

Participant Licensing Agreement

2018-12

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The Participant Licensing Agreement (the “**Agreement**”) is made as of the _____ day of _____ (the “**effective date**”) by and between Centre for Family Medicine Care Innovations, with offices at 419 Phillip Street, Unit A, Waterloo, ON N2L 3X2 (the “**Centre**”) and Think Research Corporation (“**supplier**”), with offices at 156 Front Street West, 5th floor, Toronto, ON M5J 2L6 and _____ with a place of business at _____ (“**Participant**”).

Background

- A. Waterloo Wellington Community Care Access Centre (“**WW CCAC**”) was managing the design, development, and implementation of an information technology platform (the “**SCA Solution**”) for the system coordinated access strategy and framework for improving access to care and services to residents, which includes but is not limited to initiating, managing and receiving referrals for use by residents, health care and community services providers, and coordinated access service providers (the “**SCA**”).
- B. WW CCAC retained the Supplier to license the SCA Solution to health and community care-related providers participating in the SCA, including the Participant, pursuant to a master agreement between WW CCAC and the Supplier effective August 1, 2016 (the “**Master Agreement**”).
- C. On May 17, 2017 WW CCAC and all of its assets including the Master Agreement were transferred by order of the Minister of Health and Long-Term Care to Waterloo Wellington Local Health Integration Network (“**WW LHIN**”) pursuant to section 34.2 of the Local Health System Integration Act, 2006 (Ontario).
- D. WW LHIN and the Centre entered into an Assignment and Novation Agreement dated October 24, 2017, whereby the WW LHIN assigned and novated to the Centre all of WW LHIN's rights and interest, obligations and benefits in the Master Agreement pursuant to Sections 12.2 and 12.3 of the Master Agreement.
- E. The Master Agreement has been amended by the Supplier and the Centre to replace the participation agreement that was previously attached as Schedule “**D**” to the Master Agreement with this Agreement.
- F. This Agreement must be signed by each participating health and community care-related providers (collectively the “**Participants**”) who wishes to participate in the SCA, including the Participant.
- G. This Agreement is a standalone agreement that sets out the obligations of the Participant, the Supplier and the Centre pursuant to the Master Agreement.

Now therefore in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Centre, Participant and Supplier (collectively the “**Parties**”, each a “**Party**”) agree as follows:

Article 1 – Obligations of the Parties

- 1.1 **License.** The Supplier grants a limited, non-exclusive license to the Participant to use the SCA Solution and any modifications thereto paid for by the Centre under the Master Agreement, and to authorize the agents, contractors and representatives of the Participant, respectively, to do so on its behalf. The Participant may only use the license for its own internal use and benefit and for those specific purposes reasonably contemplated by this Agreement. The Parties agree that such license will be subject to the terms and conditions set out in Schedule "A".
- 1.2 **Fees.** Under the terms of the Master Agreement, the Centre has agreed to pay all applicable license fees to the Supplier for the Participant's use of the SCA Solution. The Participant will not be responsible for paying any such license fees to the Supplier under this Agreement.
- 1.3 **Term.** The initial term of this Agreement will be one (1) year from the Effective Date (the "Initial Term") unless terminated earlier by any Party in accordance with this Agreement. At the conclusion of the Initial Term, this Agreement will renew for successive one (1) year periods (each such period being a "Renewal Term", and all such Renewal Terms together with the Initial Term being the "Term") unless terminated earlier by any Party in accordance with this Agreement.
- 1.4 **Termination**
- a) The Participant may terminate this Agreement at the end of the Initial Term or the then-current Renewal Term by providing the other Parties with a written notice of termination ninety (90) days prior to the end of the Initial Term or the then-current Renewal Term, as applicable.
 - b) Any Party may terminate this Agreement immediately upon giving notice to a breaching Party (the "Breaching Party"), with a copy to the third Party, if there has been a material breach of this Agreement by the Breaching Party and such breach has not been cured by the Breaching Party within thirty (30) days following delivery of written notice of termination by the non-breaching Party.
 - c) If the Master Agreement is terminated pursuant to its terms, this Agreement shall be terminated with effect as of the date that the termination of the Master Agreement is effective, provided that the Centre shall deliver written notice of termination to the Participant on or prior to such date. If reasonably possible in the circumstances, the Centre shall deliver such notice of termination to the Participant not less than thirty (30) days prior to the effective date of termination.
- 1.5 **Consequences of Termination for Participant**
- a) Upon termination of this Agreement as set out in section 1.4, the consequences of termination as it relates to use of the SCA Solution are addressed in the HINP and Data Sharing Agreement (defined below in section 1.6(c)), which the Participant must sign before being provided access to the SCA Solution.

