

eCHN Terms and Conditions

Electronic Child Health Network Inc. (“eCHN”) provides certain services over the eCHN System (defined below) to primarily support the sharing of certain health records (“Patient Data”) of pediatric patients (“Patients”) between Clients (as defined below), for the purpose of providing care to the relevant Patients.

APPLICABILITY OF THESE eCHN TERMS AND CONDITIONS TO YOU:

- **Use for your own Solitary Healthcare Practice:**
If you are accessing eCHN Services as a Solitary Healthcare Practitioner Client (as defined below), then by agreeing to these eCHN Terms and Conditions you shall, in your personal capacity, abide by the obligations herein that are applicable to a Client, and you shall be responsible for your authorized Users’ compliance with these eCHN Terms and Conditions.
- **Use as an authorized User on behalf of an existing eCHN Client:**
If you are accessing eCHN Services as an authorized User on behalf of an existing Healthcare Organization Client (defined below) or Solitary Healthcare Practitioner Client (defined below) as that existing Client’s PHIPA Agent (defined below), then by agreeing to these eCHN Terms and Conditions you shall abide by the provisions herein that are applicable to Users.

1. Definitions.

- a. **“Applicable Laws”** means with respect to any person, property, transaction, event or other matter, any laws, rules, statutes, regulations, orders, judgments, decrees, treaties or other requirements having the force of law applicable in the Province of Ontario and relating to or applicable to such person, property, transaction, event or other matter, and expressly include:
 - i. *Personal Health Information Protection Act, 2004* (Ontario), including the regulations thereunder, as amended or replaced from time to time (“PHIPA”); and
 - ii. *Freedom of Information and Protection of Privacy Act* (Ontario), including the regulations thereunder, as amended or replaced from time to time (“FIPPA”).
- b. **“Client”** means: a Healthcare Organization Client (defined below) or Solitary Healthcare Practitioner Client (defined below) who has executed (by signing and/or clicking through) an agreement referencing, and binding such Client and its Users (as defined below) to comply with, these eCHN Terms and Conditions.
- c. **“Confidential Information”** means any and all information and materials, which: (i) are designated in writing, as confidential at the time of disclosure, or (ii) if disclosed orally or visually, are designated as confidential at the time of disclosure, or (iii) a reasonable person, having regard to the circumstances and the information, would regard as confidential (e.g., Personal Information and/or Personal Health Information). Unless it is also Personal Information and/or Personal Health Information, the Confidential Information of a party does not include information which:
 - i. Is or at any time becomes part of the public domain other than by a breach of these eCHN Terms and Conditions by a receiving party;
 - ii. at the time when it is disclosed or access is granted to the other party, is known to the receiving party free of any restrictions; is independently developed by the receiving party without access to the disclosing party’s Confidential Information; and/or is disclosed without any restrictions to the receiving party by a third party who had a right to make such disclosure; in each case as substantiated by cogent and reliable written evidence in that party’s possession.
- d. **“Contributor”** means a Client that contributes Patient Data to the eCHN System, directly or through another Client whom the Contributor has authorized as its PHIPA Agent to submit such Patient Data to the eCHN System on its behalf, in accordance with these Terms and Conditions.
- e. **“Consent Directive”** means a directive provided pursuant to PHIPA to a HIC by a patient or their substitute decision-maker regarding the withholding, withdrawal or reinstatement of the patient’s Personal Health Information (defined below).
- f. **“Consent Management”** means the process by which a Consent Directive received by a Client is implemented within the eCHN System.

- g. **“eCHN Portal”** means the network accessible portal used to provide Clients and their Users with access to the eCHN System and eCHN Services.
- h. **“eCHN Services”** or **“Services”** means the services as described in these eCHN Terms and Conditions that are provided by eCHN and made available to a Client and its Users.
- i. **“eCHN System”** means the electronic system used by eCHN to provide the eCHN Services, and includes the eCHN Portal.
- j. **“eCHN Terms and Conditions”** means the terms and conditions set out in this document entitled eCHN Terms and Conditions available online through the eCHN Portal; provided that with respect to a Client who has separately executed a contractual document with eCHN which references that it is subject to the eCHN Terms and Conditions, the terms of that separately executed contract are hereby incorporated by reference as part of the eCHN Terms and Conditions.
- k. **“Healthcare Organization Client”** means a hospital or other incorporated entity that is registered with eCHN as a Healthcare Organization and has executed a separate agreement agreeing to abide by these eCHN Terms and Conditions. Note: a Healthcare Organization Client is distinguished from a Solitary Healthcare Practitioner Client as defined below.
- l. **“HIC”** means a Health Information Custodian, as that term is defined within PHIPA.
- m. **“MOHLTC”** means the Ministry of Health and Long Term Care;
- n. **“Patient Data”** means data records related to the health of an individual patient which is contributed to eCHN by a Client. Patient Data constitutes Personal Health Information.
- o. **“Personal Health Information”** has the meaning set out in PHIPA;
- p. **“Personal Information”** has the meaning set out in FIPPA;
- q. **“Policies”** mean the set of privacy, operational and security policies and procedures in respect of the eCHN Services as set out at www.echn.ca (or on the eCHN Portal), as they may be supplemented and/or updated from time to time.
- r. **“PHIPA Agent”** has the meaning of “agent” as defined in PHIPA.
- s. **“Solitary Healthcare Practitioner Client”** means a regulated healthcare practitioner operating his/her own practice who is registered with eCHN as a Solitary Healthcare Practitioner, and who has received login credentials from eCHN subject to executing an online agreement containing these eCHN Terms and Conditions. Note: a Solitary Healthcare Practitioner Client is distinguished from a Healthcare Organization Client as defined above.
- t. **“User”** means an individual who has been authorized by a Client (in accordance with these eCHN Terms and Conditions), to access and use the eCHN System and eCHN Services as the Client’s PHIPA Agent on behalf of the Client.

