



**HEALTH NETWORK SYSTEM (HNS)
SUBSCRIPTION AGREEMENT FOR PHARMACY OPERATORS**

between

**Her Majesty the Queen in Right of Ontario
as represented by the Executive Officer of Ontario Public Drug Programs
of the Ministry of Health And Long-Term Care**

(the "Executive Officer")

and

Pharmacy's corporate name/no.

c.o.b. _____

Pharmacy's business name, if different from corporate name

(the "Operator")

Name of Designated Manager:	
Operator Contact Information: <small>(Please include Address, Fax #, Tel # and E-mail Address)</small>	
CPhA # / ON #:	
MINISTRY USE ONLY	
Network Activation Date:	

WHEREAS:

1. The Executive Officer administers Ontario Public Drug Programs – a publicly-funded provincial drug plan which provides coverage to Ontarians deemed eligible to receive benefits under the *Ontario Drug Benefit Act* and its regulations (ODBA);
2. The Ministry operates and maintains the Health Network System (HNS), an electronic drug claims system which enables the Ministry to receive, adjudicate, process and reimburse claims for payment in respect of Approved Drug Products dispensed to Eligible Persons under the ODBA;

3. The Operator wishes to have its Pharmacy connected to the HNS, via the Acquirer Host Network, in order to submit claims for payment for Approved Drug Products dispensed by the Operator to Eligible Persons under the ODBA; and
4. All pharmacy operators in Ontario are required to enter into a HNS subscription agreement as a precondition to gaining billing privileges under Ontario Public Drug Programs;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the parties agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement, the following words shall have the following meanings:

"Acquirer Host" means the service provider or organization which has connected the Pharmacy or group of pharmacies to the HNS through its own network communications system, and which is specified by the Operator in the Ministry's *Application for ODP Registration*.

"Acquirer Host Network" means the network connection between the Pharmacy and the HNS using network communications technology and equipment supplied by the Acquirer Host, but does not include the HNS.

"Act" means the *Ontario Drug Benefit Act*, R.S.O. 1990, c.O.10 as may be amended or replaced from time to time, but excludes the Regulation and any other regulations that may be made thereunder.

"Agreement" means this HNS subscription agreement entered into between the Executive Officer and the Operator, any schedules or appendices attached hereto, or any instruments amending the Agreement in accordance with its terms.

"Applicable Law" means, with respect to a person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, or other requirement having the force of law relating to or applicable to such person, property, transaction, event or other matter. Without limiting the generality of the foregoing, this includes the ODBA; the DIDFA; the *Drug and Pharmacies Regulation Act*; the *Personal Health Information Protection Act, 2004*; the *Regulated Health Professions Act, 1991*; the *Pharmacy Act, 1991*; the *Food and Drugs Act*; the *Controlled Drugs and Substances Act*; the *Criminal Code*; and all regulations enacted respectively thereunder, all as may be amended or replaced from time to time.

"Approved Drug Product" means a drug product or other therapeutic substance which has been designated under the ODBA as a listed drug product, listed substance, or designated pharmaceutical product, or which has been approved for coverage by the Executive Officer in respect of an Eligible Person under section 16 of the Act, or which is otherwise reimbursed as a benefit under Ontario Public Drug Programs.

"BBS" means the Ministry's HNS bulletin board system or any alternative electronic messaging service that the Ministry may put in place for the purpose of communicating with pharmacy operators and other Ontario Public Drug Programs stakeholders.

"Claim" means a claim for payment or claim reversal, as applicable, that is submitted by the Operator to the Executive Officer in respect of: (i) an Approved Drug Product that is dispensed to an Eligible Person at the Pharmacy; or (ii) any other service that is eligible for reimbursement by the Executive Officer or the Ministry; and **"Claims"** shall have the corresponding meaning.

"Claims Data" means any and all information used in connection with the submission and processing of Claims.

"College" means the Ontario College of Pharmacists.

"College Rules" means the standards of practice, code of ethics, and any other standards, codes, policies, protocols, guidelines, or rules established or adopted by the College.

"Days" means calendar days.

"Designated Manager" means, in respect of an Operator that is an accredited pharmacy, the designated manager as defined in the *Drug and Pharmacies Regulation Act* and who is specified in this Agreement as the Designated Manager of the Operator.

