain language description and any further specifications set out in the applicable Service Schedule.

3.3 The Service Schedule for each Service sets out the service level metrics, if any, which apply to that Service. eHealth Ontario will provide that Service substantially in accordance with those service level metrics.

3.4 By engaging eHealth Ontario to provide a Service, Client agrees to perform any tasks attributed to Client in the Service Schedule for that Service, and Client agrees that eHealth Ontario will not be liable for any failure by eHealth Ontario to provide that Service to the extent caused in whole or in part by any failure of Client to do so or to fulfil its obligations elsewhere in this Agreement and eHealth Ontario agrees that Client will not be liable for any failure by Client to fulfil its obligations to the extent that such failure is caused in whole or in part by any failure of eHealth Ontario to fulfil its obligations elsewhere in this Agreement.

3.5 Any services not expressly set out in any Service Schedule but that are related to the Services that are requested by Client and that eHealth Ontario in its sole discretion may provide are deemed to be Services provided pursuant to the terms and conditions of this Agreement.

3.6 Each Service Schedule will contain a plain language description of the Services provided under it and a plain language description of the safeguards implemented by eHealth Ontario to protect against the unauthorized use and disclosure of, and to protect the integrity of, Personal Information.

## 4. Representatives and End Users

Client is responsible for causing its Representatives and End Users to comply with the terms and conditions of this Agreement, and a breach of this Agreement by a Client Representative or an End User is a breach of this Agreement by Client. eHealth Ontario is responsible for causing its Representatives to comply with the terms and conditions of this Agreement, and a breach of this Agreement by any such Representative is a breach of this Agreement by eHealth Ontario. Client will ensure that only its End Users will access or use the Services on its behalf.

## 5. Contacts

5.1 eHealth Ontario and Client will each appoint an Authorized Representative. A party may change its Authorized Representative by giving the other party written notice setting out the name and contact information for the new Authorized Representative. An Authorized Representative may delegate his

or her responsibility by giving the other party written notice setting out the name and contact information of the individual to whom responsibility is being delegated. An Authorized Representative may delegate his or her responsibility with respect to privacy matters only to a Privacy Representative by giving the other party written notice setting out the name and contact information of the individual to whom responsibility is delegated.

- 5.2 Additionally, each party will appoint a Primary Contact. Either party may change any one of its Primary Contacts by giving the other party written notice setting out the name and contact information for the new Primary Contact.
- 5.3 A party's Authorized Representative may also be the Primary Contact for the party for one or more instances of any Service.
- 5.4 Unless otherwise set out in a Service Schedule, any material concern regarding either party's compliance with this Agreement (including any concern regarding whether eHealth Ontario is providing any Service substantially in compliance with any service level metrics set out in the applicable Service Schedule) will be addressed by eHealth Ontario and Client in the following manner:
- (i) The applicable Primary Contacts will review the concern and attempt to agree upon how (if at all) to respond to the concern. If the Primary Contacts cannot agree on how (if at all) to respond to the concern, the concern will be escalated to the Authorized Representatives of each party for resolution.
  - (ii) The Client's Authorized Representative and eHealth Ontario's Authorized Representative will review the concern and attempt to agree upon how (if at all) to respond to the concern. If the Authorized Representatives cannot agree on how (if at all) to respond to the concern, the concern will be escalated to the Representatives of each party to whom the Authorized Representatives report for resolution.

Each party will provide open and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

## 6. Policies

- 6.1 Client agrees to use, and to require its End Users to use the Services in accordance with eHealth Ontario's Acceptable Use Policy.
- 6.2 In order to receive certain Services, Client may be required to agree to abide by certain eHealth Ontario policies in addition to eHealth Ontario's Acceptable Use Policy. If Client is required to agree to abide by any additional policy (for example, a privacy policy, security policy), that policy will be identified in the Service Schedule for that Service, and eHealth Ontario will appropriately identify and make that policy available to Client at <http://www.ehealthontario.on.ca/en/about> and provide it to Client with the applicable Service Schedule. Any amendment of any such policy will be in accordance with the terms and conditions of the applicable Service Schedule.
- 6.3 eHealth Ontario may amend the Acceptable Use Policy, from time-to-time and will notify Client of any revision to its policies by email in accordance with section 14 and by posting the revision on the eHealth Ontario website at <http://www.ehealthontario.on.ca/en/about>. Client is responsible for reviewing and retaining a copy of any amended Acceptable Use Policy. The Client's continued use of the Services constitutes acceptance of any amended Acceptable Use Policy. Notwithstanding anything to the contrary in this Agreement, for a period of 10 business days following the date on which a notice of any amendment is deemed to have been received, if that amendment is unacceptable to Client, Client may terminate this Agreement upon 30 days written notice to eHealth Ontario.
- 6.4 Unless otherwise expressly set out in the applicable Service Schedule, any violation of the eHealth Ontario policies or any Applicable Laws by Client (or by any End User) is a material breach of this Agreement by Client and eHealth Ontario may, in its sole discretion, restrict or suspend the Services, upon written notice, without an opportunity to cure notwithstanding section 11. When exercising its rights under this section, eHealth Ontario will act reasonably and respond in a manner proportional to the severity of the violation (for example, suspending Services to an End User when that End User has breached the Acceptable Use Policy rather than suspending all Services).

