

INFORMATION SHARING AGREEMENT

FOR

ELECTRONIC MEDICAL RECORDS

EFFECTIVE THE ___ DAY OF _____, 201_

BETWEEN:

PHYSICIANS PRACTICING AT/AS _____

(INSERT DESCRIPTION OF PRACTICE ARRANGEMENT OR LOCATION)

(“PARTICIPATING PHYSICIANS”)

PREAMBLE:

A. The Participating Physicians recognize the benefits of utilizing an Electronic Medical Record (“EMR”) for patient care in a community environment and the varied relationships Physicians have amongst themselves, and the use and disclosure obligations relating to patients’ Health Information under applicable law.

B. The Participating Physicians’ collection, use and disclosure of Health Information is governed *the Health Information Act*, which establishes the legislative framework for the collection, use and disclosure of Health Information by, and to Custodians, as well as the Standards of Practice adopted by the College of Physicians & Surgeons of Alberta insofar as they apply to the collection, use and disclosure of Health Information by, and the sharing with, Custodians.

C. Each of the Participating Physicians is a custodian of the Health Information in his/her custody and control and wish the share the Health Information amongst themselves for better patient care.

D. The Participating Physicians wish to clearly describe processes, procedures and rules for the collection, use and disclosure of Health Information in their custody and control.

ARTICLE 1 PURPOSE, SCOPE AND AGREEMENT ELEMENTS

- 1.1 The purpose of this Information Sharing Agreement (“ISA”) is to provide the terms upon which Participating Physicians share Health Information contributed by Participating Physicians into the EMR; enable the access to, and use and disclosure of Health Information with one another through the EMR System; and to define and manage the permitted uses and disclosures of that Health Information.
- 1.2 The management, maintenance, security and the ultimate disposition of the Health Information contained in an EMR System shall be governed by an Information Management Agreement (“IMA”) entered into between the Participating Physicians and an Information Manager of that EMR System.
- 1.3 The detailed rules and processes for the use and disclosure of Health Information shall be governed by a clinic procedure which shall be made available for Participating Physicians when required either on-line, or in hard copy.
- 1.4 The Participating Physicians acknowledge and agree that they are entering into this Agreement on the basis of the Health Information Act, and the Principles set forth in Article 2. The Principles are not intended to alter the plain meaning of the specific terms of this Agreement; however, to the extent the terms of this Agreement do not address a particular circumstance or are found to be unclear following a dispute resolution process contemplated in Article XX of this Agreement, such terms are to be interpreted and construed with reference to the Principles. The provisions of the Health Information Act, and the Principles shall be considered and taken into account by the Parties in connection with all decisions, matters of interpretation and dispute resolution arising in the context of this Agreement.

ARTICLE 2 **PRINCIPLES**

- 2.1 The relationship between the Parties to this Agreement and the use and disclosure of Health Information using processes developed pursuant to this Agreement shall be governed by the Health Information Act, as well as the following principles:
 - (a) Patient care, in the context of “sharing” Health Information about a Patient that is stored in an EMR as part of an EMR System, will guide the disclosure and use of Health Information and at all times Health Information will be respected as the product of the trusted relationship between a Patient and a Physician.
 - (b) The Patient has not only an inherent interest in the privacy, confidentiality, accuracy and integrity of Health Information relating to him or her but a Patient has the right, in addition to other rights of a Patient described under the HIA, to (a) seek access to Health Information about that Patient, (b) request the correction of an error or omission in the record containing Health Information about that Patient, and (c)

request that a Participating Physician limit the access to or disclosure of Health Information relating to that Patient.

