

Bill No. 359
2016

By-law No. A.-_____

A by-law to authorize and approve a Community Integration Information Management and Network Services Agreement, and a Community Integration Data Sharing Agreement, with respect to the Health Partner Gateway (HPG), owned and operated by the Ontario Association of Community Care Access Centres, and to authorize the Mayor and the City Clerk to execute the Agreements.

WHEREAS section 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it has been deemed expedient to enter into a Community Integration Information Management and Network Services Agreement, and a Community Integration Data Sharing Agreement, with respect to the Health Partner Gateway;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The following agreements, substantially as attached as Schedule 1 and Schedule 2 respectively, are approved to be entered into between The Corporation of the City of London, the Ontario Association of Community Care Access Centres, and other Participants, for the Health Partner Gateway (HPG):
 - (a) Community Integration Data Sharing Agreement; and
 - (b) Community Integration Information Management and Network Services Agreement.
2. The Mayor and the City Clerk are authorized to execute the Agreements approved under section 1, above, and such other documents required to be executed to give effect to the Agreement.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on September 27, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – September 27, 2016
Second Reading – September 27, 2016
Third Reading – September 27, 2016

COMMUNITY INTEGRATION DATA SHARING AGREEMENT

This Agreement is made as of March 1, 2015, between the parties listed in Schedule "A" to this Agreement, as amended from time to time, each of which have entered into a Participation Agreement in the form of Schedule "B" to this Agreement.

RECITALS

- A. Each of the Participants provides healthcare or related services.
- B. The Participants have agreed to use an electronic information system known as the Health Partner Gateway ("HPG"), that is owned and operated by the Ontario Association of Community Care Access Centres (the "Association"), to disclose and collect PHI to and from other Participants where the Participants are both providing services to the same patient or client.
- C. Each Participant has entered into a Community Integration Information Management and Network Services Agreement ("Services Agreement") with the Association that permits the Participant to use the HPG.
- D. PHI made available through the HPG may only be collected by a Participant for the purpose of more efficiently and effectively providing or assisting in the provision as applicable, of the health care or community services provided by the Participant, among other terms and conditions.
- E. This Agreement describes all of the terms and conditions upon which the Participants have agreed to disclose and collect PHI through the HPG.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency is acknowledged by each party, the parties covenant and agree as follows:

1. Definitions, Interpretation

In this Agreement:

- (1) "agent", "collect", "disclose", "health care" and "use" will each have the meaning ascribed thereto in PHIPA.
- (2) "Agreement" means this agreement including any recitals and schedules to this agreement, as amended, supplemented or restated from time to time.
- (3) "Applicable Law" means PHIPA and/or FIPPA, or any law of Ontario, or law of Canada applicable in Ontario, superseding either or both of PHIPA and FIPPA or otherwise governing PHI, including its collection, use and disclosure.
- (4) "Business Day" means any day except Saturday, Sunday or any statutory holiday in the Province of Ontario.
- (5) "Custodian" in connection with PHI means the Participant that is the Health Information Custodian of the PHI or where the Participant is not a Health Information Custodian, the Participant that collected or compiled the PHI, is responsible for it at law and accountable to the individual to whom the PHI relates.

- (6) **“FIPPA”** means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (7) **“Originating Participant”** in relation to PHI, means the Custodian disclosing the PHI.
- (8) **“Patient”** means a patient or client, receiving health care or community services, as applicable, from a Participant and in respect of PHI, the individual to whom it relates.
- (9) **“PHI”** means information that is defined as personal health information in PHIPA, or defined as personal information in FIPPA, or that relates to an identifiable individual (depending on the Custodian), and in the custody or under the control of a Participant; and disclosed and collected by means of the HPG.
- (10) **“PHIPA”** means the *Personal Health Information Protection Act, 2004* (Ontario).
- (11) **“Privacy Officer”** means the individual responsible for a Participant’s compliance with its legal and other responsibilities in relation to PHI.
- (12) **“Recipient Participant”** means a Participant collecting PHI from an Originating Participant.

In this Agreement, unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

2. Participants

Each Participant will designate and/or identify a Privacy Officer to act as a single point of contact for the Participant in connection with all matters arising from or connected to this Agreement. The name, address, telephone number, facsimile number, and e-mail address (“Contact Information”) of the Privacy Officer will be provided on the Participation Agreement executed by the Participant. The Association will maintain, update and make available to each Participant and the Committee, a list of the Contact Information for each Participant. Any Participant may at any time change its Privacy Officer and/or Contact Information upon written notice to the Association and the Committee.

3. Relationship of the Participants, Disclosure and Collection of PHI

It is understood and agreed that:

- (1) in giving effect to this Agreement, no Participant will be or be deemed to be a partner, agent or employee of another Participant for any purpose and that the relationship of each Participant to the other Participants will be that of independent contractors;
- (2) nothing in this Agreement will constitute a partnership or a joint venture between the Participants;
- (3) for the purposes of this Agreement,
 - (a) receipt of PHI by a Receiving Participant constitutes a collection of that PHI by the Receiving Participant and a disclosure of that PHI by the Originating Participant;
 - (b) for greater certainty, a Receiving Participant will be deemed to have collected PHI even if it does not make a copy of the PHI or otherwise incorporate it into its own records for the Patient;
 - (c) the Receiving Participant will have all of the obligations of a Custodian in relation to PHI that it collects under this Agreement, including obligations to protect the privacy of the Patient;

- (d) without limiting the generality of the preceding subsection, the Receiving Participant has no obligation to return to the Originating Participant or to destroy PHI on the termination or expiry of this Agreement.

4. Authorized Purposes

Participants will only collect PHI, and will cause their agents to only collect PHI:

- (1) where the Participant is a Health Information Custodian, for the purposes of providing health care or assisting in providing health care;
- (2) where the Participant is not a Health Information Custodian, if the Patient has consented to the collection for designated purposes and the Participant only uses the PHI for those designated purposes; or
- (3) where the collection is otherwise required or permitted by Applicable Law.

