

All access to and use of eHealth Ontario electronic health records through this service (the “EHR Services”) is subject to the terms and conditions contained in this EHR Practice Agreement (this “Agreement”) as may be amended from time-to-time. eHealth Ontario will provide notice of any amendment to this Agreement, along with its effective date and a link to the amended Agreement, at <http://www.ehealthontario.on.ca/docs> and such amendment will be binding on you unless you refuse its terms. If you refuse the terms of any amended Agreement you must stop your use of the EHR Services and promptly advise eHealth Ontario of your decision.

## 1 DEFINITIONS, INTERPRETATION AND OBLIGATIONS

- 1.1 The words “agent”, “health care”, “health care practitioner”, “health information custodian” and “personal health information” have the meanings ascribed to such terms in the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Schedule A (PHIPA), as amended from time-to-time; “personal information” means all recorded information about an identifiable individual or is defined as or deemed to be personal information pursuant to any Applicable Laws; “you” and “your” mean the health information custodian or “Practice” identified in the signing block below, which may be an individual health care practitioner, a corporation, a partnership or an unincorporated group (which may include a clinic with shared records, where a legal agreement is in place regarding the management of personal health information or the Practice is a physician group registered with OntarioMD).
- 1.2 Unless otherwise defined, capitalised words have the following meanings:
- “Applicable Laws” means any laws applicable in the Province of Ontario to the EHR Services or to you, including PHIPA and any guidelines of any college governed by the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 that is applicable in the circumstances;
- “Authentication Credentials” means any authentication mechanism (such as usernames, passwords, etc.) used to validate the identity of a person using an information system to access EHR Information, whether the mechanism was issued by eHealth Ontario, you or any other party;
- “Computer Application” means any software program that is approved by eHealth Ontario and is used by you to enable your access to and use of the EHR Services;
- “EHR Information” means any personal health information, personal information or other confidential information relating to individuals made available by eHealth Ontario through the EHR Services, but excludes information that has become part of the records of a health care provider within or associated with the Practice; and
- “Health Care Provider Guide” means the toolkit of materials, guides and information about EHR Services provided to the Practice with this Agreement and available at [www.ehealthontario.on.ca/docs](http://www.ehealthontario.on.ca/docs) as it may be updated from time to time by eHealth Ontario.
- 1.3 **EHR Services.** eHealth Ontario is making available to health care practitioners a suite of services that provide access to certain EHRs maintained by eHealth Ontario. The EHR Services are comprised of applications, systems, registries, databases and/or files, together with the portal applications, tools and services that provide secure user access. A list of EHR Services is available on a link at <http://ehealthontario.on.ca/en/initiatives>.
- 1.4 **Statement of Information Practices.** A current copy of the eHealth Ontario Statement of Information Practices (its plain language description of the EHR Services) is available on a link at <http://www.ehealthontario.on.ca/privacy>. Any amended version of the Statement of Information Practices will be posted at such website from time-to-time.
- 1.5 **Practice Obligations for Access to EHR Services.** You and your agents agree:
- to comply with all Applicable Laws including those pertaining to the protection and confidentiality of personal health information;
  - to be solely responsible for arranging access to and use of a Computer Application, including any costs of maintaining your access to and use of such Computer Application. Any issues with access to or use of the Computer Application will be directed to the Computer Application provider;
  - to ensure user information is complete and accurate in your Computer Application for EHR Services including the regulatory college number under which access is made and to revoke access to the EHR Services when access is no longer authorized or required;
  - to follow the procedures set out in the Health Care Provider Guide with respect to: (i) communicating to eHealth Ontario any changes in your key staff; (ii) overriding a consent directive; (iii) privacy complaints and enquiries; (iv) reporting a privacy or security breach and (v) correction and access requests;
  - to maintain policies and procedures required to ensure compliance with this Agreement;
  - any breach of this Agreement or Applicable Laws by you or any of your agents is a breach of this Agreement by your Practice;