- (c) Participating Physicians as well have an inherent interest in the privacy, confidentiality, accuracy and integrity of their information located in an EMR and in an EMR System, and the right, in addition to other rights relating to such information described under the HIA or other public sector privacy legislation, to request that other Participating Physicians not use or disclose information relating to that Physician except in strict accordance with the terms of this Agreement.
- (d) Physicians and Patients have an enduring right to continued access to information located in an EMR System relating to that Physician or Patient.
- (e) Health Information that is shared amongst the Participating Physicians will be for the purpose of facilitating good Patient management practices, decisions and other related activities, and will be undertaken to enhance the care of Patients. Moreover, Health Information disclosed and used in accordance with this Agreement may be used not only for the enhancement or betterment of individual Patient health, but also for the betterment of Patient populations and public health generally where authorized under the HIA and other legislation.
- (f) The disclosure and use of Health Information will be undertaken in accordance with the HIA on a “least information necessary to achieve the purpose” principle, with the highest degree of anonymity that is practical in the circumstances and use of Health Information will be on a “need to know” basis.
- (g) A Participating Physician disclosing or using Health Information will utilize technological practices and standards, such as encryption technology, that incorporate reasonable security measures, protect confidentiality and promote ease of use.
- (h) The professional responsibilities of Physicians set forth in the CPSA’s Standards of Practice, are acknowledged by the Participating Physicians, and the Participating Physicians shall comply with those Standards of Practice and applicable legislation.
- (i) Health Information shared pursuant to this Agreement will be managed with due diligence and attention, recognizing the potential harm that can arise from the misuse of Health Information.

- (j) Each of the Participating Physicians agrees, and shall ensure that the Health Information that it makes available for disclosure to and use by the other Parties under this Agreement, will be accurate and the Participating Physicians shall not alter, modify or enhance that Health Information except in accordance with this Agreement.

ARTICLE 3. DEFINITIONS

- 3.1 For the purposes of this Agreement the following capitalized terms shall have the meanings assigned to them below:
- 3.1.1 “Agreement” or “ISA” means this Information Sharing Agreement;
 - 3.1.2 “AH” means Her Majesty the Queen in right of Alberta, as represented by the Minister of Health;
 - 3.1.3 “AHS” means Alberta Health Services, a corporation established as a regional health authority by the Minister of Health & Wellness pursuant to s. 2(1) of the *Regional Health Authorities Act*, RSA 2000, c. R-10;
 - 3.1.4 “CPSA” means the College of Physicians & Surgeons of Alberta, as constituted pursuant to the *Health Professions Act*, RSA 2000 c. h-7, or its successor legislation;
 - 3.1.5 “Custodian” has the meaning assigned to this term in the HIA;
 - 3.1.6 “Data Management Committee” means the body or individual appointed or elected by the Participating Physicians to manage and oversee the ongoing compliance with the terms of this Agreement as described in Article 5.4 of this Agreement;
 - 3.1.7 “Effective Date” means the ____ of _____, 201_;
 - 3.1.8 “EMR” means the electronic medical record governed by the terms of this Agreement containing Health Information contributed by the Parties;
 - 3.1.9 “EMR System” means the software, hardware and communications facilities used by a Party for patient care in an ambulatory or outpatient environment to electronically store EMR’s, and to enable each Party to use and disclose Health Information embedded in EMR’s, and each EMR System shall be identified in the applicable IMA;

