

This document (this “**Schedule**”) is the Schedule for Services (“**EHR Access Services**”) related to access to the electronic health records (“**EHR**”) maintained by eHealth Ontario and the use of information in such records (“**EHR Information**”, as further detailed below) by the Client identified below and, for the avoidance of doubt, does not apply to the contribution of data to the EHR. This Schedule is made pursuant to the Services Agreement (the “**Agreement**”) between eHealth Ontario and Client dated **<effective date of SA: MMMM, dd, yyyy>** and is made effective as of **<this schedule's signing date: MMMM, dd, yyyy>** (the “**Effective Date**”). EHR Access Services will be provided by eHealth Ontario upon Client’s acceptance of the terms and conditions in this Schedule and eHealth Ontario’s written confirmation that it has received and accepted that signed Schedule.

Full Name of Client

<Insert full client name from CIF>

1 **Definitions.**

Unless otherwise specified in this Schedule, capitalised words have the same meanings as those assigned to them in the Agreement:

“**Client Systems**” means the computer systems, peripherals, terminals, communications equipment and all related hardware and software owned or leased by Client that will be used by Client to access and use EHR Information through a Computer Application;

“**Computer Application**” means any software program which is (i) licensed or owned by a Computer Application Provider and (ii) is approved by eHealth Ontario including as the application used to access and use EHR Information. The Computer Application is accessed and used by Client in connection with Client’s use of the EHR Access Services;

“**Computer Application Provider**” means eHealth Ontario or the organisation that (i) licenses or owns the Computer Application and (ii) is approved by eHealth Ontario to provide a Computer Application for use by a Client in connection with Client’s use of the EHR Access Services;

“**EHR Information**” includes any personal health information and related personal information of Individuals in the EHR, but excludes information that i) is accessed from the EHR System and has become part of the records or ii) is already part of the records of a health information custodian (as that term is defined in the *Personal Health Information Protection Act*, 2004 or PHIPA);

“**EHR Access Services**” means the services to Client that allow a Client’s authorised Registrants to access and use EHR Information for Individuals in their care through the Computer Application, as further described in section 2 below;

“**Health Care Provider Guide**” means the toolkit of materials, guides and information about the EHR provided to Client and available on line at www.ehealthontario.on.ca/docs, as identified for the applicable EHR and may be updated from time to time by eHealth Ontario in accordance with the Agreement;

“**Individual**” means a person to whom the EHR Information relates;

“**Ministry**” means the Ministry of Health and Long Term Care;

“**Privacy Officer**” is the Client Representative responsible for ensuring Client’s compliance with its own privacy obligations under Applicable Laws and/or those privacy and security related obligations under this Schedule. The Privacy Officer is further responsible for: (i) audit compliance, (ii) incident management related to privacy and security matters, and (iii) acting as a liaison with eHealth Ontario; and

“**Registrant**” means an End User associated with Client who has or requires access to and use of the EHR Access Services.

2 **Provision, Authorised Access and Use.**

2.1 Access to the Computer Application. The Client is solely responsible for: (i) arranging access to and use of a Computer Application with the applicable Computer Application Provider; and (ii)

