

DIGITAL REFERRALS AND ORDERS SYSTEM(OCEAN) HEALTH USER PARTICIPATION AGREEMENT

This Participation Agreement (“**Agreement**”) is between the **PROVINCIAL HEALTH SERVICES AUTHORITY (“PHSA”)** and you as a user (the “**User**”) of the Digital Referrals and Orders System (“**DRO System**”). As a user of the DRO System you may be a provider of health care services (e.g. a registered professional or health care body) (“**Provider**”) or an individual who has been authorized by a Provider to use their DRO System account to access and use the DRO System (“**Delegated User**”). This Agreement takes effect on the date that the User digitally accepts the Agreement.

BACKGROUND

The DRO System is a cloud-based tool made available by PHSA to Providers and Delegated Users in British Columbia through an arrangement with a third party service-provider, OceanMD Inc. (“**OceanMD**”).

Under this Agreement, the User is granted access to an online platform hosted by OceanMD through which users can access online patient services, such as, as available, health care referrals and consultations, medical imaging and laboratory ordering and other services (“**eServices**”).

Acceptance of the terms and conditions set out in this Agreement is a condition of all user access to the DRO System, including by users that are Providers or Delegated Users.

TERMS AND CONDITIONS

In consideration of the rights and privileges granted to the User under this Agreement, the User accepts and agrees to the following terms and conditions.

1. INTERPRETATION

When used in this Agreement, the following capitalized terms have the following meanings: (a) “**Applicable Privacy Laws**” means, as applicable, the *Freedom of Information and Protection of Privacy Act* (British Columbia), the *Personal Information Protection Act* (British Columbia), and any other laws applicable to the collection, use, disclosure or processing of Personal Information through the DRO System; (b) “**Patient**” means a patient receiving health services from a Provider in British Columbia; (c) “**Patient Data**” means a Patient’s Personal Information that a Provider or Delegated User inputs or views in the DRO System; (c) “**Personal Information**” means recorded information about an identifiable individual and includes all information that comprises “personal information” under Applicable Privacy Laws; (d) “**Misuse**” means any material non-compliance with this Agreement, including a breach of Applicable Privacy Laws in connection with the collection, use or disclosure of Patient Data; and (e) “**User**” means the Provider or Delegated User entering into this Agreement.

2. ACCESS

Access to and use of the DRO System is granted to the User to support health care delivery to Patients. The User may not use these privileges for any other use or purpose, except as approved in writing by PHSA. The User may not transfer, assign, or permit others to use these rights and privileges except as set out in this Agreement.

3. OCEANMD USER LICENSE AGREEMENT

The DRO System is an online platform owned and operated by OceanMD. In order to obtain a license to access and use the DRO System, each Provider must open an account with OceanMD and accept and comply with the OceanMD end user license agreement <[Digital Referrals & Orders \(phsa.ca\)](https://www.phsa.ca/digital-referrals-orders). (“**OceanMD User Agreement**”). Providers that work at more than one clinic or health care facility only require one account with OceanMD. Delegated Users are

individuals who have been given user access to a Provider's account. They are required to open a separate account with OceanMD, and are required to comply with this Agreement and the OceanMD User Agreement.

4. DELEGATED USERS

"Delegated Users" are users that a Provider adds to their DRO System account so that they can access the eServices on behalf of the Provider. In most cases, Delegated Users will be the employees or contracted staff of the Provider. However, if a Provider works at more than one clinic or health care facility and wishes to grant Delegated User privileges to a staff member of another health care provider, the Provider must first give notice to and receive permission from the other health care provider.

Delegated Users may only access and use the DRO System on behalf of the Provider who granted their system access privileges. Providers are responsible for all activity in their DRO System account, and have access to user activity logs for all Delegated Users associated with their account.

5. COMPLIANCE WITH AGREEMENT AND POLICIES

The User is responsible for their use of the DRO System and must comply with this Agreement and system use policies established by PHSA ("Policies") to support appropriate use, security, privacy, and technical and operational requirements. Policy changes will be posted on the DRO website [Digital Referrals & Orders \(phsa.ca\)](https://www.phsa.ca/digital-referrals-orders) and the User will be provided with notice of such changes. If the User does not wish to accept a Policy change, the User must stop using the DRO System upon receiving notice of the change.

6. REPORTING AND ADDRESSING MISUSE

Providers are responsible to: (a) investigate and, if appropriate, suspend or terminate access to the DRO System by their Delegated Users if there are reasonable grounds to believe they have engaged in any Misuse; and (b) provide prompt written notice of any Misuse by their Delegated Users to PHSA if that Misuse creates any reasonably foreseeable risk to other Users, Patients or the DRO System. If the User is a Delegated User, they must promptly report any Misuse of which they are aware to the Provider who granted their DRO System access.

PHSA reserves the right (but is not required) to address any Misuse of which it becomes aware, including by reporting the Misuse to law enforcement or to a user's employer, professional regulatory body, the site or health organization at which the Misuse occurred or to affected individuals.

7. SECURITY OF PASSWORDS AND CREDENTIALS

The User must ensure the security and strict confidentiality of all DRO System credentials and passwords and encryption keys. Delegated Users must immediately report to the Provider if any credentials, passwords or encryption keys are lost, stolen or compromised. All users must ensure PHSA is promptly notified if any credentials, passwords or encryption keys issued to them under this Agreement become, lost, stolen or compromised and take action to suspend any compromised credentials or accounts. In such a case, the User must follow the instructions outlined at [Digital Referrals & Orders \(phsa.ca\)](https://www.phsa.ca/digital-referrals-orders)

8. FEES AND EXCLUDED FEES

All fees payable to OceanMD for the use of DRO System under this Agreement are funded by PHSA. For more information about the services and fees that are covered by this Agreement, please see [Digital Referrals & Orders \(phsa.ca\)](https://www.phsa.ca/digital-referrals-orders) OceanMD offers other products and services to health care providers that do not form part of this Agreement ("Excluded Services"). Users who subscribe to OceanMD for Excluded Services will be responsible for

paying to OceanMD any related subscription or other fees.

9. PRIVACY NOTICE

When the User accesses and uses the DRO System some Personal Information about the User may be collected and maintained, including information about the User's use of the DRO System and the dates and details of access and use ("**Usage Data**"). PHSA may analyze, access or use Usage Data and some Patient Data for purposes including: (a) providing the eServices, including investigating and responding to complaints and incidents that may arise; (b) planning, evaluating and improving the delivery of the DRO System and eServices; (c) planning, evaluating and improving health care services and delivery in accordance with the principles established by the PHSA DRO Secondary Use Data Governance Committee. PHSA is responsible for ensuring that its own use or disclosure of Usage Data and Patient Data is authorized under Applicable Privacy Laws. . More information about the collection, use and disclosure of Patient Data and Usage Data is available at [Digital Referrals & Orders \(phsa.ca\)](https://www.phsa.ca/digital-referrals-orders).

10. INTELLECTUAL PROPERTY

Except as expressly set out in this Agreement, nothing in this Agreement shall be construed as transferring to the User any right, title, interest, ownership or intellectual property or moral rights in or to: (a) the DRO System, related software or OceanMD documentation, all of which is owned by OceanMD and/or its third party providers; or (b) materials or other works created by PHSA in connection with the DRO System or eServices, including online content, documentation, training materials, forms, policies or publications, analysis, reports and related materials. (Items (a) and (b) are defined collectively as the "**Materials**"). This section 10 does not affect a User's rights or ownership of or to their own works, if developed independently and without directly or indirectly, incorporating or relying on the Materials.

11. ACCESS CONDITIONS

The User agrees to comply with the terms and conditions of access and use set out in the OceanMD User Agreement, and, to the following additional terms: (a) to refrain from using the DRO System in any manner that violates any third party's intellectual property rights; (b) not to knowingly use the DRO System for improper, illegal or abusive purposes, including to impersonate another person, interfere with the use of the DRO System by any other user, or use the DRO System to threaten, bully, harass, promote hate, discriminate, embarrass or breach the privacy of any person; (c) not to use the DRO System or eServices in violation of any applicable law or regulation, including Applicable Privacy Laws; (d) to comply with specific configuration, content standards and use requirements established by OceanMD or PHSA from time to time to support data reporting and analysis; (e) to use the DRO System and eServices consistently with the User's professional and legal responsibilities to Patients. Non-compliance with this section 11 will be deemed to constitute Misuse.

12. COMPLIANCE MONITORING & SUSPENSION AND TERMINATION FOR MISUSE

OceanMD and/or PHSA may (but are not required to) monitor access to and use of the DRO System and eServices in order to operate the DRO System and eServices and to ensure the User complies with this Agreement and applicable laws. PHSA may, on notice to a user, suspend or terminate their access privileges for Misuse. If the access privileges of any Delegated User are suspended or terminated, PHSA will provide notice to the Provider who granted their access privileges.

13. PROVIDER EQUIPMENT, SYSTEMS AND RECORDS

a) All external equipment, software and devices the User employs to access the DRO System are the User's responsibility ("**User Facilities**"). PHSA and/or OceanMD will specify the minimum hardware, internet services

and firewall requirements needed to access the DRO System, but it is the User's responsibility to provide, supply, operate and maintain the User Facilities and ensure the protection and security of their own data and systems. The User acknowledges that the deployment of antivirus and antimalware tools and multi-factor authentication is strongly recommended.

- b) The DRO System is not intended as a long-term repository of referrals or patient records. Each Provider is responsible to ensure they meet their legal and professional responsibilities for the retention of patient records within their own health records system. Completed data collection (such as referrals) on the DRO System will be purged at specified intervals (as determined by OceanMD), and it is the Provider's responsibility to maintain records and export all completed referrals and related clinical information for input into the appropriate clinical record.
- c) During implementation, PHSA will, if requested, support the Provider to integrate the DRO System with their electronic medical record or other records management systems, but it is the Provider's responsibility to determine whether such integration is operational and meets their administrative and clinical needs. .

14. NATURE OF THE ESERVICES AND PROVIDER AND PHSA RESPONSIBILITIES

- a) The DRO System and eServices do not comprise the provision of health care or medical advice by PHSA. The DRO System is not a medical device, and does not provide alerts or other warnings related to circumstances, events or risks to Patients or Users. The DRO System and eServices are intended only as an aid to Providers to support the timely and efficient delivery of health care services, and the Provider and, as applicable, Delegated User remains responsible for the delivery of care and the assessment of risks to their Patients.
- b) In order to ensure the continuity and quality of Patient care, it is the User's responsibility to verify the accuracy of Patient Data, follow up on eServices in the absence of updates or acknowledgements from the intended recipient, and, in the event of a system interruption or failure, to continue delivering Patient care using other available conventional methods, such as fax, email or other existing workflows.
- c) PHSA maintains a business continuity plan in relation to DRO System failures, outages or service interruptions. PHSA shall make reasonable efforts to provide prompt notice to Providers of any such events or circumstances that could reasonably be expected to create a risk to patient care.

15. LIABILITY

- a) PHSA provides funding for the DRO System and eServices through OceanMD, as a third party cloud service provider. Like many such online services, PHSA cannot guarantee access will be uninterrupted, secure or defect or error free. The DRO System and eServices are provided "as is" without any implied warranties or representations. PHSA provides no representations or warranties that: (i) the DRO System or eServices provided hereunder will meet User requirements or will be fit for any intended purpose or as to merchantability, title or non-infringement; (ii) the operation of the DRO System and eServices will be uninterrupted, secure or error free; or (iii) the Patient Data available through the DRO System is accurate and complete and up-to-date.
- b) PHSA shall not be liable for claims for damages or losses due to professional fault by the User as a result of the User's acts or omissions or, as applicable, those of any of their employees, contracted service providers, agents or representatives. By entering into this Agreement, the User agrees to waive and not to commence or bring any such claims against PHSA.
- c) Except as set out in this section 15(c), PHSA shall not be liable to the User under this Agreement or in connection with the DRO System or the eServices for any damage, liability, loss, cost, expense, illness or personal injury

(including death) to any person or property (“**Damages**”), including, without limitation, where arising from (i) the unauthorized access to, or alteration, loss, theft, destruction or unavailability of User data or files (including Patient Data), programs, procedures or information; (ii) any errors, delays or failures of the DRO System or eServices (whether or not caused by programming error, operator error equipment or software malfunction); (iii) any interruptions or delays in the transmission of data or the availability of the DRO System or eServices; or (iv) Damages occasioned by lost or corrupt or incorrect data or DRO System generated reports. Regardless of whether arising under contract, tort or other legal theory, PHSA’s liability to the User, including for Damages, shall be limited to direct damage arising from PHSA’s own negligence or intentional wrongful conduct.

- d) PHSA shall not be liable to the User for any indirect, incidental, special, punitive or consequential damages or claims for loss of business or profits, whether such liability arises under contract, tort (including negligence), or other legal theory.

16. INDEMNIFICATION

The User shall indemnify, defend and hold PHSA harmless from and against any and all claims, damages, liability or expenses resulting from (i) the User’s use of the DRO System and eServices; (ii) any material breach of this Agreement by the User; (iii) any negligent or willful misconduct of the User in connection with the access to or use of the DRO System or eServices. This indemnity shall exclude claims, damages, liability, or expenses to the extent caused by PHSA’s own negligence or intentional wrongful conduct.

17. PRIVACY AND SECURITY MEASURES

When using the DRO System and accessing Patient Data, the User is responsible for implementing and maintaining reasonable measures to safeguard and ensure the privacy and confidentiality of Patient Data, including when Patient Data is integrated with the Provider’s systems or electronic medical records. Such measures shall include: (a) ensuring the security of all devices, systems, software and equipment used to access the DRO System; (b) participating in training opportunities and/or reviewing instructional materials provided by PHSA to support proper use of the DRO System; (c) for Providers, overseeing use of their account by Delegated Users; and (d) implementing technical security requirements for connection to the DRO System.

18. AUDITS AND REPORTING

Providers must investigate or conduct audits if there is reason to believe that Misuse of the DRO System or eServices has taken place at the Provider’s site or, as applicable, by their Delegated User(s). Providers are strongly encouraged to engage in routine reviews of their user logs in the DRO System to ensure that all use of the DRO System by Delegated Users complies with this Agreement. If requested, the User shall provide reasonable cooperation to and participate in any audit of the DRO System undertaken by PHSA.

19. NOTICE

Notices under this Agreement shall be effective when given in writing and delivered to the User through the DRO System or by email, mail or delivery to the contact information provided by the User when their user account was created (“**Contact Information**”). Notice to PHSA is effective when given in writing and delivered by email, mail or delivery at the following address: dro.program@phsa.ca. Any written communication from a party, if personally delivered or sent electronically or by email, will be deemed to have been received on the date of delivery, and if sent by mail will be deemed to have been received 3 days (excluding Saturdays, Sundays and statutory holidays) after the date the notice was posted. Any party may give notice in accordance with this section 19 to the other of a change of address, facsimile number or email.

20. TERMINATION

This Agreement will commence on the first use of the DRO System by the User, and shall continue until terminated. Either PHSA or the User may terminate this Agreement on 30 days written notice to the other. PHSA reserves the right to terminate this Agreement on notice to the User in the event the User has engaged in Misuse. Sections 3, 11, 15, 16, 19, 20 and 21 of this Agreement shall survive its termination.

21. GENERAL

(a) This Agreement is the entire agreement between the parties concerning the User's access to and use of the DRO System and eServices, and overrides all prior agreements, whether written or oral, concerning the same subject matter; (b) If any provision of this Agreement is found to be invalid by a court or other governmental body with authority and jurisdiction over this Agreement, the Agreement will be interpreted as if such provisions were not included. (c) This Agreement will be governed by and will be construed and interpreted in accordance with the laws of British Columbia and the laws of Canada applicable therein. (d) This Agreement may be assigned by PHSA on written notice to the User. (e) PHSA may amend this Agreement by written notice to the User, and the User's continued use of the DRO System will constitute acceptance of the amended terms. If the User does not accept any such amendment, they must stop using the DRO System and eServices.