"DIDFA" means the *Drug Interchangeability and Dispensing Fee Act*, R.S.O. 1990, c.P.23 and the regulations made thereunder, all as may be amended or replaced from time to time.

"Disciplined" includes any decision or order that may be taken or issued by the College in respect to a finding of professional misconduct or incompetence in accordance with the *Regulated Health Professions Act, 1991*; the *Pharmacy Act, 1991*; or the *Drug and Pharmacies Regulation Act*, all as may be amended or replaced from time to time.

"Drug Profile Viewer System" means the web-enabled drug claims viewer application which enables the Ministry to provide authorized health care providers with electronic access to the drug claims history of Eligible Persons, who have not withdrawn consent to this disclosure, for the purpose of providing health care.

"Eligible Person" means a person who is eligible to receive drug benefits under the ODBA, and **"Eligible Persons"** shall have the corresponding meaning.

"Health Network System" or **"HNS"** means the Ministry's Health Network, as defined in the Regulation, to which, through the Acquirer Host Network, the Operator is permitted access under this Agreement, but does not include the Acquirer Host Network.

"Ministry" means the Ministry of Health and Long-Term Care.

"Ministry Policies" means the Ontario Drug Programs Reference Manual and any other policies, directives, protocols, rules or guidelines applicable to the Operator that may be published by the Executive Officer or otherwise communicated to the Operator from time to time.

"Network Activation Date" means the date on which the Operator's HNS account is activated by the Ministry.

"ODBA" means the *Ontario Drug Benefit Act*, R.S.O. 1990, c.O.10, the Regulation, and any other regulations that may be made under the Act, all as may be amended or replaced from time to time.

"Order" means an order that may be issued by the Executive Officer under section 11.1 of the Act to suspend the entitlement of a pharmacy operator to receive payment under the Act.

"Pharmacy" means the pharmacy or dispensing outlet operated by the Operator at the address written above.

“Professional Allowance Reporting Requirements” means the reporting requirements pertaining to professional allowances which the Operator is required to meet under section 13.1 of the Act and the Code of Conduct established under the ODBA and the DIDFA.

“Reference Manual” means the *Ontario Drug Programs Reference Manual* referred to in the Regulation as may be amended or replaced by the Ministry, with reasonable notice to the Operator, from time to time.

“Regulation” means Ontario Regulation 201/96 made under the Act, as may be amended or replaced from time to time.

“Software Specifications” means the software conformance and interface specifications based on the claims standards identified in the Reference Manual as set out in the *Ontario Drug Programs Network Technical Specification Manual* dated February 26, 2007, Version 3.1.

“Transaction” means the submission and receipt of Claims Data between the Pharmacy and the Ministry through the HNS in conformance with the transaction standards identified in the Reference Manual.

2.0 TERM

2.1 This Agreement shall commence on the Network Activation Date and continue in effect unless terminated by either party in accordance with Article 12.0 of this Agreement.

3.0 BILLING PRIVILEGES / COMPLIANCE WITH APPLICABLE LAW & POLICIES

3.1 The Operator agrees to comply with the terms of this Agreement in consideration of the grant or continuation of the grant of billing privileges by the Executive Officer under the ODBA.

3.2 The Operator will comply with all Applicable Law, College Rules, and Ministry Policies.

3.3 Without limiting the generality of section 3.2, the Operator shall meet the Professional Allowance Reporting Requirements for the reporting periods and by the timelines established by the Executive Officer.

4.0 HEALTH NETWORK SYSTEM

4.1 Subject to the Operator’s compliance with the terms and conditions of this Agreement, the Executive Officer shall permit the Operator to connect to, access, and use the HNS in accordance with this Agreement.

4.2 Subject to the exemptions relating to paper claims set out in the Regulation, the Operator shall submit all Claims via the HNS.

4.3 The Operator shall use the HNS only to submit Claims, to obtain remittance advices, to access other information or notices provided by the Executive Officer through the BBS, and for any other uses which may be authorized by the Executive Officer under section 4.6 of this Agreement.