5. Compliance with Patient Instructions

To the extent that a Receiving Participant has been made aware by a Patient or by the Originating Participant that the Patient has restricted the collection, use or disclosure of PHI, the Receiving Participant will not collect, use or disclose such PHI except in accordance with the Patient's instructions unless otherwise required or permitted by Applicable Law.

6. Obligations of Participants

- (1) Each Participant will ensure that PHI is as accurate, complete and up-to-date as required for the purpose for which it is disclosed and used, as the case may be. For clarity, both Originating Participants and Receiving Participants will take the steps that in their professional judgment are necessary to ensure that the PHI that they are disclosing or using is as accurate as necessary for the purpose for which it is being disclosed or used.
- (2) Without limiting the generality of the preceding, where an Originating Participant has received instructions not to disclose PHI that it considers reasonably necessary for the purpose of providing health care, the Originating Participant will give the Receiving Participant Notice of same.
- (3) Participants will comply with Applicable Law when collecting, using and disclosing PHI and to facilitate same, will: (a) designate a Privacy Officer; and (b) advise its agents of their duties under Applicable Law and this Agreement;
- (4) Participants will have in place systems, policies and procedures, including without limitation administrative, technological and physical safeguards, to protect PHI against theft, loss and unauthorized access, use, disclosure and destruction.
- (5) Participants will collaborate and cooperate with other Participants, to the extent reasonably required, to investigate and address any privacy or security breaches that are affecting or that are likely to affect PHI.
- (6) Participants will complete and submit to the Committee, on an annual basis, a "Privacy and Information Security Compliance Checklist" developed by the Committee and designed to verify that each Participant is maintaining a privacy program that will allow it to comply with its obligations under this Agreement.

- (7) Nothing in the preceding subsection shall be interpreted or construed to require a Participant to provide information in such detail that its disclosure could reasonably threaten the security of the Participant's electronic information system.

7. Governance

A Community Integration Steering Committee (the "Committee") will be established to assist the Participants and the Association with the delivery and use of the HPG and the services of the Association, matters involving PHI and any other matters arising out of this Agreement or the Services Agreement. The membership of the Committee will include one or more representatives of the Association and each Participant sector, including but not limited to CCACs, hospitals, long term care and primary care. The Association and each Participant sector will determine the process for selecting its representatives. The initial terms of reference of the Committee will be made available to each Participant and the Association. The Committee will have the discretion to amend its terms of reference and will determine the process by which it will do so and conduct its business.

8. Dispute Resolution

Any disagreement or dispute between the Participants with respect to the performance of this Agreement or the interpretation of any provision of this Agreement ("Dispute") will be:

- (1) first referred to the Chief Executive Officers of the affected Participants; and
- (2) failing resolution of the Dispute within thirty (30) Business Days of the referral, or such other period as agreed to by the affected Participants, to the Committee.

The Participant that is seeking relief will provide the Participant from which it is seeking relief with Notice setting out the matters in dispute, a concise statement of the facts on which it relies and the resolution that it is seeking.

9. Injunctive Relief

Notwithstanding the dispute resolution process set out above, any Participant may seek injunctive or other interim relief from a court of competent jurisdiction from a breach or reasonably likely breach of this Agreement that has or may reasonably threaten the confidentiality of PHI and/or the privacy of the Patient to whom it relates.

10. Limitation of Liability

- (1) Each Participant acknowledges that use of the HPG is discretionary and that the Participant will have control over the Participants to which it discloses PHI through the HPG. Each Originating Participant has the right to request a copy of any other Participant's Privacy and Information Security Compliance Checklist as a component of conducting its due diligence regarding the privacy program of that Participant.
- (2) No Participant will seek recourse, except through the dispute resolution process provided for in Section 8 above or the injunctive relief provided for in Section 9 above, against another Participant for any claim or damages arising out of or connected to this Agreement unless due to the negligence, intentional or malicious conduct of the Participant from which it is seeking recourse and except to the extent that the claim or damages arise from or are connected with its own negligence, intentional or malicious conduct.

11. Indemnification

Each Participant, individually and not jointly and severally (an "Indemnitor"), agrees to indemnify, defend and hold the other Participants (each an "Indemnified Party") harmless from any and all loss, damages, costs, liabilities, expenses and settlement amounts, which the Indemnified Party may incur or suffer or be required to pay arising out of or in any way relating to any claim by a Participant or any third party made in respect of this Agreement, where the claim is due to the negligence, intentional or malicious conduct of the Indemnitor. The indemnification obligations of the Indemnitor will be subject to the following:

- (1) the Indemnified Party notifying the Indemnitor in writing within ten (10) Business Days after its receipt of Notice of any claim;
- (2) the Indemnitor having sole control of the defence and all settlement negotiations and agreements related thereto so long as no unilateral actions are taken by the Indemnitor which are likely to have a material adverse effect upon the Indemnified Party; and
- (3) the Indemnified Party providing the Indemnitor with reasonable assistance, information and authority necessary to perform its obligations under this Section.

12. Insurance

- (1) While a Participant, each Participant will maintain in full force and effect general liability insurance in an amount that a prudent organization in its place would maintain having consideration for its obligations under this Agreement.
- (2) Each Participant, will provide the Committee with written documentation in relation to its insurance coverage upon request.

13. Term, Termination

- (1) This Agreement will remain effective until:
 - (a) terminated by a Participant, in relation to itself;
 - (b) terminated by the Committee in relation to a Participant;
 - (c) terminated by all of the Participants; or
 - (d) the termination of the Services Agreement, as further described below.
- (2) Any Participant may terminate this Agreement in respect of itself on one (1) month's prior written notice to the Association and the Committee. Upon any termination of the Services Agreement with respect to a Participant, this Agreement will be deemed to have been terminated in respect of that Participant, effective as of the date of the termination of the Services Agreement.
- (3) The Committee may terminate this Agreement in respect of a Participant where the Participant has failed to comply with this Agreement or its acts or omissions are a threat to the security and/or integrity of PHI. Where the Committee terminates this Agreement in connection with a Participant, that Participant may make written submissions to the Committee and the Committee will reconsider the decision to terminate. Where the Committee, on reconsideration, decides not to terminate this Agreement in connection with the Participant, the Committee may impose terms

and conditions on the Participant in addition to those in this Agreement and may limit the term of the Agreement with the Participant.

