

This Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**VENDOR PARTICIPATION AGREEMENT  
FOR ELECTRONIC HEALTH INFORMATION EXCHANGE**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, represented by the Minister of Health (the **“Province”**)

**AND:**

\_\_\_\_\_ ( the **“Software Support Organization”** or **“SSO”**) at the following address:

|                  |
|------------------|
| _____            |
| _____            |
| _____            |
| _____            |
| Facsimile: _____ |
| Email: _____     |

**WHEREAS:**

- A. The Province owns and is responsible for the operation of the Province Systems.
- B. The Province Systems contain highly sensitive confidential information, including Personal Information, and it is in the public interest to ensure that appropriate measures are in place to protect the confidentiality and integrity of such information.
- C. Pursuant to System Access Agreements made between Practitioners and the Province, Practitioners and their authorized Personnel will be granted access to one or more of the Province Systems.
- D. The purpose of providing Practitioners and their authorized Personnel with Access to a Province System is to enhance patient care by providing timely and relevant information to persons involved in the provision of therapeutic care to patients.

- E. This Agreement sets out the terms by which SSO may make an Interface Implementation available to Practitioners for the purpose of the Practitioner and their authorized Personnel's Access to a Province System.

**NOW THEREFORE** in consideration of the promises and the covenants, agreements, representations and warranties set out in this Agreement (the receipt and sufficiency of which is hereby acknowledged by each party), the parties agree as follows:

## **ARTICLE 1.0 – INTERPRETATION**

### **1.1 Definitions.**

In this Agreement, unless the context otherwise requires, the following definitions will apply:

- (a) “**Access Subcontractor**” means a Subcontractor that provides any part of the Interface Access Services;
- (b) “**Access**”, in relation to a Province System, means access, in any manner and by any person, to electronic information, including any Personal Information, contained in the Province System;
- (c) “**Applicable Laws**” means all applicable laws of Canada, British Columbia, or another province or territory in Canada which is binding on the parties (or one party as applicable), and in effect from time to time, but does not include any law, statute, regulation or by-law, treaty, directive, policy having the force of law, order, judgement, injunction, award or decree of a foreign jurisdiction outside of Canada;
- (d) “**Canadian Access Personnel**” has the meaning given in Section 4.7;
- (e) “**Canadian Entity**” means a corporation, partnership, limited partnership, or other similar entity (i) that is incorporated or created under the laws of Canada or under the laws of any province of Canada, and (ii) all of whose directors if a corporation, or persons acting in a similar capacity if a partnership, limited partnership, or other similar entity, are Canadian residents;
- (f) “**Confidential Information**” has the meaning given in Section 4.16;
- (g) “**Conformance Initiation Notice**” has the meaning given in Section 3.5;
- (h) “**Conformance Standards**” means the various volumes of the “Professional and Software Conformance Standards” documents published by the Province, as such documents are amended and supplemented by the Province from time to time and made available in accordance with Section 2.3;
- (i) “**Conformance Evaluation**” means the conformance evaluation process for an Interface Implementation set out in Article 3.0;

- (j) “**Data Centre Location(s)**” means the physical location(s) where the SSO or an Access Subcontractor will store Disclosed Data in connection with the provision of Interface Access Services, as disclosed to the Province in accordance with Section 3.5(c) or otherwise by written notice from the SSO. For greater certainty, all such Data Centre Location(s) must be located within Canada;
- (k) “**Disclosed Data**” means any Personal Information obtained from a Province System through the use, by any person (including Practitioners and their authorized Personnel), of an Interface Implementation;
- (l) “**Disclosure Order**” has the meaning given in Section 4.6;
- (m) “**Foreign Access**” has the meaning given in Section 4.8;
- (n) “**Foreign Access Conditions**” means: (i) the SSO will ensure that Foreign Access is controlled, monitored and mediated by Canadian Access Personnel, (ii) the SSO will ensure that Foreign Access is limited to temporary access and storage for the minimum time necessary for the Permitted Purpose, and (iii) if Foreign Access is for the Permitted Purpose of data recovery, the SSO will ensure that Foreign Access is limited to access and storage only after the system failure has occurred;
- (o) “**Interface Access Services**”, “**Interface Application**”, and “**Interface Application Training**” have the meanings given in the definition of “Interface Implementation” below;
- (p) “**Interface Implementation**” means:
- (i) any computer application, software service, website or similar functionality, that is created, adapted, owned, licensed or maintained by the SSO and that enables Access to a Province System (an “**Interface Application**”),
  - (ii) any services, including software support, data hosting, application service provider (ASP), disaster recovery and backup services, that the SSO provides in relation to the Interface Application described in (i) above, that in any way results in the SSO or an Access Subcontractor accessing, possessing, transmitting, collecting, retaining, using or disclosing Disclosed Data (the “**Interface Access Services**”), and
  - (iii) any training program or educational or training materials that the SSO provides to Practitioners and their authorized Personnel in relation to the Interface Application described in (i) above (the “**Interface Application Training**”);
- (q) “**Material Breach**” has the meaning given in Section 8.4;
- (r) “**Permitted Purpose**” means access to Disclosed Data (including when stored at the facilities from where the SSO or an Access Subcontractor provides Interface Access Services) that is necessary for: (i) installing, implementing, maintaining,

- repairing, trouble-shooting or upgrading an electronic system or equipment used by a Practitioner or the SSO for or in connection with the SSO providing an Interface Implementation to a Practitioner, or (ii) recovery of data (including Personal Information) undertaken following the failure of an electronic system used by a Practitioner or the SSO for or in connection with the SSO providing an Interface Implementation to a Practitioner;
- (s) **“Personal Information”** means all recorded information that is about an identifiable individual or is defined or deemed as “personal information” or “personal health information” pursuant to any laws or regulations related to privacy or data protection that are applicable to the Province or to the SSO (including without limitation any information that constitutes “personal information” pursuant to the *Freedom of Information and Protection of Privacy Act* (British Columbia) or the *Personal Information Protection Act* (British Columbia) or the *Pharmaceutical Services Act* (British Columbia) , or that constitutes “personal health information” pursuant to the *E-Health (Personal Health Information and Protection of Privacy) Act* (British Columbia);
- (t) **“Personnel”** means, in relation to a person, the employees and independent contractors of that person.
- (u) **“Practitioner”** means a health care practitioner who is party to a System Access Agreement that has not expired or been terminated;
- (v) **“Province Data”** means any Personal Information contained in a Province System that is made available to, or that is otherwise accessible by, the SSO in any manner (whether authorized or not) in respect of this Agreement or the performance of any services in relation to an Interface Implementation;
- (w) **“Province Proprietary Materials”** means the Province Proprietary Software and Province Training Materials;
- (x) **“Province Proprietary Software”** means any software owned by or licensed to the Province, including object and source code versions, and any documentation and any modifications or interfaces relating to the foregoing, which the Province, in its sole discretion, permits the SSO to access (via remote online access) or use in connection with an Interface Implementation.
- (y) **“Province System”** means any electronic health record (EHR) or other information systems reasonably identified by the Province (in the Conformance Standards or otherwise) as a Province System for the purposes of this Agreement, and any replacement or successor to any such system. For greater certainty, unless otherwise directed by the Province the Province Systems include all information systems of the Province identified by the SSO in a Conformance Initiation Notice as being an information system that an Interface Implementation interfaces with;

- (z) **“Province Training Materials”** means any education or training documentation, data or other materials owned by or licensed to the Province, which the Province, in its discretion, permits the SSO to access or use in connection with an Interface Implementation;
- (aa) **“Subcontractor”** means any third party person engaged by the SSO to perform any part of the SSO’s obligations under this Agreement or any part of an Interface Implementation on behalf of the SSO, and includes an Access Subcontractor;
- (bb) **“System Access Agreement”** means a system access agreement between the Province and a Practitioner:
- (i) that is substantially in a form attached to Schedule A to this Agreement, as such form may be added to or amended from time to time by the Province on written notice to the SSO, and
  - (ii) that authorizes a Practitioner (and certain other authorized persons at the direction of the Practitioner) to Access to a Province System in accordance with the terms of such System Access Agreement;

## 1.2 Interpretation.

In this Agreement:

- (a) “includes” and “including” are not intended to be limiting;
- (b) unless otherwise specified, whenever the words “discretion”, “option”, “determine” and other similar words and variations thereof are used with respect to a party, they will be deemed to mean such party’s sole and absolute discretion, option, determination or other such similar act;
- (c) unless otherwise specified, a reference to a statute by name means the statute of British Columbia of that name, as amended or replaced from time to time; and includes any regulations or orders made under the authority of that statute; and
- (d) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*.

## 1.3 Headings.

The division of this Agreement into Articles, Sections, paragraphs and clauses, and the insertion of headings, are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

## 1.4 Schedules.

The following are the Schedules attached to this Agreement, which are incorporated into this Agreement by reference and are deemed to be an integral part of this Agreement:

## Schedule A – Practitioner System Access Agreement

### **1.5 Conflicts.**

Conflicts among provisions of this Agreement will be resolved as follows:

- (a) a provision in the main body of this Agreement will prevail over any conflicting provision in a Schedule, unless that conflicting provision expressly states otherwise; and
- (b) a provision in the main body of this Agreement or a Schedule will prevail over any conflicting provision in a document attached to or incorporated by reference into the main body or Schedule, as applicable, unless the main body or Schedule expressly states otherwise.

## **ARTICLE 2.0 – APPLICABLE LAW AND CONFORMANCE STANDARDS**

### **2.1 Compliance with Applicable Laws.**

The SSO will comply with all Applicable Laws in the performance of the SSO's obligations under this Agreement.

### **2.2 Compliance with Conformance Standards.**

The SSO will comply with Conformance Standards as follows:

- (a) when creating or updating the Interface Application associated with an Interface Implementation, the SSO will comply with all requirements set out in the Conformance Standards at the time of such creation or update;
- (b) when providing the Interface Access Services associated with an Interface Implementation, the SSO will comply with all requirements set out in the Conformance Standards at the time such Interface Access Services are provided; and
- (c) the SSO will make commercially reasonable efforts, on an ongoing basis during the term of this Agreement, to make all Practitioners (and their Personnel) that use an Interface Implementation to Access a Province System aware of the standards identified in the Conformance Standards that apply to such use.

### **2.3 Changes to Conformance Standards.**

The Province reserves the right to amend the Conformance Standards from time to time during the term of this Agreement in its discretion. The Province will provide the SSO with written notice of such amendment, and the date upon which it becomes effective in advance of the amendment's effective date. Generally, such notice will be provided at least three months in advance of its effective date, however the Province reserves the right to amend the Conformance Standards upon shorter notice if the Province determines that a shorter notice period is required

in the circumstances. The Province will make the Conformance Standards, and any amendments thereto, available on the following website (or such other website as the Province may reasonably specify from time to time for the purposes of this Agreement):

<http://gov.bc.ca/healthinformationexchange>

In the event that the SSO does not agree to an amendment to the Conformance Standards made by the Province under this Section, the SSO must promptly deliver notice to the Province terminating this Agreement pursuant to Section 9.2, and any such termination by the SSO must be effective no later than the effective date of the amendment to the Conformance Standards that the SSO does not agree to.

### **ARTICLE 3.0 – CONFORMANCE EVALUATION**

#### **3.1 New Interface Implementations.**

The SSO will not provide, license or otherwise make any Interface Implementation available to a Practitioner or any other third-party person unless the Province has delivered an **Interface Approval Notice** to the SSO in accordance with this Article 3.0 stating that the Interface Implementation has passed Conformance Evaluation.

#### **3.2 Existing Interface Implementations.**

Where an Interface Implementation has previously passed Conformance Evaluation and its Interface Application, Interface Access Services or Interface Application Training program or materials are subsequently changed, updated, enhanced or modified in a material manner (an “**Updated Interface Implementation**”), the SSO will not provide, license or otherwise make such Updated Interface Implementation available to a Practitioner or any other third-party person unless the SSO has notified the Province, in writing and in the form and manner required by the Province, of the Updated Interface Implementation and the Province has approved such Updated Interface Implementation in writing.

Prior to providing any such approval the Province, at its discretion: (a) may require that the SSO provide further information respecting the nature of the changes to the Updated Interface Implementation, or (b) may require that the Updated Interface Implementation undergo Conformance Evaluation. Subject to Section 3.6, the Province will not unreasonably delay or withhold the Conformance Evaluation of an Updated Interface Implementation.

For greater certainty, the obligations in this Section do not apply to the SSO where an Interface Implementation is changed or updated solely to correct bugs or other deficiencies in the operation of the Interface Application or to maintain service levels or other contractual obligations that the SSO may have with the Province or a Practitioner who is an existing customer of the SSO.

### 3.3 Acceptance Criteria.

For the purposes of this Article 3.0, the “**Acceptance Criteria**” for an Interface Implementation means confirmation that:

- (a) the Interface Application associated with the Interface Implementation complies with the requirements set out in the Conformance Standards and all other requirements of this Agreement,
- (b) the Interface Access Services associated with the Interface Implementation complies with the requirements set out in the Conformance Standards and all other requirements of this Agreement, and
- (c) the Interface Application Training associated with the Interface Implementation complies with the requirements set out in the Conformance Standards and all other requirements of this Agreement.

### 3.4 Internal Testing.

Before submitting an Interface Implementation for Conformance Evaluation, the SSO will conduct thorough internal testing of the Interface Implementation to verify that it meets the Acceptance Criteria to the reasonable satisfaction of the SSO.

### 3.5 Initiation of Conformance Evaluation.

The SSO must submit an Interface Implementation for Conformance Evaluation by notifying the Province in writing (a “**Conformance Initiation Notice**”) at least four weeks in advance of the date that the applicable Interface Implementation will be ready for Conformance Evaluation. The Conformance Initiation Notice must be delivered in the form and manner required by the Province, and must include the following information:

- (a) notice of the Province System(s) that the Interface Implementation interfaces with,
- (b) a description of the Interface Access Services that the SSO or an Access Subcontractor will provide in connection with the Interface Implementation,
- (c) if the Interface Access Services described under paragraph (b) above include data hosting, disaster recovery, backup or similar data storage services, the address of all physical location(s) where Personal Information will be stored in connection with such data storage services (all of which must be located within Canada),
- (d) a description of the Interface Application Training programs and materials that the SSO or a Subcontractor will provide in relation to the Interface Implementation, and



- (e) any other information respecting the Interface Implementation that may required by the Province.

The SSO acknowledges and agrees that, upon submitting a Conformance Initiation Notice to the Province, the Interface Implementation to which that Conformance Initiation Notice relates will be governed by the terms and conditions of this Agreement.

### **3.6 Scheduling.**

Upon receipt of a Conformance Initiation Notice, the Province will contact the SSO to schedule a mutually agreeable time and location to conduct Conformance Evaluation.

All dates and times for Conformance Evaluation will be subject to the approval of the Province. Without limiting the foregoing, the Province reserves the right to schedule any Conformance Evaluation in its discretion, including based on the availability of its resources, its plans and priorities for the adoption of Province Systems and the order that software support organizations present themselves to the Province for Conformance Evaluation.

### **3.7 Access for Evaluation.**

Upon the Province's request, the SSO will provide the Province with: (a) access to the SSO's facilities, equipment, software, logs, screen shots, training and other materials to allow the Province to observe and direct the conduct of tests, examine test results and otherwise determine whether the Interface Implementation meets the Acceptance Criteria to the satisfaction of the Province, and (b) any further information requested by the Province in relation to the Interface Implementation.

### **3.8 Non-Conformance.**

The Province will determine what Acceptance Criteria to test during Conformance Evaluation. If the Province determines that the Interface Implementation does not meet the Acceptance Criteria ("**Non-Conformance**"), the Province will notify the SSO of such Non-Conformance and will provide the SSO with information reasonably available to the Province with respect to the Non-Conformance. The Province, at its discretion, may do one of the following with respect to any such Non-Conformance:

- (a) schedule other date(s) and time(s) for further Conformance Testing, provided that, unless otherwise agreed by the Parties, any such further testing is at least one month after the Province's delivery of notice to the SSO of Non-Conformance. The SSO will use its best efforts to promptly correct all Non-Conformance issues identified by the Province prior to any such further Conformance Testing of the Interface Implementation; or

- (b) notify the SSO that the Interface Implementation has failed Conformance Evaluation, in which case the Conformance Evaluation process in relation to the Interface Implementation will end. Subject to any limitations imposed by the Province respecting how often an Interface Implementation may be submitted for Conformance Evaluation and any further direction of the Province, the SSO may resubmit the Interface Implementation for Conformance Evaluation after correcting all Non-Conformance issues.

### **3.9 Interface Approval Notice.**

If the Province determines that the Interface Implementation meets the Acceptance Criteria and that it otherwise approves of the Interface Implementation, the Province will sign and deliver a written notice to the SSO stating that the Interface Implementation has passed Conformance Evaluation (an “**Interface Approval Notice**”). Unless otherwise provided in the Interface Approval Notice, upon delivery of the Interface Approval Notice to the SSO the Interface Implementation, as described by the SSO in the Initiation Notice, will be deemed to have passed Conformance Evaluation for the purposes of this Agreement. From and after the date that the Interface Approval Notice is delivered to the SSO, the SSO will be eligible, upon the terms and conditions set forth in the Interface Approval Notice and in this Agreement, to supply the approved Interface Implementation to Practitioners who are customers of the SSO.

## **ARTICLE 4 – PRIVACY, SECURITY AND CONFIDENTIALITY**

### **4.1 Privacy and Security Obligations.**

The SSO will at all times, and will ensure that its Personnel, its Subcontractors and its Subcontractor’s Personnel, comply with the obligations and requirements set forth in this Article 5.0.

### **4.2 Custody and Control of Data.**

The Province and the SSO acknowledge and agree that, at all times:

- (a) Province Data is under the custody and control of the Province, and
- (b) Disclosed Data is under the custody and control of the Practitioner for the individuals who are the subjects of the Disclosed Data, notwithstanding that the Disclosed Data may be in the possession of the SSO.

### **4.3 Acknowledgement.**

The SSO acknowledges that, in connection with its provision of an Interface Implementation to Practitioners, the SSO may be given access to and possession of highly confidential and sensitive information, including Personal Information contained in or obtained from one or more of the

Province Systems, and that the confidentiality, privacy and security of such information is of paramount importance.

#### **4.4 Access to and use of Data.**

Except as expressly permitted in paragraph (b)(i) below, the SSO expressly acknowledges that it and its Subcontractors have no obligation or right to access or use any Province Data or Disclosed Data in respect of this Agreement or the performance of any services in relation to an Interface Implementation, notwithstanding that Disclosed Data may be accessed, transmitted and stored by Practitioners and their authorized Personnel using the services, systems, networks and facilities of the SSO and/or its Access Subcontractors. Notwithstanding Section 4.18, 4.19 and 4.20 but otherwise subject to the other terms of this Article 4, with respect to Province Data and Disclosed Data, SSO agrees as follows:

- (a) Except as expressly set out in paragraphs (b) and (c) below, the SSO will not take any action or fail to take any action, that in either case results in the SSO or its Subcontractors intercepting, accessing or using any Province Data or Disclosed Data;
- (b) During the term of this Agreement, the SSO or an Access Subcontractor may:
  - (i) access or use Province Data where authorized by an express and lawful written direction of the Province, to the extent of any such authorization,
  - (ii) access Disclosed Data for a Permitted Purpose, and
  - (iii) access or use Disclosed Data where expressly directed by a Practitioner, provided that: (A) such access or use is only for the purpose, and to the extent, directed by the Practitioner, and (B) the SSO, acting in a commercially reasonable manner, has no reason to believe that such direction by the Practitioner is contrary to the Practitioner's obligations to the Province under the System Access Agreement or otherwise under Applicable Law;
- (c) Upon the expiration or termination of this Agreement, the SSO or an Access Subcontractor may only access or use Disclosed Data as directed by the applicable Practitioner;
- (d) The SSO will take appropriate measures and have procedures in place to ensure that its Personnel and Subcontractors do not access or use Disclosed Data except as expressly permitted by this Agreement, including taking measures and having procedures in place to prevent unauthorized access, collection, use, disclosure, copying, modification or disposal;
- (e) Without limiting paragraphs (a), (b), (c) or (d) above, the SSO:

- (i) may only collect, create, access, use, hold and copy Disclosed Data on behalf of Practitioners and to the extent necessary for the performance of the Interface Access Services or the Permitted Purposes;
- (ii) will not, in respect of Disclosed Data, engage in data sharing, data mining, data matching, or similar activities except:
  - A. in respect of Disclosed Data in the custody and control of a Practitioner, as permitted in writing and in advance by that Practitioner in the course of their health care services to patients, or
  - B. data analysis of Disclosed Data in the custody and control of a Practitioner to the extent necessary for the SSO to monitor, maintain, and improve the Interface Implementation as contracted by the Practitioner,
 and then only having regard to Applicable Laws;
- (iii) will not permit any third-party (other than Practitioners and their authorized Personnel) to: (A) use any user IDs, passwords or other credential (whether physical or logical) that is issued by the Province and permits Access to a Province System (a “**System Credential**”), or (B) Access a Province System;
- (iv) will not divulge, share or compromise a System Credential; or
- (v) will not test or examine the security related to a system or network of the Province that is used to store or transmit Province Data.

#### **4.5 Unauthorized Storage, Access to, Disclosure or Use.**

The SSO will immediately report and provide particulars to the Province in writing: (a) of any storage, access to, disclosure or use of Province Data or Disclosed Data contrary to the provisions of this Agreement and any Applicable Laws related to privacy and the collection, use and disclosure of such information, or (b) if it has knowledge of any circumstances, incidents or events which have or may jeopardize the security, confidentiality, or integrity of information in a Province System, including any unauthorized attempt to access a Province System. The SSO will treat any such matter as a priority, and will immediately investigate the matter and implement measures to correct the matter and to prevent a recurrence of the matter, including such measures as may be required by the Province. The Province may in its discretion publicly disclose, on its website or otherwise, the occurrence of any such matter and the corrective measures required and taken as contemplated by this Section.

#### **4.6 Foreign Disclosures.**

The SSO will immediately inform the Province if the SSO receives any subpoena, warrant, order, demand or request that is from a foreign court, an agency of a foreign state or another authority outside of Canada, or any directions or requests from any affiliates (as defined in the *Business Corporations Act* (British Columbia)) of the SSO in respect of the same, and in each case, related to any Province Data or Disclosed Data that is in the possession of the SSO (each a “**Disclosure Order**”). Upon receipt of a Disclosure Order, the SSO will not disclose any

Province Data or Disclosed Data in response thereto and the SSO will at all times act in accordance with the terms and conditions of this Agreement.

#### **4.7 Storage at Specified Location(s), Only Canadian Entities May Store, Access or Use.**

Except as expressly provided in Section 4.8, the SSO will arrange its affairs to ensure that:

- (a) Disclosed Data is only stored by the SSO and its Access Subcontractors at the Data Centre Location(s), unless the Province approves otherwise in writing, and
- (b) all storage of, access to, and use of Disclosed Data by the SSO and its Access Subcontractors in the course of providing an Interface Implementation to Practitioners will be: (i) from within Canada, and (ii) performed by employees of Canadian Entities or, in the case of Access Subcontractors who are individuals, by Canadian residents (“**Canadian Access Personnel**”).

#### **4.8 Foreign Access to Disclosed Data.**

The SSO may access Disclosed Data from a location outside of Canada (“**Foreign Access**”) and by employees and contractors who are not Canadian Access Personnel only for a Permitted Purpose and then in accordance with the Foreign Access Conditions. Without limiting the foregoing, the SSO will ensure that, except for a Permitted Purpose and then only in accordance with the Foreign Access Conditions: (a) the SSO will not make Disclosed Data available to any SSO Personnel, Access Subcontractors or Access Subcontractor Personnel while any such persons are physically located outside of Canada, on either a temporary or permanent basis, and (b) no Interface Access Services will be provided or performed by the SSO in any location outside of Canada.

#### **4.9 Foreign SSO.**

If the SSO itself is not, or ceases to be a Canadian Entity (a “**Foreign SSO**”), then the Foreign SSO will use Access Subcontractors that are Canadian Entities, or, in the case of Access Subcontractors who are individuals, who are Canadian residents (“**Canadian Access Subcontractors**”), to ensure its compliance with Sections 4.7 and 4.8. Further, the Foreign SSO will not include any terms in its agreements with its Canadian Access Subcontractors permitting the Foreign SSO to access or use Province Data or Disclosed Data, except as provided in Section 4.8.

#### **4.10 Disclosure of Data.**

Notwithstanding Section 4.18, 4.19, 4.20 and any other term of this Agreement or any other obligation or right of the SSO, the SSO will not disclose to any person (other than Access Subcontractors in accordance with and subject to the terms of this Agreement, the Province, Practitioners and their authorized Personnel) or allow any such person to access or use Province

Data or Disclosed Data (including when stored at the facilities from where the SSO or an Access Subcontractor provides Interface Access Services), except pursuant to an order of a Canadian court of competent jurisdiction in accordance with Section 4.11.

#### **4.11 Court Order Disclosure.**

If the SSO is required, in order to satisfy any Applicable Laws, to disclose Province Data or Disclosed Data to any person, then the SSO will not disclose or allow access to the same unless and until the SSO:

- (a) has provided the Province and any applicable Practitioners with written notice of such requirement;
- (b) the SSO and (at their option) the Province and any applicable Practitioners have appeared before a Canadian court having competent jurisdiction; and
- (c) such Canadian court has ordered that the SSO disclose or allow access to the Province Data or Disclosed Data.

#### **4.12 Flow through of Terms to Access Subcontractors.**

The SSO will flow through the requirements of Sections 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10 and 4.11 to any Access Subcontractors to apply to the Access Subcontractors, *mutatis mutandis*.

#### **4.13 Privacy Commissioner Inspections.**

The SSO acknowledges that the British Columbia Information and Privacy Commissioner has the power to obtain information and evidence from persons in the course of conducting an investigation or inquiry. Accordingly, the SSO will provide cooperation with respect to investigations or inquiries of the British Columbia Information and Privacy Commissioner in accordance with Applicable Law.

#### **4.14 Non-Disclosure Documents.**

If requested to do so by the Province, the SSO will ensure that its Personnel, Subcontractors and Subcontractor Personnel (including Personnel of Access Subcontractors) enter into direct agreements with the Province binding those persons to privacy, confidentiality, and non-disclosure obligations as required by the Province and in a form approved by the Province, substantially the same as the privacy, confidentiality and non-disclosure obligations of this Agreement in whole or in part with regard to the particular circumstances, as determined by the Province.

#### **4.15 Specific Privacy and Security Measures.**

Without limiting any other requirement of this Article 4.0, and solely as it relates to the SSO (not the Practitioner), the SSO must:

- (a) take all reasonable measures to ensure that all Access to a Province System through an Interface Implementation appropriately uses the secure network or security technology that the Province certifies or makes available for that purpose, such as the Private Physician Network or any replacement or additional secure network. Unless otherwise agreed by the parties in writing, the use of any such network or technology by the SSO will be at its own cost and in accordance with the terms and conditions of use, including acceptable use policies, (if any) established by the Province and published in the Conformance Standards or otherwise communicated to the SSO from time to time by the Province in writing;
- (b) comply with all Applicable Laws related to privacy and the collection, use and disclosure of Disclosed Data;
- (c) have defined roles and responsibilities with respect to privacy and security for its Personnel, Access Subcontractors and Access Subcontractor Personnel that provide Interface Access Services;
- (d) employ, and ensure that Access Subcontractors employ as is relevant to the subcontracted obligations, technological and business processes to ensure that Province Data and Disclosed Data in electronic and other formats is located and accessed only from Canada in the course of providing Interface Access Services, except for the Permitted Purpose and then subject to the Foreign Access Conditions;
- (e) have, and ensure that Access Subcontractors have as is relevant to the subcontracted obligations, audit and control procedures to monitor and enforce compliance with the privacy, security and confidentiality obligations of this Agreement;
- (f) have in place and comply with appropriate record retention policies that ensure that all records containing Disclosed Data are retained in conformity of the applicable Practitioner's professional obligations and Applicable Laws;
- (g) contractually bind all Subcontractors to comply with this Article 4.0 of the Agreement, as applicable with regard to the subcontracted obligations, and will have practices and requirements to validate that the Subcontractors comply therewith; and
- (h) on the Province's request not more than once per calendar year, sign and provide to the Province a compliance certificate in a form provided by the Province regarding compliance with this Article 4.0 of the Agreement.

#### **4.16 Definition of Confidential Information.**

In this Agreement,

- (a) “**Confidential Information**” of the Province means any technical, business, financial, personal, employee, operational, scientific or other information or data (including without limitation, the terms of this Agreement) of the Province or any

person that has disclosed such information to the Province or its agents that, at the time of disclosure (i) is designated as confidential (or like designation) (ii) is disclosed in circumstances of confidence, or (iii) would be understood by a person exercising reasonable business judgement to be confidential. Province Confidential Information includes all such information or data in whatsoever form or media, whether in writing, in electronic form or communicated orally or visually. Without limiting the generality of the foregoing, the Province Confidential Information excludes Disclosed Data in the custody and control of a Practitioner, and includes Province Proprietary Materials and any information of the Province or a third party person that is designated in the Conformance Standards as confidential (or similar designation). For greater certainty, the SSO will have no right in, and will have no right to restrict the use of disclosure by the Province, of any Province Confidential Information.

- (b) “**Confidential Information**” of the SSO means any technical, business, financial, personal, employee, operational, scientific or other information or data of the SSO that is supplied to, obtained by, or that comes to the knowledge of the Province as a result of this Agreement and that is, at the time of disclosure (i) designated as confidential (or like designation) (ii) is disclosed in circumstances of confidence, or (iii) would be understood by a person exercising reasonable business judgement to be confidential.

#### **4.17 Safeguarding Confidential Information.**

Each of the parties acknowledges and agrees that all Confidential Information of the other party, whether received or created before or after the effective date of this Agreement, will be received in strictest confidence and held in accordance with and subject to the terms of this Agreement. The party receiving Confidential Information will retain such information in confidence and will treat it in accordance with the terms of this Agreement and with a degree of care no less than the degree of care that the receiving party employs for the protection of its own Confidential Information of a similar nature, provided that in any event the SSO will use no less than a reasonable degree of care to protect such Confidential Information appropriate to the nature of the information.

#### **4.18 Permitted Disclosure and Use of Confidential Information.**

Subject to Sections 4.4, 4.10 and 4.11 and all other obligations set forth in this Agreement, a Party may use and disclose relevant aspects of another party’s Confidential Information to the extent reasonably necessary to perform its obligations and exercise its rights under this Agreement, and in the case of the Province, as reasonably necessary or desirable in connection with the administration of health care delivery in British Columbia.

#### **4.19 Exceptions to Obligation of Confidentiality.**



Subject to Sections 4.4, 4.10 and 4.11, the obligations of confidentiality contained in this Article 4.0 will not apply to any information to the extent that a party can reasonably demonstrate that such information:

- (a) was, at the time of disclosure to the receiving party, in the public domain;
- (b) after disclosure to the receiving party, is published or otherwise becomes part of the public domain through no fault of the receiving party;
- (c) was in the possession of the receiving party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation;
- (d) was disclosed independently to the receiving party by a third party without any confidentiality obligations, provided such third party, or any other party from whom such third party receives such information, is not in breach of any confidentiality obligations in respect of such information;
- (e) was independently developed by the receiving party without use of any Confidential Information of the other party;
- (f) is disclosed with the prior written approval of the other party, but only to the extent approved by the other party; or
- (g) is Confidential Information of the SSO and such information is required to be disclosed by the Province under the *Freedom of Information and Protection of Privacy Act* (British Columbia).

#### **4.20 Disclosure Compelled by Law.**

Subject to Sections 4.4, 4.10 and 4.11, a party will not be considered to have breached its confidentiality obligations under this Article 4 for disclosing any Confidential Information of the other party to the extent such disclosure is required to satisfy any applicable laws provided that the party requested to make such disclosure (the “**Compelled Party**”):

- (a) promptly upon receiving any such request and within a reasonable time prior to disclosure notifies the other party of the terms and circumstances of the requested disclosure;
- (b) consults with the other Party regarding the nature and scope of such request and the response or other position that the Compelled Party intends to take with respect to such request;
- (c) does not obstruct, interfere with, and to the extent practical, permits the other party to obtain, a protective order or other remedy to prevent, object to, enjoin, narrow the scope of, or otherwise contest the requested disclosure;
- (d) if the other party is unable to obtain a protective order or other similar remedy within a time period that is appropriate in the circumstances, then the Compelled Party will only disclose such of the Confidential Information that it is legally obligated to disclose; and

- (e) makes and reasonably pursues a request, that is reasonable and customary in the circumstances, to the applicable governmental authority, for confidential treatment of the information to be disclosed pursuant to such applicable laws.

#### **4.21 Notification of Unauthorized Use of Confidential Information.**

Each party will promptly notify the other party of any unauthorized possession, use, access or disclosure, or attempt to effect the same, of the other party's Confidential Information by any person that may become known to such party.

#### **4.22 Breach of Confidentiality.**

In the event of a breach of this Article 4.0, and to the extent available pursuant to Applicable Laws (including, without limitation, the *Crown Proceeding Act* (British Columbia)), the non-defaulting party will be entitled to preliminary and permanent injunctive relief, as well as an equitable accounting of all profits and benefits arising out of such breach, which remedy will be in addition to any other rights or remedies to which a party may be entitled under this Agreement or otherwise under any Applicable Laws.

#### **4.23 No Rights to Confidential Information.**

Nothing contained in this Article 4.0 will be construed as obligating a party to disclose its Confidential Information to the other party, or as granting or conferring on a party, expressly or implied, any right, title or interest or any license in or to the Confidential Information of the other Party.

### **ARTICLE 5 – AUDIT**

#### **5.1 Audit.**

At the request of the Province, the SSO will:

- (a) disclose to the Province the location of all premises from which the SSO or its Access Subcontractors provide Interface Access Services in relation to an Interface Implementation; and
- (b) permit the Province and/or its representatives and agents to conduct periodic audits related to performance by the SSO of the SSO's obligations under this Agreement. Any such audit will be conducted on reasonable notice to the SSO and subject to the Province and its representatives agreeing to comply at all times with the SSO's or its Access Subcontractor's reasonable rules and regulations regarding safety, security, and conduct, while on the SSO's or its Access Subcontractor's premises.

### **ARTICLE 6 – INTELLECTUAL PROPERTY**

### **6.1 Ownership of Province Proprietary Materials.**

The Province (or its licensors, as the case may be) will be and remain the exclusive owner of all rights, title and interest, including all intellectual property rights, in and to the Province Proprietary Materials.

### **6.2 Ownership of Interface Implementation.**

Subject to Section 6.1 and any written agreement between the parties to the contrary, the SSO (or its licensors, as the case may be) will be and remain the exclusive owner of all rights, title and interest, including all intellectual property rights, in and to an Interface Implementation.

### **6.3 Use of Province Training Materials and Province Proprietary Software by SSO.**

Subject to the provisions of this Agreement, the SSO will have the non-exclusive, non-transferable right during the term of this Agreement, without cost or charge but subject to any third party rights as notified by the Province to the SSO, to: (i) use the Province Training Materials (if any) which the Province in its discretion makes available to the SSO for Interface Application Training, and (ii) use the Province Proprietary Software (if any) which the Province in its discretion makes available to the SSO in order to perform Conformance Testing or to enable Access to a Province System. All such use will be for the purposes of this Agreement and will be in accordance with the terms of this Agreement and the Conformance Standards, and will be subject to any restrictions, license terms or policies as reasonably determined by the Province, and any third party rights therein, all as may be notified in writing by the Province to the SSO. In connection therewith, the following provisions will apply:

- (a) the foregoing rights granted to the SSO do not give the SSO the right, and the SSO is not authorized, to (i) reverse engineer, disassemble, or decompile, alter, modify or create derivative works from the Province Proprietary Materials (other than to modify the Province Training Materials as expressly permitted by the Province), (ii) copy the Province Training Materials (except as required to distribute those training materials to Practitioners and their authorized Personnel) (iii) copy the Province Proprietary Software (except that the SSO may make one copy in machine-readable form solely for backup purposes of the Province Proprietary Software components, if any, that are installed on the SSO systems, provided that the SSO reproduces on such copy the copyright notice and any other proprietary legends that were on the original), (iv) market the Province Proprietary Materials, (v) remove, obscure or modify any markings, labels or any notice of proprietary rights, including copyright, patent and trademark notices of the Province or its licensors from the Province Proprietary Materials, (vi) release the results of any testing or benchmarking of the Province Proprietary Materials without the prior written consent of the Province, or (vii) authorize any other Person to access or use the services of the Province Proprietary Software other than as may be expressly permitted in this Agreement;

- (b) the foregoing rights are granted on an “as is” basis without representation, warranties or condition of any kind, whether oral or written or express or implied, and the Province specifically disclaims any warranties or conditions of fitness for a particular purpose, merchantability, merchantable quality, durability, satisfactory quality and non-infringement; and
- (c) the foregoing rights will terminate upon the expiry or termination of this Agreement.

#### **6.4 Other Access, Data Sharing and Third Party Agreements.**

Notwithstanding Section 6.3, the Province reserves the right to require the SSO to enter into such separate license and other agreements as the Province may require with regard to access to and use of any Province Proprietary Materials or the access to and sharing of any data held or made available by the Province, including Province Data. The license granted by the Province to the SSO in Section 6.3 (i) will not extend to any matter referred to in the preceding sentence, and (ii) will not apply to any person (such as health authorities) other than the Province that may hold data or have software that the SSO may need to access or use in connection with the SSO providing software and/or services to Practitioners.

#### **6.5 Province access/use of Interface Implementation for Test Purposes.**

Unless otherwise agreed by the Parties, during the term of this Agreement the SSO will provide the Province with reasonable access to, and use of, all SSO-supported versions of the Interface Application(s) that have passed Conformance Evaluation. Any such access to, and use of, an Interface Application by the Province:

- (a) will be solely for the purposes of the Province’s own internal testing, validation and troubleshooting of the Interface Application’s integration to the Province System(s),
- (b) will be provided by the SSO at no charge or cost to the Province, and
- (c) will be subject to any restrictions or license terms or conditions that are generally applicable to the Interface Application and communicated by the SSO to the Province in writing.

### **ARTICLE 7 – DISCLAIMER, LIMITATION OF LIABILITY AND INDEMNITY**

#### **7.1 Disclaimer.**

Access to a Province System is provided “as is”, without warranty or condition of any kind, whether oral or written or express or implied, and the Province specifically disclaims any warranties or conditions of fitness for a particular purpose, merchantability, merchantable quality, durability, satisfactory quality and non-infringement. The Province does not warrant the

accuracy or the completeness of any information provided by the Province to the SSO under this Agreement, or that Access to a Province System will function without error, failure or interruption.

## 7.2 Information and Materials at SSO's Own Risk.

The SSO agrees that any information, or materials received or otherwise obtained by the SSO in connection with this Agreement is at the SSO's own risk. The Province is not responsible for the SSO's computer systems or loss of data that may result from Conformance Testing or any Access to a Province System.

## 7.3 Indemnity by SSO.

- (a) The SSO will indemnify and save harmless the Province and its employees, advisors, agents and representatives (collectively, the "**Province Indemnified Parties**") from and against all claims, demands, losses, damages, costs and expenses made against or incurred, suffered or sustained by the Province Indemnified Parties at any time or times (whether before or after the expiration or sooner termination of this Agreement), including any claim of infringement of third-party intellectual property rights where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the SSO in connection with this Agreement (each a "**Loss**") excepting always liability arising out of the independent acts or omissions of the Province Indemnified Parties and Province contractors.
- (b) The indemnification by the SSO pursuant to paragraph (a) is limited to:
  - (i) \$2,000,000 per Loss; and
  - (ii) \$6,000,000 in the aggregate for all Losses.
- (c) The limitation set out in paragraph (b) does not apply to Losses for bodily injury or damage to real property or tangible personal property, or any Loss arising from a claim of infringement of third-party intellectual property rights, or any Loss arising from a breach of Article 4 (*Privacy, Security and Confidentiality*).
- (d) If the Province intends to make a claim for a Loss:
  - (i) then the Province will promptly notify the SSO in writing of the Loss as soon as the Province is aware of the Loss; and
  - (ii) if the Loss is on the basis of a third party claim that any element of an Interface Implementation infringes a patent, copyright, trademark or other proprietary right of any person,
    - (A) then the SSO will defend the Province against that claim at the SSO's expense and the SSO will pay all costs, damages and legal fees that a

court finally awards or are included in a settlement agreed to by the SSO, and

- (B) the Province will cooperate with the SSO and, where appropriate in the discretion of the Province, will allow the SSO to control, the defence and any related settlement negotiations.

## ARTICLE 8 – TERM AND TERMINATION

### 8.1 Five Year Term.

The term of this Agreement begins on the date first written above and will continue for **five years after that date**.

### 8.2 Termination by either Party.

Either Party may, on 60 days advance written notice to the other Party, terminate this Agreement for any reason or no reason.

### 8.3 Renewal.

The Parties may, by mutual written agreement, agree to renew this Agreement. The Province reserves the right to require any Interface Implementation that has previously passed Conformance Evaluation to undergo Conformance Evaluation again upon renewal of this Agreement.

### 8.4 Material Breach by SSO.

The SSO will be in material breach of its obligations under this Agreement upon the occurrence of any one or more of the following events (each a “**Material Breach**”):

- (a) any direct or indirect assignment of this Agreement by the SSO contrary to Section 9.7;
- (b) any disclosure of Province Data or Disclosed Data pursuant a Disclosure Order contrary to Section 4.6;
- (c) any breach of Article 4, including repeated minor breaches that have resulted in unauthorized access, collection, use, exposure or disclosure of Disclosed Data or Province Data and any storing, allowing access to, disclosure or use of Personal Information contrary to this Agreement or Applicable Laws, provided that before the Province determines, in its sole discretion, that the occurrence thereof constitutes a “**Material Breach**” the Province will have regard to all of the surrounding circumstances, including the nature and significance of the breach, the steps taken by the SSO to remedy the breach and the timeliness and effectiveness of such steps (it being understood that such consideration will in no way prevent the Province from determining that such breach constitutes a “**Material Breach**”); and

- (d) if the SSO breaches any other obligation under this Agreement and fails to rectify that breach to the satisfaction of the Province within 30 days (or such longer period as may be agreed to by the Province on a case-by-case basis) of its receipt of written notice from the Province requesting it to do so, or, where such breach is not capable of being rectified within such timeframe, the SSO fails to take or continue to take such steps and actions as may be reasonably necessary to rectify such breach to the satisfaction of the Province.

## **8.5 Remedies of the Province**

Without limiting any other rights or remedies of that the Province may have at law, in equity, or as otherwise set forth in this Agreement, upon the occurrence of a Material Breach the Province may at its option, elect to do any of the following:

- (a) publicly disclose the fact and details of the Material Breach on its website or otherwise,
- (b) by written notice to the SSO, direct that one or more of the Interface Implementation(s) affected by such breach (as determined by the Province) be immediately suspended, in which case the SSO will immediately stop providing, licensing or otherwise making such Interface Implementation(s) available to a Practitioner or any other third-party person until such time as further directed by the Province in writing, or
- (d) by written notice to the SSO, terminate this Agreement, with immediate effect or on a future date specified in the notice.

## **8.6 Consequence of Expiration or Termination.**

Unless the Province agrees otherwise in writing, upon expiration or termination of this Agreement:

- (a) the SSO will no longer permit Practitioners and their authorized Personnel to use the services, systems, networks and facilities of the SSO and/or its Access Subcontractors to Access the Province Systems,
- (b) the Province may revoke all Access to a Province System made through or in connection with an Interface Implementation of the SSO.

## **ARTICLE 9 – GENERAL**

### **9.1 Notices.**

All notices necessary under this Agreement will be given in writing, and either personally delivered, or sent by registered mail, email or facsimile to the SSO at the address set out on the first page of this Agreement, and to the Province at:

Director, Conformance and Integration Services  
Ministry of Health  
1483 Douglas Street, 4th floor  
PO Box 9635 STN PROV GOV  
Victoria, BC V8W 9P1  
Facsimile: (250) 356-6012  
Email: HLTH.CISSupport@gov.bc.ca

Notices, if personally delivered or sent by facsimile or email, will be deemed to have been received the same day, or, if sent by registered mail, will be deemed to have been received 4 days (excluding Saturdays, Sundays and statutory holidays) after the date of mailing. Either party may give notice to the other of a substitute address from time to time, which from the date such notice is given will supersede for the purposes of this Agreement any previous address specified by the party giving notice.

## **9.2 Subcontracts.**

No subcontract relieves the SSO from any of its obligations under this Agreement. The SSO must ensure that:

- (a) any person retained by the SSO to perform obligations under this Agreement, and
- (b) any person retained by a person referred to in paragraph (a) to perform these obligations

fully complies with this Agreement in performing the subcontracted obligations.

The terms of this Agreement will in all events be binding upon the SSO regardless of, and without regard to, the existence of any inconsistent or contrary terms in any agreements between the SSO and any Subcontractor, whether or not and without regard to the fact that the Province may have directly or indirectly been given or otherwise received notice of any such inconsistent term.

## **9.3 Severability.**

If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

## **9.4 Entire Agreement.**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.



### **9.5 Amendment.**

No term of this Agreement may be amended except by written instrument signed by each of the Parties, or by a unilateral notice of declaration given or made by one Party pursuant to the terms of this Agreement, in respect of a change or amendment that such Party is entitled to make under the terms of this Agreement without the requirement for the approval of the other Party.

### **9.6 Waiver.**

A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

### **9.7 Assignment.**

The SSO must not, either directly or indirectly, assign any of the SSO's rights under this Agreement without the Province's prior written consent, which consent may be given or withheld in the discretion of the Province, except where either such assignment is part of a corporate restructuring of the SSO or the sale of all or any part of the business or assets of the SSO, or the assignment is to an affiliate (as defined in the *Business Corporations Act* (British Columbia)) of the SSO, in which case such consent will not be unreasonably withheld.

### **9.8 Survival.**

The following provisions will survive the expiration or termination of this Agreement:

- (a) Sections 2.1, 3.1, 3.2, 4.4, 4.10, 4.11 and 4.16 to 4.24, Articles 6.0 and 7.0 and Section 8.6,
- (b) any provisions which by their nature are intended to survive, and
- (c) any other provisions of this Agreement which are required for the proper interpretation of the provisions set forth in paragraphs (a) and (b) above.

### **9.9 Governing Law.**

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

### **9.10 Agreement not Fetter.**

Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.

### **9.11 Binding Effect.**

This Agreement will be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

**9.12 Costs.**

The Province is not obligated to pay any amounts to the SSO for the performance of an Interface Implementation or the performance of the SSO's obligations under this Agreement, including under Section 4.15. All charges that the SSO wishes to make for, and all costs and expenses that the SSO incurs in, the performance of an Interface Implementation and the performance of the SSO's obligations under this Agreement will be, directly or indirectly, included in the SSO's charges to the Practitioners who are customers of the SSO.

**9.13 Counterparts.**

This Agreement may be executed in several counterparts, each of which will be deemed to be an original. Such counterparts together will be construed one and the same instrument, notwithstanding that all the parties are not signatories to the original or the same counterpart.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first written above.

SIGNED on behalf of Her Majesty )  
the Queen in right of the )  
Province of British Columbia by )  
a duly authorized representative )  
of the Minister of Health )  
in the presence of: )  
)  
)  
)  
)  
\_\_\_\_\_ )

(Witness)

\_\_\_\_\_  
For the Minister of Health

SIGNED AND DELIVERED by )  
**@NAME-OF-SSO** )  
in the presence of: )  
)  
)  
)  
)  
\_\_\_\_\_ )

(Witness)

\_\_\_\_\_  
**@NAME-OF-SSO**

**SCHEDULE A – PRACTITIONER SYSTEM ACCESS AGREEMENT**

[attach applicable Practitioner System Access Agreement template]