4.4 The Operator shall log on to the BBS at least once per week in order to obtain relevant notices.

4.5 If the Operator intends to obtain HNS network connectivity services from an acquirer host other than the Acquirer Host specified on the Operator’s *Application for ODP Registration*, the Operator will notify the Executive Officer by submitting to the Ministry a *Notification of Change* form at least sixty (60) Days in advance of the effective date of the change.

4.6 Any use of the HNS by the Operator that is not authorized by this Agreement shall constitute misuse and be grounds for termination of this Agreement unless such use has been previously authorized in writing by the Executive Officer. The Executive Officer may allow for expanded uses of the HNS by providing notice to the Operator on the BBS.

5.0 DISCLAIMER

5.1 Although the Executive Officer shall use reasonable efforts to ensure the accuracy and completeness of all information supplied to the Operator by the Ministry, the Executive Officer does not warrant the reliability of information supplied by third parties including, but not limited to, prospective drug use review (DUR) information and prescriber data. Such information is advisory only and is not intended to replace sound clinical judgment in the delivery of health care services.

5.2 Neither the Executive Officer nor the Executive Officer's employees, agents or suppliers shall be liable for any failure, degradation or disruption of the Acquirer Host Network or of the Operator's system or for any failure, degradation or disruption of the HNS.

5.3 In the event that there is a failure, degradation or disruption of the HNS that interferes with the processing of Claims, the Executive Officer will take all reasonable steps to re-institute the HNS as quickly as possible or to establish alternative mechanisms for the processing of Claims.

6.0 TECHNICAL SPECIFICATIONS

6.1 When submitting Claims to the Executive Officer, the Operator shall use reasonable efforts to ensure that Claims Data conforms to the technical specification criteria contained in the Reference Manual.

6.2 The Operator shall use reasonable efforts to ensure that any software used by the Operator to access or submit Claims Data through the HNS has been tested by the Acquirer Host for conformance to the Software Specifications.

6.3 In the event that the Executive Officer changes the Software Specifications, the Executive Officer will notify the Operator on the BBS no later than sixty (60) Days prior to the effective date of the change. The Executive Officer will endeavour to provide more than sixty (60) Days notice in cases where the required changes to the Software Specifications may be reasonably characterized as extensive or significant.

7.0 CLAIMS

7.1 The Operator:

- (a) shall submit Claims in compliance with Applicable Law, College Rules and Ministry Policies;
- (b) warrants that all Claims will be true, accurate and complete to the best of the Operator's knowledge;
- (c) shall not submit to the Executive Officer a Claim that:
 - (i) the Operator knows or reasonably ought to know is false, inaccurate, or misleading; or
 - (ii) is excessive in relation to the service or benefit in respect of which the Claim is being made.

7.2 The Operator understands and acknowledges that, through the Drug Profile Viewer System and in accordance with the *Personal Health Information and Protection Act, 2004*, the Ministry may disclose the Claims history of Eligible Persons to authorized health care providers in hospitals and

other health care settings for the purpose of informing clinical decision-making and supporting the provision of health care.

7.3 When submitting a Claim for dispensing an Approved Drug Product to an Eligible Person, the Operator shall specify a date of service on the Claim that reflects the date on which the Operator fills or prepares the prescription of the Eligible Person for that Approved Drug Product.

7.4 The Operator shall maintain a Transaction log which shall include the content of each Transaction for the most recent two (2) year period.

8.0 ADDITIONAL CONDITIONS

8.1 At any time during the term of this Agreement, the Executive Officer may impose such additional terms or conditions on the Operator which the Executive Officer considers appropriate in the public interest, with no less than seven (7) Days notice to the Operator.

9.0 RECOVERY OF OVERPAYMENTS

9.1 Where the Executive Officer has reasonable grounds to believe that the Executive Officer has paid an amount to the Operator for a Claim that was submitted to the Executive Officer in contravention of the ODBA or any term or condition of this Agreement, that amount will be deemed to be a debt due and owing by the Operator to Her Majesty the Queen in right of Ontario.

9.2 The Executive Officer may obtain or recover a debt that arises under section 9.1 by way of set off against any amount payable to the Operator under the ODBA.

9.3 Prior to initiating any recovery under section 9.2, the Executive Officer will provide the Operator with no less than thirty (30) Days written notice together with reasons for the recovery.

