



Data Sharing Agreement Template for Non-Trustees

Instruction Sheet

Purpose: This Data Sharing Agreement is intended to be utilized in situations where personal health information is being shared between a Pharmacy and a third party who is not a "trustee" as defined by HIPA. The purpose of the Data Sharing Agreement is to set out the roles and responsibilities of the parties with respect to the protection of the personal health information and to ensure that appropriate privacy and security measures are in place.

Disclaimer: The attached is a template document and must be amended as necessary to align with the details of the particular arrangement. It is important to note that each Pharmacy should review the template documents with legal counsel and obtain legal advice before signing any agreement.

**DATA SHARING AGREEMENT
(Trustee to Non-Trustee)**

This Data Sharing Agreement made effective the _____ day of _____, 20_____.

BETWEEN:

[insert name and address of Pharmacy](the "Pharmacy")

AND:

[insert name and address of the Non-Trustee] (the "Non-Trustee")

WHEREAS:

1. **Non-Trustee Access.** The Non-Trustee requires access to information about patients of the Pharmacy for the purposes of *[insert description of authorized purpose – e.g. supporting or providing health services to patients, obtaining payment for the provision of services to patients, etc.]*.
2. **PHI.** The parties recognize that such information may include highly sensitive personal health information ("PHI").
3. **Applicable Legislation.** This information is being shared by the Pharmacy pursuant to Section 21 of *The Health Information Protection Act (Saskatchewan)* ("HIPA") which states as follows:
21 Where a trustee discloses personal health information to a person who is not a trustee, the trustee must:
 - (a) take reasonable steps to verify the identity of the person to whom the information is disclosed; and
 - (b) where the disclosure is made without the consent of the subject individual, take reasonable steps to ensure that the person to whom the information is disclosed is aware that the information must not be used or disclosed for any purpose other than the purpose for which it was disclosed unless otherwise authorized pursuant to this Act.
4. **Purpose.** The purpose of this Agreement is to establish the basic terms and conditions for such information sharing.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. **Description of Data.** The data elements to be shared between the parties are *[insert description of the data elements – e.g. prescription information, health services number, etc.]* (the "Data").
2. **Purpose for Sharing.** The Non-Trustee requires access to the Data for the purposes of *[insert description of authorized purpose – e.g. supporting or providing health services to patients, obtaining payment for the provision of services to patients, etc.]*.

3. **Conditions for Sharing.** Unless otherwise agreed to in writing, the Pharmacy agrees to provide the Data to the Non-Trustee on the following conditions:
 - a. The Non-Trustee and its employees and agents shall comply with all of the applicable provisions of HIPA as it relates to the collection, use and disclosure of the Data, including compliance with the general duties of a trustee under HIPA as set out in Schedule A.
 - b. The Non-Trustee shall restrict use of the Data to those of its employees and agents who have a need to know for a purpose permitted or authorized pursuant to this Agreement and who have, prior to such access or disclosure, agreed (or are otherwise under a legal or ethical obligation) to protect the privacy and security of the Data to at least the same extent as provided herein.
 - c. The Non-Trustee shall only use the Data for the purposes for which it was obtained, as per section 2 above.
 - d. The Non-Trustee acknowledges and agrees that the Data, and access thereto, is being provided on an "as is, as available" basis, and is not intended to constitute medical advice. The Non-Trustee further acknowledges and agrees that the Pharmacy is not responsible nor liable for any losses, expenses, or damages (of any kind and howsoever arising) that the Non-Trustee (or any third party) may suffer or incur relating to or arising out of the inaccuracy, incompleteness, corruption, deletion, or unavailability (whether temporary or permanent) of any Data.
 - e. The Non-Trustee agrees that all decisions relating to the use of or reliance upon the Data received pursuant to this Agreement are the responsibility of the Non-Trustee.
 - f. The Non-Trustee shall indemnify the Pharmacy, its directors, officers, contractors, subcontractors, employees and agents from and against all losses, claims, damages and reasonable expenses relating to or arising out of such decisions or use except to the extent such losses, claims, damages and expenses are caused by the negligence or wilful misconduct of the Pharmacy, its employees or agents.
4. **Privacy Incidents.** Each party will immediately advise the other party:
 - a. if it becomes aware of any inaccuracies in the Data provided to the other party;
 - b. if it becomes aware or suspects that the security of the Data may have been compromised; or
 - c. if it becomes aware that it has breached any of the requirements of this Agreement.
5. **Privacy Breach Procedure.**
 - a. Each party (the "Notifying Party") shall promptly notify the privacy officer of the other party (the "Receiving Party"), in writing, in the event that the Notifying Party becomes aware of, or reasonably suspects, any unauthorized or improper access to, use of or disclosure of the Data, or if a patient or other individual has raised a privacy or security concern with respect to the Data (a "Privacy Incident").

