

Version 1.1

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## EHR Interface ClinicalConnect® Terms and Conditions

Hamilton Health Sciences Corporation, “HHS”, (through its Health Information Technology Services (HITS) eHealth Office) provides certain services through the ClinicalConnect System to permit Participants authorized by Ontario Health to connect to the Provincial Electronic Health Record to support the sharing of certain health records (“Patient Data”) of patients (“Patients”) between Participants (as defined below), for the purpose of providing care to the relevant Patients.

If you are an individual who is also a HIC (as defined below) AND you have been authorized as a User (as set out below) by Ontario Health to access the Provincial Electronic Health Record, then through this agreement you will be provided with access through the ClinicalConnect System. By agreeing to these EHR Interface ClinicalConnect Terms and Conditions you are directly agreeing with HHS to abide by the provisions herein that are applicable to Users and acknowledging that you are aware of the other obligations and restrictions governing use of the ClinicalConnect System (which the Participant is agreeing you will abide with). In all other cases (including where a physician or other HIC is providing health care to their own patients), an individual HIC agreeing to these EHR Interface ClinicalConnect Terms and Conditions shall abide by the obligations herein that are applicable to a Participant, and shall be responsible for his/her Users’ compliance with these EHR Interface ClinicalConnect Terms and Conditions. For further clarity, a HIC who uses the ClinicalConnect System at certain times as an agent of a Participant and at other times on behalf of a different Participant or on behalf of their own practice and/or patients shall obtain separate credentials for each role and shall access the ClinicalConnect System with the credentials applicable to the particular role they will be assuming at the time and may be assuming the obligations applicable to a Participant in one case (where not acting as an agent of another HIC) or those applicable to a User in another case (where they are acting as an agent of another HIC).

If you are a User who has accepted the ClinicalConnect User Agreement then you have agreed to these EHR Interface ClinicalConnect Terms and Conditions.

### 1. Definitions.

- a. **“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, and expressly include:
  - i. *Personal Health Information Protection Act, 2004* (Ontario), including the regulations thereunder, as amended or replaced from time to time (“PHIPA”); and

- ii. *Freedom of Information and Protection of Privacy Act* (Ontario), including the regulations thereunder, as amended or replaced from time to time (“FIPPA”).
- b. **“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 (e.g., Personal Information and/or Personal Health Information). Unless it is also Personal Information and/or Personal Health 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 these EHR Interface ClinicalConnect Terms and Conditions 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/or
    - iv. is disclosed without any restrictions to another party by a third party who had a right to make such disclosure.
- c. **“Consent Directive”** means a directive provided pursuant to PHIPA to a HIC by a patient or their substitute decision-maker regarding the withholding, withdrawal or reinstatement of the patient’s Personal Health Information (defined below).
- d. **“Consent Management”** means the process by which a Consent Directive received by a Participant is implemented within the ClinicalConnect System.
- e. **“ClinicalConnect Portal”** means the network accessible portal used to provide Participants and their Users with access to the ClinicalConnect System.
- f. **“ClinicalConnect Services”** or “Services” means the services as described in these EHR Interface ClinicalConnect Terms and Conditions.
- g. **“ClinicalConnect System”** means the electronic system used by HHS to provide the ClinicalConnect Services, and includes the ClinicalConnect Portal.
- h. **“EHR Interface ClinicalConnect Terms and Conditions”** means the terms and conditions set out in this document entitled EHR Interface ClinicalConnect Terms and Conditions available online through the ClinicalConnect Information Website (defined below); provided that with respect to a Participant who has separately executed a contractual document with HHS which references that it is subject to the EHR Interface ClinicalConnect Terms and Conditions, the terms of that separately executed contract are hereby incorporated by reference as part of the EHR Interface ClinicalConnect Terms and Conditions.
- i. **“HIC”** means a Health Information Custodian, as that term is defined within PHIPA.
- j. **“Information Website”** means the ClinicalConnect Information Website (<https://info.clinicalconnect.ca>).
- k. **“MOH”** means the Ministry of Health;
- l. **“Participant”** means: a HIC (defined below) who has executed (by signing and/or clicking through) an agreement referencing, and binding such Participant and its Users (as defined below) to comply with, these Terms and Conditions;

