

<NTD: THIS TEMPLATE IS PROVIDED FOR INFORMATION PURPOSES ONLY. LEGAL ADVICE SHOULD BE OBTAINED TO DETERMINE THE ARRANGEMENT AND CONTENT THAT WORKS BEST IN YOUR CIRCUMSTANCES.

THIS TEMPLATE SHOULD BE USED WHERE THE FHO\* IS THE HIC AND FHT IS THE AGENT OF THE PHYSICIANS AS A COLLECTIVE FHO\*. THIS MODEL ALLOWS FOR BROAD SHARING OF personal health information FOR HEALTH CARE, QUALITY AND ADMINISTRATIVE PURPOSES. IF INDIVIDUAL PHYSICIANS ARE EACH a HIC (as opposed to collectively as a FHO\*), there Could be additional Health information Network Provider implications THAT MAY NEED TO BE ADDED TO THIS AGREEMENT. please ask.

A SECOND OPTION IS FOR THE FHT TO BE THE HIC AND THE PHYSICIANS ARE AGENTS OF THE HIC. THAT OPTION REQUIRES A SLIGHTLY DIFFERENT AGREEMENT.

A THIRD OPTION IS TO HAVE THE FHO\* and FHT each act as HIC – which restricts sharing of personal health information and requires a different agreement. >

FHT and FHO\* PHIPA AGENCY AgREEMENT

**THIS AGREEMENT** is dated as of \* day of \*, 201\* (the “**Agreement**”)

BETWEEN:

**<Name> Family Health Team**,  
an Ontario non-share corporation located at  
<NTD: add the address>

(the “**FHT**”)

- and –

**<Name of the group of physicians> ,**

<NTD: What is the proper name? describe the type of entity such as an Ontario non-share corporation or unincorporated association of physicians> located at <address>

(the “**FHO\*[[1]](#footnote-1)**”)

Background

* + - 1. The FHO\* is made up of physicians who are partially funded by the Ministry of Health & Long-Term Care (“**MoHLTC**”) to provide primary care services to individuals who are their patients.
      2. The FHT receives funding from the MoHLTC to provide administrative support services to the FHO\* and interdisciplinary allied health professional services to patients of the FHO\*.
      3. The FHO\* owns an electronic medical record (“**eMR**”) [NTD: Who owns the eMR?] and shares it with allied health professionals hired by the FHT for all patients of the FHO\*. As such, the FHT employs allied health professionals who support physicians in the delivery of care to joint patients (“**joint patients**”). The purpose of the MoHLTC-funded shared eMR [NTD: is this correct?] is to ensure continuity of care for the joint patients. The agreement relates only to the personal health information of the joint patients.
      4. The parties wish to clarify how the obligations under the *Personal Health Information Protection Act, 2004* (“**PHIPA**”) will be discharged and by whom.
      5. In order to carry out their obligations under this Agreement, their respective agreements with the MoHLTC, and in order to meet other legal obligations and permitted business activities, each party must be able to collect, use and disclose patient personal health information, so long as the activity is in accordance with this Agreement and PHIPA.

**IN CONSIDERATION** of the mutual terms, covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the FHT and the FHO\* agree as follows:

1. **Definition of “Personal Health Information”.** Personal health information has the meaning given to it in PHIPA, being information in the custody or control of a health information custodian that identifies (or that it is reasonably foreseeable could be used to identify) an individual, including information that relates to (among other things):
   1. The physical or mental health of that individual (including family health history);
   2. The providing of health care to that individual (including identifying the health care provider of the individual);
   3. Payments or eligibility for funding for health care to that individual;
   4. Donation by that individual of a body part or bodily substance (or the testing or examination of same);
   5. The identity of that individual’s substitute decision-maker; and
   6. That individual’s health card number.

Personal health information may not only be held in the shared eMR, and it is acknowledged that this Agreement applies to all personal health information that relates to joint patients.

1. **Excluded Personal Health Information**.
   1. It is expressly acknowledged that both the FHO\* and the FHT have independent relationships with other entities and that this Agreement is not intended to extend to the personal health information relating to patients of those other entities. <If there are multiple FHO\*s or specialist practices associated with the FHO\* add: For example, this Agreement does not relate to the eMR or personal health information of patients of specialist practices co-located with the FHO\* or to the eMR or personal health information of patients of other family health organizations affiliated with the FHT.