- b) For clarity, a breach by the Participant shall only permit the Supplier, if the other requirements of termination are met, to terminate this Agreement in respect of the Participant and not result in the termination of the Master Agreement or participant licensing agreements of other Participants.

1.6 Privacy and Security

- a) Supplier shall comply with the privacy and confidentiality obligations of the Master Agreement and as set out in Schedule "B" of this Agreement.
- b) Supplier shall comply with the security obligations of the Master Agreement and as set out in Schedule "C" of this Agreement.
- c) The Participant will enter into a health information network provider ("HINP") and data sharing agreement ("HINP and Data Sharing Agreement") with the Centre to establish the Centre's roles and responsibilities as the HINP and the Participant's rights and obligations related to the sharing of Personal Health Information (as that term is defined in Schedule "B") with other Participants.

- 1.7 **Policies and Procedures.** The Supplier shall comply with applicable Participant policies that generally apply to the Participant's suppliers and of which the Participant makes Supplier aware and to which Supplier has agreed in writing, to the extent Supplier has access to a Participant's premises or systems and the Participant makes Supplier aware of them and to which Supplier has agreed in writing. To the extent that changes are required to the privacy provisions due to a policy change by the Participant, the Participant shall notify the Centre and the Supplier, and if appropriate, the Parties will amend this Agreement.

1.8 Confidentiality

- a) "Confidential Information" means all confidential, secret or proprietary information relating to the other Party or any of its Affiliates, including without limitation Personal Health Information (as that term is defined in Schedule "B"), which is designated as confidential or proprietary or that should be considered as such from its nature or from the circumstances surrounding its collection, use or disclosure. For the purposes of this Agreement the term "Affiliate" has the meaning given in the Business Corporations Act (Ontario).
- b) With respect to any Confidential Information a Party receives ("Receiving Party") from the another Party ("Disclosing Party"), the Receiving Party shall: (i) keep such information confidential; (ii) use the same degree of care to protect the Disclosing Party's Confidential Information as it uses for its own Confidential Information, but in no event less than reasonable care; (iii) not use the Confidential Information other than in connection with the performance of this Agreement; and (iv) not divulge the Confidential Information to Receiving Party's personnel, contractors or professional advisors, unless such personnel, contractors or professional advisors have a need to know and have agreed in writing to abide by confidentiality obligations consistent with the terms of this Agreement. In addition, the Centre may disclose Confidential Information to eHealth Ontario, other

stakeholders in the Ontario healthcare system ("Ontario Stakeholders"), or potential Participants subject to eHealth Ontario, such Ontario Stakeholders or potential Participants agreeing in writing to abide by confidentiality obligations consistent with the terms of this Agreement. Receiving Party agrees to use all reasonable steps to ensure that the Disclosing Party's Confidential Information is not disclosed by Receiving Party's employees, contractors or professional advisors in violation of this Section 1.7. A breach of confidentiality by any third party to whom a Receiving Party has disclosed Confidential Information shall be considered a breach by such Receiving Party. It is agreed to and understood by the Parties that Supplier shall be authorized to disclose the Confidential Information to its sub-contractors (CognisantMD and the Centre for Effective Practice) for the purpose of fulfilling the Supplier's obligations under this Agreement and Master Agreement, or as mutually agreed by the Parties.

- c) Notwithstanding the foregoing, the Receiving Party shall have no obligation with respect to any Confidential Information of the Disclosing Party that the Receiving Party demonstrates is required to be disclosed by court order or other lawful governmental action, but only to the extent so ordered, and provided that the Receiving Party shall notify the Disclosing Party, so as to provide the Disclosing Party with a reasonable opportunity to attempt to obtain a protective order either restricting or preventing such disclosure.
- d) Confidential Information shall not include information that: (i) is or becomes generally known or available to the public at large other than as a result of a breach by the Receiving Party of any obligation to the Disclosing Party; (ii) was known to the Receiving Party free of any obligation of confidence prior to disclosure by the Disclosing Party; (iii) is disclosed to the Receiving Party on a non-confidential basis by a third party who did not owe an obligation of confidence to the Disclosing Party; (iv) is developed by the Receiving Party independently of and without reference to any part of the Confidential Information. The foregoing exclusions do not apply to Confidential Information that is Personal Health Information. Confidential Information shall not be deemed to be in the public domain or generally known or available to the public merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public.
- e) A Party shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, any breach of the obligations in this Section 1.7.

1.9 **Return of Confidential Information.** Upon termination of this Agreement, or upon written notice from the Disclosing Party requesting return of any or all Confidential Information, the Receiving Party shall forthwith return all such Confidential Information to the Disclosing Party and shall keep no copies. Where deletion of information is necessary to fulfill this requirement, it shall be performed within the confines afforded by existing technology limitations. Upon request, an officer's certificate confirming that such actions have been completed and that there are no tangible and/or electronic versions of the Confidential Information in the Receiving Party's possession or control, shall be provided to the Disclosing Party by the Receiving Party.

