**Disclaimer:**

The following document is intended to give you/your lawyer helpful guidance when contemplating development of a similar document. Users should refrain from acting on the basis of information in this sample agreement without first seeking professional advice on how the provisions of it may/may not apply to you and your particular circumstances. This document is not intended to replace legal advice. For assistance with finding a lawyer/law firm, please visit Club MD \*member login required. If you have additional concerns on the privacy of your clinic, please contact the Canadian Medical Protective Association (CMPA) or the Office of the Information and Privacy Commissioner of BC (OIPC).

Prior to signing this agreement, we suggest reviewing the following resources upon which this agreement is based:

1. CPSBC Practice Standard re [Medical Records Management](https://www.cpsbc.ca/files/pdf/PSG-Medical-Records-Management.pdf)
2. CMPA [Electronic Records Handbook](https://www.cmpa-acpm.ca/static-assets/pdf/advice-and-publications/handbooks/com_electronic_records_handbook-e.pdf)
3. BC [Physician Privacy Toolkit](https://www.oipc.bc.ca/guidance-documents/1470)

**MEDICAL RECORDS DATA SHARING AGREEMENT**

This Agreement is dated [INSERT DATE].

BETWEEN:

<>,a corporation incorporated under the laws of British Columbia (“**Physician Corp A**”) <**OR if no prof. corp.**> <>,an individual residing in the City of <>, in the Province of British Columbia (“**Physician A**”)

- and -

<>,a corporation incorporated under the laws of British Columbia (“**Physician Corp B**”) <**OR if no prof. corp.**> <>,an individual residing in the City of <>, in the Province of British Columbia (“**Physician B**”)

(collectively, the “**Physicians**”, and individually the “**Physician**”)

- and -

<**if Clinic is a corporation use this; otherwise delete**><>, a corporation incorporated under the laws of British Columbia (the “**Medical Clinic**”)

**[NOTE:** The Clinic entity may not need to be registered as a professional corporation with the College if it is not providing health services directly; seek appropriate legal advice to determine if necessary**]**

**CONTEXT:**

1. Each of the Physicians carries on business as a general medical practice and primarily operates their practice <**if Clinic is a corporation keep yellow; otherwise delete**>from the Medical Clinic, which is located at <insert address> (the “**Premises**”) <**if Clinic is not registered or has DBA use this; otherwise delete**>, which is hereby known as <name of Clinic> (the “**Medical Clinic**”).
2. The Physicians provide care and services for their respective patients (collectively, “**Patients**”, or each a “**Patient**”) at the Medical Clinic.
3. This Agreement sets out the agreement between the Physicians concerning the ownership, custody and enduring access by individual registrants of personal information and medical records relating to the Patients to ensure that the practices at the Medical Clinic comply with applicable professional and legal requirements.

**NOW THEREFORE**, the Physicians hereby agree as follows:

1. **Definitions**

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

* 1. “**Applicable Law**” means, at any time, all applicable laws, statutes, regulations, official directives, rules, consents, approvals, by-laws, permits, authorizations, guidelines, orders and policies of the College or any governmental authority.
	2. “**Agreement**” means this agreement, including all schedules, as it may be amended, confirmed, supplemented, or restated by written agreement between the parties hereto.
	3. “**EMR**” means electronic medical Records.
	4. “**Personal Information**” refers to any biographical or medical information, about a Patient.
	5. “**Process**” or “**Processing**” means access to, collection, use, disclosure, recording, transfer, organization, storage, alteration, retrieval, transmission, dissemination, destruction or erasure of Personal Information under this Agreement.
	6. “**College**” means the College of Physicians and Surgeons of British Columbia.
	7. “**Medical Director**” means the Physician designated as the medical director of the Medical Clinic, from time to time.
	8. “**Privacy Officer**” is defined in Section 4.
	9. “**Records**” means the medical records of Patients created, compiled or maintained by the Medical Clinic, whether in paper, electronic or mixed format.
	10. “**Responsible Physician**” means the Physician who is designated as the primary party responsible for the Processing of Personal Information and Records as it relates to a Patient.
	11. “**Transferred Patients**” is defined in Section 5b).
1. **Compliance with Applicable Law and Other Provisions**

The Physicians agree to work cooperatively together to ensure that all Processing of Personal Information and Records is done using appropriate security provisions and in full compliance with Applicable Law and any other applicable terms and conditions governing the Records, including the license terms of an EMR system used by the Medical Clinic.

1. **Responsible Physician**

Subject to the terms and conditions of this Agreement, and subject to a Patient’s right to choose, all Physicians, regardless of their specialty, who have overall responsibility for directing and coordinating the care and management of one or more Patients within the Medical Clinic shall be designated as the Responsible Physician for those Patients. For Physicians who treat Patients on a one-off basis, the Medical Clinic may assign a Responsible Physician. In the absence of such an assignment, the Medical Director shall be deemed to be the Responsible Physician.

1. **Privacy Officer**

Subject to any other agreement governing the relationship between the Physicians, the Physicians hereby appoint \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Privacy Officer”) as the individual responsible for the Medical Clinic’s compliance with the *Personal Information Protection Act* (BC). In the absence of a valid appointment of a Privacy Officer, the Medical Director shall be deemed to be the Privacy Officer.

1. **Departure of the Physician**

In the event of a Physician ceasing to practice at the Medical Clinic for any reason other than death or incapacity (the "Departing Physician”), the following provisions apply:

* 1. The Departing Physician shall:
		1. provide reasonable advance written notice to all Patients for whom they are the designated Responsible Physician specifying the Departing Physician’s last date of practice with the Medical Clinic and any options the Patients may have in respect of their continued medical care and access to their Records, including any steps the Patients must take to transfer their care or Records, as applicable; and
		2. ensure all billing, notes and Records relating to the Departing Physician’s Patients are up to date prior to the date on which the Departing Physician ceases practicing at the Medical Clinic.
	2. If the Departing Physician continues to practice and is offering continued care of their Patients (the “Transferred Patients”), the Departing Physician’s and the Transferred Patients’ consent to transfer their Records to the Departing Physician’s new practice location is implied; and:

# the Departing Physician shall remain the Responsible Physician for the Transferred Patients notwithstanding the change in practice location;

# subject to Applicable Laws and the policies and procedures of the Medical Clinic, the Privacy Officer shall cause the Transferred Patients’ Records to be securely transferred to the Departing Physician’s new practice facility or new EMR, as applicable, in a timely manner and in a format that can be reasonably accessed, used and stored by the Departing Physician;

# the Medical Clinic may retain the Transferred Patients’ Records as required or permitted by Applicable Law (for example as part of maintaining the original record or enduring access by individual registrants); and

# any fees and expenses applicable to the transfer of the Transferred Patients’ Records shall be solely borne by the Departing Physician, unless otherwise agreed to in writing by the Medical Clinic or subject to any other agreement between the Physicians.

* 1. If the Departing Physician is not offering continued care of their Patients, such as through relocation to a new community or retirement:
		1. the Departing Physician shall cease to be the Patient’s Responsible Physician no later than the last date on which the Departing Physician practices at the Medical Clinic;
		2. custody of all Records in respect of the Departing Physician’s Patients that are not within the legal retention period shall remain with the Medical Clinic, whose Privacy Officer shall, subject to Applicable Laws and the policies and procedures of the Medical Clinic, cause the Records to be securely destroyed in accordance with the Medical Clinic policies; and
		3. prior to the date on which the Departing Physician ceases practicing at the Medical Clinic, the Departing Physician shall, at their own expense, cause all Records associated with their Patients that are still within the legal retention period to be transferred to the custody of another registrant, public hospital or health authority, or placed in a safe storage facility if they remain in the Departing Physician’s custody.
		4. until custody and control of each and every Record has been transferred, or until the date that the ultimate retention period for the Record has lapsed, whichever is later, the Medical Clinic shall ensure that the Record is maintained in a manner consistent with the terms of this Agreement, Applicable Law, and the policies and procedures of the Medical Clinic.
1. **Death or Incapacity**

Subject to any contingency plan or alternative arrangements put in place by a Responsible Physician in accordance with Applicable Law, in the event of a Responsible Physician’s death or incapacity, the Privacy Officer shall be deemed as the new Responsible Physician in respect of the deceased or incapacitated Physician’s Patients. If the deceased or incapacitated Responsible Physician is the Privacy Officer, the Medical Director shall be deemed the Responsible Physician in respect of the impacted Patients until such time as a new physician accepts Responsible Physician responsibilities, and the Medical Director shall be deemed the Privacy Officer until the then-current signatories to this Agreement designate a new Privacy Officer .

1. **Continuing Access by a Departed Physician**

# In the case of a Physician departing the Medical Clinic pursuant to Section 5b):

* 1. subject to Applicable Law, the Departing Physician may continue to access the Records and EMR system of the Medical Clinic for the sole purposes of providing continued care to the Transferred Patients until such time as custody of the Records is successfully transferred (and EMR data validated, if applicable) to the Departing Physician’s new practice location, following which time the Departing Physician’s access will be terminated; and
	2. the remaining Physicians will cause the Medical Clinic to forward a copy of critical communications it receives concerning Transferred Patients to the Departing Physician’s new practice location. Notwithstanding the foregoing, it is the obligation of the Departing Physician to use reasonable efforts to update third parties regarding any change in the Departing Physician’s contact information.
1. **Third-Party Requests**

In accordance with Applicable Law, Records may be made available to and at the request of the College. In addition, nothing in this Agreement will be construed as preventing the Physicians or the Medical Clinic from disclosing the Records in response to a legal requirement to do so.

1. **Compliance**

The Physicians shall work together to adopt policies and procedures to ensure their individual and collective compliance with the Applicable Law. Each Physician shall comply with all Applicable Law, and related policies and procedures adopted by the Medical Clinic. Each Physician shall promptly notify the Privacy Officer if they become aware of any unauthorized access to, use, disclosure, alteration, or destruction of Records or Personal Information.

1. **Termination**

This Agreement may not be amended, terminated, or replaced except by written agreement of the Physicians. A Physician who is a party to this Agreement but subsequently ceases to practice at the Medical Clinic shall automatically cease to be a party to this Agreement on the effective date of their departure. All terms of this Agreement which, by their nature, are intended to survive termination or the withdrawal of any Physician from practice at the Medical Clinic will survive such termination or withdrawal.

1. **Addition of New Physicians**

Notwithstanding the terms of any other agreement governing the addition of a physician to the Medical Clinic, it is a condition of such physician’s entitlement to practice with or as a member of the Medical Clinic that they become a party to this Agreement by executing the form of participation agreement set out in Schedule “A”, and entitlement to practice with or as a member of the Medical Clinic shall be considered full and valid consideration for the participation agreement. The terms, conditions and obligations set out in this Agreement shall become effective and binding on the new physician, together with the Physicians immediately upon execution of such participation agreement.

1. **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. **Assignment**

# 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, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns.

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.

**[SIGNATURE PAGE FOLLOWS]**

Each of the parties hereto has executed and delivered this Agreement, as of the date noted at the beginning of this Agreement.

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| --- | --- |
|  **[IF INDIVIDUAL: physician A]**Contact: [email/fax] | **[IF PROF. CORP: Physician Corp A]**Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: [Physician A] Title: Director Contact: [email/fax] |
|  **[IF INDIVIDUAL: Physician B]**Contact: [email/fax] | **[IF PROF. CORP: Physician Corp B]**Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: [Physician B] Title: Director Contact: [email/fax] |

 **[IF CLINIC IS CORP ENTITY: Clinic LEGAL NAME]**

Per:

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

Contact: [email/fax]

SCHEDULE “A” –

PARTICIPATION AGREEMENT

TO: All parties who are now or become bound by the Agreement (as defined below).

BY:

(the “**New Physician**”)

Dated:

Context:

1. <PHYSICIAN A> and <PHYSICIAN B> are parties to a medical records data sharing agreement (the “**Agreement**”) dated <\_\_\_\_\_\_\_\_\_\_\_\_, 2024>.
2. Under the terms of the Agreement, new physicians who join the medical clinic located at <ADDRESS OF CLINIC> (the “**Medical Clinic**”), must become a party to the Agreement in the form of this participation agreement (this “Participation **Agreement**”).
3. The New Physician wishes to become a party to the Agreement and to be bound to each of the existing and future parties to the Agreement by all the applicable terms and restrictions provided for in the Agreement in the same manner as if the New Physician was an original Party to the Agreement.

**IN CONSIDERATION of the New Physician being permitted to practice at the Medical Clinic**, he/she/it agrees as follows:

1. Defined Terms

Capitalized terms used but not defined in this Participation Agreement have the meanings given to those terms in the Agreement.

1. Agreement to be Bound
	1. The New Physician agrees to be bound by all the applicable terms and restrictions provided for in the Agreement in the same manner as if the New Physician was an original Party that had duly executed and delivered the Agreement.
	2. The New Physician acknowledges that he/she/it has been provided with a complete copy of the Agreement before executing this Participation Agreement.

The New Physician has caused this Participation Agreement to be executed as of the date above.

*If the New Physician is natural person:*

 Name:

 Contact: [email/fax]

*If the New Physician is a corporation:*

Corporation Name:

Per:

Name:
Director

Contact: [email/fax]