

## **ConnectMyHealth User Agreement [Version 1.1: July 27, 2022]**

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND HHS AS OPERATOR OF THE CONNECTMYHEALTH PORTAL (“CMH”), AND THE HOSPITALS AND OTHER HEALTHCARE ORGANIZATIONS THAT MAKE THE HEALTH RECORDS THEY ARE CUSTODIANS OF AVAILABLE THROUGH CMH. BY USING CMH OR BY CLICKING THE ACCEPTANCE BUTTON ON CMH, YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

### **1. User Agreement Terms and Conditions**

All users of CMH (“Users”), which can include the Patient or their substitute decision maker, and Shared Access Users they authorize, must agree to this Agreement as a condition of accessing and using CMH. This Agreement is an agreement between each User and Hamilton Health Sciences Corporation (“HHS”), and sets out the terms and conditions upon which you may access and use CMH and any Patient Data. By using CMH, or clicking on the acceptance button on CMH, you accept to be bound by the terms and conditions of this Agreement and any CMH policies and procedures set out on CMH, including but not limited to those applicable to information handling (collectively, “CMH Policies”). If you do not accept these terms and conditions or any CMH Policies, you must not use CMH. HHS may revise features and functionality of CMH, this Agreement or any CMH Policies at any time by posting a revised version on CMH. Continuing to use CMH means that you accept and agree to the then current revised terms and conditions and the then current CMH Policies. It is your responsibility to ensure that you understand how to use CMH in accordance with the then current instructions and CMH Policies.

### **2. Patient Portal**

ConnectMyHealth is a proprietary web-based patient portal application operated and managed by HHS that allows a patient (“Patient”) and any third parties (such as a family member) they authorize (“Shared Access User”), who registers on CMH, to view certain personal health information (“PHI”) regarding the Patient (“Patient Data”) which is made available by a participating hospital, health information custodian (“HIC”) or other data contributor (each referred to as a “Contributor”). In some cases, a “Proxy” (e.g., a parent/guardian) may be authorized instead of the Patient to access CMH in the place of Patient. Patient Data is not stored on CMH but instead is obtained on a real time basis from the Contributor’s health information system (“HIS”).

### **3. Registration Process**

In order to use CMH, each User (both Patients and Shared Access Users) must create their own individual account (“Account”). Patients (or a Proxy) can also identify other registered Users as a Shared Access User who can access their Patient Data and by identifying a Shared Access User a Patient hereby consents to CMH providing access by such Shared Access User to the Patient Data of that Patient. A User who is authorized as a Proxy of a Patient may access CMH in place of such User with the ability to view Patient Data available through CMH, and to configure CMH, in the same way that the Patient would otherwise have been able to. A User can be a Shared Access User for more than one Patient. CMH allows a Patient (or their Proxy) to apply certain restrictions on the Patient Data that a particular Shared Access User may view. Unless so restricted by a Patient, a Shared Access User will have access to all Patient Data that is accessible to the authorizing Patient.

As part of the registration process, a User's identity may be verified to HHS by a third party identity authentication and authorization service ("IAA Service"). In other cases, a User who has not been verified using such a service will be asked, during the registration process, to upload photographs of certain identification documents to CMH. Copies of any documents uploaded to HHS are used by HHS to help confirm the identity of Users and are then deleted within thirty (30) days following verification. Certain identifying information obtained by HHS regarding Users will continue to be stored in CMH in order to support User's access to CMH and thereafter to support provision of access log reports.

Accounts may be established by parents/guardians as a Proxy on behalf of pediatric patients or by substitute decision makers as a Proxy in respect of adult Patients. In such event, the Proxy registers the Account and will be issued the primary User Name and Password. The Proxy may then authorize Shared Access Users and otherwise use and configure the Account as an ordinary user. Proxy Accounts for pediatric Patients will be automatically locked against all access when the Patient reaches age 12, or at some earlier time as may be requested by the Patient (with the capacity to make medical decisions), and then periodically until the Patient turns 16. A Proxy Account in respect of an adult Patient may be limited in time or may be locked as part of similar periodic renewals. In such case, the Account may be unlocked only by the Patient themselves, by following the registration prompts or through submission of an authorization form. If control of an Account is transferred to the Patient and then if the Patient wishes for the Proxy to have continued access to the Account, the Patient may authorize such person as a Shared Access User, who may then access the Patient Data of such Patient via their own Account.