- 3.1.10 “Health Information” means Patient Information or information regarding a Participating Physician, or both, electronically recorded and stored in an EMR;
- 3.1.11 “HIA” means the *Health Information Act*, RSA 2000, c. H-5, and amendments thereto, as well as regulations passed thereunder;
- 3.1.12 “Health Information” shall have the meaning assigned to this term in the HIA;
- 3.1.13 “Health Service” has the meaning ascribed to that term in the HIA;
- 3.1.14 “Information Manager” means a written agreement with a person or body that provides information management or technology services, as described in an Information Manager Agreement;
- 3.1.15 “Information Management Agreement” or “IMA” means that agreement between the Information Manager and Participating Physicians, entered into pursuant to section 66 of the HIA, that governs the terms under which the Information Manager, among other responsibilities prescribed by the HIA, receives, processes, stores and converts Health Information, and maintains and secures the EMR System;
- 3.1.16 “Masking”, “Mask” or “Masked” means the act of hiding from view certain Health Information of a Patient for use or disclosure in an EMR System based on the express request of a Patient to his/her Participating Physician through access controls and other mechanisms;
- 3.1.17 “Minister” means the Minister of Health & Wellness, responsible for overseeing AH;
- 3.1.18 “Parties” means the Participating Physicians, and a “Party” means a Participating Physician;
- 3.1.19 “Patient” means an individual who receives, or is the subject matter of, Health Services, and “Patients” means more than one Patient;
- 3.1.20 “Physician” means a medical doctor duly licensed to practice medicine in the Province of Alberta by the CPSA;
- 3.1.21 “Primary Disclosure” means the disclosure of Health Information for the purpose of providing Health Services to Patients;

- 3.1.22 "Primary Use" means the application of Health Information by a Custodian for the purpose of providing Health Services to Patients and includes the reproduction of that information, but not the disclosure of that information;
- 3.1.23 "Clinic procedure " means the set of rules governing access by a Patient to his/her Health Information stored in the EMR System and the use and disclosure of that Health Information by a Custodian;
- 3.1.24 "Secondary Disclosure" means the disclosure of Health Information by a Party for any purpose not directly related to the provision of Health Services to the Patient whom is the subject of that information including, without limitation, the provision of Health Services to Patient populations or to advance Patient safety, or health system management;
- 3.1.25 "Secondary Use" means the application of Health Information by a Party for any purpose not directly related to the provision of Health Services to the Patient whom is the subject of that information including, without limitation, the provision of Health Services to Patient populations or to advance Patient safety, or health system management;
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- 3.1.26 "Standards of Practice" means the standards published by the CPSA representing the minimum standards of professional behavior and good practice expected of Alberta physicians, as amended or supplemented from time to time.

ARTICLE 4 TERM AND TERMINATION

- 4.1 This Agreement shall be in force as of the Effective Date and shall be in effect unless terminated in accordance with the terms of this Agreement.
- 4.2 The Participating Physicians may terminate this Agreement by mutual agreement.
- 4.3 A Participating Physician's participation in this Agreement shall terminate on the happening of any of the following events:
- 4.3.1 the termination of the Participating Physician's membership or participation in the _____;

- 4.3.2 a material breach of this Agreement by that Participating Physician that is not remedied within 60 days of written notice of the breach being provided to the defaulting Party by the Data Management Committee;
- 4.3.3 the bankruptcy, dissolution or winding up of the _____; or
- 4.3.4 a fundamental change to the status of a Participating Physician brought about by an external cause or source beyond that Participating Physician's control, which prevents that Physician from exercising its rights and performing its obligations under this Agreement;

it being agreed that termination of this Agreement with respect to one Participating Physician does not affect the effectiveness of this Agreement for the other Participating Physicians.

- 4.4 A Participating Physician who elects to terminate his/her participation in this ISA, may do so by signing and delivering to the Data Management Committee a Notice of Termination.
- 4.5 On termination, the former Participating Physician shall be entitled to a copy of the Health Information contributed by that former Participating Physician to the EMR System (as such originally contributed Health Information has been supplemented by other Health Information contributed by other Custodians) and, shall be entitled to receive the Health Information in a format mutually agreed upon.
- 4.6 Should this Agreement lapse or be terminated by the Participating Physicians:
 - 4.6.1 the Information Manager shall continue with responsibility for the interim maintenance of the EMR System, including responsibility for the maintenance and security of the Health Information, until such time that a determination as to the residual use, archiving or destruction of the EMR has been made;
 - 4.6.2 the Management Committee shall review a report of the contents of the EMR System provided by the Information Manager to identify Health Information contributed by each Participating Physician together with all other Health Information contributed subsequently that has been amended or is otherwise related to such Health Information; and
 - 4.6.3 the Data Management Committee shall ensure that all Participating Physicians who have contributed Health Information to the EMR System and request a copy of that Health Information, receive a copy of such Health Information, together with a copy of all other Health Information contributed subsequently that has amended such Health Information in

a format by mutual agreement such format as the Information Manager determines, acting reasonably.