**7. Security**

- 7.1 eHealth Ontario will put in place, or cause its suppliers to put in place, reasonable security measures to secure eHealth Ontario's data centre facilities and any other facilities where Client data is stored from unauthorized entry including access controls and maintaining logs of all personnel who enter.
- 7.2 eHealth Ontario will ensure that its Representatives who are permitted access to its data centre facilities or any other facilities where Client data is stored have undergone and passed a criminal indices check and have signed a non-disclosure agreement.
- 7.3 eHealth Ontario will design, implement, and manage the technology infrastructure used to provide the Services in a manner consistent with good information security practices and all applicable laws and regulations.

**8. Confidential Information, Privacy and Personal Information**

- 8.1 Unless it is also Personal Information, the Confidential Information of a party does not include information which:
- (i) is or at any time becomes part of the public domain other than by a breach of this Agreement by a receiving party;
  - (ii) at the time when it is disclosed or access is granted to the other party, is known to the receiving party (as substantiated by cogent and reliable written evidence in that party's possession) free of any restrictions;
  - (iii) is independently developed by the receiving party without access to the disclosing party's Confidential Information; and
  - (iv) is disclosed without any restrictions to another party by a third party who had a right to make such disclosure.
- 8.2 Both parties recognize that the protection of Confidential Information by the receiving party is of vital importance. As between the parties, the disclosing party is the owner of that Confidential Information. Except to the extent set out in this Agreement, no interest, license or other right in or to Confidential Information is granted to the receiving party and all information provided by a party is provided on an "as is" basis, without any warranty, representation or condition of any kind.
- 8.3 With respect to a disclosing party's Confidential Information, the receiving party will:
- (i) use that Confidential Information only in accordance with this Agreement and only for the purpose of fulfilling its obligations and exercising its rights under this Agreement, and will not use, manipulate or exploit that Confidential Information for any other purpose;
  - (ii) use the same degree of care it uses to protect its own Confidential Information of a like nature and in any event, use a standard no less than a reasonable degree of care;
  - (iii) permit access to or disclosure of that Confidential Information only to its Representatives who have a need to know and are bound by a written contract to keep the Confidential Information of third parties confidential, at least to the same extent as set forth in this Agreement; and
  - (v) notify the disclosing party as soon as possible upon becoming aware of any unauthorized access to, use, or disclosure of that Confidential Information.
- 8.4 Unless otherwise set out in a Service Schedule, upon the termination of this Agreement or if a party so requests (provided that the request would not result in the other party being unable to perform its obligations or exercise its rights under this Agreement), the other party will:
- (i) return all Confidential Information disclosed to it by the party and all copies thereof, regardless of form;
  - (ii) securely destroy any such Confidential Information that cannot be returned; and
  - (iii) furnish, as soon as reasonably practicable, a certificate signed by one of its executives attesting to such return or destruction.

Notwithstanding the foregoing, each party may retain any back-up tapes or disks produced in conjunction with the Services until such time as they are scheduled to be destroyed in accordance with that party's policies and procedures with respect to the retention of back-ups; and either party may retain any Confidential Information of the other party that it is required to retain pursuant to Applicable Laws for so long as it is required to do so.

- 8.5 Neither party will be liable for disclosing the other party's Confidential Information if required by Applicable Laws: provided that the party disclosing the Confidential Information, to the extent permitted by law, notifies the other party of any such requirement as soon as legally permissible, so that the other party may seek a protective order or other relief.
- 8.6 When the Services are used by Client to manage Personal Information, eHealth Ontario will provide all assistance that Client reasonably requests in regard to any concerns or complaints expressed by any person that relate to the management of that person's Personal Information.
- 8.7 Each party agrees that the unauthorized access, use or disclosure of the other party's Confidential Information may cause irreparable injury to the other party, and the other party is entitled to seek injunctive and other equitable relief, as a matter of right.
- 8.8 Client will at the first reasonable opportunity report to eHealth Ontario's service desk, at 1-866-250-1554 or servicedesk@ehealthontario.on.ca, and eHealth Ontario will at the first reasonable opportunity report to Client, all security or privacy incidents of which the reporting party becomes aware involving the Services. When reporting any such incident, the reporting party will provide all information that it is reasonably able to provide with respect to the incident. Further, the reporting party will provide reasonable assistance and co-operation to the other party to investigate, verify and resolve the incident, including co-operation in any public response.
- 8.9 Client's name, address and the Services provided to Client by eHealth Ontario are not considered Confidential Information and Client agrees that eHealth Ontario may list this information on one or more public websites, and in other publicly available paper or electronic publications.