- any modification or upgrade to Client Systems related to access to and use of such Computer Application, including any costs related to initial and ongoing access and use of the Computer Application. Any issues with access to or use of the Computer Application will be directed to the Computer Application Provider.
- 2.2 **Provision of Services.** When requesting the EHR Access Services, Client should complete, sign and submit this Schedule. The provision of EHR Access Services to Client is subject to the terms and conditions of the Agreement, including this Schedule, and to eHealth Ontario confirming in writing that it has accepted the Schedule as signed by Client. No ownership in or to EHR Information is transferred to Client by virtue of this Schedule and Client has only the limited right to access and use EHR Information as set out in this Schedule.
- 2.3 **Authorisation Grant.** eHealth Ontario grants to Client the right to authorise Registrants to access and use EHR Information through a Computer Application solely for the purpose of providing or assisting in the provision of health care to Individuals seeking care from Client and/or its authorised Registrants.
- 2.4 **EHR Information Access.** For the purposes of clarity:
- (a) when EHR Information appears in viewable form through the Computer Application, the EHR Information will have been accessed by the Client; and
 - (b) nothing in this Schedule will prevent the Client and/or a Registrant from incorporating EHR Information into the clinical record of an Individual; provided that, such EHR Information was obtained solely from the Computer Application in connection with that Individual seeking or receiving health care from the Client or a Registrant.
- 2.5 **Access to and Use of EHR Information.** As a condition of Client receiving the EHR Access Services through the Computer Application and of any Registrant and/or Client gaining access to and using EHR Information, the Client agrees to be responsible for:
- (a) appointing a Privacy Officer to manage its obligations under this Schedule and to act as liaison with eHealth Ontario;
 - (b) ensuring that this authorisation to access and use of EHR Information is implemented and operated in accordance with the Agreement and this Schedule;
 - (c) ensuring that it and any of its Registrants access and use of EHR Information is in compliance with use and access requirements/obligations contained in the Agreement and this Schedule, including the Health Care Provider Guide;
 - (d) where there is non-compliance by it or any Registrant, communicating that non-compliance to eHealth Ontario in accordance with section 4.3 and restricting any non-compliant Registrant from any use or access to the EHR Access Services and any EHR Information in accordance with section 4.6 as further detailed in the incident management procedures contained in the Health Care Provider Guide;
 - (e) ensuring the validity of any Registrant's identity prior to seeking access to the Computer Application for that Registrant;
 - (f) ensuring that any information concerning a Registrant is completely and accurately maintained, including updating such information when any aspect of that information changes;
 - (g) ensuring that the Computer Application Provider is notified when a Registrant no longer requires access to or use of the Computer Application as soon as reasonably possible; and
 - (h) ensuring that, in any agreement it has for access to and use of a Computer Application with a Computer Application Provider, such agreement is consistent with the terms and conditions of this Schedule, including notifications and information concerning Registrants.
- 2.6 Client acknowledges that the EHR Access Services are provided to Client solely for the access to and use of EHR Information by Client and its Registrants in connection with the provision of health care services to Individuals in their care, and not for any other use or use by any other person. Client will ensure that it will not permit any other use or any other person to use the EHR Access Services.

3. Disclaimer

- 3.1. Except as expressly provided in the Agreement and this Schedule, eHealth Ontario makes no warranties, representations, conditions, promises or indemnities of any kind, express or implied, statutory or otherwise:
- (a) with respect to the operation of the EHR Access Services or accessibility of EHR Information; or
 - (b) regarding the accuracy, authenticity, completeness, reliability, currency, veracity, merchantable quality or fitness for a particular purpose of the EHR Information accessible through the EHR Access Services;

and assumes no liability for any diagnostic, treatment, health care decision or any other decision or action taken by any person using the EHR Information. The foregoing will not apply to the extent any EHR Information was modified or created by eHealth Ontario or its Representatives in connection with the EHR Access Services.

- 3.2. Client acknowledges that the EHR Information that is accessible through the EHR Access Services:
- (a) is limited to such information that has been submitted to eHealth Ontario in respect of Individuals by parties other than eHealth Ontario, which may include the Client and its Registrants;
 - (b) may be only that portion of information that an Individual has consented to release; and
 - (c) may not necessarily contain all of the Personal Information of any Individual.

4 Privacy and Security

- 4.1 eHealth Ontario represents, and warrants that it is permitted under Applicable Laws to make accessible the EHR Information.

- 4.2 Client warrants that:

- (a) it is permitted under Applicable Laws to connect to the Computer Application and access EHR Information;
- (b) no person other than its Registrants who have a need to access EHR Information for the provision of health care services to Individuals in their care will access EHR Information in or through the EHR Access Services;
- (c) it will, and will cause each of its Registrants to, comply with Applicable Laws and to only access and use EHR Information in or through the EHR Access Services in compliance with Applicable Laws and the terms and conditions of this Schedule and the Agreement;
- (d) it will take, and require its Registrants to take, all reasonable steps to protect any eHealth Ontario EHR and EHR Information from and against any unauthorised access, collection, use, disclosure, modification, retention or disposal;
- (e) it will not, and require its Registrants to not intentionally insert, into any part or component of any eHealth Ontario EHR or into the EHR Information any virus, time lock, clock, back door, disabling device or other code, routine or instruction which tends to destroy, corrupt or disable software, data or systems or allow unauthorised access thereto;
- (f) it will, and require its Registrants to, co-operate with any reporting, audit or monitoring program required by eHealth Ontario with respect to any eHealth Ontario EHR or EHR Information;
- (g) it will not use, and require its Registrants to not use, any EHR Information for any research or any other secondary purposes unless permitted by Applicable Law;