Registration and participation with CMH is voluntary and does not affect the level of care that a Patient will receive from a Contributor. A Patient or other User may discontinue participation in CMH at any time. If a Patient decides to discontinue participation in CMH, all Shared Access Users previously authorized to view the Patient Data of such Patient will have their access discontinued to the Patient Data of such Patient and will be notified that their access has been discontinued at the Patient's request.

#### **4. Account Terms**

Each Account consists of a unique e-mail address which is used as the user name ("User Name") and associated passwords ("Password"). By registering for an Account, you hereby agree (i) to provide, true, accurate, current and complete information about yourself as requested by the registration form; and (ii) to maintain and promptly update such information to ensure it remains true, accurate, current and complete. If HHS or any Contributor has reasonable grounds to suspect that any information provided by you is untrue, inaccurate, not current or incomplete, HHS has the right to suspend or terminate your Account and your access to CMH.

You agree that you will not: (a) use or attempt to use CMH with an Account, or a User Name and/or Password that is not yours, (b) access or attempt to gain access to information other than your own information (except when authorized as a Shared Access User to access Patient Data of the authorizing Patient), (c) share your Password with any other person, or (d) leave your account signed on for the use or potential use of others. HHS may refer unauthorized or inappropriate access to CMH to legal authorities.

You are responsible for keeping your Password confidential and may not share your Password with any other person. You are also responsible for all activities that happen using your User Name and Password. You agree to advise HHS immediately of any unauthorized use of your Account or any other breach of security by contacting the CMH Program Office at 1-833-824-

0265 or [security@connectmyhealth.ca](mailto:security@connectmyhealth.ca). You agree to ensure that you exit from your Account at the end of each session. HHS will not be liable for any loss or damage arising from your failure to protect your Account from loss or inappropriate use. It is your responsibility to protect any Patient Data that you download or print from CMH.

## 5. Service Disclaimers and Limitations

CMH is provided by HHS and the Contributors as a convenience for Patients, and is not a requirement to the provision of patient care by HHS or a Contributor. The information in CMH is not a substitute for advice, diagnosis or treatment from a Patient's health care provider(s). HHS reserves the right at any time, and from time to time, to modify, suspend or terminate, temporarily or permanently, CMH (or any part or function thereof) with or without notice to you. HHS and the Contributors shall have no liability to you or any third party for any such modifications, suspensions or discontinuance of CMH.

**CMH is provided on an 'as is' basis without representations, warranties or conditions of any kind, either express or implied or statutory. This means that HHS and the Contributors make no (and expressly disclaim any) representation, condition, warranties or covenants, express or implied (including, but not limited to, implied warranties or conditions of merchantability, merchantable quality, durability, fitness for a particular purpose, title, and non infringement), regarding CMH, including, without limitation, no representation, warranty, condition or covenant that (i) the functions of CMH or any Patient Data will be usable, fit for a particular purpose, uninterrupted or virus-free or error-free; or (ii) that communications to or from CMH will be secure and/or not intercepted; or (iii) Users are who they purport to be.** You expressly agree that all use of CMH is at your sole risk. You agree that HHS assumes no liability if CMH is unavailable at any time, or for the reliability, validity, accuracy, completeness, integrity, quality or timeliness of, or any failure to deliver, any Patient Data, or with respect to the identity of a particular User. HHS does not represent or warrant the reliability, validity, accuracy, completeness, integrity, quality or timeliness of any Patient Data. You acknowledge that any use, non-use or reliance upon any such Patient Data will be at your sole risk.