## **9. Intellectual Property**

Subject to any rights or licenses as are expressly set out in this Agreement, no intellectual property rights are transferred by either party to the other party under this Agreement. Neither party will remove any confidentiality, copyright or other proprietary rights notices from any materials provided to it by the other party. Client acknowledges that Client has no right, title or interest in or to any IP addresses assigned to Client by eHealth Ontario or its Representatives in connection with any Services. If a fixed IP address is assigned to Client, eHealth Ontario or its Representatives may change any such address upon notice to Client.

## **10. Pricing, Payment and Cost Allocation**

- 10.1 Unless otherwise expressly set out in a Service Schedule, eHealth Ontario will bear the cost of delivering the Services.
- 10.2 Client will bear the cost and responsibility of engaging and using the Services, including acquiring, installing and maintaining any equipment and telecommunications facilities required by Client to obtain the Services and interconnect with eHealth Ontario's technology infrastructure.

## **11. Term and Termination**

- 11.1 This Agreement will commence as of the Effective Date and continues until terminated in accordance with the terms and conditions of this Agreement.
- 11.2 Unless otherwise set out in a Service Schedule, either party may terminate this Agreement or any Service Schedule without liability, cost, penalty or prejudice to any other rights or remedies under this Agreement upon giving at least 120 days written notice to the other party.
- 11.3 Unless otherwise set out in the Service Schedules, in the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement or the affected Service Schedule upon written notice to the other party provided that the non-defaulting party has given the breaching party prior written notice of the breach which describes the nature of the breach and the breaching party has failed to cure the breach within 30 days of the prior written notice.
- 11.4 This Agreement will automatically terminate if either party is wound up in accordance with its enabling regulation or under Applicable Laws.
- 11.5 In the event of the expiration or termination of this Agreement for any reason whatsoever, and where applicable to the Service, if requested by Client eHealth Ontario will provide reasonable assistance to

Client in connection with Client's transition to another service provider. eHealth Ontario will provide such assistance for a period not to exceed 120 days from such request.

- 11.6 The provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied including sections 4, 5, 6, 7, 8, 9, 11.5, 11.6, 12, 14, and 15.

### **12. Limitation of Liability**

- 12.1 Client acknowledges that the Services may not always be available or error free, and with the exception of any express warranties contained in this Agreement or any Service Schedules, eHealth Ontario expressly disclaims any other representations, warranties, or conditions with respect to the Services or otherwise arising from or relating to this Agreement whether express or implied, past or present, statutory or otherwise, including any implied warranties and conditions of merchantable quality or fitness for a particular purpose.
- 12.2 Except as otherwise expressly set forth in this Agreement or in any Service Schedules, in no event will either party be liable to the other party for indirect, special, consequential, incidental, punitive or exemplary losses, damage or expenses or for loss of data, lost revenue or lost profit, even if it has been advised of their possible existence, or even if same were reasonably foreseeable. With respect to any claims arising from or relating to any Service, in no event will the total cumulative liability of eHealth Ontario (including its Representatives) exceed the cap on liability set out in the applicable Service Schedule. With respect to any other claims arising from or relating to this Agreement, in no event will the total cumulative liability of either party (including its Representatives) exceed one thousand dollars (\$1,000.00). This limitation will apply irrespective of the nature of the cause of action, demand or claim, including breach of contract, negligence, tort or any other legal theory and will survive failure of the essential purpose of the Agreement or of any remedy.
- 12.3 The limitations of liability set out in this section 12 do not apply to any claim arising from the fraud or wilful misconduct of a party, or any of their Representatives or from any breach by a party, or any of their Representatives of any of the obligations under sections 7 and 8 or pursuant to Applicable Laws.

### **13. Insurance**

In addition to any insurance requirements set out in a Service Schedule, Client will maintain, for the duration of this Agreement and at its sole cost, insurance against such risks and in such amounts that could reasonably be expected by persons acting prudently and engaged in similar activities as Client. eHealth Ontario will maintain, for the duration of this Agreement and at its sole cost, insurance against such risks and in such amounts that could reasonably be expected by persons acting prudently and engaged in similar activities as eHealth Ontario. Such insurance will be with insurance carriers licensed to conduct business in the Province of Ontario and reasonably acceptable to the Government of Ontario's Risk Management and Insurance Services Unit. Neither the minimum amounts of insurance coverage referred to in this Agreement, nor any approval or waiver of any such insurance coverage by either party, will be construed to limit or qualify in any manner the liabilities and obligations imposed on each party pursuant to this Agreement.