14. Additional Participants

A Health Information Custodian or provider of community services that has been recommended as a Participant or has applied to the Committee and meets terms and conditions established by the Committee, will become a Participant upon the execution of a Participation Agreement in the form attached hereto as Schedule "B" and a Services Agreement.

15. Survival

Except as otherwise provided herein, those sections of this Agreement which, by the nature of the rights or obligations set out therein, might reasonably be expected to survive any termination or expiry of this Agreement shall survive any termination or expiry of this Agreement.

16. Notice

All notices, requests, demands or other communications (collectively, "Notices") to be given by a Participant under this Agreement will be given in writing by personal delivery or by email or facsimile transmission to the address for each Participant or the Committee or such other address as may be provided in writing by a Participant or the Committee to the Participants from time to time. If delivered or transmitted before 4:30 p.m. on a Business Day, Notices shall be deemed to have been received on that Business Day and otherwise at the opening of business on the following Business Day.

17. Assignment

No party may assign its rights or obligations under this Agreement without the prior written consent of the other parties, not to be unreasonably withheld, except that any party may without consent assign its rights under this Agreement to: (i) a successor entity; (ii) or an acquirer of all or substantially all of its assets; or (iii) following an approved transfer to another entity under the *Long-Term Care Homes Act, 2007* (Ontario).

18. Further Assurances

Each Participant agrees that it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and shall cause the doing of all such acts and the execution of all such further documents as are within its power to cause the doing or execution of, as the other Participants hereto may from time to time reasonably request in writing and as may be necessary or desirable to give effect to this Agreement.

19. Entire Agreement

This Agreement, and any agreements and other documents to be delivered pursuant to it or referenced herein, including without limitation the Services Agreement, constitutes the entire agreement between the Participants pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, oral or written, between the Participants. The execution of this Agreement has not been induced by, nor do any of the Participants rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgements not expressly made in this Agreement or in the agreements and other documents to be delivered pursuant hereto. This Agreement supersedes and replaces the Community Integration Data Sharing Agreement dated November 1, 2012.

20. Severability

Should any provision of this Agreement be found to be invalid by a court of competent jurisdiction, that provision will be deemed severed and the remainder of this Agreement will remain in full force and effect.

21. Amendments, Waivers

This Agreement may be amended, modified or supplemented only by written agreement signed by each of the Participants. No waiver, alteration, amendment, modification, or cancellation of any of the provisions of this Agreement will be binding upon a Participant unless made in writing and duly signed the Participant or Participants to be bound.

22. Governing Law

This Agreement will be interpreted, construed, and governed by and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (other than any conflict of law rules that would result in the choice of laws of another jurisdiction). The Participants agree to submit to the exclusive jurisdiction of the courts of Ontario.

23. Schedules

The following schedules are attached to and incorporated into this Agreement by reference and deemed to be part hereof:

Schedule A

I - Participants

Schedule B – Form of Participation Agreement

IN WITNESS WHEREOF, the parties have agreed to be bound by this Agreement and have executed this Agreement by executing a Participation Agreement.

Schedule A

I - Participants

II - Address for Notice: Association

Name: Bosco Chan
Title: Chief Privacy Officer & Director, Privacy, Information Security & Enterprise Risk Management
Address: 130 Bloor Street West, Suite 200, Toronto ON M5S 1N5
Phone: 416-640-7739
Fax: 416-750-3624
Email: bosco.chan@ccac-ont.ca

III - Address for Notice: Committee

Name: Bosco Chan
Title: Chief Privacy Officer & Director, Privacy, Information Security & Enterprise Risk Management
Address: 130 Bloor Street West, Suite 200, Toronto ON M5S 1N5
Phone: 416-640-7739
Fax: 416-750-3624
Email: bosco.chan@ccac-ont.ca

**Schedule B Participation
Agreement**

This Participation Agreement is entered into by

("Participant") as of

1. The terms used in this Participation Agreement have the meaning attributed to them in the Community Integration Data Sharing Agreement (DSA) among the Participant and other healthcare providers or providers of community services that also have entered into Participation Agreements under the DSA dated March 1, 2015.
2. The DSA establishes the terms and conditions upon which each Participant may collect, use, disclose, exchange and access PHI for the purposes set out in the DSA.
3. The Participant has reviewed and agrees with all other Participants to be a party to and bound by the DSA, the terms and conditions of which are incorporated herein by reference.
4. The following is the contact information for the Participant for the purposes of Notice under the Agreement:

Name: Angie Heinz

Contact Name/Title: Administrator

Address: 710 Southdale Road East, London, Ontario

Telephone: 519-661-0400 x 8260

Fax: 519-661-0446

Email: aheinz@london.ca

In witness whereof, this Agreement has been executed by the Participant :

Per: The Corporation of the City of London

Name: Matt Brown

Title: Mayor

Signature:

Name: Catherine Saunders

Title: City Clerk

Signature:

**COMMUNITY INTEGRATION INFORMATION MANAGEMENT AND NETWORK
SERVICES AGREEMENT**

THIS AGREEMENT made as of March 1, 2015.