HHS uses commercially reasonable methods to protect CMH. However, any information sent or received over the Internet can not be guaranteed to be completely secure and may be subject to inadvertent loss, theft or interception. Consequently, HHS cannot guarantee the security of any information transmitted to or from CMH.

CMH may include links to externally hosted reference material ("Third Party Content"). Any such Third Party Content is not within the control of HHS and HHS is not recommending, endorsing or otherwise providing any assurance regarding such Third Party Content. Any use of such Third Party Content or other functionality made available at such third party sites is entirely at your own risk.

**By using CMH, you agree that your access and use of CMH and any Patient Data is entirely at your own risk and liability.** Any restrictions imposed on you with respect to material downloaded from CMH and the disclaimers and limitations of liabilities set forth in this Agreement shall survive any termination of this Agreement or your use of CMH.

## 6. Use of CMH and Limitations

*Limited Functionality.* CMH is intended solely to provide a Patient and their Shared Access Users with non-urgent access to certain Patient Data. It does not permit Patients to upload or store any PHI or other content. It does not support communications between Users or between

a User and a Contributor or other care providers. It does not provide access to health care reference material within CMH (but may contain links to external sites). The PHI related to you that is displayed in CMH is not your official hospital record, but represents only a part of it. Not all information in your record is displayed. If you would like to access your full record please talk to your care provider or the relevant health information custodian.

*Use by Providers.* CMH only provides access to a subset of the patient health information that may be held by a particular Contributor. Also certain Patient Data may be subject to certain delays before it can be made available on CMH. CMH is not intended to facilitate access by health care providers to such Patient Data. HHS offers an alternative service called ClinicalConnect which is better suited for such purpose.

*No Control by HHS.* HHS does not control the content of the Patient Data presented through CMH. If you have any concern regarding the content of any Patient Data, or believe any Patient Data is incorrect and needs to be corrected, please contact the Contributor directly.

*Not Interfere with Use by Other Users.* As a condition of your use of CMH, you agree that you will not do anything to restrict or inhibit another user from using and enjoying CMH, interfere or attempt to interfere with the proper workings of CMH or do anything which imposes an unreasonable or disproportionately large burden on CMH's infrastructure.

*HHS May Disclose.* HHS reserves the right at all times to disclose any information necessary to satisfy any law, regulation, or governmental or law enforcement request. For greater certainty, HHS will fully cooperate with any legal obligation, including to disclose the identity of any User.

*CMH is Not a Substitute for Medical Advice.* Always seek the advice of a physician, or other qualified health care provider with any questions you may have regarding any information obtained from CMH and any medical conditions you believe may be relevant to you or to someone else. Never ignore professional medical advice or delay in seeking it because of information you obtain from CMH. Always consult with your physician or other health care provider before starting a new treatment, diet or fitness program. Information obtained on CMH is not intended to be complete nor exhaustive.

*Do not use CMH to communicate or treat medical emergencies.* If you have a medical emergency, call a physician, health care provider or 911 immediately, or go to the nearest emergency department. Under no circumstances should you attempt self-treatment based on anything you have seen or read on CMH.

*CMH does not create health care provider-patient relationships.* Using CMH or viewing information on CMH does not establish a health care provider-patient relationship between you and HHS or any one of the Contributors (or any of its respective physicians or other health care providers), and is not intended as a solicitation of individuals to become patients or clients of HHS or any one of the Contributors (or any of its physicians or other qualified health care providers).

*Copyright and License.* CMH, including the technology it utilizes and all associated intellectual property rights, are owned by HHS or its licensors, and is protected by copyright and other laws. Subject to the terms and conditions of the Agreement, you are hereby granted a limited, non-transferable and non-exclusive license to access, view and use CMH for your personal, non-commercial use. You are not granted any other rights to CMH or its associated technology.

*Use prohibited where contrary to law.* Use of CMH is not authorized in any jurisdiction where CMH may violate any laws or regulations. You agree not to access or use CMH in such

jurisdictions. You agree that you are responsible for compliance with all applicable laws or regulations and any contravention is entirely at your own risk.