### **14. Notice**

Any notice or other significant communication given pursuant to this Agreement will be in writing addressed to the attention of that party's Authorized Representative at the party's head office.

Unless otherwise set out in a Service Schedule or elsewhere in this Agreement, with respect to any notices concerning this Agreement, eHealth Ontario's Authorized Representative is:

Attention: General Counsel, Legal Services,  
P.O. Box 148,  
777 Bay Street, Suite 701  
Toronto, Ontario  
M5G 2C8  
email: [GeneralCounsel-CorporateSecretary@ehealthontario.on.ca](mailto:GeneralCounsel-CorporateSecretary@ehealthontario.on.ca)

If any notice under this Agreement is sent by e-mail, a copy will also be sent by courier or mail, unless such requirement is waived by the other party in writing.

Any such notice will be deemed to have been received either when:

- (i) delivered personally to the party for whom intended,
- (ii) one business day following deposit with a globally recognized overnight delivery service, all delivery charges pre-paid,
- (iii) if sent by e-mail, when it enters the receiving party's information system and becomes capable of being retrieved and processed by the receiving party, with originals by mail unless such requirement is waived by the receiving party, or
- (iv) the business day following transmission if sent by facsimile, with originals by mail, and receipt confirmed by the facsimile machine used. Either party may designate a different address by notice to the other given in accordance herewith.

### **15. General**

- 15.1 In connection with this Agreement and any Services eHealth Ontario and Client agree to comply with all Applicable Laws.
- 15.2 This Agreement will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to the conflict of laws provisions. The parties consent to the jurisdiction of the courts of Ontario.
- 15.3 This Agreement, including any applicable Service Schedules, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties. Unless otherwise expressly indicated in the applicable Service Schedule, in the event of any inconsistency between the body of this Agreement and any Service Schedule, the body of this Agreement will govern. Unless otherwise expressly indicated, in the event of any inconsistency between two or more Service Schedules, the Service Schedule with the most recent "effective date" will govern.
- 15.4 Except as expressly set out in this Agreement or the applicable Service Schedule, no amendment, supplement, modification or waiver of this Agreement by a party will be binding on the other party unless executed in writing by the party intended to be bound.
- 15.5 Headings are inserted for convenience of reference only and will not affect the construction or interpretation of the Agreement. Where the word "including" is used in the Agreement, it means "including but not limited to". Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- 15.6 No waiver of any part of this Agreement will be deemed to be a waiver of any other provision. No term of this Agreement will be deemed to be waived by reason of any previous failure to enforce it. No term of this Agreement may be waived except in a writing signed by the party waiving enforcement.
- 15.7 Unless otherwise required under Applicable Law, neither party may assign this Agreement or any right or obligation under the Agreement without receiving the other party's written consent in advance, which consent will not be unreasonably withheld; provided that, eHealth Ontario may assign this Agreement to the Ministry of Health and Long-Term Care or an agency of Crown that is subject to privacy laws that are at least as protective of Client data as those applicable to eHealth Ontario.
- 15.8 eHealth Ontario and Client are and will be considered independent contractors. Neither party will represent, in any manner, to any third party that it is an agent, employee, partner, or joint-venturer of the other.
- 15.9 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 provided that such party gives the other party prompt notice of such cause, and uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If eHealth Ontario is unable to provide any Service for a period of 30 consecutive days as a result of a continuing force majeure event, either party may terminate this Agreement upon written notice to the other party without any further liability or obligation of either party hereunder.

15.10 Each party will provide the other party with such information as the other party may reasonably require to perform its responsibilities and/or exercise its rights under this Agreement. Both Parties agree to promptly perform, make, execute, deliver, or cause to be performed, made, executed, or delivered all such further acts and documents as the other party may reasonably require for the purpose of giving effect to this Agreement.

### 16. Amendment of Service Schedules

Unless otherwise set out in a Service Schedule, eHealth Ontario may revise its Service Schedules from time to time, in its sole discretion, and Client agrees to abide by any such Service Schedule as amended from time to time. eHealth Ontario will give Client notice of any such changes to the Service Schedule by providing notice in accordance with Section 14 and by posting the revised Service Schedule on its website at [www.ehealthontario.on.ca/docs](http://www.ehealthontario.on.ca/docs). Client is responsible for reviewing and retaining a copy of any amended Service Schedule. The Client's continued use of the applicable Services constitutes acceptance of any amended Service Schedule. Notwithstanding anything to the contrary in this Agreement, for a period of 10 business days following any date on which the notice of any amendment is deemed to have been received, if that amendment is unacceptable to Client, Client may terminate the applicable Service Schedule or this Agreement upon 120 days written notice to eHealth Ontario.

### AGREED:

<Insert full client name from CIF>

eHEALTH ONTARIO

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