- 1.10 **FIPPA.** The Supplier acknowledges and agrees that the Participant may be subject to FIPPA and that under FIPPA, all information, including without limitation the Supplier's Confidential Information, will be subject to disclosure by operation of the access of information provisions in FIPPA. Supplier acknowledges and agrees that the Participant cannot guarantee that the confidentiality of any information that is in its custody or under its control will be preserved if a request is made under FIPPA for access for the information. To the extent permitted or required under FIPPA, the Participant will promptly and diligently inform the Supplier of any request made under FIPPA for the Supplier's Confidential Information and provide the Supplier with an opportunity to make representations with respect to its disclosure.
- 1.11 **Supplier's Obligations under the Master Agreement.** The Supplier acknowledges and agrees that nothing in this Agreement will derogate from its obligations to the Centre as set out under the Master Agreement.
- 1.12 **Overseeing the Supplier's Provision of Services.** The Centre, on behalf of the Participants, will oversee the Supplier's provision of the services to the Participant.
- 1.13 **Ownership of the SCA Solution.** Subject to a statement of work entered into by the Supplier and the Centre pursuant to the Master Agreement ("SOW") expressly providing otherwise, ownership of the intellectual property rights in the SCA Solution upon their creation shall vest in the Supplier and, to the extent applicable, its licensors, unencumbered, in accordance with the terms of the Master Agreement.
- 1.14 **Ownership of the SCA Solution Information**
- a) As between the Supplier and the Centre, the Centre owns all intellectual property rights in the information or materials created or generated by the SCA Solution, the Centre or the Participants under this Agreement and the Master Agreement, for the purpose of the SCA, including but not limited to statistical data, reports, website materials, processes, forms, publications, and other related information ("SCA Solution Information"). For greater certainty, SCA Solution Information does not include Source Code Materials or Documentation provided by the Supplier to the Centre for the use, operation, maintenance, modification and enhancement of the SCA Solution. The Supplier hereby grants a perpetual, irrevocable, non-transferable, non-exclusive, royalty-free license (without any right to sublicense) to the Centre and the Participants to use the Documentation for the purpose of the SCA. The Centre hereby grants a perpetual, non-transferable, non-exclusive, royalty-free license (without any right to sub-license) to the Supplier to use the SCA Solution Information for internal business purposes only, including without limitation development and improvement of the Supplier's products and services.
 - b) "Documentation" means the instructional and operational manual, training videos, training, promotional materials, and other materials of general application created by or on behalf of the Supplier, which facilitates the use, operation, maintenance, modification and enhancement of the SCA Solution

- c) "Source Code Materials" means:
- i. a complete copy of the source code version of the SCA Solution (appropriately labeled to denote the version or release thereof, and the currency date thereof) in machine-readable form in electronic format and compatible with the software as then being used by the Centre and which, when compiled, will produce the object code version of the SCA Solution; and
 - ii. a complete copy, in English, in electronic format and appropriately labeled to describe the contents thereof, of documentation on and other explanatory materials in possession of Supplier to allow a competent computer programmer possessing ordinary skills and experience, to further develop, maintain and operate the SCA Solution without further recourse to Supplier which may include general flow-charts, input and output layouts, field descriptions, volumes and sort sequence, data dictionary, file layouts, processing requirements and calculation formula and the details of all algorithms.

Article 2 – Limitation of Liability, Indemnities

2.1 **Limitation of Liability.** Subject to the exceptions below, the Parties agree (a) that the aggregate liability of the Centre and the Supplier in respect of the Master Agreement and all of the other participant licensing agreements entered into in connection with the SCA , together, is limited to the greater of: (i) the amounts invoiced by the Supplier under the Master Agreement in the previous thirty-six (36) months; and (ii) five (5) million dollars; and (b) that no Party shall have any right to consequential damages in the nature of loss of profits or loss of revenue. Such limitation of liability shall not apply in respect of: (i) breach of confidentiality obligations; (ii) breach of privacy provisions; (iii) damage to tangible or real property or injury or death to persons due to negligence; (iv) intentional misconduct; (v) breach of applicable law; and (vi) the intellectual property indemnity. The allocations of liability in this Section 2.1 represent the agreed and bargained for understanding of the Centre and the Supplier and the Supplier's compensation to be paid under the Master Agreement reflects such allocations. Any quantum limit and other limitations on Supplier's liability under this Section 2.1, the Master Agreement and any other participant licensing agreements shall include any damages paid to a Participant by Supplier under this Agreement, and the ability of the Participant to obtain damages under this Agreement are similarly limited by this Section 2.1, which shall consider amounts paid to the Centre and other Participants under either the Master Agreement or a participant licensing agreement, in determining the amount available to pay damages to the Participant, and/or the Centre, as applicable.