2. Services.

- a. **Authorisation Grant.** eCHN grants to Client the right to access and use, and the right to authorise its Users to access and use the eCHN Portal solely for the purpose of providing or assisting in the provision of health care to the relevant Patient(s) of Client.
- b. **Scope.** eCHN will provide the following eCHN Services to Clients and their Users:
 - i. Operation of the eCHN Portal;
 - ii. Operation of an electronic health records (EHR) application known as WebChart, which is used to facilitate the sharing of Patient Data from Contributors to Clients through the eCHN System;
 - iii. As a convenience to Client, but not as a replacement for Client’s own diligence in reviewing any original underlying source documents, to create and make available normalized views of certain data within the eCHN Portal, containing normalization of units and definitions and/or provision of such data using an alternative form of presentation (“Normalized Views”). Access to the originally submitted (unmodified) data will also be available from such Normalized Views. Normalized Views are generated using automated tools and processes, are not individually reviewed by eCHN, and are provided on an “as is” basis. eCHN assumes no liability for such Normalized Views. For the purposes of these eCHN Terms and Conditions, such Normalized Views shall not be considered a modification of Patient Data;
 - iv. Single Sign-On (SSO) –This Service is to enable a mechanism for a Client to permit its Users to access certain eCHN Services within the eCHN Portal using Client’s single sign on system and procedures (“SSO”) via Client’s internal Hospital Information System (“HIS”) or other internal system. To initiate the SSO Service, a Client must submit the SSO Application Form (which may be obtained from the eCHN Help Desk).
 - v. Provide within the eCHN System functionality to support Consent Management and to allow Clients to respond to Consent Directive requests from Patients;
 - vi. Provision on the eCHN Portal of tools and applications (which may be added or modified from time to time), such as:

- 1.e-Referral – a tool which allows a Client (as a Contributor) referring a Patient to provide certain requested information to the Client the Patient is being referred to.
 - 2.Diabetes Dashboard – a tool which provides a consolidated view of clinically relevant data available within the eCHN Portal, including associated indicators for clinical decision-making. In addition, the Diabetes Dashboard includes functionalities such as alerts of required clinical events according to Canadian and local best-practice guidelines, as well as graphical representation of information.
 - 3.Audit Reporter – a tool which enables a Client’s privacy team and their delegates to conduct a detailed review of (a) eCHN Portal usage by Users from their own organization, or (b) access of that Client Contributor’s Patient Data by Users of other Clients; including but not limited to a view of individuals logged into the eCHN Portal, the applications used, Patients’ charts reviewed and specific medical documentation viewed; and ‘reverse’ audit capabilities, which includes the review of Patients registered with their site and the details of authorized Users who have accessed their records. The Client is responsible for using the Audit Reporter tool as appropriate to ensure the Client and its Users are in compliance with their obligations hereunder.
 - 4.POGO Shuttle Sheet – a tool which provides seamless coordination of visits to Pediatric Oncology Group of Ontario (“POGO”) treatment sites between various professionals working with cancer patients including historical visit details when required;
- vii. Monitoring or selective audit, from time to time and at eCHN’s discretion, of submitted Patient Data to help ensure data integrity, quality and confidentiality. If a breach or suspected breach is identified with respect to User access to Patient Data, eCHN shall notify the relevant Contributor, and as PHIPA Agent of Contributor, may notify the privacy team at the Client that such User access is associated with. Where a Client suspects a breach by one of its Users, or otherwise as applicable, eCHN may disclose all access log information about a User to the Client such User is associated with. In performing these activities, eCHN is acting as PHIPA Agent of the Contributor who submitted (and remains the HIC of) such Patient Data.
 - viii. Operation of a helpdesk to provide assistance to Users on the operation of the eCHN Portal.
- c. Limitations.** The Patient Data that is accessible through the eCHN Portal:
- i. other than Normalized Views, is limited to such information that has been submitted to eCHN in respect of Patients by Contributor Clients;
 - ii. may be only that portion of information that the applicable Patient has consented to release; and
 - iii. may not necessarily contain all of the Personal Health Information of a particular Patient.
- d. Source of Information.** The eCHN Portal presents the Patient Data as it is received. A Contributor Client submitting Patient Data into the eCHN System remains accountable, as the HIC of such Patient Data, for the completeness and accuracy of such information. That Client may from time to time amend/update Patient Data it has submitted.
- e. Failures due to Reliance.** eCHN shall not be liable for any failure by eCHN to provide the Services to the extent caused, in whole or in part, by any failure of Client to do so or to fulfil its obligations hereunder. Client shall not be liable for any failure by Client to fulfil its obligations to the extent that such failure is caused, in whole or in part, by any failure of eCHN to fulfil its obligations hereunder.
- f. Suspension.**
- i. Any violation of the Policies or any Applicable Laws by Client (or by any of its Users) is a material breach of these eCHN Terms and Conditions and eCHN may, in its sole discretion, restrict or suspend the Services to such Client or any of its Users. However, when exercising its rights under this section, eCHN will act reasonably and respond in a manner proportional to the severity of the violation (for example, suspending Services to a particular User when that particular User has breached a Policy rather than suspending all Services to all Users of the relevant Client).
 - ii. In compliance with Applicable Laws, eCHN or Client may immediately suspend the access to the Services if it reasonably believes that there is: (i) a breach of any material term of these eCHN Terms and Conditions by eCHN or any Client or User or (ii) an emergency or extreme circumstance that would warrant such action, including a compromise of the integrity, security or privacy of any Patient Data. Such suspending party will notify the other party as soon as possible in such event.
 - iii. Client acknowledges that the MOHLTC and/or such other HICs that submitted Patient Data to the eCHN System, may, in their sole and absolute discretion, direct eCHN to suspend or terminate access to the applicable Patient Data and, where so directed, eCHN will suspend or terminate such access within such period of time as directed. eCHN will post an appropriate notice of such direction to all Clients, including when the suspension is to take effect, as soon as reasonably possible after receiving such direction.

3. User Obligations.

- a. User shall only access and/or use the eCHN System if and while he/she has received due authorization from a Client and has received valid User-specific login credentials issued from eCHN or authorization to access the eCHN System via Client's SSO process, in accordance with the SSO Addendum to this Agreement.
- b. User shall only access and/or use, or permit to be used, Patient Data obtained through the eCHN Portal for the sole purpose of providing or assisting in the provision of health care to the Patient to whom the Patient Data relates.
- c. User shall only access and/or use the eCHN Services in accordance with the applicable Policies.
- d. User acknowledges that use of the eCHN Services and access to the Patient Data is logged and that such usage and access is subject to audit and reporting.
- e. User shall only access, Use, disclose and/or dispose of Patient Data as directed by Client and in accordance with PHIPA.

4. Client Obligations – General.

a. Client Warranties. Client warrants that:

- i. it constitutes a HIC pursuant to PHIPA;
- ii. no person other than its Users who have a need to access Patient Data for the provision of health care services to Patients in their care will access Patient Data in or through the eCHN Portal or other eCHN Services using unique login credentials issued to individual Users;
- iii. it will, and will cause each of its Users to, only access and use Patient Data in or through the Services in compliance with Applicable Laws and these eCHN Terms and Conditions;
- iv. it will take, and require its Users to take, all reasonable steps to protect the Services and Patient Data from and against any unauthorized access, collection, use, disclosure, modification, retention or disposal;
- v. it will not, and will require its Users to not, intentionally insert, into any part or component of any the Services or into the Patient Data any virus, time lock, clock, back door, disabling device or other code, routine or instruction which tends to destroy, corrupt or disable software, data or systems or allow unauthorized access thereto;
- vi. it will, and will require its Users to, co-operate with any reporting, audit or monitoring program required by eCHN with respect to any of the Services or Patient Data;
- vii. it will not use, and will require its Users to not use, any Patient Data for any research or any other secondary purposes unless permitted by Applicable Law;
- viii. where any Consent Directive is in place for a particular individual's Patient Data, it will only override Consent Directive(s):
 1. in the case of Patient Data sourced from the Ontario Laboratory Information System ("OLIS"), as permitted by the separate agreement(s) entered into by Client and eHealth Ontario in respect of eHealth Ontario operated electronic health records systems (including OLIS); and
 2. in the case of other (i.e., non-OLIS) Patient Data, as permitted by Applicable Law.

