***Disclaimer:***

***This document is prepared as an informational resource for physicians and is intended to be a starting point for a conversation with your lawyer about how you may be able to develop a contract specific to your individual circumstance.***

***Physicians*** *are required to contact their own personal legal counsel for independent legal advice with respect to the use of these templates. For more information on law firms with preferred rates for physician members, please log into* [*Club MD*](https://www.doctorsofbc.ca/your-benefits/discount-programs/club-md)*. These templates do not constitute legal advice.  Doctors of BC does not provide legal advice to members who are considering using the templates and is not liable in any way for their use.*

*Members should not agree and sign the templates based upon information contained in this document without first consulting appropriate professional advisors. Members are also encouraged to ensure they are aware of and advised on applicable policies, guidelines, and regulatory and legislative requirements that may be relevant to their obligations.*

[**NOTE #1:** This Agreement is a more simplified version of the much more detailed Group Governance Agreement. It is intended for use primarily where the management and operational aspects of the clinic is not a concern for the contracting physician, but instead the clinic just wants to deal with the financial terms. Examples of different payment models, including cost-sharing and fee-split are provided for guidance purposes only, but appropriate legal advice must be sought to ensure it works in your particular situation]

[**NOTE #2:** This Agreement assumes the Clinic entity is a standalone, incorporated entity. If the clinic is not an incorporated entity, consider using the Group Governance Agreement or making appropriate changes here to reflect the legal nature of the clinic.]

**COST-SHARING Agreement**

**THIS AGREEMENT** is dated this <> day of <>, <>.

BETWEEN:

<>,a corporation incorporated under the laws of British Columbia <**OR if no prof. corp.**> <>,an individual residing in the City of <>, in the Province of British Columbia

(the “**Physician**”)

- and -

<>, a corporation incorporated under the laws of British Columbia (the “**Clinic**”)

CONTEXT:

1. The Physician is a designated health professional and provides medical services at the premises operated by the Clinic located at <address of operations> (the “**Premises**”).
2. The Physician and the Clinic wish to set out their terms and conditions governing the Physician’s compensation and cost-sharing.

**NOW THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. INTERPRETATION
	1. Definitions

In this Agreement, the following terms have the following meanings:

* + 1. “**Act**” means the *Business Corporations Act* (British Columbia).
		2. “**Agreement**” means this agreement, including all Schedules and Exhibits, as it may be amended, confirmed, supplemented, or restated by written agreement between the Parties.
		3. “**Business**” means the business of a medical clinic.
		4. “**Business Day**” means any day excluding a Saturday, Sunday, or statutory holiday in the Province of British Columbia.
		5. “**College**” means the College of Physicians and Surgeons of British Columbia.
		6. “**Communication**” means any notice, demand, request, consent, approval, or other communication that is required or permitted by this Agreement to be given or made by a Party.
		7. “**Confidential Information**” means any information relating to the Clinic that is of a confidential or proprietary nature, whether communicated in written form, orally, visually, demonstratively, technically or by any other electronic form or other media, or committed to memory, and whether or not designated, marked, labelled or identified as confidential or proprietary, including:
			1. Personal Information; and
			2. all analyses, compilations, customer lists, marketing materials, know-how, processes, procedures, handbooks, records, data, reports, correspondence, memoranda, specifications, materials, applications, technical data, studies, derivative works, reproductions, copies, extracts, summaries or other documents containing or based upon, in whole or in part, any of the information listed above in this Section 1.1.28,

but excluding information, other than Personal Information, which a Party can demonstrate:

* + - 1. is generally available to or known by the public other than as a result of improper disclosure by that Party or any of its Representatives; or
			2. is or was obtained by that Party from a source other than the Clinic or any of its Representatives, the other Party or any of its Representatives, or anyone bound by a duty of confidentiality to the Clinic or the other Party.
		1. “**Clinic**” is defined in the recital of the Parties above.
		2. “**Direct Costs**” means the following expenses or payments: **[these costs are intended to be paid directly by each Physician without reimbursement by the Clinic; modify as appropriate]**
			1. professional memberships and dues, including Doctors of BC, Canadian Medical Protective Association;
			2. transportation expenses;
			3. continuing medical education, professional development, medical journal subscriptions and purchase of books;
			4. employees hired directly by the Physician;
			5. computers and software for individual use;
			6. uploading or transferring of new patient charts to the Clinic;
			7. dictation and transcription costs;
			8. business interruption and disability insurance costs for the Physician or its related principal; and
			9. extended benefit plan premiums for the Physician or its related principal.
		3. “**Governmental Authority**” means:
			1. any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory or taxing authority or power of any nature; and
			2. any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.
		4. “**ITA**” means the *Income Tax Act* (Canada).
		5. “**MSP**” means the Medical Services Plan of British Columbia or other Governmental Authority that is responsible for the payment of publicly insured medical services in the Province of British Columbia.
		6. “**Parties**” means the Physician and the Clinic, collectively, and “**Party**” means either of them.
		7. “**Physician**” is defined in the recital of the Parties above.
		8. “**Premises**” is defined in the Context, above.
		9. “**Representatives**” means the directors, officers, management, employees, agents, consultants, advisors, and other representatives, including lawyers, accountants, auditors, and financial advisors, of a Party.
	1. Certain Rules of Interpretation
		1. In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.
		2. The division of this Agreement into Articles and Sections, the insertion of headings, and the inclusion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
	2. Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable in that province.

* 1. Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties and there are no representations, warranties, or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement. No Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice, or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement.

1. REPRESENTATIONS AND WARRANTIES
	1. Representations and Warranties of the Physician

The Physician represents and warrants in favour of the Clinic as follows:

* + 1. if the Physician is a corporation, that it is in good standing and has a valid permit to operate as a professional medical corporation in accordance with the College by-laws;
		2. they have duly executed and delivered this Agreement, and this Agreement constitutes a legal, valid and binding obligation enforceable against them in accordance with its terms;
		3. the execution and delivery by them of this Agreement, and the performance of their obligations under this Agreement, do not and will not breach or result in a default under any contract or covenant by which he/she is bound;
		4. they are not a non-resident of Canada within the meaning of the ITA;
		5. they are a qualified registrant and a member in good standing of the College; and
		6. they are in compliance with all by-laws, rules and regulations set out by the College and any other Governmental Authority.
	1. Representations and Warranties Continuously Given

All representations and warranties of the Parties contained in this Agreement are deemed to be continuously given during the term of this Agreement.

1. Relationship of the PARTIES
	1. No Partnership

The Physician operates an independent medical practice, serving their own patients, and will maintain their own separate billings and accounts. The Physician is not a partner with any other physician providing services at the Clinic. This Agreement is intended to be a cost-sharing agreement relating to the conduct of the Physician’s medical practice operating from the Premises. Without limiting the foregoing, it is understood and agreed that:

* + 1. no goods or services are being provided by the Physician to other physicians and that this Agreement is solely for the purpose of sharing costs and expenses relating to the operation of their separate medical practices from the Premises and relating to the operation of the Premises; and
		2. The Physician is not responsible for or liable to the patients of the other physicians located at the Clinic or for the medical services performed or carried out by the other physicians, except as specifically contemplated herein.
1. COST-SHARING
	1. Billings
		1. The Clinic shall use reasonable commercial efforts to collect all revenue for any services and activities carried on within the Premises in a timely manner.
		2. **[OPTIONAL]** On execution of this Agreement, the Physician shall execute an assignment of their payments received from MSP to the Clinic in the form required by MSP.
		3. **[OPTIONAL]** All billings generated by the Physician to MSP or to third parties, including any non-insured medical services, will confirm the Clinic as the sole payee acting as the agent for the Physician, for the purposes of allocating costs and distributing income pursuant to the terms of this Agreement.
		4. The Physician agrees that any in-person, telehealth or administrative work rendered for patients of the Physician who are attached to the Premises during the term of this Agreement shall be accounted to the Clinic.
	2. Direct Costs

The Physician is solely responsible and liable for any Direct Costs. If the Clinic pays any Direct Costs on behalf of the Physician, the Physician shall reimburse the Clinic for such payment forthwith.

* 1. Cost-Sharing [OR] Fee-Split

The terms set out in Schedule 4.3 attached hereto, form a part of this Agreement.

* 1. Payments [NOTE: this provision assumes Clinic is collecting funds based on assignment of MSP billings to Clinic. If Physician collects own billings and only pays for costs, consider amending to reflect their payment of Operating Costs to Clinic instead]

The Clinic agrees to pay the Physician on a monthly **[OR]** bi-weekly basis by cheque **[OR]** electronic funds transfer (EFT) within 10 days of completing the reconciliation of reports received from MSP.

* 1. Reconciliation [NOTE: remove for Fee Split model]

In the case of any estimated costs or expenses that are calculated in making payments to the Physician, the Clinic may adjust the calculation of such estimated costs of expenses in a subsequent period or at the end of year, which the Physician shall be responsible to pay, if necessary. In case of any overpayment by a Physician of their portion of Operating Costs during an applicable payment period, the Clinic shall reconcile such amount in a subsequent period, by end of year or as otherwise agreed by the Parties.

1. Term and Termination
	1. Term

This Agreement will come into force and effect as of the Effective Date and will continue in force until the earlier of:

* + 1. the date on which the Physician is no longer practicing in the Clinic; or
		2. the date on which this Agreement is terminated by written agreement by the Parties.
	1. Effect of Termination

Despite termination of this Agreement, the Parties will still use commercially reasonable efforts to reconcile any payments owing from either Party to the other Party that were generated during the term of this Agreement.

* 1. This Agreement to Prevail

In case of any inconsistency between the provisions of this Agreement and the Clinic’s shareholders’ agreement or articles, this Agreement will prevail, subject always to compliance with the Act, and the Parties will take all steps as may be required or desirable to conform the conflicting or inconsistent provisions of the shareholders’ agreement, constating documents or articles of the Clinic to this Agreement.

* 1. Incapacity [NTD: remove if using fee split model in Schedule 4.3]

If a Physician is physically or mentally incapacitated to the extent that they are unable to work as a physician as determined by any two outside physicians for a period of 3 months or more, he or she shall be deemed to have given notice of withdrawal at the end of the 3rd month of absence, unless the other Parties agree otherwise. For greater certainty, any incapacity does not relieve the Physician from its obligations of paying the Operating Costs during any such period of incapacity. The Physician acknowledges that he/she/it has been advised to obtain disability income insurance and that it is the Physician’s sole responsibility to do so.

1. confidentiality, Non-Solicitation
	1. Non-Solicitation of Employees

The Physician and its related principal agrees with the Clinic to not, for as long as it/he/she remains a party to this Agreement, and for a period of twelve (12) months from the date that it/he/she ceases to be a party to this Agreement, in any manner or capacity, whether directly or indirectly, individually or in partnership or otherwise jointly or in conjunction with any Person:

* + 1. induce or encourage any employee to leave the employment of the Clinic or authorize, assist, approve, or encourage any action by any other Person; or
		2. hire or attempt to hire or otherwise solicit any employee of the Clinic or authorize, assist, approve, or encourage any action by any other Person.
	1. Confidentiality
		1. Each Party acknowledges and agrees that:
			1. in the course of that Party’s association with the Clinic, that Party has acquired Confidential Information;
			2. the Clinic has possession of, title to, and ownership of and all rights to use the Confidential Information; and
			3. any disclosure of the Confidential Information to the general public would be highly detrimental to the interests of the Clinic,

and accordingly, each Party agrees to hold in strict confidence and not disclose or use any Confidential Information for any purpose.

* + 1. Despite Section 6.2.1, Confidential Information may be disclosed to any Representative, if that Representative is already bound by a duty of confidentiality not to disclose any information provided to him or her, or signs a confidentiality or non-disclosure agreement containing provisions equivalent to those in this Section 6.2.
		2. If a Party or any of its Representatives is required by applicable law, or by any Governmental Authority, to disclose any Confidential Information, that Party will not be in breach of Section 6.2.1, provided that before making any disclosure, that Party provides the Clinic and the other Parties with prompt written notice of that requirement or request so that the Clinic and the other Parties may contest the disclosure of the Confidential Information and seek an appropriate protective order or other appropriate remedy.
		3. The obligations imposed by, and the covenants contained in, this Section 6.2 are perpetual.
	1. Covenants Reasonable

Each Party acknowledges and agrees with the Clinic and the other Parties that:

* + 1. without the covenants included in this Article 6, the other Parties would not have entered into this Agreement;
		2. the covenants included in this Article 6 are reasonable in the circumstances and are necessary to protect the economic position of the Clinic and the other Parties; and
		3. the breach of any of the provisions of this Article 6 would cause serious and irreparable harm to the Clinic, its Subsidiaries, and the other Parties, which could not adequately be compensated for in damages, and if there is a breach of any of the provisions of this Article 6, each Party consents to an injunction being issued to prevent any further breach of those provisions. This Section 6.3.3 will not be construed as a derogation of any other remedy to which the Clinic, its Subsidiaries, or the other Party may be entitled if there is a breach of any of the provisions of this Article 6.
	1. Covenants Independent

The existence of any claim or cause of action of a Physician or its related principal against another Physician or its related principal, whether under this Agreement or otherwise, will not constitute a defence to the enforcement by the Clinic of the provisions of this Article 6 against that Physician or its related principal.

1. General
	1. Clinic Policies

The Physician agrees to abide by any policies and regulations of the Clinic in effect from time to time.

* 1. Conflict Between Sections

Except as may otherwise be expressly provided in this Agreement, if the exercise by a Party of its rights under any provision of this Agreement would conflict with the concurrent exercise by another Party of its rights under any provision of this Agreement, the first Party to exercise its rights will prevail.

* 1. Conflict Resolution

The Parties will use their best efforts to rectify any disputes, disagreements, controversies, questions, or claims arising out of or relating to this Agreement, including with respect to its formation, execution, validity, application, interpretation, performance, breach, termination, or enforcement, and any dispute relating to conduct claimed to be oppressive or unfairly prejudicial through private negotiations.

* 1. Independent Legal Advice

Each of the Parties acknowledges that it has read and understands the terms and conditions of this Agreement and acknowledges and agrees that it has had the opportunity to seek, and was not prevented or discouraged by any other Party to this Agreement from seeking, any independent legal advice that it considered necessary before the execution and delivery of this Agreement and that, if it did not avail itself of that opportunity before signing this Agreement, it did so voluntarily without any undue pressure, and agrees that its failure to obtain independent legal advice will not be used by it as a defence to the enforcement of its obligations under this Agreement.

* 1. Time of Essence

Time is of the essence in all respects of this Agreement.

* 1. Notices

Any Communication must be in writing and either:

* + 1. delivered personally or by courier;
		2. sent by mail; or
		3. transmitted by fax, e-mail, or functionally equivalent electronic means of transmission, charges (if any) prepaid.

Any Communication must be sent to the intended recipient at its address as follows:

to Physician at:

[insert address of Physician ]

Attention: [Physician ]
Phone: [Phone of Physician ]

E-mail: [Email of Physician ]

to the Clinic at:

[insert address of the Clinic]

Attention: [Name of Medical Director]

Phone: [Phone of the Clinic]
E-mail: [Email of Medical Director]

or at any other address as any Party may at any time advise the other Parties by Communication given or made in accordance with this Section 7.6. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is so delivered at that Party’s address, provided that if that day is not a Business Day, then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication transmitted by facsimile, e-mail, or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it was transmitted; but if the Communication is transmitted on a day that is not a Business Day or after 4 p.m. (local time of the recipient), the Communication will be deemed to have been received on the next Business Day.

* 1. Further Assurances

Each Party will execute and deliver any further agreements and documents and provide any further assurances, undertakings, and information as may be reasonably required by the requesting Party to give effect to this Agreement and, without limiting the generality of this provision, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents, and provide any assurances, undertakings, and information as may be required at any time by all Governmental Authorities having jurisdiction over the affairs of a Party or as may be required at any time under applicable law.

* 1. Amendment and Waiver

No supplement, modification, amendment, waiver, discharge, or termination of this Agreement is binding unless agreed in writing by the Parties. No waiver of, failure to exercise, or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

* 1. Assignment and Enurement

Neither this Agreement nor any right or obligation under this Agreement may be assigned by any Party without the prior written consent of the other Parties. This Agreement enures to the benefit of and is binding upon the Parties and their respective heirs, executors, trustees, administrators, personal or legal representatives, successors, and permitted assigns.

* 1. Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable, or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity, or unenforceability of that provision, in whole or in part, will not affect the legality, validity, or enforceability of the remaining provisions of this Agreement, in whole or in part.