BETWEEN:

**ONTARIO ASSOCIATION OF COMMUNITY CARE
ACCESS CENTRES**, a corporation existing under the *Corporations
Act* (Ontario), (the “**Association**”)

– and –

The parties listed in Schedule “A” hereto, as amended from time to time each of which has entered into a Participation Agreement in the form of Schedule “D”, (each a “Participant” and collectively, the “Participants”)

WHEREAS

- A. The Participants provide healthcare and related services to individuals who reside or receive treatment in the communities that they serve;
- B. The Participants have agreed that where two or more of them provide services to the same patient or client (collectively “Patient”), they will make PHI (as defined below) available electronically to other applicable Participants for the purpose of more efficiently and effectively providing or assisting in the provision of health care, or providing or assisting in the provision of community services, to the Patients to whom the information relates.
- C. The Association provides an information system (“Health Partner Gateway” or “HPG”) and related information management and technology services (“Services”) to community care access centres (“CCACs”) and is willing to extend the use of the HPG and Services to all Participants for the purposes described in paragraph B above.
- D. The Association and the Participants wish to set out their respective obligations in connection with delivery and use of the HPG and the Services in this Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I - INTERPRETATION

1.01 Definitions

In this Agreement, capitalized terms are defined in the preamble above, in the body of the Agreement or have the meaning attributed to them below:

“**Agent**” means an “agent” as defined in PHIPA;

“**Agreement**” means this Agreement and any schedules attached to this Agreement;

“Applicable Law” means the laws of Ontario, or laws of Canada applicable in Ontario, that govern the collection, use and disclosure of PHI by the Participants and the provision of the Services by the Association to the Participants;

“Applicable Participant” means the Participant that discloses PHI in its custody or under its control to another Participant;

“Authorization” means a written direction about PHI given to the Association by a Participant, electronically or otherwise;

“Authorized Persons” means the employees, officers and any subcontractors of the Association who have a need to access to PHI in order for the Association to perform the Services;

“Business Day” means any day other than a Saturday, Sunday, and statutory holiday observed in the Province of Ontario;

“Data Sharing Agreement” or **“DSA”** means the agreement between the Participants setting out the terms and conditions under which PHI may be collected, used and disclosed through the HPG and the Services under this Agreement;

“Health Information Custodian” means a “health information custodian” as defined in PHIPA;

“Health Information Network Provider” means a “health information network provider”, as defined in the regulations under PHIPA;

“Ministry” means the Ministry of Health and Long-Term Care for the Province of Ontario;

“Personal Health Information” means personal health information as defined in PHIPA;

“Personal Information” means information about an identifiable individual that is not Personal Health Information;

“PHI” means collectively Personal Health Information and Personal Information that is collected, used or disclosed by a Participant, regardless of whether the Participant is a Health Information Custodian, through the HPG and the Services under this Agreement and the DSA;

“PHIPA” means the *Personal Health Information Protection Act, 2004* (Ontario);

“Privacy Breach” means the theft, loss or unauthorized access, collection, use, manipulation, disclosure and/or destruction of PHI;

“Services” means the services to be provided by the Association to Participants under this Agreement as more particularly described in Schedule “B”; and

1.02 Number and Gender

Words importing the singular number include the plural and vice versa and words importing gender include the masculine, feminine and neuter genders.

1.03 References to Legislation

Any reference to a statute in this Agreement shall mean the statute in force as at the Effective Date together with all regulations made thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute or regulation thereto, unless otherwise expressly provided.

1.04 Headings and Table of Contents

The division of this Agreement into separate articles, sections, subsections and schedules and the insertion of headings and captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.05 Schedules

The Schedules that form part of this Agreement are:

- Schedule "A" - Participants, Contact Information for Association and Committee
- Schedule "B" - Services, Service Level Objectives
- Schedule "C" - Plain Language Description of the Services
- Schedule "D" - Participation Agreement

1.06 Order of Precedence

In the event of any conflict between any of the provisions of the Schedules hereto and the body of this Agreement, the provisions in the body of this Agreement shall govern.

ARTICLE II - SERVICES

2.01 Services, Service Level Objectives

The Association will provide the Services set out in Schedule "B". The Association will use reasonable commercial efforts to meet the service level objectives set out in Schedule "B". The failure of the Association to meet the service level objectives does not constitute a breach of this Agreement by the Association.

Additional information about HPG processes, including those for incident management, is provided in the document "Operational Summary of Roles and Responsibilities for HPG", which the Association will make available to the Participants.

2.02 Disclaimer, Alternate Means of Exchanging PHI

The HPG is not guaranteed to perform at 100% availability and each Participant will be required to maintain alternate means of disclosing and collecting PHI and down-time procedures for use where the HPG is not available. Each Participant assumes sole responsibility for its use of the HPG and the Services and subject to any limitations in Applicable Law, for the use of PHI in providing its services to Patients.

2.03 Additional Services

The Association and the Participants may agree to the provision of additional services by the Association by amendment to Schedule "B".

ARTICLE III - PRIVACY AND PHI

3.01 The Association as HINP/Agent

The Association is providing the Services as a Health Information Network Provider. Notwithstanding the preceding, where the Association is requested by a Participant to provide Services which involve the collection and disclosure of PHI and a use of PHI that is beyond that permitted to a Health Information Network Provider under PHIPA, the Association will provide the Services as the Agent of the Applicable Participant. The Association will only collect, use and disclose PHI in accordance with this Agreement and Applicable Law or pursuant to an Authorization and will not acquire any right, title or interest in or to any such PHI. For greater certainty, as between the Association and the Participants, the Participants have and retain custody and control of PHI, even in the course of the Association's performance of the Services.

3.02 Obligations of the Association as a HINP

To the extent it is providing the Services as a HINP, the Association will:

- a) notify every applicable Participant at the first reasonable opportunity if it;
 - i. accessed, used, disclosed or disposed of PHI other than in accordance with this Agreement; or
 - ii. an unauthorized person accessed PHI;
- b) to the extent reasonably practical, and in a manner that is reasonably practical, keep and make available to each applicable Participant, on the request, an electronic record of,
 - i. all accesses to all or part of the PHI associated with the Participant being held in equipment controlled by the Association, which record shall identify the person who accessed the information and the date and time of the access, and
 - ii. all transfers of all or part of the PHI associated with the Participant by means of equipment controlled by the Association, which record shall identify the person who transferred the information and the person or address to whom it was sent, and the date and time it was sent;
- c) perform, and provide to each applicable Participant a written copy of the results of, an assessment of the Services, with respect to,
 - i. threats, vulnerabilities and risks to the security and integrity of PHI, and
 - ii. how the Services may affect the privacy of the individuals who are the subject of PHI
- d) ensure that any third party it retains to assist in providing the Services agrees to comply with the restrictions and conditions that are necessary to enable the Association to comply with this section.

