

# BRITISH COLUMBIA SURGICAL PATIENT REGISTRY

## Provider Information-Sharing Agreement

THIS AGREEMENT is made as of the 25<sup>th</sup> day of January, 2010.

BETWEEN:

**PROVINCIAL HEALTH SERVICES AUTHORITY**, a society  
with an office at #700 – 1380 Burrard Street, Vancouver, BC  
V6Z 2H3

("Data Steward")

AND:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

("Provider")

WHEREAS:

A. The Data Steward has established and serves as data steward for the surgical patient registry for British Columbia;

B. It is in the public interest to ensure that appropriate measures are in place to protect the confidentiality of the information in the said registry and specifically to protect the privacy of patients;

C. In the course of providing health care services the Provider will be supplying information into, and accessing information from, the said registry, to enhance patient care by ensuring that complete, accurate and comprehensive information is available on a timely basis to all persons involved in the provision of surgical services to patients; and

D. The purpose of this agreement is to outline the rules and procedures respecting a Provider's direct data input into, and direct access to data reports from, the said registry.

NOW THEREFORE this agreement witnesses as follows:

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

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

- (a) "Authority" means a health authority which has granted Privileges to the Provider;
- (b) "Commissioner" means the British Columbia Information and Privacy Commissioner under PIPA;

- (c) “Conflicting Foreign Order” means any order, subpoena, directive, ruling, judgement, injunction, award or decree, decision, request or other requirement issued from a foreign court, agency of a foreign state or other authority outside Canada, or any foreign legislation, compliance with which would likely render a party or its employees in non-compliance with FOIPPA or PIPA;
- (d) “Data Matching” means a computerized or manual comparison of a database(s) or set(s) of records with another database(s) or set(s) of records where files are merged or “linked” on one or more specific data elements with the intent of generating a new body of personal information;
- (e) “FOIPPA” means the Freedom of Information and Protection of Privacy Act (British Columbia);
- (f) “Foreign Demand for Disclosure” means a foreign demand for disclosure as defined in FOIPPA s. 30.2;
- (g) “Loss” means costs, losses, damages, liabilities and expenses (including all reasonable legal costs, fees and expenses)
- (h) “Patient Record Information” means all Personal Information in the SPR in respect of a patient who is registered in the SPR;
- (i) “Personal Information” means personal information as defined in PIPA;
- (j) “PIPA” means the Personal Information Protection Act (British Columbia);
- (k) “Privileges” means the process whereby the medical staff of an institution of the Authority evaluates and recommends that an individual practitioner be allowed to provide specific patient care services in that institution, resulting in a specific grant or permission by an institution for an individual practitioner to perform diagnostic or therapeutic procedures or other patient care services;
- (l) “Provider” means a surgeon licensed to practice surgery in BC who has been granted privileges by the Authority as an independent provider;
- (m) “Provider Information” means information respecting the registration and status of members of a health care profession provided to the SPR by a body authorized to regulate that health care profession;
- (n) “SPR” means the Surgical Patient Registry for British Columbia managed by the Data Steward, as more particularly described in Schedule A hereto;
- (o) “SPR Data Input” means that portion of Patient Record Information collected by the Provider and which is supplied by the Provider to the SPR pertaining to a requested, scheduled or completed surgery of a patient;
- (p) “SPR Information” means:
  - (i) Patient Record Information; and
  - (ii) Provider Information;

- (q) “SPR Reports” means any SPR Information, which is contained in the SPR, and which the Provider accesses, in any manner, under this Agreement; and
- (r) “Supervised Persons” means those individuals in the Provider’s private physicians offices who are associated with and controlled by the Provider in connection with the provision of health care services to patients, and who may be designated in writing by the Provider as an additional permitted user for access to the SPR under Schedule B hereto.

## 1.2 Schedules

The following schedules are attached to and form part of this Agreement:

Schedule A – Surgical Patient Registry Overview

Schedule B – Optional: Direct SPR Access From Private Offices

## 2. **ACCESS TO THE SPR**

### 2.1 Access Privileges

Subject to the terms and conditions hereof, upon receipt of a copy of this Agreement duly signed by the Provider, the Data Steward hereby grants to the Provider personal access to the SPR as a permitted user for the purposes of:

- (a) delivering SPR Data Input into the SPR, as more specifically set out in Schedule A hereto; and
- (b) obtaining SPR Reports out of the SPR as more specifically set out in Schedule A hereto.

### 2.2 Location

Subject to Section 7.1, the access privileges may only be utilized by the Provider on the premises of and utilizing the systems of the Authority.

### 2.3 Revocation

This designation as permitted user may be terminated at any time by written notice given by the Data Steward to the Provider.

### 2.4 Warranties

The Provider represents and warrants that, for the purposes of this Agreement:

- (a) the Provider is a surgeon registered and authorized by the appropriate regulatory body in British Columbia to practice health care in British Columbia;
- (b) the Provider has authority under PIPA and under applicable law governing their profession to collect SPR Data Input from patients;
- (c) the Provider has authority under PIPA and under applicable law governing their profession to disclose SPR Data Input to the SPR;
- (d) the Provider has authority under PIPA to collect, use and disclose SPR Reports from the Data Steward pursuant to this Agreement; and

- (e) all SPR Data Input that the Provider submits to the SPR will be accurate and current.

### **3. GENERAL TERMS AND CONDITIONS OF ACCESS**

#### **3.1 Regulatory Compliance**

The Provider shall comply with PIPA, including any applicable rules, regulations or orders of the Commissioner, while performing its obligations and exercising its access rights under this Agreement. If and to the extent applicable to the Provider, the Provider shall also comply with FOIPPA.

#### **3.2 Privacy Compliance**

The Provider has read, understood and will comply with the terms of:

- (a) this Agreement;
- (b) Privacy guidelines as set out in the “Privacy Code for Private Physicians’ Offices in British Columbia” developed by the College of Physicians and Surgeons and the British Columbia Medical Association; and
- (c) the “Privacy Toolkit” jointly developed by the College of Physicians and Surgeons and the British Columbia Medical Association.

#### **3.3 Limited Purposes**

Subject to the provisions of this Agreement, the Provider is permitted access to SPR Reports only in respect of a person with whom the Provider has a surgeon-patient relationship, for the purpose of providing health care services to that person. In addition, the Provider is permitted limited access to patient demographic information of persons with whom the Provider does not have a surgeon-patient relationship, for the limited purpose of facilitating and verifying the assignment of appropriate patient identifiers for the purposes of the SPR. Any violation shall entitle the Data Steward to suspend or terminate the Provider’s access to the SPR.

#### **3.4 SPR Statistical Information**

Notwithstanding Section 3.3 hereof, the Provider is permitted to have limited access to certain SPR anonymized statistical information only for the purposes of comparing the wait times of their patients with others from a similar specialty in British Columbia for the purposes of quality assurance review, and for no other purpose. Any violation shall entitle the Data Steward to suspend or terminate the Provider’s access to the SPR.

#### **3.5 Rules and Procedures**

The Provider shall comply with all reasonable rules and procedures of the SPR developed by the Data Steward from time to time, provided that the Data Steward has delivered notice of such rules and procedures to the Provider.

#### **3.6 E-Health Act**

If the SPR is designated or prescribed under the *E-Health Act*, SBC 2008, c.38, then the Data Steward may cease to disclose SPR information until the Parties have amended this Agreement.

#### **4. COLLECTION AND DISCLOSURE PROCEDURES**

##### **4.1 Data Exchange**

The Data Steward shall control all access to SPR Information in the SPR. The Provider shall provide SPR Data Input to the SPR, paper assessment tools to the Authority, and obtain SPR Reports from the SPR using one or more of the following electronic methods:

- (a) web screens; and
- (b) electronic messages containing SPR Data Input.

##### **4.2 Safeguard Duties**

The Provider shall take reasonable and appropriate measures to safeguard the SPR Reports received from the Data Steward. The Provider shall protect SPR Reports (including screen displays) from the view of all unauthorized persons. The Provider will not:

- (a) permit any third party to use any of its user IDs and passwords;
- (b) divulge, share or compromise any of its user IDs and passwords;
- (c) use or attempt to use the user ID or any password of any other person;
- (d) test or examine the security related to the SPR;
- (e) take any action that might reasonably be construed as altering, destroying or rendering ineffective SPR Information;
- (f) alter the format or content of a print or display of any SPR Information; or
- (g) use any wireless technology such as a wireless router, local area network or personal digital assistant (e.g. blackberry) to access the SPR.

##### **4.3 Breach**

The Provider will advise the Data Steward immediately upon learning of any circumstances, incidents or events which to its knowledge have jeopardized or may in the future jeopardize the privacy of the patients to whom the SPR Information relates.

##### **4.4 Investigation**

The Provider will immediately notify the Data Steward of, and will cooperate in the investigation of all reported cases of breach of this Agreement or of any wrongful use of or access to the SPR by any person. The Data Steward reserves the right to suspend access to the SPR during the course of the investigation in order to ensure adequate protection of the SPR.

##### **4.5 Storage in Canada**

The Provider shall not store SPR Reports or permitted back-up copies of SPR Reports outside of Canada unless specifically authorized to do so in writing by the Data Steward.

##### **4.6 Foreign Demand for Disclosure**

The Provider shall immediately notify the Data Steward if the Provider receives:

- (a) a Foreign Demand for Disclosure of SPR Reports;
- (b) any request for disclosure that the Provider knows or has reason to suspect is for the purpose of responding to a Foreign Demand for Disclosure of SPR Reports; and
- (c) becomes aware of any unauthorized disclosure that the Provider knows or has reason to suspect has occurred in response to a Foreign Demand for Disclosure of SPR Reports.

#### 4.7 Procedures on Demand

If the Provider becomes legally compelled or otherwise receives a demand to disclose SPR Reports pursuant to a Conflicting Foreign Order, the Provider should not disclose that SPR Report unless:

- (a) the Data Steward has been notified;
- (b) the parties have appeared before a Canadian court of law; and
- (c) the Canadian court of law has ordered the disclosure.

#### 4.8 No Data Matching

The Provider shall not perform any Data Matching or record linkage of the SPR Reports without the prior written consent of the Data Steward, unless required or permitted under applicable law.

### 5. **ACCURACY OF INFORMATION**

#### 5.1 Provider Corrections

The Provider shall arrange for any needed correction that it identifies in the SPR Data Input. The Provider shall notify the Data Steward of any material or large-scale corrections in SPR Data Input.

#### 5.2 Data Steward Corrections

Except for data corruption occurring as a result of SPR system operations, the Data Steward will not make corrections to the SPR Data Input supplied by the Provider unless authorized by the Provider.

### 6. **DATA STEWARD**

#### 6.1 Use of Data Input

The Provider authorizes the Data Steward to use and disclose SPR Data Input pursuant to the rules and procedures of the SPR, developed by the Data Steward from time to time, and acknowledges that information in the SPR is no longer under the control of the Provider. If the Data Steward receives a request from an individual for a copy of that individual's Patient Record Information in the SPR or for correction of that individual's Patient Record Information, the Data Steward shall have the request reviewed by its Freedom of Information Co-ordinator to ensure it is dealt with in accordance with FOIPPA.

## 6.2 Retention and Destruction

The Data Steward shall retain and ultimately destroy SPR Data Input in accordance with SPR policies and procedures established from time to time by the Data Steward.

## 7. **DIRECT SPR ACCESS FROM PRIVATE OFFICES**

### 7.1 Additional Covenants

If the Provider has made separate arrangements with the Data Steward for special direct access to the SPR from their private physician's offices and/or for access to the SPR by Supervised Persons of the Provider located at such offices, the parties agree that the additional direct access provisions set out in Schedule B hereto shall be applicable and part of this Agreement.

## 8. **AUDIT AND INSPECTION**

### 8.1 Right of Inspection

In addition to any rights of inspection the Authority may have, the Data Steward or its agent (who may or may not be the Authority) may, at any reasonable time and on reasonable notice, conduct such audits and reviews of the Provider's access to the SPR as are reasonably necessary to verify compliance with this Agreement. The Provider agrees that it will permit and provide reasonable assistance to the Data Steward to facilitate an inspection.

### 8.2 Notice to the Regulatory Body

If an inspection reveals that the Provider is in breach of the terms of this Agreement, in addition to any action the Data Steward may take against it under this Agreement or pursuant to other legal remedies, the Data Steward may also notify the appropriate Regulatory Body in respect of any suspected inappropriate access by the Provider.

## 9. **TERMINATION OF AGREEMENT**

### 9.1 Suspension or Termination by Data Steward

Notwithstanding any other provision herein to the contrary, Data Steward retains the right to:

- (a) suspend or terminate the Provider's access to the SPR at any time and without notice if Data Steward, in its sole discretion, determines that it is necessary to do so; and/or
- (b) terminate this Agreement in the event of a material breach of this Agreement by Provider that is not the subject of an immediate suspension or termination pursuant to Section 9.1(a) where such breach has not been remedied to the satisfaction of Data Steward within the time frame set by Data Steward.

### 9.2 Termination by Provider

This Agreement will automatically terminate upon receipt by Data Steward of the Provider's written notice of withdrawal by the Provider.

### 9.3 Effect of Suspension or Termination

Upon suspension of the Provider's rights or upon termination of this Agreement, the Provider will cease all access to and use of the SPR.

## 10. **DISCLAIMERS AND INDEMNITY**

### 10.1 No Warranty

Access to the SPR is provided "as is", without warranty of any kind including warranty of fitness for a particular purpose. The Data Steward does not warrant the accuracy or the completeness of the SPR Information or other data included in the SPR, or that the access will function without error, failure or interruption. The information provided by the SPR is not exhaustive and therefore cannot be relied upon as complete.

### 10.2 Use of SPR

Any information received or otherwise obtained through access to the SPR is used at the Provider's own discretion and risk. The information is provided as a supplement to, and not a substitute for knowledge, expertise, skill and professional judgment in providing patient care.

### 10.3 No Actions

No action may be brought by any person against the Data Steward for any loss or damage of any kind caused by any reason or purpose related to reliance on or use of the SPR or any information received or otherwise obtained through the use of the SPR.

### 10.4 Indemnity

The Provider shall defend, indemnify and hold harmless the Data Steward and its directors and officers from and against all Loss resulting directly or indirectly from the negligence or wilful misconduct of the Provider in their access to and exchange of information with the SPR under this Agreement or any breach by the Provider of any of its covenants or obligations under this Agreement.

## 11. **LEGAL RELATIONSHIP**

### 11.1 Independent Contractors

No partnership, joint venture or agency will be created or will be deemed to be created by this Agreement or by any action of either party under this Agreement.

## 12. **NOTICES**

### 12.1 Manner of Notice

Any notice, document, statement, report, or demand that either party may desire or be required to give or deliver to the other party pursuant to this Agreement shall be in writing, and shall be given or delivered:

- (a) by personal delivery;
- (b) by mailing in British Columbia with postage prepaid; or
- (c) by facsimile transmission.



## 12.2 Deemed Receipt

Any notice, document, statement, report, or demand delivered by mail in British Columbia and correctly addressed to the party to whom it is sent shall be deemed given to and received by that party on the third business day after it is mailed, except in the event of disruption of postal services in British Columbia in which case it shall be deemed given to and received by that party when it is actually delivered. Any notice, document, statement, report, or demand delivered by facsimile transmission shall be deemed given to and received by a party when transmitted "OK" to the facsimile number provided by that party.

## 13. GENERAL TERMS

### 13.1 No Assignment

The Provider may not assign or sublicense its rights under this agreement without the prior written consent of the Data Steward.

### 13.2 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns or approved assigns, as the case may be.

### 13.3 Entire Agreement

The provisions of this Agreement constitute the entire agreement between the parties and supersedes any prior agreements, letters of intent or understanding, whether written or oral, between the parties with respect to the matters contemplated herein. No terms, conditions, warranties, promises or undertakings of any nature whatsoever, express or implied, exist between the parties with respect to this Agreement except as herein set forth. This Agreement may be amended, changed or modified in accordance with the terms hereof.

### 13.4 Partial Invalidity

If any term conditions or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, condition or provision shall be separately valid and enforceable to the fullest extent permitted by law.

### 13.5 Further Assurances

The parties shall do and execute such further documents or things as may be necessary or desirable in connection with this agreement.

### 13.6 Governing Law

This Agreement shall be governed by the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties attorn to the exclusive jurisdiction of the courts of British Columbia.

### 13.7 Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original. Such counterparts together shall constitute one and the same instrument,

notwithstanding that all of the Parties are not signatories to the original or the same counterpart.

13.8 Schedules

The Schedules to this Agreement are part of this Agreement. If there is a conflict between a provision in Schedules and any provision of this Agreement, the provision in the Schedules is inoperative to the extent of the conflict, unless the Schedules states that it operates despite a conflicting provision of this Agreement.

13.9 Headings

The headings in this Agreement are inserted for convenience only and do not form part of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement.

**PROVINCIAL HEALTH SERVICES  
AUTHORITY**

\_\_\_\_\_  
Per:

SIGNED AND DELIVERED by

\_\_\_\_\_  
*Witness Signature*

\_\_\_\_\_  
*Witness Name (print)*

\_\_\_\_\_  
*(dated)*

\_\_\_\_\_  
*Provider Signature*

\_\_\_\_\_  
*Provider Name (print)*

*Per: Medical Practice*

## **Schedule A –Surgical Patient Registry Overview**

The BC Surgical Patient Registry (SPR) is a provincial system that collects information about patients waiting for and receiving surgery in British Columbia. The purpose of the registry is to provide more accurate and complete information for surgeons, hospitals, and the Ministry of Health Services to improve surgical services for the people of B.C.

Surgeons and surgeons' offices collect and provide patient information to the hospital where surgery is to be performed. A subset of this data in turn, is automatically sent to the SPR. Daily entry of information to the registry provides the capacity for reports to reflect more accurate and timely data on the current status of surgical services. All BC hospitals (except for BC Children's Hospital) now submit surgical data to the registry. Select data, in turn, is submitted to the MOH in the form of monthly "Data Snapshots".

Reports from the SPR are available for:

1. Surgeons – to help schedule their patients for surgery and to identify current wait status and trends;
2. Health Authorities – to monitor and plan for surgical services and to allocate resources;
3. Ministry of Health Services – to monitor and evaluate provincial surgical services and to provide provincial and federal reporting information.

While managed by the PHSA, the SPR is a joint system developed and operated by the regional Health Authorities, the PHSA and the Ministry of Health Services.

Access to and use of patient information may only be used for explicit purposes and is conducted in accordance with legislation and related policies and protocols. Access policies and reports within the SPR ensure it complies with privacy legislation and health authority and registry policies.

## **SCHEDULE B – OPTIONAL: DIRECT SPR ACCESS FROM PRIVATE OFFICES**

### Additional Covenants

#### **1. ACCESS FROM PRIVATE OFFICES**

The Provider must notify the Data Steward of each location other than an Authority location at which it ordinarily practices from which it desires to directly access the SPR, including, for each location, the physical address, phone number and facsimile number. Approval of any such remote access is totally in the discretion of the Data Steward. The Provider must immediately advise the Data Steward of any changes in address, including new locations, or, if the Provider ceases to practice at any location for which access has been provided by the Data Steward.

#### **2. PROVIDER SYSTEMS**

The Provider is responsible for its own systems and related costs enabling direct access by the Provider to the SPR.

#### **3. SUPERVISED PERSONS**

##### **3.1 Authorization**

The Provider may designate one or more Supervised Persons to access SPR Reports on behalf of the Provider only if:

- (a) the Supervised Person requires access to the SPR for the purpose of carrying out the person's employment in the medical practice;
- (b) the Supervised Person is under the direct supervision of the Provider; and
- (c) the Supervised Person has signed a confidentiality undertaking.

##### **3.2 Control**

The Provider is responsible for ensuring that Supervised Persons comply with the terms and provisions of this Agreement, and do not access or disclose SPR Reports to any other person unless:

- (a) such access or disclosure is for the purposes described in this Agreement; and
- (b) the Provider has directed the Supervised Persons to access or disclose the information.

##### **3.3 Training**

Despite paragraphs 3.1 and 3.2 the Provider is responsible for training and controlling SPR access and for all activities undertaken by Supervised Persons in relation to SPR.

##### **3.4 User ID and Password**

The Provider shall supervise user ID and access codes (passwords) for all Supervised Persons. The Provider acknowledges that:

- (a) the Provider and each Supervised Persons shall not disclose his or her personal access code to other individuals and is responsible for the loss of the password or suspected unauthorized disclosure of his or her access code;
- (b) on completion of an access session to the SPR, the Provider and any Supervised Persons shall ensure that he or she has properly logged out of the session;
- (c) the Provider is wholly responsible and accountable for all work done under Provider and Supervised Persons access codes.

### 3.5 Personnel List

The Provider will retain a list of all Supervised Persons with authorized access to SPR and will provide that list to the Data Steward or its agent upon request.

### 3.6 Personnel Departures

The Provider shall deliver to the Data Steward immediate written notice of the departure or cessation of employment of any Supervised Persons.

### 3.7 Notice of Non-Compliance

If for any reason the Provider or Supervised Persons do not comply, or the Provider anticipates that it or a Supervised Person will be unable to comply with a provision in this Agreement in any respect, the Provider must promptly notify the Data Steward in writing of the particulars of the non-compliance or anticipated non-compliance and what steps have been taken or proposed to address and prevent recurrence of, the non-compliance or anticipated non-compliance.

## **4. ACCESS BY SOFTWARE SUPPORT ORGANIZATIONS**

### 4.1 No Access

The Provider will not authorize or permit access to the SPR by persons employed by or contracted to a software support organization providing services to the Provider.