## 7. Privacy

Each respective Contributor is the health information custodian (“HIC”) for personal health information (“PHI”) being sourced from such Contributor’s HIS and its information handling policies and procedures shall apply to such information. In such capacity, HHS is an electronic service provider of each Contributor under the Ontario *Personal Health Information Protection Act, 2004* (“PHIPA”). As well, HHS may act as a PHIPA Agent of such Contributor for the purposes of creating and maintaining logs of access by Users to PHI sourced from a particular Contributor and, upon request, will provide copies of such logs to Patients and/or the relevant Contributor.

HHS will send notification to the Contributor of any breach relating to PHI that involves CMH where such PHI was sourced from such Contributor. As the HIC, the Contributor will send notifications of breach relating to PHI in its custody or control to applicable patients.

Personal information and PHI available on CMH will be password protected and only authorized personnel of HHS, the patient, and persons authorized by the patient will have access to the patient’s PHI. All PHI available on CMH will be held in the strictest confidence by HHS in accordance with its information handling policies and procedures and in compliance with HHS’ obligations as a health information custodian as defined by PHIPA.

Further information regarding the CMH Program Office’s information privacy policies and procedures, or for information on making an access request to or submitting a privacy question to the CMH Program Office at HHS, or for a copy of access logs of Personal Data, please visit <https://info.connectmyhealth.ca/privacy> or contact the CMH Program Office at 1-833-824-0265 or [privacy@connectmyhealth.ca](mailto:privacy@connectmyhealth.ca). Further information regarding the information privacy policies and procedures of Contributors, or for information on making a correction request to or submitting a privacy question to a Contributor, please visit the Contributor’s webpage.

You should note that records of PHI under the custody and control of a Contributor made available through CMH may be restricted in accordance with that Contributor’s records management policies and procedures and PHIPA. Patients requiring additional access to their PHI may contact the health records department at the campus/health care organization where they received treatment. CMH supports certain functionality to prevent a Shared Access User from viewing Patient Data that has been marked on the source HIS system as “confidential” (e.g., where a privacy consent directive has been applied by a Patient with a Contributor and where the link between the Contributor HIS and CMH permits transfer of such confidentiality status).

By registering for access to CMH you hereby authorize and consent to: (i) making Patient Data from the Contributors’ HIS available for access in CMH by you and your Shared Access User(s); (ii) receiving emails from, or sent on behalf of, HHS and/or the Contributors relating to your use of CMH; and (iii) HHS, as a PHIPA agent of Contributors, maintaining and making available to Patients and Contributors, logs of all access of the personal health information obtained from the Contributor’s HIS.

Using CMH contains certain risks inherent to accessing information via the internet, and Users should use reasonable and customary precautions to protect the security of sensitive information accessed and disclosed online. One such example is that web browsers used to access to CMH typically cache information locally and copies may remain on the device used to

access CMH even after logging off, closing the browser and/or shutting off the computer. Such information may then be accessible by other persons who have access to the device. It may be possible to mitigate this potential privacy exposure (either partially or fully) by using a “private browsing” mode (if available) or certain browsers designed to provide enhanced privacy. However, if the information being accessed requires the use of an external viewer application (e.g., PDF viewer, Word document viewer, image viewer) then copies may also be cached by such external viewer applications. Other mitigations include use of non-shared devices to access CMH, ensuring such devices are secured with a good password and turning on any optional encryption features that may be available on the device.

I understand that I may request assistance with my CMH account. I understand that in order to provide assistance, HHS may be required to remotely access my Account. This access may lead to exposure of PHI to the CMH staff member assisting me. All CMH staff are required to maintain the privacy and confidentiality of any PHI which they may be required to access in the course of their duties.