3.03 Plain Language Description of the Services and Security

A plain language description of the Services that is appropriate for sharing with the individuals to whom the PHI relates, including a general description of the safeguards in place to protect against unauthorized use and disclosure, and to protect the integrity of PHI is attached as Schedule "C".

ARTICLE IV - SECURITY

4.01 Security

The Association will protect PHI with the physical, organizational and technological safeguards set out in Schedule "C". Upon request, the Association will provide any Participant with a copy of its security policies and procedures to the extent that they do not reveal a trade secret or confidential scientific, technical or commercial information of the Association.

4.02 Notification of Disclosure Order

The Association will notify the Applicable Participant promptly of any demand, order or other requirement of a court or governmental authority to disclose PHI and will take all reasonable steps, in consultation with the Applicable Participant, to respond to such demand, order or requirement.

4.03 Transfer or Disclosure of PHI Outside of Canada

The Association will not use or store PHI outside of Canada except with the permission of the Participants.

4.04 Privacy Breach Procedures

In the event of a Privacy Breach, the Association will, as soon as practicable and in any event within forty-eight (48) hours of becoming aware of a Privacy Breach, send written notice of such breach to each Applicable Participant, that includes to the extent available:

- (a) the date and time of the Privacy Breach;
- (b) a description of the PHI affected by the Privacy Breach;
- (c) the circumstances of the Privacy Breach, including the persons who accessed, disclosed and received the affected PHI; and
- (d) the actions being taken to contain the Privacy Breach and to prevent similar Privacy Breaches from occurring in the future.

4.05 Third Party Requests for PHI

The Association will refer all requests by third parties (other than Authorized Persons) for access to PHI to the Applicable Participant or Participants.

4.06 Inspection

Any Participant may enter premises of the Association from which the Association provides the Services during normal business hours, on a Business Day, upon at least twenty-four (24) hours prior notice, for the purposes of inspecting and auditing the Association's compliance with this Agreement. For greater certainty, this right of inspection applies only to premises under the control of the Association and not to any third party premises.

ARTICLE V - CONFIDENTIAL INFORMATION**5.01 Definition**

For purposes of this Agreement, "Confidential Information" means all records, data and other information whatsoever, in any form or medium (including without limitation, PHI, financial information, books and records, policies and procedures, copyright and any other intellectual property rights, computer technology, business information and other data) relating to the operations of a party hereto (the "Disclosing Party") which is made known to another party hereto (the "Receiving Party") as a result of the relationship of the parties under this Agreement or the provision or use of the HPG and the Services by the Association to the Participants, but does not include any information or documents or other items which at the time in question:

- (a) have become generally available to the public other than as a result of an unauthorized disclosure by the Receiving Party;
- (b) were available to the Receiving Party on a non-confidential basis prior to disclosure to the Receiving Party; or
- (c) are required by Applicable Laws to be disclosed.

Notwithstanding the preceding, paragraphs (a) and (b) do not apply where Confidential Information is also PHI and to the extent of any inconsistency, where Confidential Information is PHI, the provisions of Articles IV and V prevail.

5.02 Confidentiality Obligations

The Receiving Party will:

- (a) hold in strictest confidence all Confidential Information of a Disclosing Party using at least the same degree of care to protect the Confidential Information as it uses to protect the its own Confidential Information of a similar nature and in any event, no less than a reasonable degree of care;
- (b) not disclose or use or allow to be disclosed or used in any manner whatsoever, other than as expressly contemplated by this Agreement, as may be required to carry out the terms of this Agreement or as may be required for the Association to perform the Services and then only on a need-to-know basis, any Confidential Information of a Disclosing Party, either during the term of this Agreement or at any time thereafter, except with the prior written consent of such Disclosing Party;
- (c) ensure that all personnel of the Receiving Party who have access to Confidential Information of the Disclosing Party are informed of the confidential nature of the Confidential Information so as to know to keep such information confidential and not use it for any purpose except as permitted under this Agreement; and
- (d) notify the Disclosing Party promptly in writing in the event of any loss or inability to account for the Disclosing Party's Confidential Information.

5.03 Obligations on Termination or Expiry

The parties acknowledge and agree that any Confidential Information of a party provided to the other party under this Agreement will be a copy of the Confidential Information. Following the termination or expiry of this Agreement, the Receiving Party will, upon the demand of the Disclosing Party, securely destroy Confidential Information of the Disclosing Party that it is holding, without keeping any copies in any form or format, and provide the Disclosing Party with an attestation to the destruction by a senior officer or manager. Notwithstanding the preceding, a Receiving Party may retain Confidential Information of a Disclosing Party to the extent and for the period of time required by law, and the Receiving Party shall continue to comply with this Section 5.02 in relation to such retained Confidential Information.

For greater clarity, the obligation to destroy Confidential Information in the preceding paragraph do not apply to PHI collected by a Participant from another Participant under this Agreement.

ARTICLE VI - RESPONSIBILITIES OF THE PARTICIPANTS

6.01 Assistance from Participants

Each Participant will provide the Association with such reasonable assistance as the Association may request in order to perform the Services and meet its obligations under this Agreement. The Association will not be responsible or held liable for any limitation or loss of availability of the Services to a Participant should the Participant decide to withhold such assistance.

6.02 Accuracy of Information

Each Participant is responsible for ensuring the accuracy of the PHI it discloses to other Participants through the Services and more particularly, for compliance with any requirements relating to the accuracy of PHI under Applicable Law. The parties will establish and use appropriate audit controls to test the accuracy of PHI and each Participant will promptly report any issues related to the accuracy of PHI to the Association.

ARTICLE VII - GOVERNANCE

7.01 Representative

Each of the parties will designate a representative to act as a single point of contact for such party in connection with all matters concerning this Agreement, including the delivery and use of the Services and PHI

7.02 Initial Appointment and Changes

The name, address, telephone number, facsimile number, and e-mail address ("Contact Information") of each Participant's Representative will be provided on the Participation Agreement executed by the Participant. The Contact Information for the Association and the Committee will be provided in Schedule "A". A list of all Contact Information, updated by the Association as required, will be made available to the parties by the Association. Any party may at any time change its designated Representative upon written notice to the Association.