4.6.4 The Management Committee shall not otherwise amend or destroy the Health Information without the approval of the Participating Physician(s) primarily responsible for the contribution of the Health Information to the EMR System and, in any event, the Standards of Practice and those applicable to other health professional bodies shall be followed;

4.6.5 This Article, and the obligations and duties contained herein, shall survive the termination of this Agreement.

ARTICLE 5 THE ELECTRONIC MEDICAL RECORD AND EMR SYSTEM

5.1 Participating Physicians may provide Health Information in their custody or under their control into the EMR System for use and disclosure in accordance with the terms of this Agreement, subject only the following:

5.1.1 Health Information the disclosure of which, in the reasonable opinion of the Participating Physician, may harm the Patient to whom the Health Information relates; and

5.1.2 Subject to the CPSA Standards of Practice, if applicable, Health Information which the Patient to whom the Health Information relates has requested be masked under the EMR System.

5.2 The EMR System shall be managed by the Information Manager in accordance with the terms of the Information Management Agreement.

5.3 The Participating Physicians shall appoint a Data Management Committee to manage and oversee the Physicians' ongoing compliance with the terms of this Agreement

5.4 The Data Management Committee shall have the following responsibilities:

(a) set policy direction for and monitoring of the use and disclosure of EMR information;

(b) resolve disputes that arise between two or more Participating Physicians;

- (c) resolve any actual or perceived conflicts or inconsistencies that arise between the requirements of the HIA, on one hand, and the Standards of Practice;
- (d) constitute sub-committees or name individuals to which (whom) its responsibilities are delegated;
- (e) maintain and, where required, amend the Information Management Agreement;
- (f) oversee the privacy, security and stewardship issues relating to or arising from the use of the EMR; and
- (g) assume responsibility for the maintenance and security of the EMR information on termination of this ISA.

ARTICLE 6 CONFIDENTIALITY AND PRIVACY

- 6.1 The Participating Physicians, shall in accordance with the HIA, among other requirements, implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Health Information collected, used or disclosed.
- 6.2 Before using or disclosing Health Information that is in his/her custody or under his/her control, each Participating Physician shall make a reasonable effort to ensure that the information is accurate and complete.
- 6.3 Where appropriate, a Participating Physician may strip, encode or otherwise transform Health Information to create non-identifying Health Information.
- 6.4 A Participating Physician shall report to the Data Management Committee any use or disclosure of Health Information that is not in accordance with this Agreement or the clinic procedure.

ARTICLE 7 RECORDS MAINTENANCE REQUIREMENTS

- 7.1 Participating Physicians shall collect, use and disclose Health Information in accordance with this Agreement
- 7.2 In collecting, using or disclosing Health Information, the Participating Physicians shall comply with the clinic procedure , which is located at _____.
- 7.3 Notwithstanding any other provision of this Article, a Participating Physician (or former Participating Physician) shall retain Health Information as required by CPSA and HIA
- 7.4 This Article, and the obligations and duties contained herein, shall survive the termination of this Agreement

ARTICLE 8 COMPLIANCE AND AUDIT

- 8.1 The Data Management Committee shall periodically assess compliance with this Agreement by the Participating Physicians, including periodic and/or random audits of collection, use, or disclosure of Health Information, and create policies and procedures to facilitate that compliance.
- 8.2 For the purpose of facilitating transparency and accountability, the Data Management Committee shall require the Information Manager to maintain a log of all access to, use and disclosure of Health Information which shall be available for review by the Participating Physicians.
- 8.3 The Participating Physicians are responsible for ensuring that their affiliates are compliant with the provisions of this Agreement or the clinic procedure.