- (h) where any consent directive is in place for an Individual's data in any eHealth Ontario EHR, it will only override consent directive(s) in accordance with the applicable procedures set out in the Health Care Provider Guide; and
 - (i) where a consent directive override has been authorised by an Individual's substitute decision maker and cannot be communicated electronically, Client will record the name of the substitute decision maker and their relationship to that Individual and provide this information to eHealth Ontario upon request.
- 4.3 Client will notify the eHealth Ontario Service Desk at the first reasonable opportunity (i) upon the occurrence of any breach of any provision of this Schedule; (ii) upon discovery or reasonable suspicion of any unauthorised access to or use of an eHealth Ontario EHR or any EHR Information by any third party or of any issue with the accuracy or integrity of any EHR Information; or (iii) in any other circumstances provided for in the Health Care Provider Guide with respect to reporting a privacy or security breach. Client will provide notice and otherwise assist eHealth Ontario in addressing the foregoing by at the first reasonable opportunity telephoning the eHealth Ontario Service Desk, with a detailed follow-up by email; provided that no Personal Information is included in the email. Client will co-operate with eHealth Ontario in any investigation, verification or public response that arises in connection with the foregoing.
- 4.4 Client agrees to actively monitor its Client Systems by installing commercially available anti-virus and system monitoring software that, among other things, contemporaneously detect the status and findings of anti-virus scans and other monitoring reasonably applicable in health care information technology systems. Client agrees to have in place and maintain such software at all times. eHealth Ontario agrees to actively monitor its systems by installing commercially available anti-virus and system monitoring software that, among other things, contemporaneously detect the status and findings of anti-virus scans and other monitoring reasonably applicable in health care information technology systems. eHealth Ontario agrees to have in place and maintain such software at all times.
- 4.5 The Privacy Officer or his/her delegate must generate or acquire, where available, from the Computer Application Provider an audit report on a subset of user access to the Computer Application and Client Systems on a quarterly basis. The audit report will set out the results of the audit, including details of restrictions or revocation of access, any restoration of access and reasons for such restoration, and Client's compliance with sections 2.5(b) and 4.3 of this Schedule. Client will keep that report for seven (7) years or for such period of time as required by Applicable Laws, whichever is longer. Upon production of this audit report the Privacy Officer will review the audit report in order to ensure Client's ongoing compliance with the terms of this Schedule and the Agreement, and at the first reasonable opportunity notify eHealth Ontario of any instance of non-compliance in accordance with section 8, below.
- 4.6 Client controls the right to access the EHR Access Services for its Registrants. In the event eHealth Ontario detects inappropriate use of any EHR Information by any Registrant, Client must disable either directly or through the Computer Application Provider that Registrant's access to EHR Information as soon as reasonably possible after the incident is communicated to Client by eHealth Ontario, but in no event longer than the time specified in such communication, and that access must remain disabled until such time as eHealth Ontario notifies Client otherwise. If Client fails to disable access as set out above, eHealth Ontario reserves the right to disable access to any and all eHealth Ontario EHRs for all Registrants. Any restoration of access for any Registrant(s) will be at the sole discretion of eHealth Ontario.
- 4.7 Upon request by eHealth Ontario, the Client will provide a copy of any privacy or security assessments conducted on any Client Systems that are involved in the access to or use of the EHR Access Services, including EHR Information, as soon as reasonably possible. Any such assessments will be deemed to constitute Confidential Information of Client and may only be disclosed to third parties or used by eHealth Ontario to assess the privacy and security of Client's systems in respect of the EHR Access Services.
- 4.8 Each party will maintain privacy and security procedures, practices and controls in compliance with Applicable Laws, including any orders of the Office of the Information and Privacy

Commissioner of Ontario. Security controls should endeavour to follow reasonable industry practice for information security management.