End users are responsible for using the SCA Solution in accordance with professional clinical judgment. The Centre and the Participant each acknowledge that the SCA Solution is intended to be a supplement to, and not a substitute for, the knowledge, expertise, skill and judgment of physicians, pharmacists and other healthcare professionals in patient care.

2.2 **Liability of the Centre.** The Centre has no liability to the Supplier for the actions of the Participants.

- 2.3 **Intellectual Property Indemnity.** The Participant and its directors, employees, agents and representatives (collectively, the "Indemnified Parties") will be held harmless from damages suffered from, and defended by Supplier in respect of, any third party intellectual property claim for any alleged or actual infringement or misappropriation of any third party intellectual property respecting the use of the SCA Solution in the manner contemplated by this Agreement. In the case of an injunction, the Supplier shall promptly, at its sole option and expense: (a) obtain for the Indemnified Parties the right to continue using the SCA Solution; or (b) replace or modify the SCA Solution to avoid a claim, provided that the replaced or modified SCA Solution is substantially equivalent in function, speed, uptime and scalability. If an injunction is granted and option (a) or (b) in the foregoing sentence has not been completed within ten (10) days, the Participant shall have the right to terminate this Agreement, and the Supplier will repay all funds paid by the Centre in respect of the Participant's use of the SCA Solution.
- 2.4 **Indemnity.** The Indemnified Parties will be held harmless from and defended by Supplier in respect of: (a) any damage to tangible or real property or injury or death to persons caused by Supplier's negligence or willful misconduct; or (b) any damage resulting from a breach of Supplier's obligations in respect of Personal Health Information (as that term is defined in Schedule "B").
- 2.5 **Indemnity Procedure.** To receive the indemnities contained in this Article 2, the Participant must promptly notify the Supplier and the Centre in writing of a claim or suit and provide reasonable cooperation (at the Supplier's expense) and full authority to defend or settle the claim or suit. The Supplier shall have no obligation to indemnify any Indemnified Party under any settlement made without the Supplier's written consent.
- 2.6 **Insurance.** In co-operation with, and with the approval of, the Centre, Supplier shall make arrangements for obtaining, and for maintaining during the term of this Agreement and continuing thereafter as set forth below, insurance coverage of: (i) professional liability errors and omissions of \$5 Million per claim and In total, (ii) commercial general liability of \$5 Million per occurrence and in total; and (iii) cyber risk insurance of \$5 Million per claim and in total (collectively, the "Project Insurance"). Unless agreed to in writing by the Centre, the Parties acknowledge that the Project Insurance will be in place prior to, or concurrent with, the execution of this Agreement. The applicable policies for the commercial general liability shall include the following terms and conditions:
- a) the Indemnified Parties to be named as additional insureds with respect to liability arising in the course of performance of Supplier's obligations under, or otherwise In connection with, this Agreement:
 - b) a cross-liability clause;
 - c) contractual liability coverage; and
 - d) provision whereby the insurers will endeavor to provide 30 days written notice of cancellation, termination or material change in the Project Insurance.

The professional liability errors and omissions policy shall be maintained on a continuous basis for two (2) years following the termination of this Agreement.

2.7 **No Double Recovery.** The Supplier's indemnification and other obligations under this Article 2 are intended to operate in conjunction with the indemnification provisions set forth in the Master Agreement and are not intended to result in recovery by both the Centre and the Participant for the same or related claims (except to the extent that both the Centre and the Participant have suffered a loss).

Article 3 – General

3.1 **General.** This Agreement shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein (other than any conflicts of law rules that would result in the choice of laws of another jurisdiction) and expressly excluding the application of the United Nations Convention on Contracts for the International Sale of Goods. Each Party hereto irrevocably submits to the exclusive jurisdiction of the courts of Ontario.