Note: where an over-ride is initiated, the eCHN Portal:

1. will require the User seeking to initiate the over-ride to confirm that he/she is the patient's attending physician; and
2. will display a notice to warn that the over-ride will trigger a mandatory audit and will gather certain information which will be made available to OLIS (in the case of Patient Data sourced from OLIS) and/or the relevant privacy officers

b. Client Obligations re Access to and Use of Patient Data. As a condition of Client receiving the eCHN Services, the Client agrees to be responsible for:

- i. ensuring that it and its Users do not access or use any Patient Data of a Patient where Client or its User is aware that such Patient or his/her substitute decision-maker has expressly withheld or withdrawn consent to the collection, use or disclosure of such Patient Data, unless otherwise authorized under Applicable Law;
- ii. appointing a privacy officer to manage its obligations under these eCHN Terms and Conditions and to act as liaison with eCHN;
- iii. ensuring that the authorization it has received from eCHN to access and use Patient Data is implemented and operated in accordance with these eCHN Terms and Conditions;
- iv. ensuring that it and its Users' access and use of Patient Data is in compliance with use and access requirements/obligations contained in these eCHN Terms and Conditions and the Policies;

- v. where there is non-compliance by it or any of its Users, communicating such non-compliance to eCHN, who shall restrict any non-compliant User from any use or access to the eCHN Services and any Patient Data in accordance with the eCHN Privacy Breach and Incident Management procedures contained in the Policies;
 - vi. ensuring the validity of any User's identity prior to seeking access to the eCHN Portal for that User;
 - vii. ensuring that any information provided by the Client to eCHN concerning a User is completely and accurately maintained, including notifying eCHN when any aspect of that information changes; and
 - viii. notify eCHN as soon as reasonably possible when a User no longer requires access to the eCHN Portal;
 - ix. taking steps that are reasonable in the circumstances to ensure that its Users (or other agents of Client) shall only access, use, disclose, retain and dispose of Patient Data accessed through the eCHN Portal in accordance with PHIPA, including by using reasonable audit facilities (including those provided through the eCHN Portal), and appropriate privacy training of its staff;
- c. Contacts.** Each Client with multiple Users shall promptly identify to eCHN (via written notice from an authorized officer of the Client) the name and contact information of a designated local registration authority ("LRA") (the LRA position was previously known as the eCHN User Coordinator) and a privacy officer ("Privacy Officer") for the Client. The Client shall provide prompt update to eCHN of any changes to these designations, via written notice from the LRA, Privacy Officer, or other authorized officer of the Client. The individual whom Client designates as LRA shall have the authority to direct eCHN (via written confirmation, which may include an email to the eCHN help desk; or, if implemented by eCHN, via an authorization process within the eCHN Portal) to issue, revoke and/or revise any User login credentials and/or access permissions. For clarity, a Client may authorize in writing an individual at other legal entity (such as an individual employed by a Family Health Organization with whom the Client has an affiliation), to act as that Client's authorized LRA.
- d. Client Help Desk.** If a Client has a help desk in respect of its own IT systems, then such Client shall provide its Users with access to its Level/Tier 1 help desk. Such help desk will also need to be available to assist eCHN in resolving issues involving such Client's Users.
- e. Cost.** Client shall provide any equipment, software and connectivity required for it and its Users to access the eCHN Portal and other eCHN Services.
- f. Access by Users.**
- i. The Client controls the right to authorize or de-authorize access to the eCHN Services for its Users on its behalf, by providing instructions to eCHN. In the event eCHN detects inappropriate use of any Patient Data by any User, then eCHN may disable such User's access to the eCHN Services. In the event the Client detects inappropriate use of any Patient Data by one of its Users, the Client shall notify eCHN as soon as possible so that eCHN may disable such User's access to the eCHN Services. Any restoration of access for any such User will be at the sole discretion of eCHN.
 - ii. The Client acknowledges that the eCHN Portal and other eCHN Services are provided to the Client solely for the Client and its Users to access and use of Patient Data in connection with the provision of health care services to Patients in their care. The Client shall not permit any other use of Patient Data by it or its Users, or any other person to access or use the eCHN Portal or eCHN Services. The Client is accountable for all access and use by its Users.
 - iii. The Client will ensure that only its authorized Users that have been granted login credentials by eCHN (or authorized for access to eCHN services via its HIS using SSO) to access or use the eCHN Portal or other Services on its behalf.
 - iv. The Client agrees to use, and to cause its Users to use the eCHN Portal and other eCHN Services in accordance with these Terms and Conditions and the associated Policies.
 - v. Client shall notify eCHN as soon as reasonably possible of any change in status of a User.
- g. Notifications.** The Client will notify the eCHN Help Desk at the first reasonable opportunity upon the discovery or reasonable suspicion of: (i) any breach of these eCHN Terms and Conditions in relation to Client's or its Users' use or access to the eCHN Portal or other eCHN Services; (ii) any unauthorized access to or use of any of the eCHN Portal, other eCHN Services or any Patient Data by any Client Users or personnel, or any third party; (iii) any issue with the accuracy or integrity of any Patient Data; or (iii) any other circumstances provided for in the applicable Policies with respect to reporting a privacy or security breach. The Client will provide notice and otherwise assist eCHN in addressing the foregoing at the first reasonable opportunity by telephoning the eCHN Help Desk, with a detailed follow-up by email (no Personal Information or Personal Health Information should be

provided to eCHN in such email notification). Client will co-operate with eCHN in any investigation, verification or public response that arises in connection with the foregoing.

