

**COVID-19 SURGE CAPACITY AGREEMENT
(MODEL 2A)
(the “Agreement”)**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2020.

BETWEEN



(the “Hospital”)

– and –



(the “Retirement Home”)

WHEREAS an emergency was declared pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) under the *Emergency Management and Civil Protection Act* on March 17, 2020 due to the outbreak of COVID-19 in Ontario;

AND WHEREAS as a result of the outbreak of COVID-19 in Ontario, hospitals are experiencing severe space shortages and it is anticipated that there will be even further need to open up space and beds in anticipation of a continued surge of patients who have COVID-19;

AND WHEREAS as a result of an urgent necessity to increase capacity in hospitals, an Order was made under the *Emergency Management and Civil Protection Act* on April 9, 2020 to optimize the participation of retirement homes in accommodating certain hospital patients (the “**Emergency Order**”);

AND WHEREAS the provincial government has released a guidance document to all hospitals with respect to a centralized framework that may be used for surge capacity agreements with retirement homes during the COVID-19 pandemic (the “**Guidance Document**”);

AND WHEREAS the Retirement Home is licensed under the *Retirement Homes Act, 2010* and is on the approved list provided by Ontario Health to enter into surge capacity agreements with hospitals;

AND WHEREAS the Hospital wishes to transfer patients who are no longer in need of hospital-based care, but continue to require accommodation and care services, to the Retirement Home as part of a COVID-19 Surge Capacity Program between the parties on the terms and conditions set out herein (the “**Program**”), in accordance with the Emergency Order and the Guidance Document;

AND WHEREAS the parties intend for the Program to provide temporary, short-term accommodation and care services to eligible Individuals (as defined herein) in the Retirement Home in direct response to hospital capacity issues arising from the COVID-19 pandemic;

AND WHEREAS the parties intend that the accommodation and care services provided by the Retirement Home as part of the Program will not create a residential tenancy between the Retirement Home and the Individuals such that the *Residential Tenancies Act, 2006* will not apply;

AND WHEREAS the parties intend for the Program to operate in accordance with the orders, directives and guidance documents which have been issued by the provincial government (including without limitation the Ministry of Health, the Chief Medical Officer of Health and/or Ontario Health) applicable to retirement homes;

AND WHEREAS the parties acknowledge that the above recitals form part of this Agreement;

IN CONSIDERATION of the promises contained in this Agreement, the parties agree as follows:

1. Effective Date and Term of the Agreement

- 1.1 This Agreement shall become effective upon the date that it is signed by both parties (the “**Effective Date**”).
- 1.2 The term of this Agreement shall be for one (1) year commencing on the Effective Date and ending on **[INSERT DATE]** (the “**Term**”), subject to earlier termination by the parties in accordance with Section 8 of this Agreement.
- 1.3 If not sooner terminated, this Agreement may be renewed, in writing, by the parties on the same terms and conditions at least sixty (60) days prior to the end of the Term for a further period of _____ months.

2. Eligibility Criteria for Transfer from the Hospital to the Retirement Home

- 2.1 Hospital patients who meet the Eligibility Criteria are referred to in this Agreement as “Individuals”.
- 2.2 All Individuals transferred from the Hospital to the Retirement Home as part of the Program must meet all of the following Eligibility Criteria:
 1. Hospital Alternate Level of Care (“**ALC**”) patients (including patients on the waitlist for placement into a long-term care home) or referrals from the community by a Local Health Integration Network (“**LHIN**”);
 2. Assessed by a health care professional from the Retirement Home and deemed suitable for temporary residence in the Retirement Home;
 3. Provide consent (or where applicable, the individual’s substitute decision maker (“**SDM**”) will provide consent) to the transfer and for participation in the Program by signing a Program Enrolment Form (Appendix “A”); and
 4. Tested in the Hospital no more than two days prior to discharge and do not have a COVID-19 diagnosis. (the “**Eligibility Criteria**”)

For clarity, Individuals do not meet the Eligibility Criteria if they have or require any of the following: (*Retirement Homes can revise the exclusion criteria based in their individual preferences*)

- A positive or suspected COVID-19 diagnosis;
- Behaviour or mental health issues that cannot be managed by the Retirement Home as determined by the Retirement Home in its sole discretion, including without limitation exit seeking behaviours;
- Bariatric issues;

- Swallowing issues;
 - Palliative or end-of-life care;
 - MAPLe Score above 3 or equivalent care needs;
 - PPS Score below 40% and in active stage of decline; or
 - PICC lines, IV therapy, scheduled services (dialysis/chemo), or oxygen requirements.
- 2.3 During the Term, the Hospital may transfer Individuals to the Retirement Home as part of the Program, unless the Retirement Home is experiencing a COVID-19 outbreak and provided that the Retirement Home has space capacity in accordance with Section 3.1.

3. Payment by the Hospital for the Program

- 3.1 The Retirement Home agrees to reserve ___ number of private rooms and ___ number of double occupancy rooms within the Retirement Home for the Program starting as soon as reasonably possible following the Effective Date and for the remainder of the Term.
- 3.2 The Hospital agrees to pay a per diem rate to the Retirement Home for each room reserved for the Program in the amount of \$250.00 for a private room and \$215.00 per bed within a double occupancy room, plus any applicable taxes, regardless of whether the room is occupied.
- 3.3 The Hospital shall pay any associated dispensing fees on behalf of Individuals who will be required to fill their prescriptions through the Retirement Home's pharmacy service provider.
- 3.4 If the Individual requires incontinence products, the Hospital will pay an additional sum as invoiced monthly by the Retirement Home for the required incontinence products.
- 3.5 If the Individual requires occupational therapy or physiotherapy, the Hospital will pay an additional sum as invoiced monthly by the Retirement Home for the required therapy.
- 3.6 In the event that an Individual refuses to move out of the Retirement Home after his/her participation in the Program has ended, and provided that he/she has not entered into a written care home tenancy agreement with the Retirement Home (a "**Tenancy Agreement**"), the Hospital shall continue to pay the full per diem amount set out herein for the Individual to the Retirement Home for as long as the Individual remains in the Retirement Home.
- 3.7 The cost for any services or products required by Individuals for which the Retirement Home is not expressly responsible under this Agreement shall be paid for by the Hospital.

4. Accommodation and Care Services

- 4.1 The Retirement Home will provide on behalf of the Hospital accommodation and care services to each Individual participating in the Program for a period of up to six (6) months, with the potential to extend an Individual's participation in the Program for up to another six months if more time is required to transition the Individual to another setting.
- 4.2 The Retirement Home will provide the following care services to Individuals as part of the Program: bathing, dressing, medication administration (which requires the Individuals to use the Retirement Home's pharmacy service provider), transfers, up to 2-person lift, incontinence care (excluding incontinence products), daily meals (breakfast, lunch and dinner - therapeutic diets to be discussed), recreational activities within the Retirement Home (as may be appropriate or available during the Term), laundry and housekeeping ("**Care Services**").

- 4.3 Nothing in this Agreement precludes an Individual or the Hospital from purchasing from the Retirement Home additional, optional services which are not provided as part of the Program.
- 4.4 While it is acknowledged that this Agreement or participation in the Program does not create any tenancy or like relationship between the Individual and the Retirement Home, nothing in this Agreement precludes an Individual and the Retirement Home from entering into a Tenancy Agreement after the Individual's participation in the Program has ended.

5. Obligations of the Hospital

5.1 During the Term, the Hospital shall:

- a) Transfer to the Retirement Home only those Individuals who meet the Eligibility Criteria, after the Retirement Home confirms that a room is ready and available;
- b) Provide testing for COVID-19 to prospective Individuals to confirm that they meet the Eligibility Criteria;
- c) Promptly advise the Retirement Home if the Hospital is in outbreak due to COVID-19 and provide details of the infected patient units;
- d) Provide the Retirement Home with requested patient profiles or other information or records within the Hospital's control to assist the Retirement Home in assessing a prospective Individual's eligibility for the Program;
- e) Fully inform the prospective Individuals of the terms of this Agreement and obtain their written consent (or the written consent of their SDM) to participate in the Program by having them sign a Program Enrolment Form ("Appendix "A") and providing a copy of the Program Enrolment Form to the Retirement Home prior to transfer;
- f) If a room to be used for the Program is unfurnished, provide the necessary furniture, beds, lifts, other necessary medical supplies and equipment, and transportation all for the purposes of the Program;
- g) Ensure that Individuals continue to have access to a physician or other primary care provider;
- h) Provide to the Retirement Home, at the Hospital's cost, sufficient Personal Protective Equipment ("**PPE**"), as assessed by the Retirement Home, in advance of an Individual's transfer to the Retirement Home, including without limitation as needed to meet the full 14-day self-isolation period required for an Individual upon arrival at the Retirement Home;
- i) Work with the LHIN to ensure that Individuals on the long-term care waitlist who are transferred to the Retirement Home will remain on the waitlist as a crisis placement until the Individual is transitioned into a long-term care home;
- j) Work in good faith with the Retirement Home and the appropriate LHIN to transition those Individuals whose needs can no longer be met at the Retirement Home to another setting;
- k) If, as assessed by the Retirement Home, an Individual no longer meets the Eligibility Criteria, work in good faith with the Retirement Home and the LHIN to return the Individual to the Hospital;

- l) At least sixty (60) days in advance of the end of an Individual's participation in the Program, work in good faith with the Retirement Home and the appropriate LHIN to assess the Individual's needs and options and transition the Individual out of the Retirement Home to another setting, unless the Retirement and the Individual have entered into a Tenancy Agreement;
- m) Promptly remove all furniture, beds, lifts, and other medical supplies and equipment from the Retirement Home which have been provided by the Hospital after the Program ends; and
- n) Manage any waitlist for Individuals awaiting transfer from the Hospital into the Retirement Home as part of the Program.

6. Obligations of the Retirement Home

6.1 During the Term, the Retirement Home shall:

- a) Provide accommodation and Care Services to Individuals who meet the Eligibility Criteria and are transferred by the Hospital as part of the Program for the duration of the Individual's participation in the Program;
- b) Promptly advise the Hospital and the local Public Health agency immediately if the Retirement Home is experiencing a COVID-19 outbreak;
- c) Promptly advise the Hospital if, based on the Retirement Home's assessment, a prospective Individual does not meet or ceases to meet the Eligibility Criteria;
- d) Work in good faith with the Hospital and the appropriate LHIN to transition those Individuals whose needs can no longer be met at the Retirement Home to another setting;
- e) At least sixty (60) days in advance of the end of an Individual's participation in the Program, work in good faith with the Hospital and the appropriate LHIN to assess the Individual's needs and options and transition the Individual out of the Retirement Home to another setting, unless the Retirement and the Individual have entered into Tenancy Agreement; and
- f) In the event that an Individual refuses to move out of the Retirement Home after his/her participation in the Program has ended, and provided that he/she has not entered into a Tenancy Agreement with the Retirement Home and in consideration of Section 3.6 above, cooperate with the Hospital to move the Individual out of the Retirement Home.

7. Invoicing and Payment

- 7.1 The Retirement Home shall submit monthly invoices to the Hospital by no later than the 21st day of each month for payments owing by the Hospital for the following month.
- 7.2 Invoices submitted by the Retirement Home shall be paid by the Hospital by the end of the month in which the Hospital receives the applicable invoice.
- 7.3 Final payments will be reconciled between the parties no later than thirty (30) days following the end of an Individual's participation in the Program, or in the case of an Individual who fails to transfer out of the Retirement Home after his/her participation in the Program has ended, within thirty (30) days after the Individual moves out of the Retirement Home.

7.4 The Hospital reserves the right to request and conduct an audit of billing/invoices at its own expense under this Agreement.

8. Termination

8.1 Either party may terminate this Agreement for any reason upon giving ninety (90) days' written notice to the other party.

8.2 Either party may terminate this Agreement immediately on written notice to the other party, if in the sole discretion of the terminating party there has been inadequate or poor performance of the other party's obligations pursuant to this Agreement and the other party has received notice of such inadequate or poor performance and has not remedied the same within thirty (30) days.

8.3 Notwithstanding the termination of this Agreement by either party for any reason, the Hospital will continue to pay the full per diem amount set out herein, and such additional amounts relating to the Individual's care which have been agreed to, for each day that an Individual remains in the Retirement Home following the termination of this Agreement, unless the Individual and the Retirement Home have entered into a Tenancy Agreement.

9. Confidential Information

9.1 The parties acknowledge that by virtue of this Agreement, they may come into possession of confidential information about the other party. The parties agree not to use, disclose, or permit any person to obtain any confidential information about the other party, without the prior written consent of the other party.

9.2 Each party shall comply with its obligations under the *Personal Health Information Protection Act, 2004*, as may be amended from time to time, with respect to all personal health information related to Individuals and prospective Individuals.

10. Indemnification and Limitation of Liability

10.1 As of the Effective Date, the Hospital agrees to indemnify, defend and save the Retirement Home and its owner, and the owner's directors, officers, servants, agents and employees (collectively the "RH Parties") harmless against and in respect of any loss, damage, claim, cost, expense or judgment whatsoever, including, without limitation, all reasonable legal fees, which any RH Parties may incur, suffer or be required to pay, pursuant to any claim, demand, action, suit, litigation, charge, complaint, prosecution or other proceeding that may be made or asserted against or affect any RH Parties, in connection with a breach by the Hospital of any of its responsibilities under this Agreement or on account of injury to persons including death or damage to property, in any way caused or contributed to by the actions or conduct of the Hospital, its servants, agents or employees in connection with or arising out of this Agreement or other matters to which this Agreement pertains.

10.2 As of the Effective Date, the Retirement Home agrees to indemnify, defend and save the Hospital and its director, officers, servants, agents and employees (collectively the "Hospital Parties") harmless against and in respect of any loss, damage, claim, cost, expense or judgment whatsoever, including, without limitation, all reasonable legal fees, which the Hospital Parties may incur, suffer or be required to pay, pursuant to any claim, demand, action, suit, litigation, charge, complaint, prosecution or other proceeding that may be made or asserted against or affect the Hospital Parties, in connection with a breach by the Retirement Home of any of its responsibilities under this Agreement or on account of injury to persons including death or

damage to property, in any way caused or contribute to by the actions or conduct of the Retirement Home, its servants, agents, employees and/or persons working under its control in connection with or arising out of this Agreement or other matters to which this Agreement pertains.

- 10.3 The parties acknowledge that this Agreement is being entered into for the purpose of implementing Orders issued under the *Emergency Management and Civil Protection Act*.

11. Insurance

- 11.1 Each party shall maintain in full force and effect during the term of this Agreement, at its own expense, a policy of comprehensive general liability insurance, providing coverage for a limit of not less than \$5 million for each occurrence of a claim of bodily injury (including personal injury), death or property damage, including loss of use thereof, that may arise directly or indirectly out of the acts or omissions of the party under this Agreement.
- 11.2 The Hospital will make best efforts to add the Retirement Home as an insured in its policy of insurance for the benefit of the Individuals.

12. Dispute Resolution

- 12.1 The Hospital and the Retirement Home recognize that the timely exchange of information and consultation is essential to the success of the Program. The parties agree to consult with one another and to use their respective best efforts to communicate and resolve concerns through mutual discussions.
- 12.2 The parties agree that any disputes in any way relating to this Agreement, including as a result of a termination of this Agreement, will be resolved through direct consultation between the parties, acting reasonably and in good faith. After informal discussions between the parties have been exhausted and the parties have been unable to resolve the dispute within ten (10) days, the dispute shall be referred to the CEO of the Hospital and the CEO of the Retirement Home or delegates, who shall, acting in good faith, seek to resolve the dispute in a reasonable and constructive manner, within the spirit of the Program and the circumstances set out in the recitals to this Agreement.

13. General Matters

- 13.1 **Waiver.** No waiver, alteration, amendment, modification, or cancellation of any of the provisions of this Agreement shall be binding upon a party unless made in writing and duly signed by the parties. No failure or delay of either party to this Agreement in exercising any right or remedy granted under this Agreement (or now or hereafter existing in equity, at law, by virtue of statute or otherwise), shall affect or operate as a waiver of such right or remedy.
- 13.2 **Entire Agreement.** This Agreement and the Appendix hereto constitute the entire agreement between the parties pertaining to the Program. There are no other agreements between the parties in connection with the subject matter of this Agreement, except as specifically set out in this Agreement and Appendix hereto.
- 13.3 **Severability.** In the event that any provision of this Agreement is determined to be void or unenforceable in whole or in part it shall not be deemed to affect or impair the validity of any other provision.

