

**eDOCSNL
Physician Participation Agreement**

Table of Contents

1.0	Definitions	2
2.0	Purpose	5
3.0	Eligibility Criteria	6
4.0	Fees and Terms of Payment.....	7
5.0	Term and Termination	7
6.0	Withdrawal by Participating Physician	8
7.0	Implementation of Med Access	9
8.0	Custodians and Information Manager	10
9.0	Sharing of EMR Data	10
10.0	Privacy and Security Obligations.....	11
11.0	Retention and Disposition of Data	12
12.0	Breach Protocol.....	13
13.0	Auditing	14
14.0	Other Requirements	14
15.0	Program Improvement.....	15
16.0	Accuracy and Integrity	15
17.0	NLCHI’s Responsibilities for Protection and Security of EMR Data	15
18.0	Compliance with the Professional Services Agreements between TELUS and NLCHI.....	16
19.0	TELUS Med Access Support Levels.....	16
20.0	TELUS Med Access Support Services.....	17
21.0	Storage	19
22.0	Data Export.....	19
23.0	Intellectual Property Rights	20
24.0	Notices	21
25.0	Dispute Resolution	22
26.0	Representations, Warranties, Indemnities and Limitations of Liability.....	22
27.0	Force Majeure.....	24
28.0	General Provisions	24

Appendices to the Physician Participation Agreement

- A. eDOCSNL electronic medical record Newfoundland and Labrador Program Subscription Cost
- B. Professional Services Agreement between TELUS and NLCHI
- C. TELUS Information Management Statement

eDOCSNL

PHYSICIAN PARTICIPATION AGREEMENT

BETWEEN: THE NEWFOUNDLAND AND LABRADOR CENTRE FOR HEALTH INFORMATION (NLCHI)

AND: Dr.
(the “Participating Physician”)

Herein referred to as “the Parties”

WHEREAS:

Her Majesty in Right of Newfoundland and Labrador as represented by the Minister of the Department of Health and Community Services (HCS), and the Newfoundland and Labrador Medical Association (NLMA) and the Newfoundland and Labrador Centre for Health Information (NLCHI) signed a Memorandum of Understanding (MOU) on the 30th day of October 2015 to jointly govern, implement and operate a sustainable Electronic Medical Record Program (“EMR Program”) herein referred to as eDOCSNL;

AND WHEREAS:

The purpose of eDOCSNL is to improve collaboration and information sharing between physicians and other healthcare providers, improve the overall quality of care, enhance the overall capability for patient safety within healthcare, provide a means for physicians to improve clinical efficiencies, and provide health information to inform future health planning and policy development;

AND WHEREAS:

The EMR Management Committee is responsible for the governance of eDOCSNL and NLCHI is responsible for administrative support for eDOCSNL, the integration between the Electronic Medical Record (EMR) and the provincial Electronic Health Record (EHR), and vendor management;

AND WHEREAS:

NLCHI, for and on behalf of eDOCSNL, will provide the Participating Physician with Med Access, the EMR Services provided by TELUS Health Solutions GP (TELUS), consisting of a suite of medical practice management applications that facilitate the electronic capture and display of patient medical records, clinical tools and reports, practice scheduling, billing, intra-clinic messaging, interfaces with regional lab providers, panel

reporting and related mobile applications. It captures, organizes and displays patient information in a user-friendly manner, in support of patient care and management of the Participating Physician's practice;

AND WHEREAS:

NLCHI has a mandate to assist individuals, communities, health service providers and policy makers at federal, provincial and regional levels in making informed decisions to enhance the health and well-being of persons in the province by providing accurate and current information to users of the health and community services system and integrating data from all components of the health and community services system, among other duties;

AND WHEREAS:

This Agreement sets out the terms and conditions for the sharing of EMR Data between the Participating Physician and NLCHI, to enable each party to meet its obligations as a Custodian under the Personal Health Information Act SNL 2008 c. P-7.01 ("PHIA"), as amended;

AND WHEREAS:

Pursuant to a Professional Services Agreement ("Professional Services Agreement") dated the 2nd day of November, 2015 between NLCHI and TELUS Health Solutions GP represented by its Managing Partner TELUS Health Solutions Inc., NLCHI retained the services of TELUS for the processing, retrieval, storage or disposal of EMR data, and to provide information management and information technology services for Participating Physicians and their Authorized Users, as defined therein;

NOW THEREFORE, the Parties agree as follows:

1.0 Definitions

1.1 Terms defined in PHIA have the same meanings in this Agreement, unless they conflict with a term defined in this Agreement or the context requires otherwise. In all cases, the terms set out in PHIA or other applicable legislation shall prevail.