- m. **“Personal Health Information”** has the meaning set out in PHIPA;
- n. **“Personal Information”** has the meaning set out in FIPPA;
- o. **“Policies”** mean the set of operational, privacy and security policies and procedures in respect of the ClinicalConnect Services as set out on the Information Website, as they may be supplemented and/or updated from time to time.
- p. **“PHIPA Agent”** has the meaning of “agent” as defined in PHIPA.
- q. **“Program Office”** means the HITS eHealth Office at HHS which will serve as the Program Office for the ClinicalConnect System, with responsibilities in relation to the ClinicalConnect Services that include Participant and User implementation and compliance with the ClinicalConnect Policies, including the resolution of privacy issues, requests, inquiries and complaints and more generally, communications and the day-to-day operation of the ClinicalConnect System.
- r. **“Provincial Electronic Health Record”** means the electronic health record maintained by Ontario Health as set out in PHIPA.
- s. **“Use”** in reference to Personal Health Information, has the meaning as defined in PHIPA and includes viewing of the Personal Health Information.
- t. **“User”** means an individual who has been authorized by a Participant (in accordance with these EHR Interface ClinicalConnect Terms and Conditions), to access and use the ClinicalConnect Portal as the Participant’s PHIPA Agent on behalf of the Participant. For clarity, the term User also applies to a Participant who is an individual that accesses the ClinicalConnect Portal.

## 2. Services.

- a. **Authorization Grant.** HHS grants to Participant the right to access and use, and the right to authorize its Users to access and use, the ClinicalConnect Portal solely for the purpose of providing or assisting in the provision of health care to the relevant Patient(s) of Participant.
- b. **Scope.** HHS will provide the following ClinicalConnect Services to Participants and their Users:
  - i. Operation of the ClinicalConnect Portal to facilitate the viewing of Patient Data from the Provincial Electronic Health Record by Participants;
  - ii. Provision on the ClinicalConnect Portal’s tools and applications (which may be added or modified from time to time and as described on the Information Website), such as: 1. Audit Functionality – functionality built into ClinicalConnect which enables a Participant’s privacy team and their delegates to conduct a detailed review of (a) ClinicalConnect Portal usage by Users from their own organization, including but not limited to a view of individuals who have logged into ClinicalConnect Portal, the applications used, Patients’ charts reviewed and specific modules viewed; and ‘reverse’ audit capabilities, which includes the review of Patients registered with their site and the details of authorized Users who have accessed their records.
  - iii. If a breach or suspected breach is identified with respect to User access to Patient Data, the Program Office shall notify Ontario Health. Where a Participant suspects a breach by one of its Users, or otherwise as

applicable, the Program Office may disclose all access log information about a User to the Participant such User is associated with.

- iv. Operation of a helpdesk to provide assistance to Users on the operation of the ClinicalConnect Portal.
- v. Additional services as outlined on the ClinicalConnect Information Website.
- c. **Limitations.** The Patient Data that is accessible through the ClinicalConnect Portal:
  - i. is limited to such information that is being made accessible from the Provincial Electronic Health Record;
  - ii. may be only that portion of information that the applicable Patient has consented to release; and
  - iii. may not necessarily contain all of the Personal Health Information of a particular Patient.
- d. **Source of Information.** The ClinicalConnect Portal presents/aggregates the Patient Data as it is made available from the Provincial Electronic Health Record on an as is basis.
- e. **Failures due to Reliance.** HHS shall not be liable for any failure by HHS to provide the Services to the extent caused, in whole or in part, by any failure of Participant to fulfil its obligations hereunder. Participant shall not be liable for any failure by Participant to fulfil its obligations to the extent that such failure is caused, in whole or in part, by any failure of HHS to fulfil its obligations hereunder.
- f. **Suspension.**
  - i. Any violation of the Policies or any Applicable Laws by Participant (or by any of its Users) is a material breach of these EHR Interface ClinicalConnect Terms and Conditions and HHS may, in its sole discretion, restrict or suspend the Services to such Participant or any of its Users. However, when exercising its rights under this section, HHS will act reasonably and respond in a manner proportional to the severity of the violation (for example, suspending Services to a particular User when that particular User has breached a Policy rather than suspending all Services to all Users of the relevant Participant).
  - ii. In compliance with Applicable Laws, HHS or Participant may immediately suspend the access to the Services if it reasonably believes that there is: (i) a breach of any material term of these EHR Interface ClinicalConnect Terms and Conditions by HHS or any Participant or User or (ii) an emergency or extreme circumstance that would warrant such action, including a compromise of the integrity, security or privacy of any Patient Data. Such suspending party will notify the other party as soon as possible in such event.
  - iii. Participant acknowledges that: (1) the MOH and/or such other HICs that submitted Patient Data to the ClinicalConnect System, may, in their sole and absolute discretion, direct HHS to suspend or terminate access to the applicable Patient Data and, where so directed, HHS will suspend or terminate such access within such period of time as directed. HHS will post an appropriate notice of such direction to all Participants, including when the suspension is to take effect, as soon as reasonably possible after

receiving such direction; and (2) Ontario Health may suspend your access to the Provincial Electronic Health Record.