7.03 Community Integration Steering Committee

A Community Integration Steering Committee (the "Committee") will be established to assist the parties with the delivery and use of the HPG and the Services, matters involving PHI and any other matters arising out of this Agreement. The membership of the Committee will be representative of the parties. For clarity, the Committee will include one or more representatives of the Association, and of each Participant sector, including but not limited to CCACs, hospitals, long term care and primary care. The Association and each Participant sector will determine the process for selecting its representatives. The initial terms of reference of the Committee will be made available to each party. The Committee will have the discretion to amend its terms of reference and will determine the process by which it will do so and conduct its business.

ARTICLE VIII - SCHEDULE AMENDMENTS; ADDITIONAL PARTICIPANTS

8.01 Amendments

At any time and from time to time during the term of this Agreement, any party may request amendment (a "Schedule Amendment") to a Schedule to this Agreement. The party submitting the request will specify the nature, details and reasons for the proposed Schedule Amendment.

8.02 Accepted Schedule Amendment

Each Schedule Amendment that is accepted and agreed to in writing by the parties will be deemed incorporated into and will constitute a formal amendment of this Agreement, and the provisions of this Agreement will apply to each Schedule Amendment.

8.03 Written Agreement

For greater certainty, the Association will not be obligated to perform any additional services or fulfill any additional obligations contained in a Schedule Amendment until it has been agreed to in writing by the parties.

8.04 Additional Participants

A Health Information Custodian or provider of community services that has been recommended as a Participant or has applied to the Committee and meets the terms and conditions established by the Committee, will become a Participant upon the execution of a Participation Agreement, in the form attached hereto as Schedule "C" and a DSA.

ARTICLE IX - TERM AND TERMINATION

9.01 Term

This Agreement will remain effective until terminated by a Participant, in relation to itself, by the Committee in relation to a Participant, by all of the Participants, or by the Association.

Any Participant may terminate this Agreement in respect of such Participant on one (1) month's prior written notice to the Association and Committee. Upon any termination of the DSA with respect to a Participant, this Agreement will be deemed to have been terminated in respect of that Participant, effective as of the date of the termination of the DSA.

The Committee may terminate this Agreement in respect of a Participant where the Participant has failed to comply with this Agreement or its acts or omissions are a threat to the security and/or integrity of PHL. Where the Committee terminates this Agreement in connection with a Participant, that Participant may make written submissions to the Committee and the Committee will reconsider the decision to terminate and may impose terms and conditions and limit the term of the Agreement in connection with the Participant.

The Association may terminate this Agreement on ninety (90) days' notice to the Participants.

The Participants, acting through the Committee, may extend this Agreement immediately following termination for up to sixty (60) days, or such other period as agreed to by the Committee on behalf of the Participants and the Association, to facilitate the transition from the HPG and Services to the Participants or another third party system and service provider.

ARTICLE X - LIMITATION OF LIABILITY

10.01 Limitation of Liability

The Parties acknowledge that the provision of the HPG and Services to the Participants is not in the Association's ordinary course of business and is being provided as a benefit for the Participants and their Patients. No party will seek recourse against the Association for damages arising out of or in connection with this Agreement unless: (1) due to the malicious conduct of the Association; or (2) for the failure to perform under the indemnity to the Association in Section 10.02 below. The parties agree to work through the Committee and with their insurers and risk managers, to mitigate the risk of third party claims that could potentially flow from their use of the HPG and Services.

10.02 Indemnification of Association

Each Participant agrees to indemnify and hold the Association harmless from and against any and all damages, costs, liabilities, expenses and settlement amounts, which the Association may incur or suffer relating to any claim by a Participant or any third party that the Association may defend or settle in respect of this Agreement or otherwise related to the provision of the HPG and the Services (the "Claim"), except where due to the malicious actions of the Association (the "Participant Indemnity"). The amount of indemnification for which each Participant will be responsible under this section 10.02 will be allocated equitably among the applicable Participants.

ARTICLE XI - NOTICE

11.01 Required or Permitted Communications

Any demand, notice, direction or other communication ("Notice") required or permitted to be given hereunder, or for the purposes hereof, to a party will be in writing and will be sufficiently made or given if delivered personally or by courier, or if sent by first class prepaid registered mail or if transmitted by facsimile or other similar means of electronic communication, addressed to the party at the address in Schedule "A".

11.02 Deemed Receipt

Any communication, if delivered personally or by courier, will be deemed to have been given and received on the date on which it was delivered, provided that if such day is not a Business Day, or such delivery was not made within normal business hours, then the communication will be deemed to have

been given and received on the Business Day next following such day. Any communication mailed as aforesaid will be deemed to have been given and received on the fourth Business Day following the date of its mailing in Canada, provided that if at the time of mailing or within four (4) Business Days thereafter, there occurs a labour dispute or other event that might reasonably be expected to disrupt delivery of documents by mail, any communication shall be delivered or transmitted by other means provided for in this section. Any communication given by facsimile or similar form of electronic communication will be deemed to have been given and received on the date of its transmission, provided that if such day is not a Business Day or if it is not received within normal business hours on the date of its transmission, then it will be conclusively deemed to have been given and received on the first Business Day next following its transmission. Any party may change its address at any time by written notice given to the other parties in accordance with this section.

ARTICLE XII - GENERAL

12.01 Entire Agreement

With respect to its subject matter, this Agreement, including the Schedules hereto, contains the entire understanding of the parties and supersedes and replaces all previous agreements, promises, proposals, representations, understandings, and negotiations, whether written or oral, between the parties respecting the subject matter hereof. This Agreement supersedes and replaces the Community Integration Information Management and Network Services Agreement dated November 1, 2012.