1.2 The additional definitions that apply to this Agreement are:

- a) "**Agent**" has the meaning defined in PHIA;
- b) "**Agreement**" means this eDOCSNL Physician Participation Agreement, including all schedules and appendices, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

- c) **“Analytic Data Holdings”** - Personal Health Information collected by NLCHI to be used in making informed decisions to enhance the health and well-being of persons in the province;
- d) **“Authorized User”** means a Custodian in Newfoundland and Labrador, including a physician, and his/her employees, agents or contractors, who under this Agreement has been granted a subscription to Med Access;
- e) **“Canada Health Infoway”** means the independent not-for-profit organization funded by the Canadian federal government, with the purpose of realizing the vision of healthier Canadians through innovative digital health solutions;
- f) **“Custodian”** has the meaning defined in PHIA;
- g) **“eDOCSNL”** means the Newfoundland and Labrador provincial Electronic Medical Record Program, as administered by NLCHI;
- h) **“Electronic Health Record”** or **“EHR”** means a secure and private lifetime record of an individual’s key health history and care within the health system;
- i) **“Electronic Medical Record”** or **“EMR”** means the Participating Physician’s secure, computer-based patient record system that provides a collection of patient information, including, but, not limited to, medical history, conditions, medications, immunizations and allergies. It is sometimes extended to include other functions, such as order entry for medications and tests;
- j) **“EMR Data”** means Personal Health Information and Metadata entered, created or stored in an EMR;
- k) **“EMR Management Committee”** means the Committee established under the MOU responsible for the development and management of eDOCSNL;
- l) **“EMR Practice Advisor”** means the NLCHI employee who supports the Participating Physicians and his/her employees and agents in adopting Med Access;
- m) **“EMR Services”** means those services provided by TELUS pursuant to the Professional Service Agreement, including a subscription to Med Access and as described in Appendix “B” to the Professional Service Agreement;
- n) **“EMR Solution Releases”** means updates to Med Access provided by TELUS;

- o) “**Go-Live**” means the event upon which the use of the EMR by the Participating Physician commences in a clinical setting;
- p) “**HCS**” means the Department of Health and Community Services;
- q) “**Intellectual Property Rights**” means all copyrights, trade secrets, inventions, patents, designs, methods, processes, procedures, written materials, trademarks, trade names, service marks, domain names, ideas and concepts and any other intellectual property created or owned by the Participating Physician, NLCHI, and TELUS and its licensors, including all applications, registrations, licenses, sub-licenses, agreements or any other evidence of a right in any of the foregoing;
- r) “**Information Manager**” has the meaning defined in PHIA;
- s) “**Material Breach**” has the meaning as defined in the Personal Health Information Regulations under the PHIA (O.C. 2011-095);
- t) “**Med Access**” is a web-based, highly configurable Electronic Medical Record (EMR) that adapts to individual clinic and user preferences and work styles supporting ready integration into a clinical practice;
- u) “**Metadata**” means data that provides information about other data, including data descriptions and access rights to systems and documents. Metadata reveals the who, what, where, when, how and a variety of activities associated with data;
- v) “**NLCHI**” means the Newfoundland and Labrador Centre for Health Information, a corporation as created under the Centre for Health Information Act SNL 2004 c. 5.1;
- w) “**NLMA**” means the Newfoundland and Labrador Medical Association, a corporation continued under the Medical Act, SNL 2011 c. M-4.02;
- x) “**Participating Physician**” means a physician who is licensed or registered under the Medical Act, 2011 to practice medicine and who is a signatory to this Agreement;
- y) “**Personal Health Information**” means Personal Health Information as defined in the PHIA;

- z) **“Personal Health Information Act” (“PHIA”)** means the health-sector specific privacy law, proclaimed into force on April 1st, 2011, and as may be amended from time to time, that establishes rules that custodians and information managers of Personal Health Information must follow when collecting, using and disclosing Personal Health Information;
- aa) **“Professional Services Agreement”** means the contract between TELUS and NLCHI, signed Nov 2, 2015, and appended to this Agreement as Appendix “B”;
- bb) **“Secondary Use”** has the meaning defined in the MOU;
- cc) **“TELUS”** means TELUS Health Solutions Inc., a party to the Professional Service Agreement, and information manager for the Participating Physician.

PART ONE: TERMS AND CONDITIONS

2.0 Purpose

- 2.1 NLCHI grants to the Participating Physician, and up to three additional Authorized Users within that Participating Physician’s practice, a subscription to Med Access for purposes including, but not limited to: creating, maintaining, reviewing, and analysing records, and for business and medical practice purposes. Participating Physicians may add additional users as per Appendix “A”.
- 2.2 This Agreement establishes the terms and conditions of the Participating Physician’s participation in eDOCSNL.
- 2.3 The Parties acknowledge that this Agreement sets out the terms and conditions for the collection, use and disclosure of Personal Health Information between the Parties for patient care and other authorized uses and disclosures as defined by PHIA and/or the EMR Management Committee.
- 2.4 The Parties agree that the collection, uses and disclosures of Personal Health Information by NLCHI shall be governed by PHIA and by policies established by the EMR Management Committee.
- 2.5 All eDOCSNL procedures, policies, manuals or similar documentation are subject to approval by the EMR Management Committee.