From time to time it may make clinical sense that personal health information be shared as between clinicians in different family health organizations affiliated with the FHT who are caring for the same patient, however such sharing would be considered a “disclosure” as that term is understood under PHIPA and the rules of PHIPA about disclosing personal health information with another health information custodian would apply.> [NTD: Decide whether this highlighted language is appropriate]

* 1. <If the FHT has its own programs where it sees patients not rostered to a FHO\* physician, add a description and include an example of a relevant program – for example “Diabetes Education Program”: It is also expressly acknowledged that the FHT has its own patients who are not rostered to or seen by the FHO\* physicians (for example, patients in the FHT’s \* Program).>
  2. **The FHO\* is the “Health Information Custodian” and the FHT is the “agent”.** Under PHIPA, the definition of a health information custodian includes a person who operates a group practice of health care practitioners who has custody or control of personal health information as a result of or in connection with performing the person’s duties or work. Every patient rostered to a physician in the FHO\* signs a form agreeing to have information shared with the FHO\*. Because there is a shared eMR, and because the parties have joint patients and have integrated activities and in order to simplify who is the health information custodian for the joint patients, the parties agree that the FHO\* will act as the health information custodian for purposes of PHIPA and that the FHT and its staff will act as “agents” of the FHO\* as that term “agent” is defined under PHIPA <If the FHT has its own programs where it sees patients not rostered to a FHO\* physician, add: except with respect to the FHT’s own patients described in 3b below>. Because of the shared eMR and integrated nature of the relationship between the FHO\* and the FHT, the parties consider the sharing of personal health information as between the FHO\* and the FHT to be a “use” and not either a “collection” or “disclosure” as those terms are understood under PHIPA. The parties acknowledge that this designation of the FHO\* as HIC and the FHT as agent facilitates broad sharing of personal health information for clinical, quality and administrative purposes allowed by PHIPA.
  3. <If the FHT has its own programs where it sees patients not rostered to a FHO\* physician, add this as “b.” If not, delete this and remove the formatting above so that there is no “a” either and just make it 3.: **The FHT is the “Health Information Custodian” for its own patients.** The FHT enters personal health information about its own patients into the shared eMR. The FHT is the health information custodian for those records of personal health information. The FHO acknowledges its physicians, staff and agents have no entitlement to those records of personal health information except to fulfill the functions of administering and maintaining the eMR. Unauthorized collection, use or disclosure of such personal health information by the FHO or its agents would be considered a privacy breach.>

1. **Privacy Officers**[[2]](#footnote-2)**.** The FHO\* and the FHT will each appoint a privacy officer (“**Privacy Officers**”) to jointly fulfill the role of contact people for the FHO\* as health information custodian under PHIPA, including to:
   1. Facilitate compliance with PHIPA;
   2. Ensure all FHO\* and FHT staff and other agents are informed of their privacy duties;
   3. Create joint privacy policies and information management practices;
   4. Respond to inquiries from the public about joint privacy policies and information management practices;
   5. Respond to requests for access to or correction of a record of personal health information;
   6. Receive and respond to privacy complaints;
   7. Notify affected individuals if there has been a privacy breach; and
   8. Respond to inquiries and investigations of the Information and Privacy Commissioner/Ontario (“**IPC/O**”) and notify or report to the IPC/O as appropriate.

It is acknowledged by the parties that either the FHT or the FHO\* may take the lead for these activities, but as the health information custodian the FHO\* will have ultimate authority and responsibility to approve all joint privacy compliance activities.

1. **Joint Privacy Policies and Information Management Practices**. The parties agree they will publish joint privacy policies and information management practices, which will apply to FHO\* and FHT staff and agents (for example, a general privacy policy, access and correction procedures, safeguarding guidelines, lockbox policy, record retention policy, privacy breach protocols, and privacy impact assessment procedures). <If you have multiple FHO\*s add: It is acknowledged that it is ideal if these policies and information management practices also align with the other family health organizations affiliated with the FHT.>
2. **Contracts**. The parties agree that the FHO\* may, as owner of the eMR, from time to time, undertake or be required to modify or amend agreements with respect to the shared eMR (or shared health record in whatever format) including for example contracts to participate in regional or provincial shared health records projects, or contracts dealing with storage, security or disposal services for the eMR or shared health record. In such circumstances, the FHO\* shall provide the FHT with • days’ <some use thirty (30) days – but it is up to you> prior written notice of the proposed contractual change or amendment and no change or amendment shall be made without the FHT’s prior written approval that shall not be unreasonable withheld.
3. **Use and Disclosure of Records of Personal Health Information**. The parties agree that FHO\* and the FHT staff members are entitled to use and disclose records of personal health information in the eMR in order to:
   1. Fulfill their professional obligations to the joint patients;
   2. Fulfill their privacy obligations;
   3. Fulfill their administrative functions (including for example, getting paid, planning programs, and mandatory reporting obligations to the MoHLTC);
   4. Defend themselves in regulatory and other legal actions; and
   5. Perform their own reasonable business functions as otherwise permitted or required by law (for example, for other permitted uses or disclosures recognized under PHIPA).