### **3. User Obligations.**

- a. User shall only access and/or use the ClinicalConnect System if and while he/she has received due authorization from a Participant and has received valid User-specific access login credentials issued from HHS or an authorized Identity Provider (“iDP”).
- b. User shall only access and/or use, or permit to be used, Patient Data obtained through the ClinicalConnect Portal for the sole purpose of providing or assisting in the provision of health care to the Patient to whom the Patient Data relates.
- c. User shall only collect, use, disclose, retain or dispose, as the case may be, of Patient Data only if:
  - i. the collection, use, disclosure, retention or disposal of the information, as the case may be:
    - 1. is permitted by the Participant;
    - 2. is necessary for the purposes of carrying out his or her duties as the PHIPA Agent of Participant;
    - 3. is not contrary to PHIPA or another law; and
    - 4. complies with any conditions or restrictions that Participant has imposed; and
  - ii. the prescribed requirements under PHIPA, if any, are met.
- d. User shall notify the Participant at the first reasonable opportunity if Patient Data that User has collected, used, disclosed, retained or disposed of on behalf of the Participant is stolen or lost or if it is used or disclosed without authority.
- e. User shall only access and/or use the ClinicalConnect Services in accordance with the applicable Policies.
- f. User hereby authorizes the Program Office to send informational and service related notices and bulletins to User including using any email address provided.
- g. User acknowledges that use of ClinicalConnect Services and access to the Patient Data is logged and that such usage and access is subject to audit and reporting.

### **4. Participant Obligations – General.**

- a. **Participant Warranties.** Participant warrants that:
  - i. it constitutes a HIC pursuant to PHIPA;
  - ii. no person other than its Users who have a need to access Patient Data for the provision of health care services to Patients in their care will access Patient Data in or through the ClinicalConnect Portal or other ClinicalConnect Services using unique login credentials issued to individual Users;
  - iii. it will, and will cause each of its Users to, only access and use Patient Data in or through the Services in compliance with Applicable Laws and these EHR Interface ClinicalConnect Terms and Conditions;



- iv. it will take, and require its Users to take, all reasonable steps to protect the Services and Patient Data from and against any unauthorized access, collection, use, disclosure, modification, retention or disposal;
- v. it will not, and will require its Users to not, intentionally insert, into any part or component of any of the Services or into the Patient Data 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 unauthorized access thereto;
- vi. it will, and will require its Users to, co-operate with any reporting, audit or monitoring program required by the Program Office with respect to any of the Services or Patient Data;
- vii. it will not use, and will require its Users to not use, any Patient Data for any research or any other secondary purposes unless permitted by Applicable Law;

- 1. where any Consent Directive is in place for a particular individual's Patient Data, it will only override Consent Directive(s) as permitted by the separate agreement(s) entered into by Participant and Ontario Health in respect of access to the Provincial Electronic Health Record;

Note: where an override is initiated, the ClinicalConnect Portal:

- 1. will require the User to document why their access to the Patient Data is required to provision, or assist in provision of care, to the Patient; and
  - 2. will display a notice to warn that the override will trigger a mandatory audit and will gather certain information which will be made available to the relevant privacy contact (or to Ontario Health) in the case of any Ontario Health operated provincial data repositories.

**b. Participant Obligations Regarding Access to and Use of Patient Data.** As a condition of Participant receiving the ClinicalConnect Services, the Participant agrees to be responsible for:

- i. ensuring that it and its Users do not access or use any Patient Data of a Patient where Participant or its User is aware that such Patient or his/her substitute decision-maker has expressly withheld or withdrawn consent to the collection, use or disclosure of such Patient Data, unless otherwise authorized under Applicable Law;
- ii. appointing a privacy contact to manage its obligations under these EHR Interface ClinicalConnect Terms and Conditions and to act as liaison with the Program Office;
- iii. ensuring that the authorization it has received from the Program Office to access and use Patient Data is implemented and operated in accordance with these EHR Interface ClinicalConnect Terms and Conditions;
- iv. ensuring that it and its Users' access and use of Patient Data is in compliance with use and access requirements/obligations contained in these EHR Interface ClinicalConnect Terms and Conditions and the Policies;
- v. considering and imposing appropriate restrictions on its Users' access to Patient Data (through its own supplementary policies, and where technologically feasible, through technological means);