- 2.6 NLCHI will maintain an eDOCSNL website with up-to-date information on EMR Management Committee approved policies, procedures, training programs, and the EMR Data that may be exchanged between the Participating Physician and the EHR and between the Participating Physician and NLCHI. The website address is www.eDOCSNL.ca.
- 2.7 NLCHI will work with TELUS to supply the Participating Physician with Med Access and related EMR Services, and the Participating Physician agrees to acquire the use of Med Access and related EMR Services in accordance with and subject to the terms and conditions set out in this Agreement and its appendices.

3.0 Eligibility Criteria

- 3.1 The Participating Physician represents and warrants that as of the date of Go-Live, and for the term of this Agreement, the Participating Physician:
- 3.1.1 is a registered and licensed medical practitioner under the Medical Act 2011; and
- 3.1.2 agrees to manage and maintain his/her patients' medical records in Med Access; and
- a) to use Med Access to securely house Personal Health Information necessary in the provision of healthcare; and
- b) to purchase the hardware, software and other related equipment required to meet the specifications of TELUS to connect to EMR Services; and
- c) to comply with other criteria as reasonably determined by the EMR Management Committee, and consistent with the purposes of the MOU.
- 3.2 The Participating Physician shall give prompt written notice to NLCHI of:
- 3.2.1 any change in circumstances as a result of which the Participating Physician no longer satisfies the Eligibility Criteria; and
- 3.2.2 any changes in his/her usage of Med Access or other factors that may affect the fees payable pursuant to this Agreement, including, but not limited to, providing access to Med Access to more than three other Authorized Users as described in Appendix A.

4.0 Fees and Terms of Payment

- 4.1 The Participating Physician shall pay to eDOCSNL the fee established in Appendix "A", eDOCSNL electronic medical record Newfoundland and Labrador Program Subscription Cost.
- 4.2 Any changes to the fees and terms of payment shall be as approved by the EMR Management Committee.
- 4.3 The Participating Physician is responsible for paying the subscription fee up to the end of the month in which the withdrawal or termination took effect.
- 4.4 If a Participating Physician fails to pay the annual fee within two months of the renewal date, the Participating Physician's subscription to Med Access will be changed to "View Only" meaning that the Participating Physician's Med Access will no longer accept additions or modifications to patient records, until such time as his/her account is paid.

5.0 Term and Termination

- 5.1 This Agreement shall come into force upon Go-Live and shall remain in force until:
 - 5.1.1 the Participating Physician provides ninety (90) days written notice to NLCHI that he/she wishes to withdraw from the eDOCSNL program; or
 - 5.1.2 the Participating Physician no longer meets the Eligibility Criteria at Article 3.1.1, at which time NLCHI may immediately terminate this Agreement and eDOCSNL will arrange for the physician to have access to his/her records; or
 - 5.1.3 such circumstances and within such timeframes as may be deemed necessary by the EMR Management Committee.
- 5.2 If either Party breaches its obligations under this Agreement and has not resolved such breach within thirty (30) business days of being provided with a written notice thereof, then either Party may terminate this Agreement immediately, upon providing written notice of termination to the other Party.

6.0 Withdrawal by Participating Physician

- 6.1 The Participating Physician acknowledges that upon the effective date of withdrawal from participation in eDOCSNL, he/she will no longer be entitled to access, use or disclose EMR Data using Med Access.
- 6.2 The Participating Physician acknowledges that he/she shall request from TELUS a copy of the Personal Health Information for which the Participating Physician is a custodian in the EMR and shall be entitled to receive the Personal Health Information and audit logs in accordance with Article 22, Data Export. During the transition period between the effective date of withdrawal or termination and the receipt of a copy of the EMR Data, the Participating Physician shall have “read-only” access to the EMR Data contributed by the Participating Physician.
- 6.3 The Participating Physician acknowledges that in the event he/she withdraws from participation in eDOCSNL without written notice to NLCHI, regardless whether such withdrawal arises because of death, abandonment, or other circumstances, custodianship of the Participating Physician’s EMR Data shall be in accordance with PHIA. If the Participating Physician has not appointed a custodian or personal representative, the EMR Management Committee may set direction as to how the Participating Physician’s EMR Data should be managed until a custodian is appointed under PHIA, and may take such actions as it deems necessary, including to:
 - 6.3.1 notify the College of Physicians and Surgeons of Newfoundland and Labrador; and
 - 6.3.2 make a recommendation(s) to the Minister of Health and Community Service for appointment of a custodian under PHIA.
- 6.4 The Participating Physician is responsible for meeting all requirements of the College of Physicians and Surgeons of Newfoundland and Labrador, including Bylaw 6: Medical Records.

7.0 Implementation of Med Access

- 7.1 Under the direction of the EMR Management Committee, NLCHI agrees to provide, and the Participating Physician agrees to participate in, implementation services including: orientation site visit, readiness assessment, development and execution of a site implementation plan, EMR user training, privacy advice, and Go-Live review.
- 7.2 The Participating Physician agrees to comply with any applicable protocols communicated by NLCHI and approved by the EMR Management Committee pertaining to access to the EHR and other health information systems.
- 7.3 The Participating Physician shall adopt EMR Solution Releases, provided by NLCHI and TELUS, as long as these releases are provided at no additional cost to the Participating Physician and are consistent with EMR Management Committee policy.
- 7.4 Should there be a cost associated with a required upgrade to hardware or software due to an EMR Solution Release, eDOCSNL will provide 12 months' notice of the expected expenditure. The EMR Management Committee may approve a shorter notice period if circumstances warrant.
- 7.5 The Participating Physician shall participate, and require his/her Authorized Users to participate, in any user training provided by eDOCSNL or TELUS in relation to such releases, to be held at a mutually agreeable time.
- 7.6 NLCHI will make available EMR Practice Advisors to assist the Participating Physician with adoption and the achievement of mature use of Med Access.

PART TWO: INFORMATION SHARING BETWEEN THE PARTICIPATING PHYSICIAN AND NLCHI

8.0 Custodians and Information Manager

- 8.1 The Participating Physician is the Custodian of the EMR Data within his/her Med Access, including when in transit and when stored in the Participating Physician's data holdings at TELUS's data centre.
- 8.2 NLCHI is the Custodian of EMR Data disclosed to NLCHI by a Participating Physician when that data resides with NLCHI including when in transit from TELUS to NLCHI.
- 8.3 TELUS agrees to be the Participating Physician's information manager and has executed in satisfaction of PHIA s. 22 the Information Management Statement appended hereto as Appendix "C".

9.0 Sharing of EMR Data

- 9.1 The Parties acknowledge that this Agreement establishes the terms and conditions for the collection, use and disclosure of Personal Health Information for the purposes of the delivery of health care services by health care professionals within the circle of care.
- 9.2 The Parties acknowledge that this Agreement also establishes the terms and conditions for the collection, use and disclosure of EMR Data for other authorized uses including Secondary Use.
- 9.3 The Participating Physician acknowledges that to fulfil the MOU, EMR Data will be used and disclosed in accordance with PHIA, the *Centre for Health Information Act* and as approved by the EMR Management Committee. The EMR Management Committee will approve an information management framework for the use and disclosure of EMR Data which specifies the data elements to be disclosed, the purposes for which the data is being disclosed, and any appropriate limitations on use of the data.
- 9.4 NLCHI acknowledges that it will use this EMR data for Secondary Use within the scope of the information management framework.

- 9.5 The Parties acknowledge that to support patient care and to fulfil the MOU, Personal Health Information will flow:
- a) from the EHR and other appropriate health information systems (e.g. Meditech) to the EMR and;
 - b) from the EMR to the EHR and other appropriate health information systems in accordance with PHIA, the Centre for Health Information Act and, as approved by the EMR Management Committee. Personal Health Information will be shared for the purpose of the delivery of health care services by health care professionals within the circle of care, consistent with the Information Management Framework.
- 9.6 The Parties agree that EMR and EHR Personal Health Information will be exchanged on an ongoing basis for the duration of this Agreement, unless terminated in accordance with Article 5 (Termination) or Article 6 (Withdrawal).
- 9.7 NLCHI shall implement policies and procedures on the collection, use and disclosure of EMR Data that have been approved by the EMR Management Committee. These policies will be available on www.eDOCSNL.ca.

10.0 Privacy and Security Obligations

- 10.1 The Participating Physician and NLCHI shall protect the privacy and confidentiality of the EMR Data in compliance with PHIA.
- 10.2 The Participating Physician shall develop, adapt or adopt policies and procedures consistent with the eDOCSNL Physician Privacy and Security Manual available at www.eDOCSNL.ca and as may be updated from time to time by the EMR Management Committee. Such policies shall include, but, not be limited to:
- 10.2.1 Explicit requirements for all employees, contractors and agents of the Participating Physician to comply with PHIA and all other applicable provincial and federal privacy legislation;
 - 10.2.2 Maintenance of appropriate hardware and software including robust, up-to-date antivirus, malware protection and firewalls, as well as a commitment to promptly address any hardware or software with known security vulnerabilities. Where appropriate, this includes the removal of software with known security or privacy vulnerabilities;
 - 10.2.3 Provisions to ensure the confidentiality of all passwords and ensure that each password is used only by one Authorized User.

- 10.3 NLCHI will implement appropriate measures to support ongoing adherence with privacy and security policies by both Parties. Any such policies that involve the Participating Physician's Med Access or clinic operations will be subject to approval by the EMR Management Committee.
- 10.4 The Participating Physician is responsible for the actions of his/her Authorized Users and for the content of the Personal Health Information in his/her Med Access.
- 10.5 The Participating Physician shall require all Authorized Users to sign a privacy and confidentiality agreement.
- 10.6 NLCHI agrees to comply with, and cause all employees, contractors and agents of NLCHI and TELUS to comply with PHIA and all other applicable provincial and federal privacy legislation.
- 10.7 The Parties agree that nothing in this Agreement will be interpreted as permitting a use, disclosure or other treatment of EMR Data that would in any matter contravene the terms of PHIA.

11.0 Retention and Disposition of Data

- 11.1 The following provisions shall govern the retention and disposition of Personal Health Information:
 - 11.1.1 Both Parties acknowledge that each party is solely responsible for the proper retention and disposition of Personal Health Information within their care or custody. Such action will be in accordance with PHIA and any other applicable legislation, and the by-laws and policies set out by the College of Physicians and Surgeons of Newfoundland and Labrador.
 - 11.1.2 NLCHI warrants, through the Professional Services Agreement, that no Personal Health Information acquired or managed by TELUS shall be stored, possessed or transmitted outside of Canada.
 - 11.1.3 The Parties acknowledge that any copies of the Personal Health Information created and designated by TELUS as a backup shall only be used for disaster recovery and business continuity purposes. Handling of such data shall be governed by the terms and conditions set out in the Professional Services Agreement, along with any policies established by the EMR Management Committee.

12.0 Breach Protocol

- 12.1 In the event of a breach, where a breach is an unauthorized use or disclosure of Personal Health Information, the Participating Physician is responsible for promptly taking reasonable steps to contain the breach, investigate and analyze the breach, notify the appropriate people or organizations of the breach, and take steps to prevent a recurrence of the event.
- 12.2 The Office of the Information and Privacy Commissioner must be notified when there is a Material Breach of Personal Health Information.
- 12.3 If the Participating Physician suspects or finds a Material Breach in Med Access, the Participating Physician will promptly notify the NLCHI Service Desk of such suspected or actual breach. Service Desk coordinates are: 709.752.6006 or Service.Desk@nlchi.nl.ca .
- 12.4 If the Participating Physician suspects or finds any breach, the Participating Physician is encouraged to notify the NLCHI Service Desk 1-877-752-6006.
- 12.5 The Participating Physician shall consult the Office of the Information and Privacy Commissioner, the Physician Privacy and Security Manual or the NLCHI Service Desk if they require additional advice on the management of a breach.
- 12.5 NLCHI must notify the Participating Physician of a Material Breach of the Participating Physician's EMR Data in the EHR or from NLCHI Analytic Data Holdings and shall provide the Participating Physician with complete details of the breach.
- 12.6 NLCHI is responsible for notifying the patient of a breach of his/her Personal Health Information if the breach occurred in the EHR or in NLCHI's Analytic Data Holdings.
- 12.7 The Participating Physician is responsible for notifying the patient of a breach of their Personal Health Information if the breach occurred in Med Access or the TELUS data centre, in accordance with the Participating Physician's notification policy, a sample of which is included in the Privacy and Security Manual which is part of the eDOCSNL Privacy and Security Resources.

13.0 Auditing

- 13.1 The Participating Physician will develop and follow clinic auditing policy and procedures in accordance with the Privacy and Security Resources.
- 13.2 Pursuant to Article 1.18 of the Professional Services Agreement, the Participating Physician acknowledges that the Professional Services Agreement authorizes TELUS to conduct investigations and/or audits of the Participating Physician's operations and records but only to the extent that these relate to the EMR Services. The Participating Physician is required to cooperate with TELUS in the investigations and audits. TELUS shall use reasonable efforts to minimize disruption to the Participating Physician.
- 13.3 With reasonable notice the Participating Physician will cooperate with NLCHI conducting an audit of the Participating Physician's Med Access to assess configurations and/or implementation of technical controls to ensure Med Access is maintained at an appropriate, secure level within the parameters established in EMR Management Committee policy.
- 13.4 The EMR Management Committee will approve by policy the ability for NLCHI to conduct an audit or assessment of the Participating Physician's Med Access if there is a suspected or actual issue that may compromise the EMR Data in Med Access or the EHR.
- 13.5 NLCHI acknowledges that the NLMA may, on the request of one or more physicians, audit the privacy and security practices of NLCHI with respect to the EMR Program and the access to EMR Data by NLCHI employees or agents.
- 13.6 NLCHI is responsible for auditing the privacy and security practices of TELUS and access to Med Access by TELUS and its agents, as documented in the Professional Services Agreement. NLCHI will report to the EMR Management Committee on all audit activities related to TELUS.

14.0 Other Requirements

- 14.1 The Participating Physician acknowledges that NLCHI is not responsible for any contracts, agreements, or any other legally binding document(s) that a Participating Physician may have with a third party which provides internet or telecommunication network connection necessary to access EMR Services.

15.0 Program Improvement

- 15.1 The Participating Physician agrees to respond to requests from NLCHI about his/her usage and the perceived benefits of participating in eDOCSNL at the times and in a manner designated by the EMR Management Committee.

16.0 Accuracy and Integrity

- 16.1 The Participating Physician agrees that, before using or disclosing EMR Data that is in his/her custody or under his/her control, the Participating Physician will make reasonable efforts to ensure the accuracy and completeness of the EMR Data as required by PHIA

PART THREE: INFORMATION MANAGEMENT SERVICES

17.0 NLCHI's Responsibilities for Protection and Security of EMR Data

NLCHI warrants, that in accordance with the terms and conditions of the Professional Service Agreement, the following shall apply:

- 17.1 TELUS as Information Manager, shall protect the EMR Data in storage and from the point where it enters TELUS' system.
- 17.2 TELUS, its employees, subcontractors and agents have a duty to protect the EMR Data at a standard that must be equal to or greater than the Participating Physician's obligations in section 15 of PHIA. To achieve this, TELUS has committed to:
- 17.2.1 Limit access to the EMR Data to only those employees, subcontractors or agents of TELUS who require that access in order to provide the EMR Services;
 - 17.2.2 Implement appropriate hardware, software and/or procedural mechanisms wherever possible to create a secure audit log that records a user identifier for each time its employees, subcontractor and agent's access, print, examine or otherwise interact with EMR Data in the Participating Physicians' EMR. Where such audit capabilities cannot be fully implemented, reasonable alternative access control monitoring mechanisms will be implemented and reported to the EMR Management Committee;

- 17.2.3 Not modify or alter the EMR Data unless that is required as part of the EMR Services and only on the written instructions of the Participating Physician;
- 17.2.4 Ensure that its employees, subcontractors and agents who may have access to EMR Data are provided with privacy training that informs them of the need to fulfill the privacy obligations of PHIA and other applicable legislation;
- 17.2.5 Ensure employees, subcontractors and agents sign a non-disclosure agreement with TELUS; and
- 17.2.6 Immediately notify the Participating Physician in writing if TELUS or its employees, subcontractors or agents become aware that any of the conditions set out in this Agreement have been breached.

18.0 Compliance with the Professional Services Agreements between TELUS and NLCHI

- 18.1 The Participating Physician agrees, in so far as the Professional Services Agreement imposes limits, obligations, or restrictions on the Participating Physician, to be bound by the relevant provisions in the Professional Services Agreement, attached hereto as Appendix "B".

19.0 TELUS Med Access Support Levels

NLCHI warrants, that in accordance with the terms and conditions of the Professional Service Agreement, the following shall apply:

- 19.1 TELUS will provide support that covers all reasonable support requirements. The Participating Physician's support needs will be resolved with the assistance of TELUS over the phone or through the secure EMR Messenger or email as users prefer. Remote access tools are available to demonstrate to Participating Physicians the solution when procedural questions arise or when troubleshooting procedures require desktop access. For critical issues that render the software unavailable, a dedicated resource and an appropriate response team will be assigned. This team will have full access to the Participating Physician's Med Access with tools for diagnostics and resolution.
- 19.2 TELUS Med Access Service Desk takes ownership of an incident/inquiry until full recovery and is supported by a number of subsequent levels of support.

20.0 TELUS Med Access Support Services

NLCHI warrants, that in accordance with the terms and conditions of the Professional Service Agreement, the following shall apply:

20.1 TELUS Med Access Service Desk Support Service includes a toll-free line available for support Monday through Friday from 08:00 to 17:00 (NST), except statutory holidays which include: Good Friday, Victoria Day, Canada Day, Labour Day Monday, Thanksgiving Day Monday, Remembrance Day, Christmas Day, Boxing Day and New Year's Day.

20.2 The TELUS Med Access Service Desk can be reached with the following North America accessible toll free number and or email address:

- 1-888-781-5553
- MedAccessSupport@telus.com

20.3 The following support services will be available during regular office hours

Support Coverage	Service Desk Support Service. A toll-free line is available for Service Desk support Monday through Friday from 08:00 – 17:00 (NST), except statutory holidays. Support for critical issues defined as “Access to the EMR is unavailable from all workstations within the clinic, no workaround available” is available 24/7.
Service Desk Services – first response to call	80% of calls answered within 60 seconds
Service Desk Services - first response to e-mail	80% of e-mails answered within 24 hours
First call resolution	70% of tickets closed by support on first call without escalation

20.4 The following support services will be available after hours:

Support coverage	Support for critical issues, defined as "Access to the EMR is unavailable from all workstations within the clinic, no workaround available", is available 24/7.
Tier 1 help desk services – first response to call	80% of calls answered within 10 minutes
Tier 1 help desk services – first response to e-mail	80% of e-mails answered by next business day

20.5 TELUS has regular maintenance windows for software maintenance and upgrades. EMR Services will be unavailable during this time. Regular maintenance windows are as follow:

20.5.1 every day of the week from 01:00 to 03:00 (NST);

20.5.2 once a week, starting on Saturday at 23:00 (NST) and ending on Sunday at 05:00(NST); and

20.5.3 twice a year for a period of 8 hours outside of regular business hours (08:00–17:00 (NST)) at a time that TELUS will communicate to NLCHI in advance and eDOCSNL will notify the Participating Physician.

20.6 TELUS will perform emergency updates as necessary to perform any maintenance that TELUS, acting reasonably, deems should not wait for the next regular maintenance window (e.g., to deploy a fix to a critical defect). When an emergency update is to be applied, Participating Physicians will be notified as soon as possible in advance.