All uses and disclosures of personal health information must comply with PHIPA.

**Schedule A**, as amended from time to time through written agreement by both the FHT and the FHO\*, sets out the agreed upon authorized purposes and authorized staff of the FHT for accessing the eMR or other records of health information.

The parties agree to give each other sufficient notice of any other initiatives that will have a significant impact on the shared eMR so as to allow the other party to raise concerns (such as whether the initiative meets the mission, vision and values of the organization or about the possible technical effects on server performance etc.) or provide input before decisions are made or to allow the other party to prepare its staff for any changes to practice.

The parties also agree that former staff of the FHO\* or the FHT may be granted access to a record of personal health information if permitted or required by law and as authorized by the FHO\* and the FHT (for example, to respond to a lawsuit or regulatory complaint or peer review process).

1. **Patients Own Their Information**. The parties acknowledge that the information in the eMR belongs to the individual patient to whom the information relates. If a patient de-rosters from a physician or the FHO\* or otherwise wishes to move to another health care provider outside the FHO\* or the FHT, the parties will work together to transfer the patient’s record of personal health information in a manner that is consistent with PHIPA and applicable regulatory College guidelines.
2. **Safeguards**. The parties will work together to perform the statutory obligations to safeguard their joint patients’ personal health information. For greater clarity, both parties mutually agree to:
   1. access, use, and disclose personal health information in accordance with the terms and conditions of this Agreement;
   2. ensure that only authorized staff of the FHT who have a need to access, use and disclose personal health information do so only in accordance with the terms and conditions of the Agreement;
   3. take all reasonable steps to protect personal health information against any unauthorised access, use, disclosure, modification, retention or disposal;
   4. not intentionally insert, into any part or component of the eMR, 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;
   5. co-operate reasonably with any reporting, audit or monitoring program required in accordance with applicable laws and with respect to the purposes of this Agreement;
   6. not use or disclose personal health information for any purpose unless permitted by this Agreement and applicable laws; and
   7. maintain privacy and security procedures, practices and controls in compliance with this Agreement and applicable laws, including any directions, advice or orders of the IPC/O and the MoHLTC.
3. **Accuracy.** 
   1. Both the FHT and the FHO\* will take all reasonable care in adding personal health information into the shared eMR, but in any event the same care as it would take in maintaining its own, separate records for individuals seeking care including accuracy, completeness, reliability, currency and veracity of personal health information.
   2. Both the FHT and the FHO\* will take all reasonable steps to maintain accuracy and integrity of personal health information in the eMR and will notify the other as soon as reasonably possible, if it becomes aware that any personal health information that it has entered into the eMR becomes inaccurate, corrupted, damaged, incomplete, or out of date.
   3. The parties agree that they will each be responsible for the correction and modification of any personal health information that it has entered into the eMR.
4. **Audit**. The parties agree to cooperate with any privacy assessment or audits conducted about the eMR or joint privacy policies or information management practices and agree to make such changes as may be reasonably recommended by the privacy assessment or audit.
5. **Theft, Loss or Unauthorized Access of Personal Health Information.** In the event that either party becomes aware that personal health information has been stolen or lost, or their agent or other person has obtained unauthorized access to personal health information, or either party has collected, used, disclosed or disposed of the personal health information in violation of PHIPA or other than as contemplated in this Agreement or in the joint privacy policies or information management practices, the party shall at the first reasonable opportunity notify the Privacy Officers. The joint privacy breach protocol shall be followed.
6. **Remedies in the Event of Theft, Loss or Unauthorized Access of Personal Health Information.**  Following any theft, loss or unauthorized use of personal health information as more fully described in section 12 above by the FHT or its staff or agent or other person for whom the FHT is responsible, the FHO\*, in its sole discretion, may exercise any one or more of the following rights and remedies:
   1. require the FHT to implement any and all recommendations arising from any audit, report, or privacy impact assessment (“**PIA**”) undertaken in response to the privacy breach;
   2. restrict or prohibit access by the FHT to the eMR or any part thereof; or
   3. terminate this Agreement immediately for default under section 18.