- 4.9 **Access Requests and Complaints.** Upon receipt by Client of either of the following:
- (a) a request received from an Individual, or that Individual's substitute decision maker, relating to, among other things, that Individual's right to access, modify or correct their EHR Information; or
 - (b) an enquiry or complaint from an Individual, or that Individual's substitute decision maker, relating to eHealth Ontario and/or any eHealth Ontario EHR,
- the Client will follow the applicable procedure set out in the Health Care Provider Guide.

5 **Audit.**

In addition to any rights under the Agreement, Client authorises eHealth Ontario and its Representatives, upon five (5) days written notice and during Client's regular business hours, to inspect any records and documents in the possession or under the control of Client relating to responsibilities of Client as provided under this Schedule. Any such information will be deemed to be Confidential Information of Client. eHealth Ontario may exercise its rights under this section to verify compliance with the terms and conditions of this Schedule and any applicable terms of the Agreement.

6 **Term, Termination and Suspension.**

- 6.1 **Term.** This Schedule will commence as of the Effective Date and will continue unless terminated in compliance with Applicable Laws or in writing by both parties.
- 6.2 **Suspension of Services.** In compliance with Applicable Laws, either party may immediately suspend the access to EHR Access Services if it reasonably believes that there is i) a breach of any material term of this Agreement or ii) an emergency or extreme circumstance that would warrant such action including a compromise of the integrity, security or privacy of any EHR Information. In addition, eHealth Ontario may suspend the EHR Access Services if the Ministry requires eHealth Ontario to suspend or terminate the EHR Access Services for any reason. Such party will notify the other party in writing as set out in the Notice section of the Agreement.
- Client acknowledges that the Ministry and/or such other health information custodian(s) that submitted such information to the eHealth Ontario EHR, may, in their sole and absolute discretion, direct eHealth Ontario to suspend clinician access to the applicable EHR Information and, where so directed, eHealth Ontario will suspend such access within such period of time as directed. eHealth Ontario will provide notice of such direction to Client, including when the suspension is to take effect, as soon as reasonably possible after receiving such direction.
- 6.3 **Termination.** Irrespective of sections 11.2 and 11.3 of the Agreement this Schedule may only be terminated upon the mutual written agreement of both parties, and if the Agreement is terminated for any reason, the terms and conditions of the Agreement will continue to apply to this Schedule.
- 6.4 **Survival.** In the event of any expiration or termination of this Schedule for any reason whatsoever, those provisions of this Schedule that by their nature are meant to survive expiration or termination will survive, including sections 4.5, 5, 6.3, 7 and 8.

7 **Limitation of Liability.**

The first sentence of section 12.2 of the Agreement shall not be applicable to any liability arising under or pursuant to this Services Schedule

The total cumulative liability of one party to the other concerning performance or non-performance under this Schedule will not in the aggregate exceed \$2,000,000. 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. The foregoing limitations do not apply to losses, expenses, costs, damages or liabilities that are: (a) caused by the fraud or wilful misconduct of a party or any of its Representatives or from any breach by a party or its Representatives of Applicable Laws; or (b) recoverable pursuant to an indemnification or other third party obligation provided to eHealth Ontario by one of its subcontractors or agents where such indemnification or other third party obligation is applicable to the Client, but only to the extent eHealth Ontario is actually able, using its reasonable and diligent efforts, to recover such losses, expenses, costs, damages or liabilities from such subcontractor or agent, and any such recovery will be shared on an equitable basis as between eHealth Ontario, Client and other clients who suffered losses, expenses, costs, damages or liabilities within the scope of any such indemnification obligations. For clarity, in respect of the foregoing, eHealth Ontario agrees to use reasonable and diligent efforts to maintain, and not amend to Client's detriment, such indemnification or other third party obligations.