- h. Retention.** The eCHN System is not intended as a primary source of information regarding any Patient or as a long term archive of Patient Data. Data may be purged from the eCHN system from time to time, without notice. Client should retain its own copy of any Patient Data viewed and relied upon by such Client or its Users.
- i. Privacy/Security Assessments.** Upon request by eCHN, the Client will provide a copy of any privacy or security assessments conducted on any Client systems that are involved in the access to or use of the eCHN Portal or other eCHN Services, including the receipt or transmission of Patient Data, as soon as reasonably possible. Any such assessments will be deemed to constitute Confidential Information of Client and may only be disclosed to third parties or used by eCHN to assess the privacy and security of Client's systems in respect of the Services.
- j. Cooperation.** In the event of a privacy breach or an alleged or suspected privacy breach, Client will cooperate with eCHN to verify compliance with these eCHN Terms and Conditions.

5. Client Obligations - Supplementary provisions applicable to Contributors.

- a. Provision.** Each Contributor agrees to provide eCHN with the specific types of Patient Data as will be documented between the Contributor and eCHN.

- b. Authority to Provide and Authorize Access to Patient Data.**

- i.** The Contributor confirms that it is permitted under Applicable Laws to provide Patient Data to eCHN to access, use and make available to other Clients and Users of eCHN in accordance with these eCHN Terms and Conditions. A Contributor may authorize another eCHN Client to submit the Contributor's Patient Data to the eCHN System on behalf of the Contributor as the Contributor's PHIPA Agent, provided that both the Contributor and the PHIPA Agent have executed and submitted to eCHN the Contributor-Agent Authorization Form (which may be obtained from the eCHN Help Desk). For clarity, eCHN may rely on an executed Contributor-Agent Authorization Form as Contributor's authorization that eCHN may communicate directly with the PHIPA Agent, and receive information, validation and operational direction (including completion of operational forms) from the PHIPA Agent, with respect to any operational matter in relation to the submission of Contributor's Patient Data, including: (i) validating the interface being used by the PHIPA Agent to submit the Patient Data; (ii) conducting data quality and integrity checks of the Patient Data, and addressing any issues related to same; (iii) privacy breaches related to such Patient Data; and (iv) any other operational matters that eCHN may reasonably require to address related to such Patient Data. The Contributor shall promptly update eCHN of any change to the information provided in the Contributor-Agent Authorization Form.
 - ii.** The Contributor shall ensure that the Patient Data it submits to the eCHN System was collected for the purpose of providing or assisting in the provision of healthcare to the Patient to whom the Patient Data relates or that Contributor has otherwise obtained express consent of the Patient or his/her substitute decision-maker to submit such Patient Data to eCHN;
 - iii.** The Contributor shall fully comply with any Consent Directive expressly given by a Patient or his/her substitute decision-maker with regards to whether the applicable Patient Data may or may not be shared with eCHN:
 - 1. If the Consent Management is managed by the Contributor system, Contributor shall withhold the Patient Data from being transferred to eCHN (or reinstate the Patient Data transfer to eCHN, as applicable), as required by the Consent Directive
 - 2. Otherwise, when the Consent Management is managed by the eCHN System (i.e., at the eCHN interface layer), Contributor shall ensure that any Consent Directive is properly communicated to the eCHN System either: i) electronically as part of the Patient Data transfer, or ii) manually by using the Consent Management tool available on the eCHN Portal. The eCHN System is designed to prevent any subsequent Patient Data from being posted into (or to permit the resumption of posting into) the eCHN WebChart as stipulated by the Consent Directive.
 - 3. Consent Management functionality does not apply to e-Referral. Contributor shall not send through e-Referral any Patient Data that is subject to a Consent Directive.
 - iv.** Where Patient Data submitted to the eCHN System is subject to a Consent Directive, either at a document level or at the patient chart level, which specifies that the Patient Data shall be maintained in a "locked" state (i.e., only accessible with the express consent of the Patient or their substitute decision maker and/or in the case of a consent override), then the Contributor of such Patient Data (or any Client, acting under authority of the Patient or their substitute decision-maker

in the case of an entire patient chart block) shall manually use the Consent Management tool available on the eCHN Portal to appropriately flag such Patient Data.

- v. eCHN confirms that, (1) it is permitted under Applicable Laws to receive, use and/or disclose Patient Data in accordance with these eCHN Terms and Conditions and (2) it shall maintain Patient Data in compliance with Applicable Laws and these eCHN Terms and Conditions.
- c. Authorization re Normalized Views and Markers.** Contributor authorizes eCHN to create Normalized Views of submitted Patient Data. To support the provision of Normalized Views, eCHN develops data normalization processes to map the Client clinical dictionary and procedure codes, result codes / names to the eCHN Enterprise Dictionary. The Client is then required to review and sign-off on the eCHN developed mapping. Such Normalized Views are provided in addition to, and without modifying, the underlying Patient Data. eCHN may also create consolidated views of relevant clinical markers provided it does not alter the underlying Patient Data.
- d. Other Obligations.** Contributor shall:
 - i. not intentionally insert, into any part or component of the eCHN System, any virus, time lock, clock, back door, disabling device or other code, routine or instruction which tends to destroy, corrupt or disable software, data or systems or allow unauthorized access thereto; and
 - ii. co-operate reasonably with any reporting or monitoring required by eCHN in relation to the eCHN System, in accordance with Applicable Laws and with respect to the purposes of these eCHN Terms and Conditions.
- e. Use of Patient Data upon Termination.** Upon termination of these eCHN Terms and Conditions, (i) the Contributor will have no further obligation to provide Patient Data to eCHN; and (ii) eCHN will follow Contributor's instructions with respect to previously contributed Patient Data. Contributor has the option to notify eCHN to logically delete any previously submitted Patient Data such that such Patient Data will be rendered inaccessible to other Clients on a go forward basis.
- f. Auditing Access.** eCHN provides an online audit tool (Audit Reporter) which can be used by specifically authorized Users (e.g., Privacy Officers) at Client organizations to produce their own audit reports pertaining to their Users' access of Patient Data on the eCHN Portal, or can be used by specifically authorized Users of a Contributor to produce an audit report of access by Users of other Clients of Patient Data submitted by such Contributor.
- g. Patient Data Accuracy and Corrections.**
 - i. **By Contributor.** In providing Patient Data to eCHN, the Contributor will take the same care as it would take in maintaining its own patient records for individuals seeking care from the Contributor. The Contributor will make reasonable efforts to provide the Patient Data to eCHN at such time or times as may be agreed to by the parties.
 - ii. **By eCHN.** eCHN will take all reasonable steps to maintain the accuracy and integrity of the Patient Data made available in the eCHN Portal and will notify the Contributor as soon as reasonably possible if it becomes aware that any such Patient Data has become corrupted, damaged, or that the integrity of such data has become compromised or is otherwise questionable.
 - iii. **Replacement of Data.** The parties acknowledge that eCHN does not modify Patient Data. In the event that the Contributor becomes aware that any of the Patient Data being made available in the eCHN Portal is or has become inaccurate, corrupted, damaged or incomplete, Contributor will follow procedures provided by eCHN to resubmit replacement copies in a timely manner. The eCHN System will replace the affected Patient Data and store the affected Patient Data securely, with links to both affected and the replacement Patient Data, to enable tracing in accordance with Applicable Laws.
 - iv. **Other Clients.** No Client, other than the Contributor with respect to Patient Data submitted by such Contributor to the eCHN System, shall have authority to make any correction to Patient Data; and any other Client shall instead direct any Patient or his/her substitute decision-maker requesting a correction to that Patient's Patient Data back to the Contributor.
- h. Responsibility for Data.** The parties agree that the Contributor will be solely responsible for communicating to eCHN the correction and modification of any Patient Data, and that eCHN will assist the Contributor by replacing the affected Patient Data on behalf of Contributor where Contributor is unable to replace such Patient Data itself.
- i. Consent Management.** For the purpose of Consent Management in respect of the Patient Data, eCHN, as a PHIPA Agent of the Contributor, may receive, use or disclose Patient Data to receive and implement a Consent Directive, as directed by or under the authorization of the Contributor. The following options are available to support Consent Management. Patient Data subject to a Consent Directive: (i) may be blocked from being sent from the Contributor system to the eCHN System; (ii) may be blocked at the eCHN System from being added to eCHN WebChart (and will therefore not be accessible to any Clients); (iii) may be stored in eCHN WebChart but in a locked state with support