10.0 CONFIDENTIALITY / PRIVACY / FREEDOM OF INFORMATION

10.1 Each party shall hold in confidence and treat as confidential any information received from or supplied by the other party which is marked confidential or may by its nature be reasonably assumed to be confidential.

10.2 Each party acknowledges that it is subject to the law pertaining to health information custodians under the *Personal Health Information Protection Act, 2004*. Each party shall provide to the other party all assistance reasonably requested in regard to any relevant privacy concern arising in relation to the subject matter of this Agreement, including complaints of individuals and complaints and reviews conducted by the Information and Privacy Commissioner of Ontario.

10.3 Any documents or written materials in the custody or control of the Executive Officer are subject to the *Freedom of Information and Protection of Privacy Act* (FIPPA) and may be disclosed pursuant to an access request under FIPPA or if required by an order of a court or tribunal or otherwise by law.

11.0 CHANGES TO OPERATOR

11.1 The Operator shall notify the Executive Officer of any changes to the Operator's corporate name, business name, or contact information (including street address, telephone number, facsimile number and e-mail address) by submitting a *Notification of Change* form to the Ministry no later than seven (7) Days after the change.

11.2 If: (a) the Operator undergoes a change in control, directly or indirectly, including a change of the

controlling interest in the Operator's shares; or (b) there is a sale of all or substantially all of the Operator's assets ("Change"),

- (i) the Operator shall notify the Executive Officer in writing no later than thirty (30) Days prior to the date on which the Change takes effect ("Takeover Date");
- (ii) the Operator shall seek or ensure that the new owner seeks the Executive Officer's consent for the continuation of billing privileges under the ODBA following the Takeover Date, which such consent shall not be unreasonably withheld; and
- (iii) if the Executive Officer provides consent under paragraph (ii), the Operator or new owner shall complete and submit to the Ministry an updated *Application for ODP Registration*.

11.2.1 Despite paragraph (i) of section 11.2, if there are exigent circumstances which prevent the Operator from meeting the thirty (30) Day notice requirement, the Operator shall notify the Executive Officer as soon as reasonably possible but, in any event, no later than seven (7) Days prior to the Takeover Date.

11.2.2 Despite paragraph (ii) of section 11.2, the Executive Officer shall not give consent for the continuation of billing privileges under the ODBA unless the new owner assumes all of the rights and liabilities of the former Operator under this Agreement. Despite the foregoing, the assumption by a new owner of the Operator's rights and liabilities under this Agreement shall not release the Operator from any of its outstanding liabilities under this Agreement.

11.3 If the Pharmacy is to be shut down permanently or closed for an indefinite period of time ("Closure"), the Operator shall notify the Executive Officer in writing of the date of Closure as soon as reasonably possible. Following the Closure date, the Executive Officer may de-activate the Operator's billing account on the HNS unless otherwise agreed to by the parties.

11.4 The Operator shall not assign this Agreement or any part thereof without obtaining the prior written consent of the Executive Officer.

12.0 TERMINATION

12.1 **Opting Out.** In accordance with section 11 of the Act, the Operator may opt out of receiving payment from the Executive Officer and terminate this Agreement at any time upon giving at least ninety (90) Days written notice to the Executive Officer.

12.2 **New Agreement.** If the Executive Officer considers it advisable in the public interest, the Executive Officer may terminate this Agreement and invite the Operator to enter into a new or revised HNS pharmacy subscription agreement at any time upon giving at least sixty (60) Days written notice to the Operator.

12.3 **Termination for Cause.** If the Operator has breached any provision of this Agreement, the Executive Officer may issue an Order against the Operator and terminate the Agreement upon giving the Operator thirty (30) Days written notice together with reasons ("Notice of Order and Termination"). The Operator may, within twenty-one (21) Days of the receipt of the Notice of Order and Termination, make written representations to the Executive Officer: (i) to dispute the facts upon which the Notice of Order and Termination was issued, and/or (ii) as to why the Notice of Order and Termination should be revoked. Before the Order and termination take effect, the Executive Officer will consider any representations made by the Operator and will advise the Operator in writing whether or not the Notice of Order and Termination is revoked ("Notice of Decision"). If the Notice of Order and Termination is not revoked, the Order and Agreement termination will take effect on the date given in the Notice of Order and Termination or on such later date that the Executive Officer may specify in the Notice of Decision.

