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## **Amendment No. 1 to the SCA Program Information Sharing and Health Information Network Provider (HINP) Agreement**

This Amendment No. 1 (“**Amending Agreement**”) to the SCA Program Information Sharing and Health Information Network Provider (HINP) Agreement dated October 24, 2017 (“**HINP Agreement**”) by and between the Centre for Family Medicine Care Innovations, operating as the eHealth Centre of Excellence (the “**Centre**”) and the organizations that have entered into a Participation Agreement with the Centre under the HINP Agreement (each a “**Participant**” and collectively, the “**Participants**”) is made effective as of [insert date] (“**Amendment No. 1 Effective Date**”).

### **WHEREAS:**

1. The Centre provides a provincial information system and related services that facilitate the electronic referral of Clients among Participants (collectively the “**eReferral Service**”) using a platform and services provided by Third Party Providers.
2. The Centre and each Participant (each a “**Party**” and collectively, the “**Parties**”) is a party to the HINP Agreement which sets out their respective rights and obligations in connection with the eReferral Service.
3. The Ministry of Health has established a program (“**Ontario eServices Program**”) to deliver digital services to support clinical workflows and thereby, facilitate smoother transitions in care and an improved patient experience. Originally provided as part of the System Coordinated Access Program (“**SCA Program**”), the eReferral Service is one of the digital health tools that is being funded by Ontario Health and made available through the Ontario eServices Program.
4. Ontario Health is an agency of the Government of Ontario under the Ministry of Health, with a mandate to oversee health care delivery across Ontario in accordance with the objects set out in the *Connecting Care Act, 2019*. Among other designations, Ontario Health is a prescribed entity within the meaning of and for the purposes of section 45 of the *Personal Health Information Protection Act, 2004* (“**PHIPA**”) and section 18 of Ontario Regulation 329/04 made under PHIPA (“**PHIPA Regulation**”).
5. Ontario Health has created an eReferral repository (“**eReferral Repository**”) to collect information relating to electronic referrals (“**eReferral Data**”). In its capacity as a Prescribed Entity, Ontario Health seeks to collect and use eReferral Data for analytics with respect to the management and evaluation of, allocation of resources to, and planning for Ontario’s health system (“**Permitted Purposes**”), more specifically, to further the Ontario eService Program goals set out in paragraph 3 above.

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6. As a Prescribed Entity, Ontario Health is authorized under PHIPA to collect Personal Health Information for the Permitted Purposes from Health Information Custodians. Under the terms and conditions set out in the data sharing agreement attached as Schedule A to this Amending Agreement (“**DSA**”), which the Participant will have hereby authorized and directed the Centre to execute as its agent, the Centre will effect the disclosure by the Participant to Ontario Health of the eReferral Data generated by the Participant’s use of the eReferral Service.
7. The Parties hereby agree to the amendment of the HINP Agreement to: identify the eReferral Service as part of the Ontario eServices Program rather than the System Coordinated Access Program or SCA Program; witness the Participant’s authorization and direction to the Centre to execute the DSA on behalf of the Participant; witness the Participant’s authorization and direction of the Centre, as the Participant’s Agent, to transmit the Participant’s eReferral Data to Ontario Health pursuant to the terms and conditions of the DSA; and clarify the Centre’s role under PHIPA for the purposes of the eReferral Service.

**NOW THEREFORE** in consideration of the promises, mutual covenants, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each Party), the Parties covenant and agree as follows.

**A. Incorporation by Reference**

1. Except as otherwise expressly provided in this Amending Agreement, the capitalized terms herein will have the meanings attributed to them in the HINP Agreement and in the DSA attached as Schedule A to this Amending Agreement.

**B. eReferral Program**

1. The following defined terms in the HINP Agreement will be replaced with the term “eReferral Service”: “SCA Network”, “SCA Program”, “SCA Program Office”, and “SCA Website”. The defined term “System Coordinated Access Privacy Guide” will be replaced with the term “eReferral Service Privacy Guide”. The defined term “SCA Privacy Guide” will be replaced with the term “Privacy Guide”.
2. The definition of “Agent in Subsection 1.1.3 in the HINP Agreement will be replaced with the following:
  - 1.1.3 “Agent” has the same meaning set out in PHIPA and “agent” means a person authorized to create legal relations with a third party on behalf of another as more particularly described in Section 1.9.

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3. The following will be added to Section 1.9 (Independent Contractors) of the HINP Agreement:

Notwithstanding the preceding, the Participant hereby authorizes and directs the Centre, as its agent, to execute the DSA.