for “emergency override” functionality. Contributor agrees that the eCHN Portal will include Consent Management tools that will allow a Client to instruct eCHN, as PHIPA Agent of Contributor, to receive and effect a Consent Directive entered into the eCHN Portal by the Client upon the direction and authority of the Patient whose Patient Data is being made subject to a Consent Directive.

- j. **Interfaces.** Patient Data is received from Contributors through system-to-system electronic interfaces with transmission being sent through secure and encrypted channels. Modification of any eCHN interfaces used to receive a transfer of Patient Data from a Contributor will include acceptance testing involving Client staff who perform end-to-end testing to validate the interface before go-live.

6. Confidentiality.

- a. **General.** Both parties recognize that the protection of Confidential Information by the receiving party is of vital importance. As between the parties, the disclosing party is the owner of that Confidential Information. Except as otherwise set out in these eCHN Terms and Conditions, no interest, license or other right in or to Confidential Information is granted to the receiving party and all information provided by a party is provided on an “as is” basis, without any warranty, representation or condition of any kind.
- b. **Handling/Restrictions.** With respect to a disclosing party’s Confidential Information, the receiving party will:
 - i. use that Confidential Information only in accordance with these eCHN Terms and Conditions and only for the purpose of fulfilling its obligations and exercising its rights under these eCHN Terms and Conditions;
 - ii. with respect to any Confidential Information which constitutes Personal Health Information, shall handle such information as appropriate for its role, which in the case of eCHN is that of a health information network provider (as that term is set out in PHIPA) or PHIPA Agent of the Contributor, and in the case of a Client, for the purpose of providing care to the applicable patient that is the subject of such information;
 - iii. use the same degree of care it uses to protect its own Confidential Information of a like nature and in any event, use a standard no less than a reasonable degree of care;
 - iv. permit access to or disclosure of that Confidential Information only to its Representatives who have a need to know and are bound by a written contract to keep the Confidential Information of third parties confidential, at least to the same extent as set forth in these eCHN Terms and Conditions; and
 - v. notify the disclosing party as soon as possible upon becoming aware of any unauthorized access to, use, or disclosure of that Confidential Information.
- c. **Return/Destruction.** Except with respect to Patient Data, upon the termination of these eCHN Terms and Conditions or if a party so requests (provided that the request would not result in the other party being unable to perform its obligations or exercise its rights under these eCHN Terms and Conditions), the other party will:
 - i. return all Confidential Information disclosed to it by the party and all copies thereof, regardless of form;
 - ii. securely destroy any such Confidential Information that cannot be returned; and
 - iii. furnish, as soon as reasonably practicable, a certificate signed by one of its executives attesting to such return or destruction.

Notwithstanding the foregoing, each party may retain any back-up tapes or disks, including but not limited to audit log information, produced in conjunction with the Services until such time as they are scheduled to be destroyed in accordance with that party’s policies and procedures with respect to the retention of back-ups; and either party may retain any Confidential Information of the other party that it is required to retain pursuant to Applicable Laws for so long as it is required to do so.

- d. **Lawfully Required Disclosure.** Neither party will be liable for disclosing the other party’s Confidential Information if required by Applicable Laws: provided that the party disclosing the Confidential Information, to the extent permitted by law, notifies the other party of any such requirement as soon as legally permissible, so that the other party may seek a protective order or other relief.
- e. **Injunctive Relief.** Each party agrees that the unauthorized access, use or disclosure of the other party’s Confidential Information may cause irreparable injury to the other party, and the other party is entitled to seek injunctive and other equitable relief, as a matter of right.
- f. **Exception.** Client’s name, address, key contact information and a description of the Services provided to Client by eCHN are not considered Confidential Information and Client agrees that eCHN

may list this information on one or more public websites, and in other publicly available paper or electronic publications.

7. Ownership and Characterization of Access.

- a. **Patient Data.** The parties acknowledge that in regards to Patient Data:
 - i. the Contributor retains custody and control of Patient Data in any eCHN System;
 - ii. the initial viewing of Personal Health Information from eCHN by a HIC (the "Viewing HIC") constitutes a collection by the Viewing HIC and a disclosure by the Contributor of an instance of that Personal Health Information (even if the Viewing HIC's PHIPA Agents do not download or otherwise make or retain a copy of the Personal Health Information);
 - iii. any subsequent viewing by a Viewing HIC of Personal Health Information collected pursuant to (b), above, constitutes a use/access of that Personal Health Information by that Viewing HIC; and
 - iv. any Patient Data that is accessed by a User and made part of its Client's health record for the applicable Patient may be used and further disclosed in accordance with Client's own organizational policies and subject to the requirements of PHIPA.
 - v. nothing in these eCHN Terms and Conditions will prevent the Client and/or a User from incorporating Patient Data into the clinical record of the relevant Patient, provided that such Patient Data was obtained solely from the eCHN Portal in connection with that relevant Patient seeking or receiving health care from the Client and/or its User.
- b. **eCHN's Role.** eCHN does not create or maintain an electronic health record under authority of PHIPA. It accepts submissions of Personal Health Information and maintains such personal health information as a health information network provider ("HINP") as defined in PHIPA, and/or as PHIPA Agent of the contributing HIC. eCHN complies with the requirements of PHIPA that are applicable to a HINP. Each of eCHN and the Contributor acknowledges and agrees that the Contributor making the Patient Data available to eCHN does not constitute a "disclosure" by the Contributor to eCHN; nor does it constitute a collection by eCHN. eCHN does not consider itself to be "disclosing" any Personal Health Information when such information is viewed by a Client.
- c. **Other.** Subject to any rights or licenses as are expressly set out in these eCHN Terms and Conditions, no intellectual property rights are transferred by either party to the other party under these eCHN Terms and Conditions. Neither party will remove any confidentiality, copyright or other proprietary rights notices from any materials provided to it by the other party.

8. Additional Privacy Obligations

- a. **Compliance with Applicable Laws.** Each party agrees to comply with its respective obligations under Applicable Laws with respect to the activities contemplated by these eCHN Terms and Conditions, including the Permitted Purposes (defined below).
- b. **Permitted Purposes.** Contributor appoints and authorizes eCHN, as its PHIPA Agent to use, disclose, retain or dispose of Personal Health Information on the Contributor's behalf for the purposes of providing the Services including the creation and maintenance of its repositories (the "Permitted Purposes"). "Permitted Purposes" shall also include: (i) support of a User requesting to confirm the accuracy or validity of a record, (ii) providing functionality to assist Contributor with Consent Management functionality and to assist Contributor in responding to access and correction requests, and/or (iii) support of a privacy investigation. As Contributor's PHIPA Agent, eCHN agrees to receive, use and disclose Contributor's Patient Data only if Contributor is permitted or required to do so under PHIPA, unless otherwise required under Applicable Laws.
- c. **Reporting Obligations.** eCHN may use the business information of Users, and de-identified patient keys, to generate aggregated reports and statistics for internal reporting functions and mandatory reporting obligations to the MOHLTC. eCHN does not collect, use or disclose Personal Health Information as part of these reporting activities.
- d. **Authorization and Obligations.** The Contributor grants to eCHN the right to: (i) receive, access, use and disclose the Patient Data for the Permitted Purposes as permitted under Applicable Laws and (ii) use and/or disclose the Patient Data where required under Applicable Laws (collectively, the "Authorisation Grant"). As a condition of the Authorisation Grant, eCHN shall:
 - i. ensure that any non-compliance with these eCHN Terms and Conditions of which it becomes aware is communicated to the Contributor at the first reasonable opportunity, including: (i) upon the occurrence of any breach of any provision of these eCHN Terms and Conditions by it or its staff; (ii) upon discovery or reasonable suspicion of any loss, theft or unauthorized access to or use of Patient Data by any person; or (iii) upon discovery of any issue with the accuracy or integrity of Patient Data;

- ii. receive, access, use, and disclose Patient Data in accordance with these eCHN Terms and Conditions;
- iii. ensure that any persons who are permitted to collect Patient Data within the eCHN System agree to do so in compliance with Applicable Laws and the applicable Permitted Purposes;
- iv. ensure that only its staff who have a need to receive, access, use and disclose Patient Data do so only in accordance with these eCHN Terms and Conditions;
- v. remain responsible for the acts of its staff, including the collection, access, use and disclosure of Patient Data by its Representatives. Any breach of the provisions of these eCHN Terms and Conditions by its staff will be deemed a breach by eCHN;
- vi. take all reasonable steps to protect Patient Data against any unauthorized access, collection, use, disclosure, modification, retention or disposal;
- vii. not intentionally insert, into any part or component of the Contributor system, any virus, time lock, clock, back door, disabling device or other code, routine or instruction which tends to destroy, corrupt or disable software, data or systems or allow unauthorized access thereto;
- viii. co-operate reasonably with any reporting, audit or monitoring program required by the Contributor in accordance with Applicable Laws and with respect to the purposes of these eCHN Terms and Conditions;
- ix. ensure that all accesses to all or part of the Patient Data in the eCHN System are logged and provide a mechanism for Contributor to obtain access to such audit information (using an Audit Reporter);
- x. not use or disclose Patient Data for any purpose unless permitted by these eCHN Terms and Conditions and/or Applicable Laws;
- xi. upon request of the Contributor, provide a copy of the results of privacy or security assessment(s) as soon as reasonably possible;
- xii. maintain privacy and security procedures, practices and controls in compliance with Applicable Laws; and
- xiii. when acting as the PHIPA Agent of Contributor, comply with PHIPA obligations applicable to the Contributor so as to not put Contributor in breach of its obligations under PHIPA due to an act or omission of eCHN or its staff.

e. Acceptable Use and Limitations.

- i. eCHN will not collect, access, use or disclose Patient Data for any purpose other than as required to provide the Services, unless required under Applicable Laws.
- ii. eCHN agrees that HICs who collect or access the Patient Data through the eCHN Portal will be bound by these eCHN Terms and Conditions, or an agreement containing obligations conforming to and consistent with those contained in these eCHN Terms and Conditions, which will restrict access to the Patient Data to the purposes set out in these eCHN Terms and Conditions and in compliance with Applicable Laws.

f. Access or Correction Requests and Complaints.

- i. Where necessary in connection with the Permitted Purposes, eCHN agrees to assist the Contributor in responding to individual access or correction requests or complaints in respect of Patient Data within the eCHN System, in accordance with its Policies, the Permitted Purposes and Applicable Laws. The eCHN System includes functionality to permit a Contributor to electronically submit a replacement record to supersede a record containing incorrect information. Access to the superseded record is retained in the eCHN System but such record is flagged as superseded.
- ii. When the Services are used by Client to manage Personal Information, eCHN will provide all assistance that Client reasonably requests in regard to any concerns or complaints expressed by any person that relate to the management of that person's Personal Information.
- iii. Upon receipt by Client of either of the following:
 - 1.a request received from a Patient, or that Patient's substitute decision-maker, relating to, among other things, that Patient's right to access, modify or correct their Patient Data; or
 - 2.an enquiry or complaint from a Patient, or that Patient's substitute decision-maker, relating to eCHN and/or any eCHN Service;
 the Client will follow the applicable procedure set out in the applicable Policies.
- iv. If eCHN receives an access request from a Patient, eCHN will provide the Patient with a list of Clients who submitted or accessed the Patient Data and refer the Patient to such Clients. Clients can use the audit tools available on the eCHN System to generate logs and respond to the Patient's access request.

g. Notice re Logging and Auditing by eCHN. eCHN employs a logging and auditing program which may result in review of Patient Data accessed by a particular User, including patient search

parameters entered or sent by a Client or its Users, and all other activity related to the use of any eCHN Service. eCHN's audit logs are retained in order to fulfil its obligations as a Health Information Network Provider.

- h. Required Disclosures.** eCHN shall have the right to disclose any information about Client or Users, including registration data, in order to comply with any applicable laws and/or requests under legal process, to operate the eCHN system, to protect eCHN's property or rights, or otherwise pursuant to eCHN's Privacy Policy.
- i. Reporting.** Each party will, at the first reasonable opportunity report to the other, all security or privacy incidents of which the reporting party becomes aware involving the Services. When reporting any such incident, the reporting party will provide all information that it is reasonably able to provide with respect to the incident. Further, the reporting party will provide reasonable assistance and co-operation to the other party to investigate, verify and resolve the incident, including co-operation in any public response. Any notice of real or suspected privacy or security breaches, or matters related to access requests pursuant to these eCHN Terms and Conditions will be sent by eCHN to a Client's designated privacy contact or by Client to eCHN's designated privacy officer.

9. Security and Privacy Safeguards.

- a.** eCHN warrants that it has implemented and will maintain strong administrative, physical and technical safeguards, consistent with industry best practices as applicable to health care systems in Ontario, to protect the Personal Health Information being transferred, processed or stored from theft, loss, unauthorized use, modification, disclosure, destruction and/or damage and will ensure its representatives comply with its privacy and security requirements. These safeguards include security software and encryption protocols, firewalls, locks and other access controls, privacy impact assessments, staff training and confidentiality agreements.
- b.** eCHN will put in place, or cause its suppliers to put in place, reasonable security measures to secure eCHN's data centre facilities and any other facilities where Client data is stored from unauthorized entry, and which may include access controls and maintaining logs of all personnel who enter.
- c.** eCHN will ensure that its personnel and contractors who are permitted access to its data centre facilities or any other facilities where Client data are subject to appropriate confidentiality obligations.
- d.** eCHN will design, implement, and manage the technology infrastructure used to provide the Services in a manner consistent with good information security practices and all Applicable Laws.
- e.** Each Party will maintain privacy and security procedures, practices and controls in compliance with Applicable Laws, including any orders of the Office of the Information and Privacy Commissioner of Ontario.
- f.** Client agrees to actively monitor its systems used to access eCHN Services by installing commercially available anti-virus and system monitoring software that, among other things, contemporaneously detect the status and findings of anti-virus scans and other monitoring reasonably applicable in health care information technology systems. Client agrees to have in place and maintain such software at all times. eCHN agrees to actively monitor its systems by installing commercially available anti-virus and system monitoring software that, among other things, contemporaneously detect the status and findings of anti-virus scans and other monitoring reasonably applicable in health care information technology systems. eCHN agrees to have in place and maintain such software at all times.

10. Certain Warranties; Certain Disclaimers.

a. eCHN Warranties.

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

b. Disclaimers/Exceptions.

- i.** eCHN does not represent or warrant that its services will be error free or uninterrupted.

- ii. Except as expressly provided in these eCHN Terms and Conditions, eCHN makes no warranties, representations, conditions, promises or indemnities of any kind, express or implied, statutory or otherwise:
 - 1. with respect to the operation of Services or accessibility of Patient Data; or
 - 2. regarding the accuracy, authenticity, completeness, reliability, currency, veracity, merchantable quality or fitness for a particular purpose of the Patient Data accessible through the eCHN Portal or eCHN Services;and eCHN assumes no liability for any diagnostic, treatment, health care decision or any other decision or action taken by any person using the Patient Data.
- iii. Except as expressly provided in these eCHN Terms and Conditions, **eCHN does not make, and expressly disclaims, any other warranties, representations or conditions, express or implied, in fact or in law, including the implied warranties and conditions of merchantable quality or fitness for a particular purpose.**
- c. **Contributor Warranties and Disclaimers.** The Contributor warrants that it will comply with all Applicable Laws with respect to the provision of Patient Data to eCHN for the Permitted Purposes. The Contributor does not represent or warrant that the Patient Data or its provision of Patient Data will be error free or uninterrupted. Except as expressly provided in these eCHN Terms and Conditions, the **Contributor does not make, and expressly disclaims, any other warranties, representations or conditions, express or implied, in fact or in law, including the implied warranties and conditions of merchantable quality or fitness for a particular purpose.**
- d. **Risk of Use.** The eCHN System is not provided for the purpose of informing clinical decisions for care, nor is it a substitute for the consideration and judgement of a trained health professional. Use of any data from eCHN, the eCHN Portal or any of the other eCHN Services are solely at the risk of the Client and its Users. eCHN assumes no liability for any decision or action taken by any person using the eCHN Portal or any data contained therein or for any inability to access same.
- e. **Availability.** Continuous and uninterrupted availability of the Services are not guaranteed and may be suspended, limited, changed, or discontinued, temporarily or permanently, with or without notice. The Services may be inaccessible, unavailable or inoperable for any reason, including: (i) equipment or system malfunctions or Internet/communication outages; (ii) periodic maintenance procedures or repairs which may be undertaken from time to time; or (iii) causes beyond the reasonable control of eCHN. Client should maintain their own copies of Patient Data and alternative communication protocols to obtain Patient Data from other providers, to the extent reasonably required, in the event of any sustained interruption.
- f. The information contained in the eCHN System is provided or sourced from contributing health providers (or presented as a normalized view of such information) and is made available to Clients and their Users on an 'as-is' basis. Clients and their Users should verify any applicable information before relying on such information for clinical, diagnostic or treatment purposes and prior to incorporating any such information into their Patient record.
- g. eCHN is not responsible for any damages, costs, liabilities, or expenses which may be incurred or suffered as a result of use or any inability to use the eCHN Portal and/or any other Service.

11. Liability.

- a. **Indirect Damages.** In no event shall any party be liable to the other party for indirect, special, consequential, incidental, punitive or exemplary losses, damages or expenses or for loss of data, lost revenue or lost profit. For clarity, this limitation is not intended to act as a bar on a party impleading another party into a breach of privacy claim commenced by a third party against the first party.
- b. **Direct Damages.** Subject to the other terms in this section 11, eCHN shall remain responsible for the actions of its agents and subcontractors in their performance of the Services. The total cumulative liability (the "Cap") of eCHN to all Clients, or of any Client to eCHN and any other Clients, for direct damages arising in connection with that party's performance or non-performance under these eCHN Terms and Conditions, or otherwise related to the provision or use of the eCHN Service, shall not in the aggregate for any and all damages arising during any April 1st to March 31st period exceed \$500,000. However, the foregoing Cap shall not apply to losses, expenses, costs, damages or liabilities that are recoverable pursuant to a contractual obligation of indemnification provided to eCHN by one of its subcontractors or agents to the extent eCHN is actually able, using reasonable efforts, to recover contribution from such subcontractor or agent in relation to such damages being claimed, and further provided that any such recovery will be shared on an equitable basis as between

eCHN, the claiming Client and other Client who suffered losses, expenses, costs, damages or liabilities within the scope of such indemnification.