The FHO\* may also require that the joint FHT/FHO\* Privacy Policies and Information Management Practices as described in section 5 above be reviewed and amended with a view to eliminating the risk of a future breach of this Agreement

1. **Costs Associated with Privacy Breaches**. In the event of a privacy breach or privacy investigation or both, there may be associated costs in managing the breach/investigation, for example relating to seeking legal advice, notifying patients, hiring support staff to perform tasks, engaging consultants or updating information technology systems. The parties agree to the following:
   1. The FHO\* shall be responsible for costs related to the eMR and the security of the eMR system as the owner of the eMR;
   2. Each party shall be responsible for the actions or omissions of their own staff and agents and other persons for whom they are responsible; and
   3. The parties will share the costs if a privacy breach or privacy investigation or both relate to shared staff or agents, or involve a combination of staff or agents from both the FHT and the FHO\* or where it is not obvious that one or the other of the FHT or FHO\* is responsible for the action or omission. Such determination shall be made by the Lead Physician of the FHO\* and the FHT Executive Director.
2. **Dispute Resolution.** The parties agree to meet to discuss any concerns with respect to their individual privacy practices or practices of their staff members or agents or others. This shall be done initially by the Privacy Officers. If resolution cannot be reached within 15 days (or as otherwise agreed in writing), the parties shall involve the Lead or Associate Lead Physician of the FHO\* and the Board Chair of the FHT. If resolution still cannot be reached, either party may immediately terminate this Agreement and the PHIPA agency relationship. However, it is acknowledged that termination of this Agreement would have a significant negative impact on the ability of the parties to continue as affiliates and to meet their obligations to the MoHLTC or under other agreements as affiliated entities.
3. **Insurance.**  The parties agree to obtain and maintain privacy insurance for purposes of being able to meet their obligations under this Agreement and PHIPA and they agree to ensure that the policy(ies) acknowledge this PHIPA agency agreement and protect the interests of both parties.
4. **Indemnity.** Each party hereby agrees to indemnify and hold harmless the other from all costs, damages, fines, penalties or other liabilities arising out of a breach of its obligations under PHIPA or this Agreement.
5. **Term.** This Agreement shall commence on the date this Agreement is signed by the last signatory below, and shall remain in force and effect until terminated in accordance with this Agreement.
6. **Termination for Convenience.** Either party may terminate this Agreement upon one hundred and eighty (180) days’ written notice to the other.
7. **Termination for Default.** Either party is entitled to immediately terminate this Agreement without further notice or penalty in the event that the other party breaches any of the terms or conditions of this Agreement.
8. **Termination.** Any termination of this Agreement should not negatively impact on either party’s ability to fulfill their legal obligations (and obligations of their staff and agents) and the parties agree to work together in the event of a termination to ensure that there is a reasonable transition of the shared eMR to fulfill those obligations.
9. **Severance of eMR.** Upon the termination of this Agreement, the parties agree to sever any eMR sharing system implemented for the purposes of this Agreement and to terminate access rights of their authorized staff.
10. **Maintaining Personal Health Information with Joint Patient Consent.** The parties acknowledge and agree that it would be advantageous to the joint patients, for the purposes of providing health care or assisting in the provision of health care, for each party to maintain copies of or access to that joint patient’s personal health information, even following termination. The parties agree that they will explore options to obtain joint patient consent for the sharing of personal health information and/or will expeditiously deal with any requests for disclosure of personal health information in accordance with the provisions of PHIPA.
11. **Assignment/Subcontracting.** Neither party will be entitled to assign this Agreement without the prior written consent of the other party.
12. **Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario.
13. **Notices.** All notices under this Agreement shall be in writing and shall be delivered by personal delivery/courier, fax or registered mail to the other party at its address indicated below. The notice shall be deemed to have been delivered on the day of personal delivery, on the day received by fax (as evidenced by a transmission confirmation), or on the fifth day following mailing.

To the FHT: **<NTD: Insert contact name and address.>**

To the FHO\*: **<NTD: Insert contact name and address.>**

1. **Severability.** Each of the provisions contained in this Agreement is distinct and severable. Any declaration by a court of competent jurisdiction of the invalidity or unenforceability of any provision or part of a provision will not affect the validity or enforceability of any other provision of this Agreement.
2. **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 this Agreement shall not constitute a waiver of these rights, and these rights shall continue in full force and effect.
3. **Entire Agreement.** This Agreement, including Schedule A, contains all of the agreements, representations and understanding of the parties and supersedes and replaces any and all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. Any amendment to this Agreement must be in writing and signed by duly authorized officers of each party.
4. **Counterparts**. This Agreement may be executed in any number of counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.
5. **Independent Legal Advice.** Both parties confirm that, prior to the execution of this Agreement, it had a full and complete opportunity to obtain independent legal advice and representation and that it has either done so or has freely chosen not to obtain such advice.