* 1. Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by fax, e-mail, or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

Each of the Parties has executed and delivered this Agreement as of the Effective Date.

|  |  |
| --- | --- |
|  **[name of physician, if no prof. corp.]** | **[name of Physician prof. Corp if applicable ]**Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: [Physician] Title: Director |

 **[name of Clinic]**

Per:

Name: [Name of a director of the Clinic]
Title: Director

**Schedule 4.3 – Cost-Sharing [OR] FEE-SPLIT Terms**

**[Option #1 – Fee-Split]**

The Physician will be paid by the Clinic based the following formula:

For payments received by the Clinic from MSP:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Payment Physician for the applicable payment period | = | Amount collected by Clinic from MSP in the preceding billing cycle billed by the Physician | X | 70% |

For payments received by the Clinic from non-MSP sources (e.g. private billings, medical-legal reports):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Payment Physician for the applicable payment period | = | Amount collected by Clinic from non-MSP sources in the preceding billing cycle billed by the Physician | X | 90% |

**[OR]**

**[OPTION #2 – COST-SHARING]**

* 1. Definitions

In this Schedule 4.3, the following terms have the following meanings:

* + 1. “**Gross Income**” means the gross income received by the Clinic from the assignment of the Physician’s MSP billings, any third-party billings, including ICBC, WorkSafe BC, insurance companies, law firms, and payments by patients for any non-insured medical services.
		2. “**Fixed Costs**” means the following costs or expenses related to the Premises: **[these costs are intended to be one-time or long-term costs for the benefit of all Physicians; modify list as appropriate]**
			1. medical equipment;
			2. IT equipment, including computers, label makers and any other equipment for the general use by the Clinic’s employees;
			3. electronic medical records software/subscriptions;
			4. telephone and audiovisual equipment.
		3. “**Operating Costs**” means the Fixed Costs and the Variable Costs, collectively, and includes any incidental expenses of the Clinic thereto.
		4. “**Physician Net Income**” is defined in Section 1.4.
		5. “**Variable Costs**” means any payments and expenses of the Premises related to: **[these costs are intended to be deducted from the Physician’s Gross Income in proportion to their use; modify as appropriate]**
			1. cleaning and janitorial services;
			2. medical supplies;
			3. office supplies;
			4. courier and postage;
			5. lease or mortgage;
			6. payroll expenses;
			7. employee benefit insurance premiums;
			8. WorkSafe BC premiums;
			9. telephone, internet, fax services;
			10. property tax, strata fees;
			11. utilities, including hydro and gas;
			12. bank service charges;
			13. property insurance;
			14. commercial general liability insurance;
			15. legal and accounting fees;
			16. salaries of all employees, including medical office assistants, clinic manager and bookkeeper; and
			17. other costs and expenses related to the Premises or the Clinic, but not expressly included in the Direct Costs or Fixed Costs, including but not limited to operational costs, actions, suits, proceedings, demands, assessments, judgments, repair, maintenance and replacement of the Premises.
	1. Variable Costs

The Physician agrees that the Variable Costs shall be allocated to them based the following formula:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Portion of the Variable Costs payable by the Physician for the applicable payment period |  | Gross Income of the Physician for the applicable payment period |  | Variable Costs during the applicable payment period (including any applicable sales taxes) |
| = | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | X |
|  | Total Gross Income of all physicians working at the Clinic during the applicable payment period |  |

**[OR]**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Portion of the Variable Costs payable by the Physician for the applicable payment period |  | Number of days allocated to the Physician during the applicable payment period |  | Total Variable Costs during the applicable payment period (including any applicable sales taxes) |
| = | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | X |
|  | Total number of days allocated to all physicians working at the Clinic during the applicable payment period |  |

The allocation of days will be set at least 30 days before a given calendar quarter and any changes must be agreed upon in writing by the Clinic. If no changes are made for the next calendar quarter, then the allocation of clinic days will stay the same as the previous calendar quarter.

* 1. Net Income Distribution

The net income payable to a Physician by the Clinic shall be equal to that Physician’s Gross Income minus that Physician’s portion of the Operating Costs (the “**Physician Net Income**”).

* 1. Payment of Physician Net Income

The Physician Net Income payable to the Physician by the Clinic for a particular calendar month shall be calculated and paid by the Clinic within 2 weeks of the preceding calendar month.

* 1. Reversals

In the case of any estimated costs or expenses, payment errors, refunds or reversals that relate to a payment period that was already paid out or allocated to a Physician, the Clinic may adjust the Physician Net Income in a subsequent payment period upon notice to such Physician.