- c. **Liability to Users.** Separate or apart from any liability eCHN may have to a Client, eCHN shall not have any liability to any User under these eCHN Terms and Conditions or arising from the provision or use of, or otherwise relating to, the Services.
- d. **Applicability.** The foregoing limitations and exclusions shall apply: (i) irrespective of the nature of the cause of action, demand or claim, including breach of contract, negligence, tort or any other legal theory; and will survive failure of the essential purpose of these eCHN Terms and Conditions, or of any remedy; and (ii) even if the relevant party has been advised of the possibility of such damages or if such possibility was reasonably foreseeable.
- e. **SickKids.** The Hospital for Sick Children (“SickKids”) provides certain services to eCHN including data center and connectivity. SickKids also acts as the transfer payment agent for the funding received for eCHN from MOHLTC and as the contracting party with certain third parties to provide staff for the operation of eCHN. Also, representatives of SickKids, along with a representative of eHealth Ontario sit on the eCHN board. However, SickKids does not assume any liability for the acts or omissions of eCHN or any third party contractor retained to provide services in support of the operation of eCHN, except to the extent SickKids has expressly assumed certain liabilities pursuant to a services agreement between SickKids and eCHN. Client agrees that SickKids shall, as a third party beneficiary, be entitled to the benefit of, and may itself enforce, any disclaimer, liability exclusion or limitation on liability contained in these eCHN Terms and Conditions that are for the benefit of eCHN.

12. Termination.

- a. **Breach.** In the event of a material breach of these eCHN Terms and Conditions, the non-breaching party may terminate these eCHN Terms and Conditions upon written notice to the other party provided that the non-defaulting party has given the breaching party prior written notice of the breach which describes the nature of the breach and the breaching party has failed to cure the breach within 30 days of the prior written notice.
- b. **Other Termination.** The parties acknowledge that: (i) eCHN is not intended to be the primary source of Patient Data used by Client or its Users; (ii) eCHN may be merged with, or phased out, as a result of other provincial EHR clinical repositories; (iii) Participation in eCHN is voluntary and not all hospitals in Ontario participate in eCHN; and (iv) Funding for eCHN from the MOHLTC may be discontinued in the future. Consequently, for the foregoing or other reasons in eCHN's sole discretion, eCHN may terminate its agreements that are subject to these eCHN Terms and Conditions without liability, cost, penalty or prejudice to any other rights or remedies under these eCHN Terms and Conditions upon giving at least 90 days written notice (or prominent posting on the eCHN Portal). A Client or User may terminate its agreement with eCHN that is subject to these Terms and Conditions immediately upon providing written notice to eCHN.
- c. **Survival.** The provisions of these eCHN Terms and Conditions which by their nature extend beyond such expiration or termination shall survive and remain in effect until all obligations are satisfied including any confidentiality or privacy obligations, disclaimers and/or liability limitations/exclusions.

13. Assignment. Neither party may assign these eCHN Terms and Conditions or any right or obligation hereunder without receiving the other party's written consent in advance, which consent will not be unreasonably withheld; provided that, eCHN may assign these eCHN Terms and Conditions without consent to: (i) SickKids; or (ii) any entity as directed by the MOHLC. In the event of assignment to SickKids, any references herein to eCHN shall be interpreted to refer to SickKids. Upon any assignment, the assignor shall have no further liability for any acts or omissions of the assignee.

14. Governing Law. These eCHN Terms and Conditions will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to the conflict of laws provisions. The parties consent to the jurisdiction of the courts of Ontario. Any claim, action or proceeding initiated by any party other than eCHN shall be commenced exclusively in Ontario and a venue of Toronto.

15. Entire Agreement and Amendment. These eCHN Terms and Conditions, along with any eCHN Policies, contain the entire understanding of the parties relating to its subject matter and supersede all previous agreements or representations, statements and understandings (verbal or written) made by or on behalf of one party to the other. eCHN may amend these eCHN Terms and Conditions or any Policy by posting a revised version on the eCHN Portal provided it also provides prominent notice to Users during the login process and provides at least 60 days prior notice in an email notification to

Clients addressed to the email address on file with eCHN for such Client. Users or Clients who do not agree to any amendment may terminate by written notice to eCHN, discontinuance of access to the eCHN Portal and further receipt of any Services.

- 16. Severability.** The invalidity or unenforceability of any provision in these eCHN Terms and Conditions will not affect the validity or enforceability of any other provision and any invalid provision will be deemed severed.
- 17. Notice.** Any notice or other significant communication given pursuant to these eCHN Terms and Conditions will be in writing (which may include email) addressed to the attention of that party's authorized representative as advised from time to time. Any such notice will be deemed to have been received either when: (i) delivered personally to the party for whom intended; (ii) one business day following deposit with a globally recognized overnight delivery service, all delivery charges pre-paid; (iii) if sent by e-mail, when it enters the receiving party's information system and becomes capable of being retrieved and processed by the receiving party; or (iv) the business day following transmission if sent by facsimile, with originals by mail, and receipt confirmed by the facsimile machine used. Either party may designate a different address by notice to the other given in accordance herewith.
- 18. Waiver.** The failure of either party to insist upon strict performance of any terms and conditions or to exercise any of its rights set out in these eCHN Terms and Conditions will not constitute a waiver of these rights, and these rights will continue in full force and effect. No provision of these eCHN Terms and Conditions may be waived except in a writing signed by the party waiving enforcement. No waiver of any part of these eCHN Terms and Conditions will be deemed to be a waiver of any other provision.
- 19. Force Majeure.** Except as expressly provided otherwise in these eCHN Terms and Conditions, neither party will be liable for any failure or delay in its performance under these eCHN Terms and Conditions due to any cause beyond its reasonable control that could not have been avoided by the exercise of reasonable foresight (a "Force Majeure Event"), such as acts of war, rebellion, acts of God, earthquake, flood, embargo, riot, sabotage, terrorism, or governmental act provided that the party affected by a Force Majeure Event gives the other party prompt notice of such Force Majeure Event as soon as reasonably possible after such event arises, and uses its reasonable efforts to promptly correct such event.
- 20. Interpretation.** Headings are inserted for convenience of reference only and will not affect the construction or interpretation of these eCHN Terms and Conditions. Where the word "including" is used in these eCHN Terms and Conditions, it means "including but not limited to". Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- 21. Further Assurances.** Each party will provide the other party with such information as the other party may reasonably require to perform its responsibilities and/or exercise its rights under these eCHN Terms and Conditions. Both parties agree to promptly perform, make, execute, deliver, or cause to be performed, made, executed, or delivered all such further acts and documents as the other party may reasonably require for the purpose of giving effect to these eCHN Terms and Conditions.