- vi. taking steps that are reasonable in the circumstances to ensure that no User (or other agents of Participant) collects, uses, discloses, retains or disposes of Patient Data except in accordance with PHIPA, including, use of audit facilities provided by the ClinicalConnect System to perform random audits of access by its Users and the provision by Participant of regular staff training on privacy (and shall remain responsible for any Patient Data that is collected, used, disclosed, retained or disposed of by the Participant's agents, regardless of whether or not the collection, use, disclosure, retention or disposal was carried out in accordance with PHIPA);
  - vii. where there is non-compliance by it or any of its Users, communicating such noncompliance to the Program Office, who shall restrict any non-compliant User from any use or access to the ClinicalConnect Services and any Patient Data in accordance with the ClinicalConnect Policies;
  - viii. ensuring the validity of any User's identity at a minimum in compliance with Ontario Health's Assurance Level 2 prior to seeking access to the ClinicalConnect Portal for that User;
  - ix. ensuring that any information provided by the Participant to the Program Office concerning a User is completely and accurately maintained, including notifying the Program Office when any aspect of that information changes; and
  - x. ensuring as soon as reasonably possible that the ClinicalConnect Portal is updated, or the Program Office is otherwise notified, when a User no longer requires access to the ClinicalConnect Portal.
- c. Contacts.** Each Participant shall identify to the Program Office (via written notice from an authorized officer of the Participant) in writing a minimum of one local registration authority ("LRA") and a privacy contact for the Participant. The Participant shall provide prompt update to the Program Office of any changes to these designations, via written notice from an authorized officer of the Participant. The individual whom Participant designates as LRA shall have the authority to direct HHS (via written confirmation, which may include an email to the Program Office; or, if implemented by HHS, via an authorization process within the ClinicalConnect Portal) to issue, revoke and/or revise any User login credentials and/or access permissions.
- d. Participant Help Desk.** If a Participant has a help desk in respect of its own IT systems, then such Participant shall provide its Users with access to its Level/Tier 1 help desk. Such help desk will also need to be available to assist HHS in resolving issues involving such Participant's Users.
- e. Cost.** Participant shall provide any equipment, software and connectivity required for it and its Users to access the ClinicalConnect Portal and other ClinicalConnect Services.
- f. Access by Users.**
- i. The Participant controls the right to authorize or de-authorize access to the ClinicalConnect Services for its Users on its behalf, by providing instructions to the Program Office. In the event the Program Office detects inappropriate use of any Patient Data by any User, then the Program Office may disable such User's access to the ClinicalConnect Services. In the event the

Participant detects inappropriate use of any Patient Data by one of its Users, the Participant shall notify the Program Office as soon as possible so that the Program Office may disable such User's access to the ClinicalConnect Services. Any restoration of access for any such User will be at the sole discretion of the Program Office.

- ii. The Participant acknowledges that the ClinicalConnect Portal and other ClinicalConnect Services are provided to the Participant solely for the Participant and its Users to access and use Patient Data in connection with the provision of health care services to Patients in their care. The Participant shall not permit any other use of Patient Data by it or its Users, or any other person to access or use the ClinicalConnect Portal or ClinicalConnect Services. The Participant is accountable for all access and use by its Users.
- iii. The Participant will ensure that only its authorized Users who have been granted login credentials by HHS or their authorized iDP will access or use the ClinicalConnect Portal or other Services on its behalf.
- iv. The Participant agrees to use, and to cause its Users to use the ClinicalConnect Portal and other ClinicalConnect Services in accordance with these EHR Interface ClinicalConnect Terms and Conditions and the associated Policies.
- v. Participant is responsible for notifying the Program Office of any change in status of a User.

**g. Notifications.**

- i. The Participant will notify the Program Office and Ontario Health at the first reasonable opportunity upon discovery or reasonable suspicion of any theft, loss or unauthorized access to or use of any Patient Data, including any use or disclosure without authority. The Participant will also notify the Program Office at the first reasonable opportunity:
  - 1. upon the occurrence of any breach of these EHR Interface ClinicalConnect Terms and Conditions in relation to Participant's use or access to the ClinicalConnect Portal or other ClinicalConnect Services;
  - 2. upon discovery or reasonable suspicion of any unauthorized access to or use of any of the ClinicalConnect Portal or other ClinicalConnect Services by any Participant personnel or any third party;
  - 3. of any issue with the accuracy or integrity of any Patient Data; or
  - 4. in any other circumstances provided for in the applicable Policies with respect to reporting a privacy or security breach.
- ii. The Participant will provide notice and otherwise assist the Program Office in addressing the foregoing at the first reasonable opportunity by telephoning the Program Office, with a detailed follow-up by email (no Personal Information or Personal Health Information should be provided to the Program Office in such email notification). Participant will cooperate with the Program Office in any investigation, verification or public response that arises in connection with the foregoing.
- iii. The Participant will notify the Program Office about significant administrative or operational changes in its organization and the programs and/or sites for which it has approval to use the ClinicalConnect Portal. For example, the Participant will provide notice upon any change in its:



1. Business name, corporate structure (amalgamation, dissolution, etc.), or legal status under applicable laws including PHIPA;
  2. HIC status (including its termination or suspension);
  3. registration or approval status with any government body or regulatory college necessary to maintain the Participant's HIC status;
  4. HIC type as defined in PHIPA;
  5. contact/location information in relation to an approved program or site; or
  6. a change in the type of health care services offered by the Participant.
- h. Retention.** The ClinicalConnect System is not intended as a primary source of information regarding any Patient. Participant should retain its own copy of any Patient Data viewed and relied upon by such Participant or its Users.
- i. Privacy/Security Assessments.** Upon request by HHS, the Participant will provide a copy of any privacy or security assessments conducted on any Participant systems that are involved in the access to or use of the ClinicalConnect Portal or other ClinicalConnect Services, including the receipt or transmission of Patient Data, as soon as reasonably possible. Any such assessments will be deemed to constitute Confidential Information of Participant and may only be disclosed to third parties or used by the Program Office to assess the privacy and security of Participant's systems in respect of the Services.
- j. Co-operation.** As required, the Participant will co-operate with the Program Office to:
- i. verify compliance with these EHR Interface ClinicalConnect Terms and Conditions;
  - ii. take all steps necessary to investigate and remediate a privacy breach or an alleged or suspected privacy breach involving the ClinicalConnect Portal; or
  - iii. verify and/or fulfill requirements to sufficiently address significant administrative and/or operational changes to ensure appropriate ongoing access to the ClinicalConnect System by the Participant.

## 5. Confidentiality.

- a. General.** 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 as otherwise set out in these EHR Interface ClinicalConnect Terms and Conditions, 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.
- b. Handling/Restrictions.** With respect to a disclosing party's Confidential Information, the receiving party will:
- i. use that Confidential Information only in accordance with these EHR Interface ClinicalConnect Terms and Conditions and only for the purpose of fulfilling its obligations and exercising its rights under these EHR Interface ClinicalConnect Terms and Conditions;

- ii. with respect to any Confidential Information which constitutes Personal Health Information, handle such information as appropriate for its role, which in the case of HHS is that of an electronic service provider under PHIPA and in the case of a Participant, for the purpose of providing care to the applicable patient that is the subject of such information;
  - iii. 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;
  - iv. 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 these EHR Interface ClinicalConnect Terms and Conditions; 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.
- c. Return/Destruction.** Except with respect to Patient Data or audit logs, upon the termination of these EHR Interface ClinicalConnect Terms and Conditions 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 these EHR Interface ClinicalConnect Terms and Conditions), 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.
- d. Lawfully Required Disclosure.** 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.
- e. Injunctive Relief.** 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.
- f. Exception.** Participant's name, address and a description of the Services provided to Participant by HHS are not considered Confidential Information and Participant agrees that the Program Office may list this information on one or more public websites, and in other publicly available paper or electronic publications. In addition, Users' names, addresses, contact information, and professional designations provided by Participant to HHS may be used to send informational

bulletins and service related notifications to Users (including by email) regarding ClinicalConnect.

## 6. Ownership and Characterization of Access.

- a. Patient Data.** The parties acknowledge that in regards to Patient Data:
- The Participant will access the Provincial Electronic Health Record through ClinicalConnect only in accordance with the authority provided by Ontario Health and applicable law;
  - any Patient Data that is accessed by a User and made part of its Participant's health record for the applicable Patient may be used and further disclosed in accordance with Participant's own organizational policies and subject to the requirements of PHIPA; and
  - nothing in these EHR Interface ClinicalConnect Terms and Conditions will prevent the Participant and/or a User from incorporating Patient Data into the clinical record of the relevant Patient, provided that such Patient Data was obtained solely from the ClinicalConnect Portal in connection with that relevant Patient seeking or receiving health care from the Participant and/or its User.
- b. HHS' Role.** HHS does not create or maintain an electronic health record under authority of PHIPA. It provides a connection to view the Provincial Electronic Health Record as an electronic service provider to the Participant and Ontario Health. HHS complies with the requirements of PHIPA that are applicable to an electronic service provider. HHS does not consider itself to be "disclosing" any Personal Health Information when such information is viewed by a Participant.
- c. Other.** Subject to any rights or licenses as are expressly set out in these EHR Interface ClinicalConnect Terms and Conditions, no intellectual property rights are transferred by either party to the other party under these EHR Interface ClinicalConnect Terms and Conditions. Neither party will remove any confidentiality, copyright or other proprietary rights notices from any materials provided to it by the other party.