20.7 Med Access availability is defined as the ability to retrieve existing records, update or alter existing records and create new records. Med Access availability is measured within the TELUS Data Centre. Uptime will be determined on an average monthly availability as an aggregate of all Med Access users.

20.8 Med Access will be available 99.9% of the time on a monthly basis, averaged over each month and over all Med Access users. Excluded from the calculation are:

20.8.1 regular maintenance windows;

20.8.2 emergency maintenance occurring during regular maintenance windows; and

20.8.3 any circumstances beyond TELUS' control, including without limitation, interruption or failure of telecommunication or digital transmission links, delays or failures due to an internet service provider, hostile network attacks, force majeure, network congestion and third party software/hardware.

21.0 Storage

21.1 The Participating Physician is allocated storage at the TELUS data centre. NLCHI, through actions approved by the EMR Management Committee, will take the necessary action to ensure alignment between the system's storage capacity and the Participating Physician's storage needs.

22.0 Data Export

22.1 The Participating Physician will provide in writing the format and manner in which the Participating Physician's EMR Data is to be transferred to the Participating Physician or another custodian or person as required by PHIA S. 4(3).

22.1.1 Data Export: If requested by the Participating Physician and subject to payment of a reasonable fee set by eDOCSNL, TELUS will release and export to the Participating Physician, or person designated in writing by the Participating Physician, the Participating Physician's EMR Data; or

22.1.2 Electronic Print-out: Delivery in Adobe PDF format, through a means that supports privacy and confidentiality as described in this Agreement, to the Participating Physician, or a person designated in writing by the Participating Physician; or

22.1.3 Assignment of Records: When a Participating Physician retains the records in a shared database with other physicians, and with the written agreement of one of the remaining physicians, TELUS will associate the records with the remaining physicians.

PART FOUR: ADDITIONAL TERMS

23.0 Intellectual Property Rights

- 23.1 The Participating Physician shall not, and shall not permit his/her employees who are Authorized Users to, directly or indirectly;
 - 23.1.1 Reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the EMR Services;
 - 23.1.2 Modify, translate or create derivative works based on the EMR Services;
 - 23.1.3 Rent, lease, distribute, sell, resell, assign or otherwise transfer rights to the EMR Services; or,
 - 23.1.4 Remove any proprietary notices from the EMR.
- 23.2 The Parties acknowledge and agree that:
 - 23.2.1 NLCHI, and TELUS, or its licensor, is the owner of all Intellectual Property Rights created by NLCHI, and TELUS, or its licensor, in the Med Access, including any written materials, logos, trademarks, trade names, copyright, patents, trade secrets, and moral rights, registered or unregistered but not including EMR Data; and
 - 23.2.2 No proprietary interests or title in or to the intellectual property in Med Access, as identified in Section 23 above, is transferred to the Participating Physician by virtue of this Agreement.
 - 23.2.3 TELUS and its partners or its licensors retain the exclusive ownership of all Intellectual Property Rights created in and to the EMR Services, whether or not developed in conjunction with NLCHI, a Participating Physician, or an Authorized User, excepting only those methodologies, processes, or any other modifications to components, other than the EMR Services, that are for the sole purpose of the use by NLCHI, the Participating Physician or Authorized User of the EMR Services, which will remain the Intellectual Property of the NLCHI, the Participating Physician, or the Authorized User, respectively.

- 23.3 Intellectual Property Rights which may be developed or created by the Participating Physician, or otherwise enuring to the Participating Physician, either before, during, or after the currency of this Agreement, either registered or unregistered, that are created by the Participating Physician, shall remain the exclusive property of the Participating Physician.
- 23.4 NLCHI acknowledges and agrees that no property interests or title in or to the intellectual property created by the Participating Physician is transferred, licensed, sold, or given NLCHI or TELUS by virtue of this Agreement.
- 23.5 NLCHI will in no way impede, fetter, or frustrate the Participating Physician's access to, or use, reproduction, licensure, or sale of, his or her Intellectual Property, including any property located or stored in the EMR.
- 23.6 For the purposes of further clarity, the Parties acknowledge and agree that no intellectual property interest is created in the EMR Data.

24.0 Notices

- 24.1 All notices, requests, claims, demands and other communications hereunder shall be in writing and will be effective if given:
- 24.1.1 by delivery in person;
 - 24.1.2 by first class or registered mail, postage prepaid;
 - 24.1.3 by facsimile; or
 - 24.1.4 by electronic mail, to the address of the Party specified in this Agreement, or to such other address as either Party may specify by notice to the other Party. Notices so given will be effective upon receipt by the Party to which notice is given.

24.2 NLCHI's and the Participating Physician's addresses for service are as follows:

For NLCHI:

Name: Program Director, eDOCSNL
Address: 70 O'Leary Avenue, St. John's, NL
Phone: 709- 752-6000
Email: info@edocsnl.ca

Participating Physician:

Name:
Address:
Phone: 709-
Fax: 709-
Email:

25.0 Dispute Resolution

25.1 The Parties will use all reasonable efforts to resolve disputes arising out of, or in connection with this Agreement, promptly and in a professional and amicable manner.

25.2 Any dispute that remains unresolved after ten (10) business days shall be referred to the EMR Management Committee established under the MOU for resolution, with the Participating Physicians and other Parties permitted to make representations to the EMR Management Committee.

26.0 Representations, Warranties, Indemnities and Limitations of Liability

26.1 NLCHI does not promise any particular result from the installation, implementation or use of the Med Access and no representation or warranty is given in this regard.

26.2 NLCHI indemnifies and holds the Participating Physician harmless from any claims, damages and losses arising out of the performance of this Agreement, including, without limitation, any and all claims, damages and losses arising out of the unauthorized disclosure of EMR Data, except to the degree that such claims, damages and losses were caused or contributed to by the Participating Physician.

- 26.3 The Participating Physician indemnifies and holds NLCHI harmless from any claims, damages and losses arising out of the Participating Physician's performance of this Agreement, including, without limitation, any and all claims, damages and losses arising out of the unauthorized disclosure of EMR Data except to the degree that such claims, damages and losses were caused or contributed to by NLCHI.
- 26.4 Except as set out in this Agreement, any services or advice provided by NLCHI pursuant to this Agreement are provided "as is" without any warranty, condition, guarantee or representation of any kind whatsoever, express or implied, statutory or otherwise. The Participating Physician acknowledges that the selection of Med Access by NLCHI, NLMA and HCS as Parties to the MOU does not constitute a representation or warranty as to the fitness for any particular purpose of Med Access.
- 26.5 Notwithstanding any other provision in this Agreement, with the exception of, and being subject to, the indemnity provisions contained in Section 26.2 and 26.3 herein, the liability of each Party arising out of or in connection with this Agreement, whether in contract or in tort (including negligence), is limited to the amount paid by the Participating Physician for ongoing maintenance and support as listed in Appendix A in the one-year period prior to the date of the occurrence giving rise to the claim; and in no event will either Party be liable to the other for loss of revenue, loss of profits or loss of use, or for any indirect, incidental or consequential damages, even if such Party has been advised of the possibility of such damages. Nothing in this section is to be interpreted as precluding remedies which may be otherwise available in equity.
- 26.6 The Parties agree that the party which has suffered or would suffer by the breach of this Agreement by the other, may, subject to applicable law, be entitled to immediate equitable relief, including injunction and specific performance, as remedies for any such breach. Such remedies shall, subject to applicable law, not be deemed to be the exclusive remedies available for any such breach but shall be in addition to all other remedies available at law or in equity. By entering into this Agreement, the Parties are not waiving any rights which they may have pursuant to applicable law.

27.0 Force Majeure

27.1 Neither Party shall be liable for any delay or failure to perform under this Agreement if such delay or failure is due to any contingency, excluding financial inability, beyond its reasonable control and which it could not reasonably have foreseen and provided against. The Party experiencing any delay or failure as a result of any such contingency shall:

27.1.1 provide prompt written notice thereof to the other Party; and

27.1.2 use commercially reasonable efforts to remedy the delay or failure in a manner which minimizes the disruption to the other Party.

28.0 General Provisions

28.1 In this Agreement, unless a contrary intention appears in context, or express provisions of this Agreement provide otherwise, (i) words importing the singular include the plural and vice versa, and words importing a particular gender include all genders, (ii) the word “including” means “including without limitation”, (iii) where a period of time is specified, dated or calculated from a date or event, such period will be calculated excluding such date or the date on which such event occurs, as the case may be, and (iv) titles are for convenience of reference and do not affect the interpretation of the Agreement. Any rule of construction to the effect that ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

28.2 The Parties agree to execute such further documents as may reasonably be required to give effect to this Agreement.

28.3 The provisions of this Agreement are severable and if any part of this Agreement is found to be unenforceable, the remainder of the Agreement will not be affected and will remain valid and in effect.

28.4 The Participating Physician shall not assign this Agreement.

28.5 This Agreement may be amended only by agreement of the Parties in writing.

28.6 This Agreement is the complete and exclusive statement of the agreement between the Parties regarding the subject matter hereof, superseding all information published anywhere and all other communications between the Parties relating to such subject matter, including any Subscription Form or other document previously signed by the Participating Physician.

- 28.7 This Agreement may be executed and delivered in counterparts and in original or facsimile or other electronic form, and all such counterparts together will constitute one and the same instrument.
- 28.8 This Agreement is binding upon and enures to the benefit of the Parties and his/her respective heirs, executors, administrators, successors and permitted assigns.
- 28.9 Sections 9, 10, 11, 13, 17, 18, 23, 25, 26 and 28.9 survive this agreement.

AGREED AND EXECUTED by the Parties and effective as of the Effective Date.

THE PARTICIPATING PHYSICIAN:

Print Name

Signature

Office Address

Phone Number

Email Address

NLCHI:

Print Name

Signature

70 O'Leary Ave

Office Address

St. John's NL, A1B 2C7

City, Province, Postal Code

709-752-6000

Phone Number

info@edocs.nl.ca

Email Address