ARTICLE 9 USE AND DISCLOSURE GENERALLY

- 9.1 A Participating Physician shall use and disclose Health Information only in accordance with this ISA, HIA, other applicable legislation and regulations and AHS Medical Staff Bylaws and Rules (as applicable) as well as the Standards of Practice of the CPSA.
- 9.2 A Participating Physician shall use or disclose Health Information on the basis of first, aggregate; second, non-identifying; and finally, on an individually identifying basis only that is essential, in each case, for the intended purpose.
- 9.3 A Participating Physician shall use and disclose the minimum Health Information necessary for the intended purpose.
- 9.4 Use and disclosure shall be pursuant to procedures that ensure recipients of Health Information are identifiable and properly authorized to have that Health Information disclosed to them.

ARTICLE 10 PRIMARY USE AND DISCLOSURE OF HEALTH INFORMATION

- 10.1 The Participating Physicians may use and disclose Health Information required for the purpose of providing Health Services to Patients in accordance with the terms and conditions of this Agreement.
- 10.2 The rules and procedures relating to Primary Use and Disclosure are described in the clinic procedure.

ARTICLE 11 SECONDARY USE AND DISCLOSURE OF HEALTH INFORMATION

- 11.1 The Participating Physicians may use or disclose Health Information as permitted by this Agreement or the Health Information Act for any purpose not directly related to the provision of Health Services to the Patient whom is the subject of that information including, without limitation, addressing the needs of Patient populations or to advance Patient safety, or health system management.
- 11.2 Where appropriate, the Participating Physician disclosing Health Information shall enter into a Disclosure Agreement in a form appended as Schedule "B" to this ISA with the Third Party receiving the disclosed Health Information.
- 11.3 The rules and procedures relating to Secondary Use and Disclosure are described in the clinic procedure.

ARTICLE 12 DISPUTE RESOLUTION

- 12.1 The Participating Physicians will use all reasonable efforts to resolve any dispute arising out of, or in connection with, this Agreement promptly and in a professional and amicable manner.
- 12.2 Any dispute that remains unresolved after 10 business days shall be referred to the Management Committee for resolution.

ARTICLE 13 NOTICES

- 13.1 Every request, notice, delivery or written communication provided for, or permitted by this Agreement shall be in writing and delivered to, mailed (postage prepaid) or faxed to the intended recipient at the addresses/fax numbers provided to the Management Committee.
- 13.2 A notice, demand or communication made or given by personal delivery or facsimile during normal business hours at the place of receipt on a business day shall be deemed to have been made or given at the time of actual delivery or transmittal. Any notice, demand or communication made or given by personal delivery or facsimile after business hours, or on a day other than a business day shall be deemed to have been made or given at the commencement of normal business hours on the first business day following actual delivery or transmittal.

ARTICLE 14 GENERAL

- 14.1 This Agreement may not be amended except with the agreement of the Participating Physicians, as evidenced in a duly written agreement.
- 14.2 Any dispute, interpretation or application of this Agreement shall be resolved in accordance with the laws of the Province of Alberta.

- 14.3 Each provision of this Agreement shall be severable from every other provision for the purpose of determining the legal enforceability of any other provision unless severance affects the entire intent and purpose of the Agreement.
- 14.4 This Agreement sets forth the complete understanding of the Parties with respect to its subject matter, and supersedes all prior or contemporaneous agreements, written or oral. In the event of a conflict or inconsistency between this Agreement and the provisions of any other agreement between the Parties, the provisions of this Agreement shall prevail.
- 14.5 This Agreement may not be assigned by any Party without the other Parties' express written consent.

IN WITNESS WHEREOF each Participating Physician has executed this Agreement effective the Effective Date

Signature: _____

Name (Print): _____

Sample