## 7. Additional Privacy Obligations

- a. Compliance with Applicable Laws.** Each party agrees to comply with its respective obligations under Applicable Laws with respect to the activities contemplated by these EHR Interface ClinicalConnect Terms and Conditions.
- b. Access or Correction Requests and Complaints.**
- When the Services are used by Participant to manage Personal Information, the Program Office will provide all assistance that Participant reasonably requests in regard to any concerns or complaints expressed by any person that relate to the management of that person's Personal Information.
  - If the Program Office receives an access request from a Patient, the Program Office will direct the patient to contact the Participant or Ontario Health as appropriate.

- c. **Notice re Logging and Auditing by HHS.** HHS employs a logging and auditing program which may result in review of Patient Data accessed by a particular User.
- d. **Required Disclosures.** HHS shall have the right to disclose any information about Participant or Users, including registration data, in order to comply with any applicable laws and/or requests under legal process, to operate the ClinicalConnect System, to protect HHS' property or rights, or otherwise pursuant to HHS' Privacy Policy.
- e. **Reporting.** Each party will, at the first reasonable opportunity report to the other, 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. Any notice of real or suspected privacy or security breaches, or matters related to access requests pursuant to these EHR Interface ClinicalConnect Terms and Conditions will be sent by the Program Office to a Participant's designated privacy contact or by Participant to the Program Office.

## 8. Security and Privacy Safeguards.

- a. HHS warrants that it has implemented and will maintain strong administrative, physical and technical safeguards, consistent with industry best practices as applicable to health care systems in Ontario, to protect the Personal Health Information being transferred, processed or stored from theft, loss, unauthorized use, modification, disclosure, destruction and/or damage and will ensure its representatives comply with its privacy and security requirements. These safeguards include security software and encryption protocols, firewalls, locks and other access controls, privacy impact assessments, staff training and confidentiality agreements.
- b. HHS will put in place, or cause its suppliers to put in place, reasonable security measures to secure HHS' data centre facilities and any other facilities where Participant data is stored from unauthorized entry, and which may include access controls and maintaining logs of all personnel who enter.
- c. HHS will ensure that its personnel and contractors who are permitted access to its data centre facilities or any other facilities where Participant data are stored are subject to appropriate confidentiality obligations.
- d. HHS 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.
- e. 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.
- f. Participant agrees to actively monitor its systems used to access ClinicalConnect Services 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. Participant agrees to have in place and maintain such software at all times. HHS 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. HHS agrees to have in place and maintain such software at all times.

## 9. Certain Warranties; Certain Disclaimers.

### a. ClinicalConnect Warranties.

- i. HHS 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 the Services will substantially comply with their applicable description.
- ii. HHS warrants that it will perform the Services with personnel who are competent and qualified to perform their responsibilities and that the Services will be performed in a good and professional manner in accordance with currently acceptable standards and practices reasonably applicable to a public hospital operating and providing services of a similar nature, and otherwise in a timely manner in accordance with the terms of these EHR Interface ClinicalConnect Terms and Conditions.
- iii. HHS warrants that it will otherwise comply with all Applicable Laws in its provision of the Services.

### b. Disclaimers/Exceptions.

- i. HHS does not represent or warrant that its services will be error free or uninterrupted.
- ii. Except as expressly provided in these EHR Interface ClinicalConnect Terms and Conditions, HHS makes no warranties, representations, conditions, promises or indemnities of any kind, express or implied, statutory or otherwise:
  1. with respect to the operation of Services or accessibility of Patient Data; or
  2. regarding the accuracy, authenticity, completeness, reliability, currency, veracity, merchantable quality or fitness for a particular purpose of the Patient Data accessible through the ClinicalConnect Portal or ClinicalConnect Services;and HHS assumes no liability for any diagnostic, treatment, health care decision or any other decision or action taken by any person using the Patient Data.
- iii. Except as expressly provided in these EHR Interface ClinicalConnect Terms and Conditions, **HHS does not make, and expressly disclaims, any other warranties, representations or conditions, express or implied, in fact or in law, including the implied warranties and conditions of merchantable quality or fitness for a particular purpose.**