3.2 **Notice.** Any notice or other communication (a "Notice") required or permitted to be given or made hereunder shall be in writing and shall be well and sufficiently given or made if either delivered in person; or sent by facsimile transmission that produces a permanent paper record (an "Electronic Transmission"), charges prepaid and confirmed by prepaid first-class mail:

In the case of a notice to the Centre, addressed to it at:	And in the case of a notice to Supplier, addressed to it at:	In the case of a notice to Participant, addressed to it at:
419 Philip Street, Waterloo, Ontario	156 Front Street West, 5 th Floor Toronto, Ontario MSJ	
N2L 3X2	2L6 Telephone No. 416-977-	
Telephone No.	1955	
519-885-0606	Email:	
Fax No.	legal@thinkresearch.com	
519-885-4838	Attention: Vice-President, Legal	Telephone
Attention:		No. Fax No.
Privacy Analyst Lead		Attention:

"Business Day" means Monday to Friday between the hours of 9:00 a.m. to 5:00 p.m., except when such a day is a public holiday, as defined in the Employment Standards Act (Ontario). Any notice given or made in accordance with the above shall be deemed to have been given or made and to have been received:

- i. on the Business Day following delivery, if delivered in person;
- ii. on the day of sending if sent by Electronic Transmission during Business Hours and, if not, then on the first Business Day after the sending thereof; and
- iii. on the fifth Business Day following mailing, if sent by prepaid first-class mail.

Any Party hereto may from time to time change its address for notice by giving Notice to the other Parties hereto in accordance with the provisions of this Section.

- 3.3 **Assignment by the Centre.** The Centre may assign its rights and obligations under this Agreement to any Affiliate without Supplier's consent.
- 3.4 **Assignment by Participant.** A Participant may assign, on notice to the other Parties but without consent, its rights at no cost to reflect a reorganization and/or the conduct of its IT functions, such as through LHINs or entities created for the facilitation of IT functions for one or more licensees.
- 3.5 **Assignment by Supplier.** Supplier may assign or transfer its rights, interests or obligations to one or more Affiliates or to a third party at the time of the sale or any other transfer of Supplier's operations (or a part thereof) to which this Agreement pertains, without any consent of the Participant, provided that such Affiliate or third party, as the case may be, agrees with the Centre to be bound by the terms and conditions of the Master Agreement and all of the participant agreements entered into by the Centre and the Supplier in connection with the Master Agreement (including without limitation this Agreement) as though it were a party thereto and hereto (provided that Supplier, subject to the Centre agreeing otherwise in writing at the Centre's sole discretion, shall not be released of its obligations under this Agreement). In such case, Supplier must notify the Centre in writing of such assignment or transfer.
- 3.6 **Binding on Successors.** This Agreement shall ensure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 3.7 **Force Majeure.** Dates and times by which a Party is required to render performance under this Agreement or any schedule hereto, other than an obligation to pay, shall be postponed automatically to the extent and for the period of time that such Party is prevented from meeting them by reason of any cause beyond its reasonable control, applying reasonable foresight and due diligence, provided: (i) to the extent feasible, prompt notice is provided of the event; (ii) a work-around strategy is promptly developed; and (iii) all commercially reasonable efforts are used to provide a work-around and to otherwise resume service to the applicable standard. A failure by a subcontractor or agent to perform shall not be an event of force majeure for a Party, unless the subcontractor or agent has itself experienced an event of force majeure. Labour disputes or lock-outs suffered or caused by a Party or its subcontractors or agents shall not be considered an event of force majeure. A requirement to disclose Personal Health Information other than under Canadian law pursuant to the terms of this Agreement shall not be an event of force majeure. The benefit of this Section shall not apply to the performance of an obligation which is thirty (30) or more days in default.
- 3.8 **Waiver.** A waiver by either Party hereto of any of its rights hereunder or of the performance by the other Party of any of its obligations hereunder shall be without prejudice to all of the other rights hereunder of the Party so waiving and shall not constitute a waiver of any such other rights or, in any other instance, of the rights so waived, or a waiver of the performance by the other Party of any of its other obligations hereunder or of the performance, in any other instance, of the obligations so waived. No waiver by either Party of any of its obligations hereunder shall be effective or binding upon such Party unless the same shall be expressed in writing.

- 3.9 **Independent Contractors.** It is understood and agreed that in giving effect to this Agreement, no Party shall be or be deemed a partner, agent or employee of another Party for any purpose and that their relationship to each other shall be that of independent contractors. Nothing in this Agreement shall constitute a partnership or a joint venture between the Parties. No Party shall have the right to enter into contracts or pledge the credit of or incur expenses or liabilities on behalf of the other Party.
- 3.10 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by facsimile, email or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile, email or other electronic means as if an originally executed document had been received.
- 3.11 **Entire Agreement.** This Agreement, together with any attached Schedules, constitute the complete agreement between the Parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Agreement may be amended only in a writing that refers to this Agreement and is signed by the Parties hereto.
- 3.12 **Survival.** Except as otherwise provided herein, (a) the terms of Section 1.5, 1.6, 1.8-1.11, 1.13, 1.14, 2.1-2.3, 2.4(b), 2.5, 2.7, 3.1, 3.9, 3.11, 3.12, and all Schedules specifically referenced in such sections, shall survive any termination or expiry of this Agreement, as shall any other provision of this Agreement which, by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to so survive, and (b) Section 2.4(a) shall survive any termination or expiry of this Agreement for a period of five (5) years following such expiry or termination.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**CENTRE FOR FAMILY MEDICINE CARE
INNOVATIONS**