12.02 Waivers

No party will be bound by or be liable for any alleged representation, promise, inducement or statement of intention not set forth herein. No waiver, alteration, amendment, modification, or cancellation of any of the provisions of this Agreement will be binding upon a party unless made in writing and duly signed by the party or parties to be bound.

12.03 Further Assurances

Each of the parties will, at its own expense and upon the request of another party, from time to time, promptly execute and deliver, or cause to be executed and delivered, all such further acknowledgements, consents, assurances and other documents, and promptly do, or cause to be done, all such further acts and things as that other party may reasonably request in order fully to effect the purposes of this Agreement.

12.04 Parties Not Partners

Nothing in this Agreement will be construed so as to imply, constitute or create a partnership, employment, joint venture or agency relationship between the parties and nothing in this Agreement or arising from the terms of this Agreement will be construed to confer on a party any right, authority or power to act for, or to assume, create or undertake any obligation or responsibility on behalf of any other party.

12.05 Severability

If any term or condition of this Agreement or the application thereof, to any person or circumstances is to any extent invalid, illegal or unenforceable in any respect, the remainder of this Agreement shall not be affected by the invalidity, illegality or unenforceability of the particular term or condition or the application thereof.

12.06 Governing Law

This Agreement will be interpreted, construed, and governed by and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (other than any conflict of law rules that would result in the choice of laws of another jurisdiction) and the Participants agree to submit to the exclusive jurisdiction of the courts of Ontario.

12.07 Assignment

No party may assign its rights or obligations under this Agreement without the prior written consent of the other parties, not to be unreasonably withheld, except that any party may without consent assign its rights under this Agreement to: (i) a successor entity; (ii) or an acquirer of all or substantially all of its assets; or (iii) following an approved transfer to another entity under the Long-Term Care Homes Act, 2007 (Ontario) or any other law regulating the ownership or operation of a party.

12.08 Enurement

This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

12.09 Survival

The provisions of this Agreement which by their own terms take effect on termination of this Agreement or by their nature survive termination, will continue in full force and effect and survive such termination, notwithstanding any termination of this Agreement, including Articles V and X and Sections 12.01 - 12.04, 12.06, 12.08 and this 12.09.

IN WITNESS WHEREOF, the Association has executed this Agreement below and each Participant has executed this Agreement by execution of a Participation Agreement in the form in Schedule "D".

ONTARIO ASSOCIATION OF COMMUNITY
CARE ACCESS CENTRES

Per: 

Name: Joyce Barretto
Title: Chief Administrative Officer

Per: 

Name: David McLelland
Title: Chief Technology Officer

Schedule "A"

I – List of Participants

The list of Participants to this Agreement can be accessed on the Ontario Association of Community Care Access Centres (OACCAC) website at
<http://oaccac.com/Documents/Community-Integration-Project/ScheduleA.pdf>

II – Association Address for Notice

Name: Bosco Chan
Title: Chief Privacy Officer & Director, Privacy, Information Security & Enterprise Risk Management
Address: 130 Bloor Street West, Suite 200, Toronto ON M5S 1N5
Phone: 416-640-7739
Fax: 416-750-3624
Email: bosco.chan@ccac-ont.ca

III – Committee Address for Notice

Name: Bosco Chan
Title: Chief Privacy Officer & Director, Privacy, Information Security & Enterprise Risk Management
Address: 130 Bloor Street West, Suite 200, Toronto ON M5S 1N5
Phone: 416-640-7739
Fax: 416-750-3624
Email: bosco.chan@ccac-ont.ca

Schedule "B"

Services and Service Level Objectives

Description of HPG

1. Health Partner Gateway (HPG) is a portal application system that supports Participants in exchanging Patient information with other Participants in a secure and timely manner. HPG is a proprietary application written, maintained, and supported by the Association. The systems use Microsoft .NET technology and it runs on Microsoft Windows Servers with a Microsoft SQL Server database. The HPG systems are located in a secure eHealth Ontario data center on the eHealth Ontario private network.
2. The HPG system offers business functions which include the following and will be made available to the Participants:
 - (a) eReferral to Long Term Care Home (LTCH). eReferral to LTCH enables Participants to electronically share, through an automated process, new and updated Patient referrals and associated referral information with Participants in their Local Health Integration Network ("LHIN") that are LTCHs. The recipient LTCHs will be able to receive, respond and update referrals electronically as Patients progress from application through vacant bed matching through admission processes. This functionality includes the sharing of referral updates between other Participants and LTCH Participants.
 - (b) eReferral to Community. eReferral to Community enables Participants to electronically share new and updated patient referrals and associated referral information, including shared documents and assessments, electronically with Participants that are Community Support Service Agencies ("CSSA"). The recipient CSSAs have the ability to receive, respond and update referrals electronically as patients progress from application through to admission.
 - (c) Partner-to-Partner Messaging. The partner-to-partner messaging function allows Participants to send messages to other Participants. This function also allows specific locally-managed organizations to become part of a „Community Messaging Group“, enabling them to send messages to, and receive messages from other Organizations within the group. „Community Messaging Group“ exists only within the boundaries of the CCAC: communication is restricted to Organizations managed by the CCAC.

Services

The Association will:

- Provide all support for HPG production systems including, without limitation, all maintenance, back-up and recovery, and performance and capacity monitoring, tuning, planning of the applications and reporting.
- For Priority 1 Level Incidents (as defined below), initiate and participate in P1 activities.

- Provide appropriate representatives to participate in the system-related committees and/or working groups.
- Ensure support representatives have access to perform troubleshooting and diagnostic activities in respect of HPG.
- Provide all support for any in-scope databases including, without limitation, all maintenance, back-up and recovery, and performance and capacity monitoring, tuning, planning and reporting.
- Provide all Tier 2 and Tier 3 Support (as defined below) as appropriate including, without limitation:
 - Serve as the initial point of contact with regard to all HPG problems, inquiries, and requests.
 - Maintain and update tickets in the ticketing and tracking system once escalated from a local helpdesk. Includes selecting the priority level, performing an accurate triage of the incident and allocation of correct resources
 - Contact eHealth Ontario support in respect of all Priority 1 and Priority 2 Level Incidents on in scope environments and applications.
 - Contact the Association's incident manager in respect of all Priority 1 and Priority 2 Level Incidents.
 - Suggest possible work-arounds and other solutions, if applicable.
- Procure, install, operate, support and maintain all of the hardware and software that is required for the HPG, including:
 - obtain all appropriate licenses and maintenance agreements; and
 - make all contacts and other communications with the applicable third-party vendors with respect to such hardware and software,
- Procure and maintain communication services, including Internet connections necessary for integration and any and all other on-line services offered by the Association.

