Information Sharing Agreement

Background and Summary

The AMA and the PCN Practice Management Office have jointly prepared a template of an Information Sharing Agreement (“ISA”) for the benefit of PCN physicians sharing patient Health Information in an Electronic Medical Record (“EMR”). The attached document represents the results of months of careful work and we urge each physician to review the document carefully before signing. It is intended to be customized to accord with each PCN’s individual requirements.

The rationale for encouraging the use of an ISA lies with the College’s Standards of Practice Regarding Patient Record Retention effective January, 2016:

(3) A regulated member acting as a custodian who shares patient information with other custodian(s) **must** have an information sharing agreement that clarifies access, transfer and return of patient records.

At the root of the requirement to have an ISA in place is compliance with the *Health Information Act* (“HIA”). The HIA places a positive obligation on a Custodian of Health Information to protect the integrity, confidentiality and accuracy of that information and to only use or disclose that information under certain prescribed conditions and to designated individuals.

This ISA addresses the Custodians’ obligations by:

▪ ensuring that physicians are guided to use or disclose Health Information on firstly an aggregate basis, failing which non-identifying and finally and only if necessary individually identifying, using the minimum amount of information required for the purpose;

▪ creating principles governing the gathering, use and disclosure of Health Information (Article 2);

▪ describing Primary and Secondary uses and disclosures of Health Information (Articles 3.1.20 through 3.1.23);

▪ clarifying the requirement to maintain confidentiality and privacy (Article 6);

▪ recommending the creation of a Data Management Committee to oversee the sharing of information and to ensure compliance with the ISA (Articles 5.2 and 5.3); and

▪ confirming what happens with Health Information should a PCN member choose to leave the PCN or should a physician leave a clinic (Article 4.5 and Appendix A).

It also provides a Dispute Resolution Process (Article 12) should differences arise relating to physicians’ use or disclosure of Health Information.

As Custodians of Health Information, PCN physicians are responsible for ensuring the privacy, confidentiality and security of their patients’ information. This Agreement is one of the tools which will allow physicians to do that.

INFORMATION SHARING AGREEMENT

FOR

ELECTRONIC MEDICAL RECORDS EFFECTIVE THE DAY OF , 201\_

BETWEEN:

PHYSICIANS PRACTICING AT/AS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(INSERT DESCRIPTION OF PRACTICE ARRANGEMENT OR LOCATION)  
("PCN PHYSICIANS")

PREAMBLE:

1. The PCN Physicians recognize the benefits of utilizing an Electronic Medical Record ("EMR") for patient care in a community environment, the varied relationships Physicians have amongst themselves, and the use and disclosure obligations relating to patients' Health Information under applicable law.
2. The PCN Physicians' collection, use and disclosure of Health Information is governed by the Health Information Act (“HIA”), 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.
3. Each of the PCN Physicians is a Custodian of the Health Information in his/her custody and control and wish to share the Health Information amongst themselves for better patient care.
4. The PCN 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. The purpose of this Information Sharing Agreement ("ISA") is to provide the terms upon which PCN Physicians share Health Information contributed by PCN 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.
  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 PCN Physicians and an Information Manager of that EMR System.
  3. The PCN Physicians acknowledge and agree that they are entering into this Agreement on the basis of the HIA, 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 12 of this Agreement, such terms are to be interpreted and construed with reference to the Principles. The provisions of the HIA 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 HIA, as well as the following principles:

* 1. 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 use and disclosure 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.
  2. 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 (i) seek access to Health Information about him/herself; (ii) request the correction of an error or omission in the record containing Health Information about the Patient, and (iii) request that a PCN Physician limit the access to or disclosure of Health Information relating to that Patient.
  3. PCN 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 PCN Physicians not use or disclose information relating to that Physician except in strict accordance with the terms of this Agreement.
  4. Physicians and Patients have an enduring right to continued access to information located in an EMR System relating to that Physician or Patient.
  5. Health Information that is shared amongst the PCN 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.
  6. 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.
  7. A PCN 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.
  8. The professional responsibilities of Physicians set forth in the CPSA's Standards of Practice are acknowledged by the PCN Physicians, and the PCN Physicians shall comply with those Standards of Practice and applicable legislation.
  9. 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 PCN 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 PCN 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:

1. “Affiliate(s)” shall have the meaning assigned to this term in the HIA;
2. "Agreement" or "ISA" means this Information Sharing Agreement;
3. "AH" means Her Majesty the Queen in right of Alberta, as represented by the Minister of Health;
4. "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;
5. "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;
6. "Custodian" has the meaning assigned to this term in the HIA;
7. "Data Management Committee" means the body or individual appointed or elected by the PCN Physicians to manage and oversee the ongoing compliance with the terms of this Agreement as described in Article 5.4 of this Agreement;
8. "Effective Date" means the\_\_\_ day off \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_;
9. "EMR" means the electronic medical record governed by the terms of this Agreement containing Health Information contributed by the Parties;
10. "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;
11. "HIA" means the Health Information Act, RSA 2000, c. H-5, and amendments thereto, as well as regulations passed thereunder;
12. "Health Information" shall have the meaning assigned to this term in the HIA;
13. "Health Service" has the meaning ascribed to that term in the HIA;
14. “Information Management Agreement" or "IMA" means that agreement between the Information Manager and PCN 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;
15. "Minister" means the Minister of Health & Wellness, responsible for overseeing AH;
16. "Parties" means the PCN Physicians, and a "Party" means a PCN Physician;
17. "Patient" means an individual who receives, or is the subject matter of, Health Services, and "Patients" means more than one Patient;
18. "Physician" means a medical doctor duly licensed to practice medicine in the Province of Alberta by the CPSA;
19. “Physician Information” means information other than Health Information which relates to the identity, demographics, training, background, billing practices or other characteristics of a PCN Physician;
20. "Primary Disclosure" means the disclosure of Health Information for the purpose of providing Health Services to Patients;
21. "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;
22. "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;
23. "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;
24. "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

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.
2. The PCN Physicians may terminate this Agreement by mutual agreement.
3. A PCN Physician's participation in this Agreement shall terminate on the happening of any of the following events:
4. the termination of the PCN Physician's membership or participation in the\_\_\_\_\_\_\_\_\_\_\_\_;
5. a material breach of this Agreement by that PCN 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;
6. the bankruptcy, dissolution or winding up of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ; or
7. a fundamental change to the status of a PCN Physician brought about by an external cause or source beyond that PCN Physician's control, which prevents that Physician from exercising his/her rights and performing his/her obligations under this Agreement;

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

* 1. A PCN 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.
  2. On termination, the former PCN Physician shall be entitled to a copy of the Health Information contributed by that former PCN 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. (See Appendix A)
  3. Should this Agreement lapse or be terminated by the PCN Physicians:
     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;
     2. the Data 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 PCN Physician together with all other Health Information contributed subsequently that has been amended or is otherwise related to such Health Information; and
     3. the Data Management Committee shall ensure that all PCN 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 reasonable format as determined by the Information Manager.
     4. The Data Management Committee shall not otherwise amend or destroy the Health Information without the approval of the PCN 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;
     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 PCN 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 exceptions:

1. Health Information the disclosure of which, in the reasonable opinion of the PCN Physician, may harm the Patient to whom the Health Information relates; and
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.
3. The PCN Physicians shall appoint a Data Management Committee with a minimum membership of three (3) PCN Physicians to manage and oversee the PCN Physicians' ongoing compliance with the terms of this Agreement.
4. The Data Management Committee shall have the following responsibilities:
   1. set policy direction for and monitoring of the use and disclosure of EMR information;
   2. resolve disputes that arise between two or more PCN Physicians;
   3. resolve any actual or perceived conflicts or inconsistencies that arise between the requirements of the HIA, on one hand, and the Standards of Practice;
   4. constitute sub-committees or name individuals to which (whom) its responsibilities are delegated;
   5. maintain and, where required, amend the Information Management Agreement;
   6. oversee the privacy, security and stewardship issues relating to or arising from the use of the EMR; and
   7. assume responsibility for the maintenance and security of the EMR information on termination of this ISA.

ARTICLE 6 CONFIDENTIALITY AND PRIVACY

1. The PCN 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.
2. Before using or disclosing Health Information that is in his/her custody or under his/her control, each PCN Physician shall make a reasonable effort to ensure that the information is accurate and complete.
3. Where appropriate, a PCN Physician or, at his or her direction, the Information Manager may strip, encode or otherwise transform Health Information to create non-identifying Health Information.
4. A PCN Physician shall report to the Data Management Committee any use or disclosure of Health Information that is not in accordance with this Agreement.

ARTICLE 7 RECORDS MAINTENANCE REQUIREMENTS

1. PCN Physicians shall collect, use and disclose Health Information in accordance with this Agreement
2. In collecting, using or disclosing Health Information, the PCN Physicians shall comply with the HIA.
3. Notwithstanding any other provision of this Article, a PCN Physician (or former PCN Physician) shall retain Health Information as required by CPSA and HIA.
4. This Article, and the obligations and duties contained herein, shall survive the termination of this Agreement.

ARTICLE 8 COMPLIANCE AND AUDIT

1. The Data Management Committee shall periodically assess compliance with this Agreement by the PCN Physicians, including periodic and/or random audits of collection, use, or disclosure of Health Information, and create policies and procedures to facilitate that compliance.
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 PCN Physicians.
3. The PCN Physicians are responsible for ensuring that their Affiliates are compliant with the provisions of this Agreement.

ARTICLE 9 USE AND DISCLOSURE GENERALLY

1. A PCN 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 CPSA Standards of Practice.
2. A PCN 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.
3. A PCN Physician shall use and disclose the minimum Health Information necessary for the intended purpose.
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 PCN 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.

ARTICLE 11 SECONDARY USE AND DISCLOSURE OF HEALTH INFORMATION

1. The PCN Physicians may use or disclose Health Information as permitted by this Agreement or the HIA 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.

ARTICLE 12 DISPUTE RESOLUTION

1. The PCN 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.
2. Any dispute that remains unresolved after 10 business days shall be referred to the Data Management Committee for resolution.

ARTICLE 13 NOTICES

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.
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

1. This Agreement may not be amended except with the agreement of the PCN Physicians, as evidenced in a duly written agreement.
2. Any dispute, interpretation or application of this Agreement shall be resolved in accordance with the laws of the Province of Alberta.
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.
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.
5. This Agreement may not be assigned by any Party without the other Parties' express written consent.

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

Custodian - Date:

(Print Name)

Custodian Signature Witness

Custodian - Date: i\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Print Name)

Custodian Signature Witness

Custodian - Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Print Name)

Custodian Signature Witness

Appendix A

When a former PCN Physician leaves the clinic, they are entitled to a copy of the Health  
Information they contributed to the EMR.

Questions to answer/address:

* Former PCN Physician can expect to receive an e-copy of the Health  
  Information they contributed in the EMR in a format that can be migrated to another  
  EMR.

o Who will pay for export of data?  
o Who will pay for import of data into new EMR?

* Former PCN Physician can request a .pdf of the Health Information they  
  contributed to the EMR

o Who will pay for this and what is the expected cost?

* Former PCN Physician who chooses not to maintain custody of the records must  
  ensure there is a new Information Sharing Agreement relating to management of the  
  Health Information they contributed to. As per CPSA, this new ISA will need to address:

o Which PCN Physician(s) will maintain custody of the Health  
Information?

o Who is responsible for costs if copies of the Health Information are provided to  
the former PCN Physician who is a party to the agreement?

■ reflect costs that are reasonable and consistent with applicable  
legislation and community standards.

o Identify response time that the former PCN Physician can expect for  
requests of copies of Health Information they contributed to.

o If this clinic dissolves, the former PCN Physician needs to be notified by  
clinic so they can determine how they will gain access to the Health Information  
for required CPSA Patient Records Standard 21