- c. **Risk of Use.** The ClinicalConnect System is provided for the purpose of assisting in informing clinical decisions for care, and is not a substitute for the consideration and judgement of a trained health professional. Use of any data from the ClinicalConnect Portal or any of the other Services are solely at the risk of the Participant and its Users. HHS assumes no liability for any decision or action taken by any person using the ClinicalConnect Portal or any data contained therein or for any inability to access same.
- d. **Availability.** Continuous and uninterrupted availability of the Services are not guaranteed and may be suspended, limited, changed, or discontinued, temporarily or permanently, with or without notice. The Services may be inaccessible, unavailable or inoperable for any reason, including:
  - i. equipment or system malfunctions or Internet/communication outages;
  - ii. periodic maintenance procedures or repairs which may be undertaken from time to time; or
  - iii. causes beyond the reasonable control of HHS.Participant should maintain its own copies of Patient Data and alternative communication protocols to obtain Patient Data from other providers, to the extent reasonably required, in the event of any sustained interruption.
- e. The information contained in the ClinicalConnect System is made available to Participant and its Users on an 'as-is' basis. Participant and its Users should verify any applicable information before relying on such information for clinical, diagnostic or treatment purposes and prior to incorporating any such information into their Patient record.
- f. HHS is not responsible for any damages, costs, liabilities, or expenses which may be incurred or suffered as a result of use or any inability to use the ClinicalConnect Portal and/or any other Service.

## 10. Liability.

- a. **Indirect Damages.** In no event shall any party be liable to the other party for indirect, special, consequential, incidental, punitive or exemplary losses, damages or expenses or for loss of data, lost revenue or lost profit. For clarity, this limitation is not intended to act as a bar on a party impleading another party into a breach of privacy claim made and/or commenced by a third party against the first party.
- b. **Direct Damages.** Subject to the other terms in this section 10, HHS shall remain responsible for the actions of its agents and subcontractors in their performance of the Services. The total cumulative liability (the "Cap") of HHS to all Participants, or of any Participant to HHS and any other Participants, for direct damages arising in connection with that party's performance or non-performance under these EHR Interface ClinicalConnect Terms and Conditions, or otherwise related to the provision or use of the ClinicalConnect Services, shall not in the aggregate for any and all damages arising exceed \$1,000,000. However, the foregoing Cap shall not apply to losses, expenses, costs, damages or liabilities that are recoverable pursuant to a contractual obligation of indemnification provided to HHS by one of its subcontractors or agents to the extent HHS is actually able, using reasonable efforts, to recover contribution from such subcontractor or agent in relation to such

damages being claimed, and further provided that any such recovery will be shared on an equitable basis as between HHS, the claiming Participant and other Participant who suffered losses, expenses, costs, damages or liabilities within the scope of such indemnification.

- c. **Liability to Users.** Separate or apart from any liability HHS may have to a Participant, HHS shall not have any liability to any User under these EHR Interface ClinicalConnect Terms and Conditions or arising from the provision or use of, or otherwise relating to, the Services.
- d. **Applicability.** The foregoing limitations and exclusions shall apply: (i) 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 these EHR Interface ClinicalConnect Terms and Conditions, or of any remedy; and (ii) even if the relevant party has been advised of the possibility of such damages or if such possibility was reasonably foreseeable.

## 11. Termination.

- a. **Breach.** In the event of a material breach of these EHR Interface ClinicalConnect Terms and Conditions, the non-breaching party may terminate these EHR Interface ClinicalConnect Terms and Conditions 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.
- b. **Other Termination.** The parties acknowledge that:
  - i. the ClinicalConnect System is not intended to be the primary source of Patient Data used by Participant and its Users;
  - ii. the ClinicalConnect System may be merged with, or phased out, as a result of other provincial EHR clinical repositories;
  - iii. Access to the Provincial Electronic Health Record through the ClinicalConnect System is controlled by Ontario Health and they may withdraw authorization for a Participant to connect through the ClinicalConnect System; and
  - iv. Funding for the ClinicalConnect System may be discontinued in the future.Consequently, for the foregoing or other reasons in HHS' sole discretion, HHS may terminate its agreements that are subject to these EHR Interface ClinicalConnect Terms and Conditions without liability, cost, penalty or prejudice to any other rights or remedies under these EHR Interface ClinicalConnect Terms and Conditions upon giving at least 90 days written notice (or prominent posting on the ClinicalConnect Portal). A Participant or User may terminate its agreement with HHS that is subject to these EHR Interface ClinicalConnect Terms and Conditions immediately upon providing written notice to HHS.
- c. **Survival.** The provisions of these EHR Interface ClinicalConnect Terms and Conditions which by their nature extend beyond such expiration or termination shall survive and remain in effect until all obligations are satisfied including any

confidentiality or privacy obligations, disclaimers and/or liability limitations/exclusions.