## **8. Limitation of Liability; Indemnity**

To the maximum extent permitted by law, in no event shall HHS or any Contributor, and their respective physicians, other health care providers, officers, directors, employees, agents, licensors, and their respective successors and assigns, be liable for any damages of any kind, including without limitation, any direct, special, indirect, aggravated, punitive, incidental or consequential damages, and including without limitation loss of profits, failure to realize expected savings or loss of or unauthorized access to data, any loss or damages in the nature of or relating to medical injury, personal injury, wrongful death, improper diagnosis, inaccurate information, improper treatment or any other loss incurred in connection with use, misuse or reliance upon CMH or the Patient Data, or inability to use CMH, or arising from fraudulent third party access to Patient Data, regardless of the cause and whether arising in contract (including fundamental breach), tort (including negligence), or other legal or equitable theory. The foregoing limitation shall apply even if HHS or a Contributor knew of or ought to have known of the possibility of such damages.

Your participation in CMH is entirely voluntary and provided only as a convenience. As a result, you agree to indemnify, defend and hold harmless HHS, and Contributors, and their respective physicians, other health care providers, officers, directors, employees, agents, licensors, and their respective successors and assigns, from and against any and all claims, demands, liabilities, costs, or expenses whatsoever, including, without limitation, legal fees and disbursements, resulting directly or indirectly from (i) your breach of any of the terms and conditions of this Agreement, or (ii) access to, use, misuse, reliance upon or inability to access or use CMH, or (iii) access to Patient Data granted to a Shared Access User who is not who they purport to be, including but not limited to, as a result of reliance by HHS on information provided by an IAA Service. You will cooperate as fully as reasonably required in the defence of any claim. HHS reserves the right to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, provided, however, that you will remain liable for any such claim and for the costs of defence.

Every exemption from liability, limitation and condition contained here for the benefit of HHS and every defence and immunity of whatsoever nature applicable to HHS or to which HHS is entitled under this Agreement will also be available and will extend to protect each Contributor, and every director, officer, employee, agent or representative of any of them, each of whom is an intended third party beneficiary of such provisions.

## 9. General Legal Terms and Conditions

*Governing law and jurisdiction.* CMH is operated by HHS from its facilities within the Province of Ontario, Canada. You agree that all matters relating to this Agreement, and/or your access or use of CMH shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to conflict of laws principles. Subject to mandatory arbitration provided below, you agree and hereby submit to the exclusive jurisdiction of the courts of the Province of Ontario with respect to all matters relating to your access and use of CMH as well as any dispute that may arise therefrom or relating to this Agreement. CMH is designed for use by Canadian users who are located in Canada, and is specifically not intended for use by users located in the European Union or elsewhere.

*Arbitration.* **All disputes arising out of or in connection with CMH, your use of CMH, or this Agreement, or in respect of any derived or associated defined legal relationship, will be referred to and finally resolved by arbitration under the legislation of Ontario.** The place of arbitration will be Toronto, Ontario. The language of the arbitration will be English.

*Limitation Period.* You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of CMH or this Agreement must be commenced within one year after such claim or cause of action arose.

*Waiver.* Any consent by HHS or a Contributor Provider, or waiver of, a breach of this Agreement which you have committed, whether express or implied, shall not constitute a consent to, or waiver of any other, different or subsequent breach.

*Entire Agreement.* This is the entire Agreement between you and HHS, and/or you and any Contributor, relating to your access and use of CMH.

*Severability.* If any provision of this Agreement is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions.

*Independent Parties.* Contributors are hospitals or other health information custodians that have agreed to provide Patients and their Shared Access Users with access to Patient Data they hold for the purpose of allowing such Patients and/or their Shared Access Users to have access to such information. Contributors are not partners of HHS or of each other. Contributors are third party beneficiaries of this Agreement and you acknowledge that they may enforce relevant provisions.

*Severability.* The invalidity or unenforceability of any provision of this Agreement or any provision contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant contained herein and any such invalid provision or covenant shall be deemed severable from the rest of the Agreement.

*Questions and Comments.* Questions or comments regarding CMH should be directed to the CMH Program Office at [info@connectmyhealth.ca](mailto:info@connectmyhealth.ca).