12.4 **Immediate Termination.** Despite section 12.3, the Executive Officer may issue an Order against

the Operator and terminate this Agreement immediately upon notifying the Operator ("Notice of Immediate Order and Termination") if:

- (a) the Executive Officer has reasonable grounds to believe that:
 - (i) the Operator has obstructed a person carrying out an inspection under section 14 of the Act;
 - (ii) the Operator has submitted fraudulent Claims;
 - (iii) the Operator has knowingly furnished false or incomplete information to the Executive Officer in connection with the administration of the ODBA or the DIDFA;
 - (iv) the Operator or the Designated Manager has committed an offence under the laws of Canada or Ontario related to fraud in the operation of a pharmacy;
 - (v) a director of the Operator who has a controlling interest in the Operator's shares has committed an offence under the laws of Canada or Ontario related to fraud in the operation of a pharmacy; or
 - (vi) termination is necessary for reasons concerning the protection of public health or safety;
- (b) the Designated Manager is Disciplined by the College for any act, omission or conduct that is related to the subject matter of this Agreement;
- (c) a director or officer of the Operator who has a controlling interest in the Operator's shares is Disciplined by the College for any act, omission or conduct that is related to the subject matter of this Agreement; or
- (d) the Operator has been adjudged bankrupt, has made a general assignment for the benefit of its creditors, or a receiver has been appointed on account of the Operator's insolvency.

12.5 **Opportunity to Make Submissions.** If the Executive Officer issues a Notice of Immediate Order and Termination under section 12.4 (a), the Order will expire thirty (30) Days after it is issued unless extended or made permanent by further Order of the Executive Officer. The Operator may, within twenty-one (21) Days of the receipt of the Notice of Immediate Order and Termination, make written representations to the Executive Officer: (i) to dispute the facts upon which the Order was issued, and/or (ii) as to why the Order and termination should not be extended or made permanent. Prior to the expiry of the Order, the Executive Officer will consider any representations made by the Operator and will decide whether to permit the Order to expire, to extend it for a fixed period of time, or to make it permanent, and will notify the Operator of this decision in writing forthwith

12.6 **Notices.** Any notice issued by the Executive Officer under section 12.3, 12.4 or 12.5 of this Agreement ("Notice") may be served on the Operator by delivering and leaving a copy of the Notice with the Designated Manager or with any person employed, or apparently employed, at the Pharmacy. If there is no one present at the Pharmacy to accept service of the Notice during the Pharmacy's posted business hours, the Executive Officer may serve the Notice electronically by facsimile or e-mail and the Notice shall be deemed to have been received by the Operator on the date on which the Notice is transmitted.

12.7 **Publication of Operator Name on Website.** If the Agreement is terminated under this Article 12.0, the Executive Officer may publish on the Ministry website the name of the Operator, the date of termination, and any reason for termination.

13.0 GENERAL

13.1 Subject to Article 8.0, no amendment to this Agreement shall be binding upon the parties unless in writing and duly signed by both parties.

- 13.2 A waiver of any failure to comply with any term of this Agreement shall be in writing and signed by the party providing the waiver. Every such waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent or previous failure to comply.
- 13.3 This Agreement, and the rights, obligations and relations of the parties hereto, shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws applicable therein. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals from them.
- 13.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement and any invalid or unenforceable provision shall be deemed to be severed.
- 13.5 The provisions of this Agreement which, by their nature, extend beyond the expiration or termination of this Agreement shall survive and remain in effect until all obligations of the parties have been satisfied.

<p>_____</p> <p>Operator's Corporate Name/ No</p> <p>c.o.b. _____</p> <p>Per:</p> <p>_____</p> <p>Name:</p> <p>Title:</p> <p><i>I have authority to bind the Operator.</i></p> <p>Date of Signature: _____</p>	<p>HER MAJESTY THE QUEEN in right of Ontario as represented by the Executive Officer of Ontario Public Drug Programs of the Ministry of Health and Long-Term Care</p> <p>_____</p> <p>Helen Stevenson Executive Officer of Ontario Public Drug Programs</p> <p>Date of Execution: _____</p>
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