8 Notices for Privacy Matters.

In addition to the notice obligations set out in the Agreement, any notice required by this Schedule, including notice of real or suspected privacy or security breaches, or matters related to access requests pursuant to this Schedule will, unless otherwise indicated herein, be provided:

- (i) to eHealth, to the eHealth Ontario Service Desk, at:
 Tel.: 1-866-250-1554
 Email: servicedesk@ehealthontario.on.ca
- (ii) to the Client, to the attention of the Client's Privacy Officer or delegate at:

Name: <Insert>		Title: <Insert>	
Address (number and street name and/or P.O. box) <Insert>			Suite No.
Building Name (for multi-building sites) 	City/Town <Insert>	Province ON	Postal Code <Insert>
Phone Number: <Insert>		Email Address: <Insert>	

Either eHealth or the Client may designate a different address by notice to the other given in accordance with the Agreement.

9 Plain Language Descriptions.

Client hereby acknowledges receiving from eHealth Ontario the plain language descriptions of the EHR Access Services and the safeguards implemented by eHealth Ontario to protect against unauthorised use and disclosure of and to protect the integrity of personal health information (as that term is defined in PHIPA) or Personal Information. The current copy of the plain language descriptions is attached to this Schedule as Exhibit "A" and is also identified and available on line at www.ehealthontario.on.ca/docs. eHealth Ontario may amend the plain language descriptions from time-to-time in accordance with the Agreement .

10 **General Provisions.**

Entire Agreement and Amendment. With the exception of the Agreement and any other document attached thereto or expressly incorporated into this Schedule, this Schedule constitutes the entire agreement between the parties with respect to the EHR Access Services and supersedes any prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties. In the event of any inconsistency between the Agreement and this Schedule, this Schedule will govern. Other than for the Acceptable Use Policy, in the event of an inconsistency between the Agreement and this Schedule, on the one hand, and any applicable policy, on the other hand, the Agreement and this Schedule will govern. The parties acknowledge and agree that the execution of this Schedule has not been induced by, nor have either of the parties relied upon or regard as material, any representations or writings whatsoever not incorporated and made a part of this Schedule. eHealth Ontario may amend this Schedule and Health Care Provider Guide as follows:

- (a) Notwithstanding section 16 of the Agreement, any amendments to this Schedule must be in writing and signed by a duly authorised officer of Client; and
- (b) Notice of the introduction of any new, or any revisions to, the Health Care Provider Guide for applicable EHRs or other policies applicable to Client (other than the Acceptable Use Policy) will be given to Client with at least 120 days written notice (along with a copy), unless otherwise required by Applicable Laws.

eHealth Ontario and Client identified below have entered into an eHealth Ontario Services Agreement. The terms and conditions which apply to the EHR Access Services and related services are set out in the Agreement and this Schedule.

By signing below, as a health information custodian, Client is requesting the EHR Access Services and acknowledging that eHealth Ontario’s provision of such services and Client’s use of such services will be in accordance with the terms and conditions of this Schedule and the Agreement.

Signature block has been removed for this sample

Exhibit “A” – Plain Language Description

A EHR Access

Health care providers will be granted access to the EHR Access Services in order to allow them to access and use EHR Information for Individuals under their care and only for the purpose of providing or assisting in the provision of health care and not for any research or any other secondary purpose unless permitted by Applicable Law. Health care providers will be authorised to access the EHR Access Services through a Computer Application licensed or owned by a Computer Application Provider, an organisation approved by eHealth Ontario to provide a Computer Application. Health care providers may be provided access to EHR Information through one or more Computer Applications.

B. EHR Information

EHR Information is the information in an eHealth Ontario EHR as provided by Individuals’ health information custodians connected to such EHR (e.g. hospitals and laboratories). An eHealth Ontario EHR presents the EHR Information as it is received. The submitting health information custodian remains accountable for the completeness and accuracy of any information submitted by that health information custodian into an eHealth Ontario EHR, and that health information custodian may amend that information from time to time, so when providing care, health care providers should always access the latest information in the applicable eHealth Ontario EHR.

C. Security and Privacy Safeguards

eHealth Ontario has implemented, and will maintain administrative, physical and technical safeguards to protect the personal health information being transferred, processed or stored from theft, loss, unauthorised use, modification, disclosure, destruction and/or damage. These safeguards include security software and encryption protocols, firewalls, locks and other access controls, privacy impact assessments, staff training and confidentiality agreements. Additional information can be found in the Health Care Provider Guide.