**12. Insurance.** Each party agrees to 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 the parties. Without limiting the generality of the preceding, the coverage required under this Section shall include:

- i. general liability insurance with a minimum of five million dollars (\$5,000,000.00) coverage for any one occurrence;
- ii. coverage for damages for breach of privacy, in relation to Personal Health Information (which in the case of HHS shall be for a minimum of five million dollars (\$5,000,000.00) coverage for any one occurrence);
- iii. personal injury;
- iv. cross liability; and
- v. contractual liability.

Each party agrees to provide the other with at least thirty (30) days' prior written notice of material change to, cancellation, or non-renewal of the coverage required under this Section. Participant's policy shall be required to:

- vi. name HHS as an additional insured, but only with respect to this Agreement; and
- vii. provide HHS with a copy of its policy upon request.

Such insurance will be with insurance carriers licensed to conduct business in the Province of Ontario. The above requirements may alternatively be met by a Sole Practitioner (Physician) who maintains membership with Canadian Medical Protective Association (CMPA), or a Sole Practitioner (Nurse Practitioner) who maintains Professional Liability Protection through the Canadian Nurses Protective Society (CNPS).

**13. Assignment.** Neither party may assign these EHR Interface ClinicalConnect Terms and Conditions or any right or obligation hereunder without receiving the other party's written consent in advance, which consent will not be unreasonably withheld provided that HHS may assign these EHR Interface ClinicalConnect Terms and Conditions without consent to any successor entity as directed by Ontario Health or as required by regulation. Upon any assignment, the assignor shall have no further liability for any acts or omissions of the assignee.

**14. Governing Law.** These EHR Interface ClinicalConnect Terms and Conditions 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. Any claim, action or proceeding initiated by any party other than HHS shall be commenced exclusively in Ontario and a venue of Hamilton.

**15. Entire Agreement and Amendment.** These EHR Interface ClinicalConnect Terms and Conditions, along with any ClinicalConnect Policies, contain the entire understanding of the parties relating to its subject matter and supersede all previous agreements or representations, statements and understandings (verbal or written) made by or on behalf of one party to the other. HHS may amend these EHR Interface ClinicalConnect Terms

and Conditions or any Policy by posting a revised version on the ClinicalConnect Information Website provided it also provides prominent notice to Users during the login process and provides at least 30 days prior notice in an email notification to Participants addressed to the email address on file with the Program Office for such Participant. Users or Participants who do not agree to any amendment may terminate by written notice to the Program Office, discontinuance of access to the ClinicalConnect Portal and further receipt of any Services.

**16. Severability.** The invalidity or unenforceability of any provision in these EHR Interface ClinicalConnect Terms and Conditions will not affect the validity or enforceability of any other provision and any invalid provision will be deemed severed.

**17. Notice.** Any notice or other significant communication given pursuant to these EHR Interface ClinicalConnect Terms and Conditions will be in writing (which may include email) addressed to the attention of that party's authorized representative as advised from time to time. 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 email, when it enters the receiving party's information system and becomes capable of being retrieved and processed 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.

**18. Waiver.** The failure of either party to insist upon strict performance of any terms and conditions or to exercise any of its rights set out in these EHR Interface ClinicalConnect Terms and Conditions will not constitute a waiver of these rights, and these rights will continue in full force and effect. No provision of these EHR Interface ClinicalConnect Terms and Conditions may be waived except in a writing signed by the party waiving enforcement. No waiver of any part of these EHR Interface ClinicalConnect Terms and Conditions will be deemed to be a waiver of any other provision.

**19. Force Majeure.** Except as expressly provided otherwise in these EHR Interface ClinicalConnect Terms and Conditions, neither party will be liable for any failure or delay in its performance under these EHR Interface ClinicalConnect Terms and Conditions due to any cause beyond its reasonable control that could not have been avoided by the exercise of reasonable foresight (a "Force Majeure Event"), such as acts of war, rebellion, acts of God, earthquake, flood, embargo, riot, sabotage, terrorism, or governmental act provided that the party affected by a Force Majeure Event gives the other party prompt notice of such Force Majeure Event as soon as reasonably possible after such event arises, and uses its reasonable efforts to promptly correct such event.

**20. Interpretation.** Headings are inserted for convenience of reference only and will not affect the construction or interpretation of these EHR Interface ClinicalConnect Terms and

Conditions. Where the word “including” is used in these EHR Interface ClinicalConnect Terms and Conditions, 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.

**21. Further Assurances.** 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 these EHR Interface ClinicalConnect Terms and Conditions. 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 these EHR Interface ClinicalConnect Terms and Conditions.