- b. Both parties agree to take all reasonable steps to mitigate any harmful effect resulting from any such Privacy Incident and to remediate the Privacy Incident. For greater certainty:
 - i. the Pharmacy agrees to take responsibility for any actions taken by the Pharmacy or its employees or agents that may have led to the Privacy Incident; and
 - ii. the Non-Trustee agrees to take responsibility for any actions taken by the Non-Trustee or its employees or agents that may have led to the Privacy Incident.
6. **Term.** The term of this Agreement shall be for a period of one year from the date of execution and shall continue in force on a year-to-year basis thereafter unless and until terminated in accordance with the provisions of this Agreement.
7. **Termination.** Either party may terminate this Agreement for convenience by providing ninety (90) days' prior written notice to the other party. The Agreement may also be terminated at any time and without notice on the written agreement of the parties.
8. **Material Breach.** Either party may terminate this Agreement for cause at any time upon written notice in the event the other party has breached this Agreement in a material way.
9. **Applicable Laws.** Notwithstanding anything else in this Agreement, both parties agree to comply with all present and future laws respecting or applicable to their respective collection, use, handling and disclosure of the Data. If new legislation is proclaimed into force relating to, or impacting the Data sharing contemplated by this Agreement, both parties agree to negotiate in good faith and in a commercially reasonable manner such further agreements, amendments or documents as reasonably required to ensure compliance with such legislation by both parties.
10. **Highest Standards Applicable.** The obligations contained in this Agreement are intended to be complementary to the obligations the parties have pursuant to applicable law. In the event of any inconsistency between such obligations, the obligations imposed by law shall govern, provided that, to the extent this Agreement imposes a higher confidentiality or security standard than the standard imposed by law, this Agreement shall govern.
11. **Survival.** Terms and conditions of this Agreement relating to use of the Data, privacy and confidentiality, and indemnification shall survive the termination of this Agreement.
12. **Governing Law.** This Agreement shall be construed in accordance with the laws of the Province of Saskatchewan.
13. **Binding Agreement.** This Agreement is binding upon the parties and their respective successors and assigns.
14. **Costs.** Unless otherwise agreed to in writing, each party is responsible for its own costs and expenses, if any, related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

[Insert name of Pharmacy]

[Insert name of Non-Trustee]

Per: _____

Per: _____

Name:

Name:

Title:

Title:

SCHEDULE A

Sharing of Personal Health Information

It is anticipated that personal health information and records containing personal health information may be shared between the Pharmacy and the Non-Trustee pursuant to the Data Sharing Agreement to which this Schedule is attached for the purposes of *[insert description of authorized purpose – i.e. supporting or providing health services to patients, obtaining payment for the provision of services to patients, etc.]*.

Personal health information ("PHI") shared for these purposes will be disclosed on a trustee-to-non-trustee basis as per section 21 of *The Health Information Protection Act* ("HIPA"). Despite the fact that it is not a "trustee" as defined in HIPA, the Non-Trustee agrees to be bound by the provisions in this Schedule A and agrees to comply with the general duties imposed under HIPA as if it were a trustee, including without limitation:

- (1) To appoint a person to be responsible for privacy and to follow the accountability recommendations set out by the Office of the Saskatchewan Information and Privacy Commissioner ("OIPC") on its website (<http://www.oipc.sk.ca/>);
- (2) To take all reasonable steps to comply with a revocation of consent promptly after receiving the revocation (section 7 of HIPA);
- (3) To take reasonable steps to inform individuals of the anticipated uses and disclosures of their PHI and to establish policies and procedures that provide information regarding the rights of individuals under HIPA (section 9 of HIPA);
- (4) To take reasonable steps to ensure that the trustee is able to inform an individual about any disclosure of that individual's PHI made without the consent of that individual (section 10 of HIPA);
- (5) To establish policies and procedures to maintain administrative, technical and physical safeguards that will:
 - a. protect the integrity, accuracy and confidentiality of PHI in its custody and control;
 - b. protect against any reasonably anticipated threat or hazard to the security or integrity of, loss of, or unauthorized use, disclosure or modification of PHI in its custody and control; or
 - c. otherwise ensure compliance with HIPA by its employees or agents (section 16 of HIPA);
- (6) To take reasonable steps to ensure that PHI collected by it is accurate and complete (section 19 of HIPA);
- (7) To limit collection, use and disclosure of PHI on a need-to-know basis (section 23 of HIPA);
- (8) To ensure that it has the consent (express or implied) of the subject individual to the collection and use of their PHI as contemplated in the Data Sharing Agreement.

Please see the OIPC website (<http://www.oipc.sk.ca/>) for further tips on compliance with HIPA.