This Agreement is agreed to as described between the FHO\* and the FHT.

|  |
| --- |
| **<Name> FAMILY HEALTH TEAM** |
| Signature |
|  |
| Name & Title |

|  |
| --- |
| **<Name> FAMILY HEALTH ORGANIZATION** |
| Signature |
|  |
| Name & Title |

**Schedule A**

**Permitted Uses and Disclosures of Personal Health Information by the FHT**

**NTD: This is just for information and idea purposes – it has to be customized**

USES

|  |  |  |
| --- | --- | --- |
| **Activity** | **Authorized FHT Personnel**  **[NTD: Just ideas]** | **Comments** |
| Clinical care | Allied health professionals |  |
| Planning or delivering FHT clinical programs or services | Executive Director  QIDSS |  |
| Planning or delivering FHO\* clinical programs or services |  | <For example, may require physician approval and may be limited to reporting aggregate data only> |
| Evaluating or monitoring FHT clinical programs or services | QIDSS |  |
| Evaluating or monitoring FHO\* clinical programs or services |  | <For example, may require physician approval and may be limited to reporting aggregate data only> |
| Detecting, monitoring or preventing fraud or unauthorized receipt of services or benefits | Manager, Finance  Executive Director | <For example, may require physician approval if applies to FHO\* activities > |
| Risk management | Executive Director |  |
| Error management | Executive Director |  |
| Activities to improve or maintain the quality of care or improve or maintain the quality of any related FHT program or service | Executive Director  QIDSS |  |
| Activities to improve or maintain the quality of care or improve or maintain the quality of any related FHO\* program or service |  | <For example, may require physician approval and may be limited to reporting aggregate data only> |
| Educating agents | Executive Director  Allied health professionals if program is approved |  |
| Disposing of information or modifying information in order to conceal the identity of the individual | QIDSS or IT |  |
| Seeking consent for additional uses or disclosures | Executive Director |  |
| Proceedings or contemplated proceedings where FHT or FHT staff are involved | Executive Director and FHT staff as appropriate and authorized by the Executive Director |  |
| Obtaining payment or processing monitoring verifying or reimbursing claims for payment | Manager, Finance |  |
| Research | Only as approved by the FHT Board |  |

DISCLOSURES

|  |  |  |
| --- | --- | --- |
| Sharing with another health providers within the Circle of Care | Allied health professionals |  |
| Notifying individuals about a deceased person | Allied health professionals | <restriction might be – only with authorization by family physician> |
| Determining or verifying the eligibility of a patient to receive health care or services | Manager, Finance |  |
| Participating in an audit or accreditation | Executive Director  QIDSS |  |
| Providing information to a prescribed registry | QIDSS | <this should be detailed> |
| Making mandatory reports under law | Executive Director  Allied health professionals (if required by law) |  |
| Eliminating or reducing a significant risk of serious bodily harm | Executive Director or at discretion of Executive Director |  |
| Proceedings or contemplated proceedings where FHT or FHT staff are involved | Executive Director and FHT staff as appropriate and authorized by the Executive Director |  |
| Reporting or responding to requests from regulatory Colleges of the allied health professionals | VP HR |  |
| Research | Only as approved by the Board |  |
| Prescribed entities for health system analysis (such as ICES) | QIDSS | <this should be detailed> |
| Mandatory reports to the MoHLTC |  | <only anonymized information> |
| Discretionary reports to the MoHLTC |  | <only anonymized information> |
| Collaborations with third party stakeholders | QIDSS on direction of Executive Director | <only anonymized information> |

1. We have referred throughout this sample to groups of physicians affiliated with FHTs but organized separately from FHTs as Family Health Organizations (**FHOs\***). However, with the “\*” we acknowledge that physicians may be organized in other configurations of physician payment organizations such as Family Health Networks (**FHNs**), Rural and Northern Physician Group Agreements (**RNPGAs**), Family Health Groups (**FHGs**) or Alternative Payment Plans (**APPs**). For ease of reference, we refer to FHOs\* but we intend to include these other models in that term. If you have a Blended Salary Model where the physicians are employed, you do not likely need this template (please seek advice). [↑](#footnote-ref-1)
2. NTD: The FHT and the FHO\* may mutually decide to choose only one Privacy Officer. This is up to you. [↑](#footnote-ref-2)