Signature:



Printed Name:

Mohamed Alarakhia

Title: Director

THINK RESEARCH CORPORATION

Signature:



Printed Name:

Sachin Aggarwal

Title: CEO

[Participant]

Signature: _____

Printed Name: _____

Title: _____

Schedule "A" 1 – Additional License Terms and Conditions

1. License Limitations

- a) Licenses granted for the SCA Solution (the "Licensed Product") shall not include any right for the Centre or the applicable Participant (as applicable, the "Licensee") to have such licensed rights exercised by or through any third party, except as expressly provided otherwise in this Agreement.
- b) The Licensee may use the Licensed Product only for the internal business purposes of such Licensee. The Licensee may not use the Licensed Product to offer outsourcing, data processing, service bureau, time-sharing or other services to third parties except if, and to the extent it is acting as a health information network provider ("HINP") and agent as per PHIPA for the purposes of the Project. The Licensee shall not sell, rent, sublicense, publish, display, loan, distribute, lease, sublease, or otherwise share with any third party the benefit of the Licensed Product, except as expressly provided otherwise in the Master Agreement. The Licensee shall not use the Licensed Product or any component thereof for any purposes competitive with the Supplier.
- c) Each Licensee agrees:
 - i. at all times to limit access to the Licensed Product to only authorized users;
 - ii. to immediately suspend access to the Licensed Product for any authorized user who is suspended, terminated, on leave, or otherwise no longer an authorized user of such Licensee; and
 - iii. at all times to maintain and enforce a secure password policy for such Licensee's authorized users.
- d) The Licensee may not reverse engineer, decompile, or disassemble the Licensed Product, nor attempt in any other manner to obtain the source code of the Licensed Product.
- e) The Licensee acknowledges and agrees that all right, title and interest, including copyright in and to the Licensed Product, the accompanying printed materials, and any copies of the Licensed Product, are owned or licensed by the Supplier, except where ownership rights are otherwise defined by a Statement of Work.

The Licensee acknowledges and agrees that the Licensed Product constitutes the valuable and proprietary and confidential information of the Supplier and the Supplier's licensors and is protected by applicable copyright laws and intellectual property laws and treaties. Accordingly, the Licensee is required to treat the Licensed Product like any other copyrighted material, except as otherwise permitted pursuant to the Master Agreement.

¹ This Schedule A replicates Schedule F of the Master Agreement as it applies to Participants.

2. Derivative Works

- a) The term "Derivative Works" includes all abridgements, additions, adaptations, collective works, compilations, condensations, copies, deriving works, enhancements, expansions, exports, improvements, modifications, partial copies, recompilations, reports, revisions, transformations, and translations based upon or otherwise related to the Licensed Product For clarity, interoperable third party components intended to work with the SCA Solution, such as APIs are not deemed to constitute Derivative Works, and their development is intended to be encouraged by the Parties.
- b) Unless otherwise permitted under this Agreement, the Licensee will not create any Derivative Works from the Licensed Product or permit any other person to create any such Derivative Works.
- c) In the event that, despite subsection (b), any Derivative Work is created by or on behalf of the Licensee, the Supplier (or the Supplier's licensors, as applicable) will be the exclusive owner of such Derivative Work. Promptly after the creation of any such Derivative Works, the Licensee will deliver to the Supplier the source code and documentation of such works. Licensee will provide, without need for additional compensation, all assistance reasonably requested by the Supplier to ensure that any such Derivative Works vest in the name of the Supplier (or the Supplier's licensors, as applicable). Licensee will be reimbursed by the Supplier for any reasonable expenses it incurs in association with any such assistance.

3. Licensee Obligations

During the term of the Master Agreement each Licensee shall:

- a) obtain, and maintain at its expense, all other software, hardware, databases, internet connectivity, internet browsers and materials necessary to meet the minimum system requirements to make use of the Licensed Product;
- b) be responsible for the administration and maintenance of user names and passwords for the Licensed Product for authorized users in connection with the Master Agreement, and for ensuring the confidentiality thereof;
- c) notify the Supplier immediately of any loss or disclosure, whether voluntary or otherwise, of any user name and/or password of any authorized users created in furtherance of this Agreement to a third party;
- d) be responsible for ensuring the security of its computer system and its confidential information prior to any confidential information being used in connection with the Licensed Product; and
- e) provide remote access to the Supplier's authorized support personnel to assist with the installation, support, testing and maintenance of the Licensed Product.

Schedule "B"² Personal Health Information

1. In this Schedule "B", "Personal Health Information" or "PHI" means personal health information (as that term is defined in the Personal Health Information Protection Act, 2004 (Ontario)) of the Participant to which Supplier has access under this Agreement or the Master Agreement and the "Services" means the information technology or information management services provided by the Supplier in connection with the SCA Solution.
2. The Parties acknowledge and agree that for the purposes of the implementation, hosting and ongoing maintenance and support of the SCA Solution, the Supplier will provide the Services to the Participant.
3. The Parties acknowledge and agree that the privacy requirements applicable to the Supplier in connection with the Services, shall be dictated by the privacy law applicable to the recipient of the Services and to the Supplier as a service provider to the recipient, as amended from time to time.
4. Notwithstanding the preceding, and regardless of the nature of the recipient of the Services or the specific Services, whenever the Supplier is providing the Services, the Supplier shall be bound by a core set of privacy requirements ("Core Privacy Requirements") in accordance with which, the Supplier shall:
 - a) acquire no rights to, control over, or possession of PHI, including but not limited to if the Supplier needs to hold or store PHI to provide the Services;
 - b) not use any PHI to which it has access in the course of providing the Services except as necessary in the course of providing the Services and for greater certainty, not use PHI for any of its own purposes;
 - c) not disclose any PHI to which it has access in the course of providing the Services, and without limiting the generality of the preceding, not disclose PHI pursuant to an order or other requirement for such disclosure unless the order or requirement is made or authorized under a law of Ontario or a law of Canada applicable in Ontario;
 - d) not permit its employees or any person acting on its behalf to have access to PHI unless the employee or person acting on its behalf agrees to comply with the restrictions that apply to the Supplier under this Agreement;
 - e) implement administrative, technical and physical safeguards, practices and procedures to protect the privacy of the individuals in relation to whose PHI it provides the Services and the confidentiality and security of such PHI;
 - f) keep, and on request make available to each applicable custodian, an electronic record of:
 - i. all accesses to PHI by the Supplier (which in this paragraph (f) includes its employees and agents) or from equipment or systems controlled by the Supplier, which record shall identify the person who accessed the PHI and the date and time of the access; and
 - ii. all transfers of PHI by or to the Supplier or by means of equipment or systems controlled by the Supplier, which record shall identify the person who transferred the PHI and the person or address to whom it was sent, and the date and time it was sent;

²This Schedule B replicates Schedule G of the Master Agreement as it applies to Participants.

- g) notify the Participant at the first reasonable opportunity if the Supplier accesses, uses, discloses or disposes of PHI, other than in accordance with this Schedule "B" or any additional SCA Solution privacy requirements applicable to the Supplier, or learns that an unauthorized person accessed PHI; and
 - h) to the extent that any permitted third party it retains to assist it in providing the Services has access to PHI, ensure that the third party agrees in writing to comply with the restrictions and conditions that are necessary to enable the Supplier to comply with this Schedule "B" and any additional SCA Solution privacy requirements applicable to the Supplier.
5. Notwithstanding any other provision of this Schedule "B", the Participant, as a custodian under the Personal Health Information Protection Act, 2004 (Ontario), acknowledges and agrees that Supplier may de-identify PHI from the Licensee's use of the Licensed Product in connection with the provision of the Services and may use such de-identified data for the following purposes:
- a) to track adoption and usage of the SCA Solution for internal quality improvement, internal research and internal product development purposes;
 - b) to generate aggregated statistics that can be used by the Supplier for external marketing and customer relations purposes;
 - c) for any quality improvement or research purpose requested by the Centre or with the consent of the Centre, any other governmental, publicly-controlled or not-for-profit body in Canada (including without limitation Local Health Integration Networks, the Ministry of Health and Long- Term Care, other agencies of the Province of Ontario or the Government of Canada, Canadian public universities and the Canadian Institute for Health Information); or
 - d) in connection with the quality improvement and research purposes listed in paragraph (c) above, to share such de-identified data with the Centre and with the consent of the Centre, any other governmental, publicly-controlled or not-for-profit body in Canada (including without limitation Local Health Integration Networks, the Ministry of Health and Long-Term Care, other agencies of the Province of Ontario or the Government of Canada, Canadian public universities and the Canadian Institute for Health Information).
6. To the extent that the purpose or effect of the Services is primarily to enable two or more Participants to use electronic means to disclose PHI to one another, in addition to the Core Privacy Requirements, the Supplier shall:
- a) provide the Participant with a plain language description of the Services that is appropriate for sharing with the public, including a general description of the safeguards the Supplier has implemented to protect against unauthorized use and disclosure of personal health information accessible through the SCA Solution and to protect the integrity, security and confidentiality of such personal health information;
 - b) make the general description referred to in paragraph (a) above available to the public along with any guidelines and policies of the Supplier that apply to the Services (to the

extent that these do not reveal a trade secret or confidential scientific, technical, commercial or labour relations Information); and

- c) perform an assessment of the Services and provide a high-level summary of such assessment to each Participant, with respect to, threats, vulnerabilities and risks to the security and integrity of personal health information accessible through the SCA Solution and how the Services may affect the privacy of the individuals to whom that personal health Information relates.

Schedule “C”³ Security

The Supplier will cooperate with the Centre to satisfy the requirements below to the extent the controls have a shared responsibility or are within the control of the Supplier.

1.1 Security

- a) The Supplier agrees to establish and maintain minimum safeguards to protect the Participant's PHI and Confidential Information as defined below:
 - i. Information Security Policy and Procedures. Establish and maintain formal information security policies and procedures establishing controls around the Confidential Information and Personal Health Information of the Participant, and the systems that process them, in accordance with the requirements of the Participant.
 - ii. Information Security Organization. Define responsibility for the ongoing review of information security safeguards to reasonably ensure its continuing suitability, adequacy and effectiveness, in accordance with the requirements of the Participant, and changing threats to security.
 - iii. Asset Management. Define the inventory of data centre, facilities and systems that create, store, process and disseminate the Participant's Confidential Information and Personal Health Information and establish ownership and responsibility for the successful operation of security controls for each of those environments.
 - iv. Human Resources. Establish and maintain controls to ensure that employees, contractors and third party staff are suitably screened and educated on security practices prior to being given access to the data and the systems that process that data, and that all individual access to the Participant's Confidential Information and Personal Health Information, is promptly removed upon termination of employment, agreement or contract with Supplier, or adjusted upon a change in role. At the request of the Participant, Supplier will be obligated to provide a list of individuals that have access to IT resources related to this Agreement.
 - v. Physical and Environmental Security. Establish a security perimeter around the physical work environment and sensitive data processing facilities and establish physical entry controls to reasonably ensure that only authorized individuals gain access to the environment, and environmental controls to protect against damage from fire, flood, and other forms of man- made or natural disasters.
 - vi. Communications and Operations Management. Establish operating procedures and controls for the secure operations of systems and networks facilitating the access to the Participant's Confidential Information and Personal Health Information in order to reasonably prevent accidental or deliberate misuse. Such controls include, but are not limited to, change management, least privileges granted, segregation of duties, separation of production environment from development/test environments, backups, network security, and the encryption of media in transit between the Centre, Participants and Supplier. In addition, Supplier will maintain a secure communication link (e-mail, telephony, etc.) to ensure that the Participant's

Confidential Information and Personal Health Information travelling between the parties remain secure.

- vii. **Access Controls.** Establish controls and procedures for the authorization, regular review and revocation of access at all levels of the system environment including physical access, network access, operating systems, applications and database access. Maintain suitable authentication controls to reasonably ensure that an individual's access rights to the Participant's Confidential Information and Personal Health Information is appropriate for the individual's role regardless of how that individual is attempting to access that information or the location from which access is being attempted. Information Systems Acquisition, Development and Maintenance. Maintain an application development and maintenance framework that protects the integrity of the production application and associated source code from unauthorized and untested modifications. Such a framework shall establish control over the Participant's Confidential Information and Personal Health Information, across all environments within the development lifecycle of systems. Incident Management. Establish policies and procedures for the timely communication and investigation of suspected breaches in the security of the Participant's Confidential Information and Personal Health Information. At a minimum, communication of such incidents to the Participant and the Centre must take place prior to any discussion with regulators, clients, outside law enforcement agencies or representatives of the media. Incident investigations and associated information handling shall be performed in accordance with Applicable Law.
 - viii. **Compliance.** Establish policies and procedures to ensure that the design, operation and management of systems and processing the Participant's Confidential Information and Personal Health Information meets the requirements of Applicable Law, and the requirements established in this Agreement.
 - ix. **Data Destruction and Disposal.** Supplier will implement processes and controls to ensure that any storage media or data is disposed or destroyed securely in accordance to with the reasonable requirement of the Participant.
 - x. **Auditing Supplier** will maintain an audit trail of the associated activities by staff or automated processes. Supplier will make available upon the Centre's request any reports related to specific actions.
- b) Supplier shall conduct regular control reviews of security of the Services, including, as applicable, penetration testing and intrusion detection, malware alerts, and share the results of such reviews with the Participant upon request.

1.2 **Verification and Audit of Security Compliance.** Supplier represents and warrants that it maintains adequate internal audit functions to assess internal controls in its environment, and to protect the security and confidentiality of any of the Participant's Confidential Information and Personal Health Information.

³ This Schedule C replicates Schedule H of the Master Agreement as it applies to the Participant.