**C. Disclosure of eReferral Data**

1. The following will be added to Section 1.5 (Schedules) of the HINP Agreement:

1.5.5 Schedule D – Data Sharing Agreement

2. The following will be added to Section 3.3 (Agent) of the HINP Agreement:

3.3.2 The Centre is an Agent on behalf of the Participant for the purpose of carrying out the Participant's disclosure of eReferral Data to Ontario Health under the terms and conditions of the DSA that is Schedule D to this Agreement.

3.3.3 The Participant acknowledges and agrees that it has reviewed the DSA and hereby directs the Centre to transmit its eReferral Data, as defined in the DSA, to Ontario Health.

3.3.4 For clarity, nothing in this Article 3 grants the Centre custody or control of Participant eReferral Data or permission to disclose eReferral Data except as expressly directed by a Participant. Transmission of eReferral Data to Ontario Health under this Agreement constitutes a disclosure of the eReferral Data by the Participant to Ontario Health and a collection of the eReferral Data by Ontario Health from the Participant. Nothing in the preceding will be interpreted or construed to prevent the Centre, as an Agent of the Participant, from collecting, de-identifying and otherwise using, and disclosing the Participant's referral data to generate reports on behalf of the Participant and conducting analysis as permitted under Section 2 (Agent) of Schedule C to this Agreement.

3.3.5 Notwithstanding anything to the contrary in this Agreement, the Centre is not a Health Information Custodian or a Participant and has no Client Data of its own.

3. The following will be added to Schedule C (Services to be Provided by the Centre as a HINP and Agent) of the HINP Agreement:

N. The Centre will carry out the disclosure of the Participant's eReferral Data to Ontario Health through the eReferral Service on the terms and conditions set out in the DSA that is Schedule D to this Agreement.

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4. The following will be added to Section 4.1 (Participant Representations and Warranties) of the HINP Agreement:

- 4.1.8 it has provided any notice to Clients and obtained any Client consent required for it to disclose eReferral Data to Ontario Health.

5. The following will be added to Article 5 (Obligations and Rights of the Participants) of the HINP Agreement:

5.9 Disclosure of eReferral Data to Ontario Health

- 5.9.1 The Participant agrees to disclose its eReferral Data to Ontario Health, in Ontario Health's capacity as a Prescribed Entity under the terms and conditions of the DSA.

- 5.9.2 The Participant will direct any inquiries it has in connection with Ontario Health's use of eReferral Data to Ontario Health at the address set out in Article 17 (Notice) of this Agreement.

- 5.9.3 The Participant will be responsible for responding to any inquiries of Ontario Health in connection with the eReferral Data it has disclosed to Ontario Health, including but not limited to inquiries about data quality.

- 5.9.4 The Participant may direct the Centre, in writing, to cease transmitting its eReferral Data to Ontario Health. The Centre generally requires ten (10) Business Days written notice to implement such a direction ("**Direction**").

- 5.9.5 Where a Direction is related to receipt of notification that Ontario Health will amend the DSA under Section 14.1 of the DSA ("**Notice of Amendment**"), the Participant:

- 5.9.5.1 acknowledges that the amendments made under Section 14.1 may come into effect as early as twenty (20) Business Days following the date of the Notice of Amendment;

- 5.9.5.2 will ensure that the Centre receives the Direction within ten (10) Business Days of the date of the Notice of Amendment if the Participant intends for the Direction to be implemented prior to the effective date of the amendment; and

- 5.9.5.3 acknowledges and agrees that if the Direction is not received by the Centre at least ten (10) Business Days following the Notice of Amendment, the Centre may not be able to implement the Direction prior to the effective date of the amendment and will have no responsibility or liability for failing to do so.

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6. The following will be added to Section 14.2 (Centre Indemnity) of the HINP Agreement:

14.2.4 The Participant releases the Centre from any liability in relation to any acts or omissions of Ontario Health in connection with its collection of the eReferral Data by means of the eReferral Service and any subsequent use and disclosure of the eReferral Data by Ontario Health.

7. The following is added to Article 17 (Notice) of the HINP Agreement:

**Ontario Health**

5th Floor, 525 University Avenue

Toronto, ON M5G 2L3

Attention: Chief Privacy Officer

Email: Privacy@ontariohealth.ca

8. The following Schedule A will be added as Schedule D to the HINP Agreement.

**D. HINP Agreement to Continue as Amended**

1. Except as herein amended, the terms and conditions of the HINP Agreement will continue in full force and effect and are hereby ratified and affirmed by each Party.

**<Signature Sections and accompanying DSA (Schedule A) intentionally removed for web content>**