- (g) to access EHR Information only as necessary for the purpose of providing health care to individuals in your care or providing services which will facilitate, support or assist in the provision of health care to those individuals;
- (h) to not access 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 personal health information 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 only use the Authentication Credentials issued to access the EHR Services, not disclose the Authentication Credentials to any third party, and take all reasonable steps to protect the confidentiality of the Authentication Credentials, such as logging out after each session;
- (j) to not intentionally insert into any part or component of the systems operated by eHealth Ontario any virus, disabling device or code;
- (k) to co-operate with any reasonable reporting, evaluation, audit or monitoring program required by eHealth Ontario with respect to the EHR Services or the EHR Information;
- (l) if you suspect that the security of any Authentication Credentials 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, to immediately notify eHealth Ontario in accordance with section 2.3, provide such information as required, and co-operate with and provide all such assistance as eHealth Ontario may request in connection with any such occurrence; and
- (m) to comply with the current version of the eHealth Ontario Acceptable Use Policy, a copy of which is available on the eHealth Ontario website at <http://www.ehealthontario.on.ca/docs>. eHealth Ontario may in the future amend the Acceptable Use Policy and post such amendment at <http://www.ehealthontario.on.ca/docs>, and your continued use of the EHR Services constitutes acceptance of any such amendment. In the event of any conflict between the eHealth Ontario Acceptable Use Policy and any term and/or condition of this Agreement, the term and/or condition of this Agreement shall prevail.

**1.6 eHealth Ontario Obligations.** eHealth Ontario will:

- (a) subject to your continued compliance with this Agreement, provide you with access to the EHR Information;
- (b) comply with all Applicable Laws including those pertaining to the protection and confidentiality of personal health information;
- (c) operate in accordance with reasonable business practices and use reasonable efforts to make access to and use of the EHR Information available through the EHR Services during published service hours. From time-to-time the EHR Services may not be available due to conditions beyond the reasonable control of eHealth Ontario;
- (d) manage, in a secure manner, any devices, codes or other security measures it creates for enabling access to the EHR Services; and
- (e) develop, implement, operate and manage a mechanism to detect and monitor unauthorised access to the EHR Services and unauthorised use or disclosure of EHR Information, which may include processes and technology.

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

**1.8 Termination of EHR Services.**

- (a) You may terminate this Agreement upon thirty days' written notice to eHealth Ontario.
- (b) eHealth Ontario may terminate this Agreement and your access to and use of the EHR Services upon thirty days' notice to you.

**2. DISCLAIMER, LIABILITY AND GENERAL**

**2.1. Disclaimer.** All information and content provided through the EHR Services is provided to eHealth Ontario by third parties and not verified by eHealth Ontario and may not necessarily contain all of the clinical information of an individual. eHealth Ontario will use commercially reasonable efforts to prevent the loss, corruption alteration of EHR Information after it has been received by eHealth Ontario from third parties, however eHealth Ontario 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. In

In addition, the EHR Services incorporate complex software systems which may malfunction from time to time, so eHealth Ontario does not guarantee or warrant that the EHR Services will operate at all times on an error-free basis or without interruption from time to time.

- 2.2 **Liability.** eHealth Ontario assumes no liability for any diagnostic, treatment, health care or other decision or action taken by any person using the EHR Information or the EHR Services. In no event will eHealth Ontario, or its directors, officers, employees, or staff 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 in any way based upon, occasioned by, attributable to, or arising out of access to the EHR Services and/or use of the EHR Information, 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 eHealth Ontario. In no event will you, or the directors, officers, employees, or staff of your Practice 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 in any way based upon, occasioned by, attributable to, or arising out of access to the EHR Services and/or use of the EHR Information, 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 you or your Practice.
- 2.3 **Notices.** Any notices required or permitted to be given by you to eHealth Ontario in connection with this Agreement will be given to the eHealth Ontario Service Desk at: Tel.: 1-866-250-1554; Email: [servicedesk@ehealthontario.on.ca](mailto:servicedesk@ehealthontario.on.ca). Any notices required or permitted to be given by eHealth Ontario to you in connection with this Agreement may be given by: (i) the eHealth Ontario Service Desk, which notices will be deemed to be given when communicated; (ii) posting the notice on the EHR Services portal, which notices will be deemed to be given when posted; and/or (iii) forwarding it to you by email, postal mail, courier or other method of personal delivery to the address maintained on file for you by eHealth Ontario. Notices given by email will be deemed to be given when sent. Notices given by postal mail will be deemed to be given five business days after mailing. Notices given by courier or other method of personal delivery will be deemed to be given on the next business day.
- 2.4 **Assignment.** Except for the access and use rights granted by eHealth Ontario 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 eHealth Ontario under this Agreement will be governed by the laws of the Province of Ontario and the federal laws applicable therein, without regard to choice or conflicts of law rules. You and eHealth Ontario 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 constitutes the entire agreement between you and eHealth Ontario 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. 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.