Service Level Objectives

Association Response and Resolution Targets for Incidents

P1 and P2 Incidents detected by the Association affecting multiple users will be managed as follows: Urgent and Full system advisories must be issued within 30 minutes and a provincial call is initiated at the 2 hour mark with all operational IT designates for information updates for P1 Incidents. All other Incidents (P3 and P4) must be communicated as needed (system advisory or SMA updates).

Incident Priority Level	Incident Service Level Description	Incident Response Target	Incident Resolution Target	On Call Support Availability after hours
Priority 1 (Critical)	Core application down or network connection or business productivity service down at: ² <ul style="list-style-type: none"> • multiple Participants or • main site at one Participant or 	Within 20 minutes ¹ <i>Note: updates every 2 hours</i>	Within 4 hours	Yes

Incident Priority Level	Incident Service Level Description	Incident Response Target	Incident Resolution Target	On Call Support Availability after hours
	<ul style="list-style-type: none"> multiple sites within a single Participant or across CCACs 			
Priority 2 (Major)	Core application degraded, network connection degraded or business productivity service degraded at: ² <ul style="list-style-type: none"> multiple Participants or main site or multiple sites within a single Participant or across Participants 	Within 20 minutes ² <i>Note: updates every 4 hours</i>	Within 14 hours	Yes
Priority 3 (Minor)	Core application or business productivity service degraded or business support service degraded/down for a small number of users (1-10)	Within 2 Regular Support Hours	Within 48 Regular Support Hours	No
Priority 4 (Minimal)	Network connection degraded, or business productivity service or business support service degraded without impacting the business.	Within 2 Regular Support Hours	Within 5 Business Days	No

¹The Association will endeavor to provide updates every 2 hours for P1 Incidents until resolution. The Association will endeavor to provide updates every 4 hours for P2 Incidents.

HPG Target Availability

HPG system availability	Availability is based on 24 hours per day/7 days per week, 365 days per year excluding planned and scheduled maintenance, reported on a monthly percentage figure. Target = 99.5%
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Scheduled and Emergency Maintenance

The Scheduled maintenance window for HPG is:

- Wednesday and Saturday 9 PM to 6 AM.

Additional information about roles and responsibilities for the HPG and contact information is included in the document “Operational Summary of Roles and Responsibilities for HPG” which the Association will make available to all Participants.

SCHEDULE "C"
Plain Language Description of the Services and Security

The following description of the health Partner Gateway (HPG) has been created to highlight privacy security safeguards within HPG.

3. Description of HPG

1. Health Partner Gateway (HPG) is a portal application system that supports the exchange of patient and client information by providers of health care and community services with other such providers in a secure and timely manner. HPG is a proprietary application written, maintained, and supported by the Association. The systems use Microsoft .NET technology and it runs on Microsoft Windows Servers with a Microsoft SQL Server database. The HPG systems are located in a secure PHI-appropriate, eHealth Ontario data center on the eHealth Ontario private network.

4. Summary Privacy and Security Safeguards

2. There are numerous controls built into the HPG to protect PHI:

(a) Administrative Safeguards:

- The Chief Privacy Officer of the Association is accountable for the privacy and information security of the HPG systems
- All Association employees, consultants and contractors must abide by our privacy and information security policies and commit to complying with an Acceptable Use and Conduct policy as a condition of employment or as part of their contract or agreement.
- Association makes privacy and information security education mandatory for staff
- Risk assessment is part of the Association project cycle

(b) Technical Safeguards:

- Association has deployed safeguards to ensure only the people who need to have access to our systems and the Association's clients' information are given access
- Strong passwords are required to access systems hosting personal health information and other personal information.
- Association protects personal health information and other personal information by making sensitive information in our computing devices unreadable to those who are not authorized to access this information.
- Security applications are installed in our sensitive information systems to monitor and prevent abnormal activity.
- Perimeter security technologies are deployed to ensure our systems are protected from users on the internet.

(c) Physical Safeguards

- Systems where personal health information and other personal information are processed or stored are physically secured in purpose-built facilities with appropriate physical and environmental controls.
- Physical security controls of these purpose-built facilities are validated by an internally conducted threat risk assessment to ensure they meet the Association security standards.

SCHEDULE "D"

Participation Agreement Template

This Participation Agreement is entered into by

("Participant") effective

1. The terms used in this Participation Agreement have the meanings attributed to them in the Community Integration Information Management and Network Services Agreement (Network Services Agreement) dated March 1, 2015 among the Ontario Association of Community Care Access Centres (the "Association"), the Participant and other providers of healthcare and/or community services that also have entered into the Network Services Agreement through a Participation Agreement and a Data Sharing Agreement between the Participants.
2. The Network Services Agreement establishes the terms and conditions upon which the Association will make the HPG available to and provide the Services to the Participants.
3. The Participant has reviewed and agrees to be a party to and bound by the Network Services Agreement, the terms and conditions of which are incorporated herein by reference.
4. The following is the contact information for the Participant for the purposes of all Communications under the Agreement:

Name: Angie Heinz

Contact Name/Title: Administrator

Address: 710 Southdale Road East, London, Ontario

Telephone: 519-661-0400 x 8260

Fax: 519-661-0446

Email: aheinz@london.ca

In witness whereof, this Agreement has been executed by the Participant.

Per: The Corporation of the City of London

Name: Matt Brown

Name: Catharine Saunders

Title: Mayor

Title: City Clerk

Signature:

Signature:

