PHYSICIAN SERVICES AGREEMENT

1. Term of Physician Services Agreement

Her Majesty the Queen in right of Ontario, as represented by the Minister of Health and Long-Term Care (the "MOHLTC"), and the Ontario Medical Association ("OMA") (together, the "Parties") have negotiated this 2016 Physician Services Agreement ("PSA"). The Parties agree the term of this PSA commences on April 1, 2016 and ends March 31, 2020.

Negotiations to establish the next Physician Services Agreement will begin no later than December 1, 2019.

2. Baseline of a Predictable Physician Services Budget

The MOHLTC and OMA agree to set a Physician Services Budget (PSB) for each Fiscal Year of the PSA and to co-manage expenditures for physician services within that PSB to achieve a predictable and sustainable PSB.

The PSB baseline will be Fiscal Year 2015-2016 expenditures of $11,584.0 million, which excludes the costs of medical liability protection.

3. PSB Annual Growth

The MOHLTC will increase the funding for the PSB by 2.5% in each of the four Fiscal Years of this PSA to pay for the health care needs of a growing and ageing population and the MOHLTC's share of the cost of net new physicians. The increases will be based on the planned PSBs for the previous Fiscal Year (i.e. not based on actual expenditures and not including the one-time payments set out in Section 4).

The planned PSBs for the Fiscal Years of the PSA would be:

Fiscal Year 2016-2017:	2.5%	$11,873.6 million
Fiscal Year 2017-2018:	2.5%	$12,170.4 million
Fiscal Year 2018-2019:	2.5%	$12,474.7 million
Fiscal Year 2019-2020:	2.5%	$12,786.6 million

The MOHLTC commits that should actual expenditures in Fiscal Year 2016-2017 exceed the planned PSB for Fiscal Year 2016-2017, there will be no reconciliation of the overage past the one-time payment reduction set out in Section 4 below.

It is agreed that the MOHLTC will add additional funding to the PSB where:

(i) the MOHLTC makes a policy decision to provide a new or expanded service or program to Ontarians (e.g. the announcement of expanded IVF services, or new services provided in Ontario that were previously paid by the MOHLTC as an out of province service), or

(ii) there is an unforeseeable event beyond the control of either party that materially impacts the PSB to increase overall expenditures.

4. One-Time Payment Increases

Subject to the paragraphs below, the MOHLTC will provide one-time payments to physicians as follows:

Fiscal Year 2016-2017:	$50 million
Fiscal Year 2017-2018:	$100 million
Fiscal Year 2018-2019:	$120 million
Fiscal Year 2019-2020:	$100 million

These payments will be in addition to the planned growth increase to the PSB each Fiscal Year but will not increase the PSBs of each Fiscal Year.

The payments will be distributed after the Fiscal Year to which they relate, and under the co-management process using principles of relativity, appropriateness and value for money to support health care priorities for patients.

If actual expenditures for physician services in a Fiscal Year exceed the planned PSB for that Fiscal Year (as set out in Section 3), then the one-time payment for that Fiscal Year would be reduced by any excess above the planned PSB for that Fiscal Year. For Fiscal Years 2017-2018, 2018-2019, and 2019-2020, any further excess (not covered by the one-time payment) would be addressed through the co-management process, including reductions on any future one-time payments under this PSA.

5. Co-Management

The Parties agree that they have a joint responsibility to hold expenditures for physician services to the planned PSBs in each Fiscal Year and the Parties will use the co-management process to achieve the goals of this PSA.

(a) Modernization of the Schedule of Benefits and Other Payments

To manage the PSBs to achieve the planned growth in each Fiscal Year, the Parties will modernize the Schedule of Benefits and other payments to physicians. Recommendations for changes will be developed by the Medical Services Payment Committee (MSPC) and approved by the Parties. The MSPC and the Parties will be supported by external expert advice, as

needed, and by the facilitator described in Section 5(d). In making such adjustments, the Parties will use principles of relativity, appropriateness and value for money to support health care priorities for patients.

The Parties will recalibrate the expenditures of the PSB as follows:

(i) By April 1, 2017, permanent fee or physician payment reductions of $100 million of payments will be made to manage expenditures to achieve the annual PSB growth.

The total amount of the PSB as set out in Section 3 would not be reduced by these changes.

(ii) By April 1, 2019, permanent fee or physician payment reductions of $100 million of payments will be made to manage expenditures to achieve the annual PSB growth.

The total amount of the PSB as set out in Section 3 would not be reduced by these changes.

(b) Changes to Address Over-Expenditures or Under-Expenditures

Where it appears that expenditures for physician services may or will exceed the planned PSB of a Fiscal Year, the Parties will address that over-expenditure as soon as possible using the principles of relativity, appropriateness and value for money to support health care priorities for patients, in order to minimize the impact of any subsequent adjustment to physicians and patients.

If expenditures for physician services are lower than the planned PSB of a Fiscal Year, then the under-expenditure would be distributed under the co-management process using principles of relativity, appropriateness and value for money to support health care priorities for patients.

The Parties will need to agree on methodologies for monitoring performance against the planned PSB, measuring the financial impact of specific initiatives, quarterly check-ins on progress against targets, and determining thresholds which would trigger funding adjustments.

(c) On-Going Management of the PSB

The Parties recognize that future health system quality, accessibility, and sustainability will depend in part on the development and adoption of evidence-based approaches for addressing the appropriateness of physician procedures and physician billing practices.

The process of co-managing the PSB should be evidence-informed and will be based on the principles of relativity, appropriateness and value for money to support health care priorities for

patients. Co-management will be an ongoing process and may include a variety of actions and the consideration of various issues including, but not limited to:

- Developments in medical practice or technology
- Increases or decreases to fee codes and other payments
- Progressive discounts on fee-for-service billings above $1 million per year
- Monitoring of data such as expenditures, utilization, practice patterns, and billing profiles
- Health human resources
- Patient accountability

The Parties will form a bilateral group to make recommendations about physician supply and distribution. This group will consult widely within the health, regulatory and education sectors and will bring forward a set of recommendations to the Parties no later than March 1, 2017 for a sustainable supply of physician human resources for Ontario.

The Parties will also co-manage the impact of other changes in the health care system on expenditures of the PSB in the interests of patients.

(d) Co-Management Process

The Parties will engage in monthly monitoring of expenditures of the PSB and quarterly check-ins at PSC. PSC will make any necessary recommendations to the Parties for funding changes to stay within the annual PSB and otherwise to make changes in the interests of patients based on relativity, appropriateness, evidence and value for money to support health care priorities for patients.

The Parties will use third party expertise as necessary and will appoint a permanent facilitator, who is expert in health care system issues and dispute resolution processes, to advise and assist the Parties to achieve agreement under the co-management process. The Parties will agree on the terms of reference for the expert facilitator which will include:

(a) Principles of evidence-based decision-making;
(b) Principles of relativity, appropriateness and value for money to support health care priorities for patients; and
(c) Encouraging the Parties to consider all possible options for resolution.

The facilitator will be involved with helping the Parties determine “how” to achieve the goals of this agreement; not determining what money or how much money needs to be saved or spent.

Where the Parties are unable to agree on the methodology for modernization of the Schedule of Benefits and other payments, reconciliation, or the distribution of one-time payments, the facilitator shall make recommendations which shall be deemed to be the final resolution to which the Parties shall be bound.

The Parties agree to review terms of reference for the Physician Services Committee in Appendix "B" of the OMA Representation Rights and Joint Negotiation and Dispute Resolution Agreement to determine whether any amendments may be required in order implement this PSA.

6. Improving Primary Care Services for Patients

The MOHLTC and the OMA are committed to improving services for patients and making the health system more patient-focused. Many primary care physicians provide high quality, patient-centred services, and these practices should be the role-models for physicians across the province.

The Parties will work together to ensure that every Ontarian who wants one has a primary care provider.

By November 1, 2016 the Parties will negotiate amendments to primary care physician agreements to achieve improvements in access to primary care for patients, such as:

(i) Improvements to evening, weekend and holiday coverage;

(ii) 24 to 48 hours access for urgent conditions; and

(iii) Reporting upon physician resource and access issues.

These changes would be at a physician group level (rather than an individual physician level) so that physician groups could decide how to achieve these service improvements for the patients of the group's practice.

In addition, managed entry into FHN and FHO Agreements as set out in Section 8 of Appendix D of the 2012 Physician Services Agreement will be restored. Any additional expenditures arising from these initiatives will be managed within the PSB.

On the condition commitments to negotiate the amendments set out in subsections (i), (ii) and (iii) above to primary care physician agreements are met, the MOHLTC agrees to recommend amendments to Bill 210 that would remove sections 29 and 38, unless the Parties agree to otherwise modify these sections.

7. OMA Role in Health System Design

Beyond the issue of co-management, it is acknowledged that physician participation is essential to health system transformation. The Parties are committed to ongoing engagement between the OMA and the MOHLTC regarding health system reform and design.

8. OMA Litigation

The Parties agree that the OMA's legal challenge (Court File No. CV-15-539424) shall proceed and the Parties' rights and obligations shall be further governed in accordance with the Memorandum of Agreement between the Parties attached to this PSA as Appendix "A".

The undersigned representatives of the Parties hereby agree to unanimously recommend acceptance of this PSA to their respective principals.

DATED AT TORONTO, ONTARIO AS OF THIS ____ DAY OF _____, 2016

FOR THE OMA	FOR THE MOHLTC
_____	_____
Name: _____	Name: _____
Title: _____	Title: _____

IN WITNESS WHEREOF the Parties have executed this PSA made as of the dates written below.

FOR THE OMA	FOR THE MOHLTC
_____	_____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX “A”

MEMORANDUM OF AGREEMENT

Court File No.: CV-15-539424

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ONTARIO MEDICAL ASSOCIATION

Applicant

and

ONTARIO (MINISTER OF HEALTH AND LONG-TERM CARE)

and LIEUTENANT GOVERNOR-IN-COUNCIL OF ONTARIO

Respondents

MEMORANDUM OF AGREEMENT

WHEREAS the Ontario Medical Association ("OMA") and the Minister of Health and Long-Term Care ("Minister") have been exploring a possible resumption of negotiations for a Physician Services Agreement ("PSA") in a confidential and without prejudice process governed by the Agreement To Explore Resumption of Negotiations (dated April 6, 2016);

AND WHEREAS the OMA and the Minister have reached a tentative agreement (dated July 7, 2016) for a new PSA ("PSA 2016");

AND WHEREAS the OMA and Minister must seek ratification of PSA 2016 by their respective principals;

THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree that, subject to the exceptions set out below and subject to the Respondents raising any issue regarding forum or transfer of the proceedings to the Divisional Court, the OMA may continue its application under the *Canadian Charter of Rights and Freedoms* in Court File No. 15-539424 (the "OMA *Charter* challenge) whether or not PSA 2016 is ratified.

2. The Parties confirm that (1) any and all discussions, correspondence, and information exchanged between the OMA and Minister in the "Small Group" discussions that began in October 2015 and the process of negotiation in 2016 related to PSA 2016, all of which were intended to be confidential and without prejudice, are entirely without prejudice to the OMA *Charter* challenge; and (2) a party may not refer to such discussions, correspondence, or information in its evidence or submissions in the OMA *Charter* challenge.

3. The Parties agree that the OMA Board of Directors may send PSA 2016 to the OMA membership via a referendum and then to OMA Council for ratification (the "Ratification Process").

4. The Parties further agree that, if PSA 2016 is not ratified, then (1) they may not refer to the facts or outcomes of the Ratification Process in their evidence or submissions in the OMA *Charter* challenge; and (2) the facts and outcomes of the Ratification Process are entirely without prejudice to the OMA *Charter* challenge.

5. The Parties further agree that, if PSA 2016 is ratified, then each Party may refer in its evidence or submissions to PSA 2016, or any facts or events related to PSA 2016 that arise on or after the date on which PSA 2016 is ratified (unless the OMA and Minister specifically agree that such a fact or event is without prejudice). The Respondents agree that they will not rely on PSA 2016 or any related facts or events to argue that the OMA *Charter* challenge is moot (in whole or in part), but the Respondents reserve all rights to argue mootness, or any other defence or issue, in any other proceedings related to any of the matters raised in the OMA *Charter* challenge.

6. The OMA agrees that, if PSA 2016 is ratified, then it will amend its Notice of Application to delete paragraphs 1(b) – (k), (m) and (o). The Respondents agree that they will consent to such amendments on a without costs basis. The parties agree that the claims made in these paragraphs shall be deemed to be settled and released by the OMA with prejudice and without costs.

7. The OMA agrees that, if PSA 2016 is ratified, then it will not seek damages or other monetary compensation (under section 24(1) of the *Charter* or otherwise) from the Respondents in the OMA *Charter* challenge.

8. The OMA further agrees that, if PSA 2016 is ratified, the OMA will not seek, support or be entitled to any remedies (in the OMA *Charter* challenge or any other proceedings) as a result of declarations as may be made in the OMA *Charter* challenge other than the orders described at paragraph 1(n) and (p) of the Notice of Application.

9. Notwithstanding the expiry of PSA 2016 on March 31, 2020, the Minister agrees not to take unilateral action in respect of the matters governed by PSA 2016, or matters usually covered by a PSA, until after the decision of the first instance court in the OMA *Charter* challenge; the Minister's commitment not to take such action may be enforced, if necessary, by an injunction application by the OMA in the Superior Court (whether before the first instance application judge or otherwise); if the Minister takes such unilateral action, the matter in respect of which such action is taken shall be submitted to binding interest arbitration before a three-person panel. The Minister and Respondents further commit to abide by the ruling of the court of first instance in the OMA *Charter* challenge pending any appeal and will not seek a stay pending appeal from the first instance ruling. This paragraph is of no force and effect if the Respondents are successful in the court of first instance or on any appeal therefrom in which case the ruling of the first instance court, or the appeal court as the case may be, shall govern pending any successful appeal by the OMA or any stay pending appeal obtained by the OMA.

10. For certainty, nothing in this agreement precludes the Respondents or the OMA from appealing any ruling by the court of first instance.

11. For clarity, the Parties agree that paragraphs 5 to 9 of this Memorandum of Agreement only apply if PSA 2016 is ratified by the OMA and the Minister. This means that if PSA 2016 is not ratified, then the OMA is not required to amend its Notice of Application or otherwise limit the relief that it is seeking in the OMA *Charter* challenge.

12. This Memorandum of Agreement may be placed in the record in any proceeding.

Dated at Toronto, Ontario this 7th day of July, 2016

FOR THE OMA

_____

Name: _____

Title: _____

Date: _____

FOR THE MINISTER OF HEALTH AND LONG-TERM CARE

_____

Name: _____

Title: _____

Date: _____

FOR THE RESPONDENTS

_____

Name: _____

Title: _____

Date: _____