- 13.4 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.
- 13.5 Assignment. Neither party shall assign or transfer this Agreement, or any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 13.6 Cooperation. The parties agree to cooperate in delivering or signing additional documents as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.
- 13.7 No Principal/Agent Relationship Created. This Agreement does not create the relationship of principal and agent or employer and employee between the Hospital and the Retirement Home and under no circumstances is either party to be considered the agent of the other. The parties shall have no authority to assume or create any obligation whatsoever in the name of or on behalf of the other party.
- 13.8 Counterparts. This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall be but one and the same instrument.

The parties confirm that they have the necessary power and authority to execute this Agreement and perform the obligations under this Agreement. IN WITNESS whereof the parties have executed this Agreement by their duly authorized signing officers as of the date first set forth above.

[Name of Hospital]

Name:
Title:

[Name of Retirement Home]

Name:
Title:

APPENDIX "A"

COVID-19 SURGE CAPACITY PROGRAM (MODEL 2A) PATIENT ENROLMENT FORM

Individual's Name: _____ Date of Birth: _____

Name of Substitute Decision-Maker (if any): _____

I understand that [Name of Hospital] (the "**Hospital**") and [Name of Retirement Home] (the "**Retirement Home**") have entered into a COVID-19 Surge Capacity Agreement (the "**Agreement**") in response to existing or anticipated severe space shortages in the Hospital resulting from the COVID-19 pandemic.

I also understand that the Agreement establishes a COVID-19 Surge Capacity Program (the "**Program**"), which provides that patients at the Hospital who meet specific eligibility criteria may be transferred to the Retirement Home to receive temporary accommodation and care services which is paid for by the Hospital.

I confirm that I have been informed of the terms of the Program and if I am eligible, I hereby consent to participate in the Program, including my transfer from the Hospital into the Retirement Home as soon as a bed becomes available there.

I consent to the collection, use and disclosure of my personal health information by and amongst the Hospital, the Retirement Home and the Local Health Integration Network ("**LHIN**") for all purposes related to my participation in the Program.

I understand and agree to the following:

- a) I will be transferred from the Hospital to the Retirement Home where I will be provided temporary accommodation in either a private or double occupancy room, as well as care services as agreed upon by the Hospital and Retirement Home;
- b) My temporary stay at the Retirement Home will be for a period of up to 6 months, with the potential for the Hospital to extend my stay for up to another 6 months if more time is needed to transition me to another setting;
- c) The Hospital will pay for the full cost of the accommodation and care services provided to me by the Retirement Home during my participation in the Program. I will, however, have the option to purchase additional services from the Retirement Home for which I will be solely responsible for payment;
- d) I confirm that my temporary stay at the Retirement Home does not create any residential tenancy or like relationship between myself and the Retirement Home and, for greater certainty, my stay at the Retirement Home will not be subject to the provisions of the *Residential Tenancies Act, 2006*;

- e) Upon my arrival at the Retirement Home, I will self-isolate for a period of 14 days to ensure that I am not infected with COVID-19. I will follow all policies and procedures of the Retirement Home, including without limitation those which may be put into place to protect against COVID-19, during my participation in the Program. I understand that a copy of the Retirement Home's policies and procedures will be provided to me prior to or at the time of my arrival to the Retirement Home;
- f) If I have applied for placement in a long-term care home, I will not withdraw my application and I will accept the first bed offered to me;
- g) During my participation in the Program, I will work in good faith with the Hospital, the appropriate LHIN and the Retirement Home to assess my needs and options, and to transition me out of the Retirement Home to another setting;
- h) During my participation in the Program, I agree to have my drug prescriptions filled by the Retirement Home's pharmacy service provider, which is required to facilitate the administration of medications for me; and
- i) At the end of my participation in the Program as determined by the Hospital and the Retirement Home, I agree to move out of the Retirement Home to another setting as will be arranged for me.

Dated at _____, this ____ day of _____, 2020.

Name of Individual/SDM:
Address:
Phone Number:

Witness' Name: