date]

[Name and address of service provider]

Dear Mr. [Name]:

Re: Non-Disclosure Agreement

Clinton Public Hospital, Seaforth Community Hospital, St Marys Memorial Hospital and Stratford General Hospital, operating as the Huron Perth Healthcare Alliance (the "Alliance") has entered into an agreement with [name of organization] (the "Recipient") dated [Date] (the "Services Agreement") under which the Recipient provides certain services (the "Services") to the Alliance. As such, the Alliance will be furnishing the Recipient with certain Confidential Information (as defined below).

FOR VALUE RECEIVED, the parties hereby agree as follows:

1. Confidential Information

This Agreement shall extend to all documents, materials and information (whether oral, written or otherwise) relating to the Alliance that are given, disclosed or made available to the Recipient by the personnel or representatives of the Alliance at any time in connection with or in the course of the Services, and/or that are obtained by the Recipient as a result of or in the course of any visit to any facility or location owned or occupied by the Alliance, and includes without limitation the Alliance’s financial or business information, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, system user IDs and passwords, schematics, software source documents, contracts, customer lists, personal information concerning employees or members of the professional staff, that is either information (a) from which Alliance can be reasonably believed to derive actual or potential value from such information remaining not generally known or readily ascertainable or (b) marked "private", "proprietary", "restricted", "confidential" or otherwise marked so as to indicate confidentiality. (collectively, "Confidential Information").
2. **Non-Confidential Information**

Confidential Information under this Agreement does not include:

- a. information which is in or hereafter enters the public domain through no action on the Recipient’s part in violation of the terms and conditions hereof;

- b. information which the Recipient can demonstrate was in the Recipient’s possession prior to the time of disclosure by the Alliance and was not acquired by the Recipient directly or indirectly from the Alliance or any other person on a confidential basis; and

- c. is disclosed pursuant to the lawful requirement of a court or government agency of competent jurisdiction without condition of confidentiality, provided that the Recipient notifies the Alliance in advance to give the Alliance the opportunity to seek a protective order against such disclosure.

3. **Personal Health Information**

To the extent that any of the Confidential Information disclosed to the Recipient under this Agreement is “Personal Health Information” as defined in Ontario’s *Personal Health Information Protection Act, 2004*, the Recipient shall comply with the requirements of Schedule A to this Agreement.

4. **Internal Monitoring of Confidential Information**

The Recipient will keep the Confidential Information strictly confidential with the same degree of care as that with which it protects its own confidential information of similar type, which in any event shall not be less than a reasonable degree of care. The parties agree that without the prior written consent of the Alliance, the Confidential Information will not be copied, reproduced or disclosed, in whole or in part, and will be used solely for the purpose of providing the Services, and not for any other purpose, including to adversely affect the business or operations of the Alliance.

5. **Restrictions**

5.1 **Disclosure to Third Parties**

The Recipient shall not disclose, publish or communicate the Confidential Information to any third party without the prior written consent of the Alliance. However, the Recipient may disclose the Confidential Information to a third party who has a legitimate need to know the Confidential Information for the purposes under this Agreement, and (1) is an
accountant, lawyer, underwriter, or advisor under a duty of confidentiality; or (2) is under a written obligation of confidentiality at least as restrictive as this Agreement.

5.2 Disclosure within Recipient’s Organization

The Recipient shall not use the Confidential Information nor circulate it within its own organization except to the extent necessary to provide the Services.

5.3 Internal Monitoring of Confidential Information

The Recipient shall use its best efforts to prevent inadvertent disclosure of the Confidential Information to unauthorized personnel or to any other third party. The Recipient shall immediately notify the Alliance if the Confidential Information is used, distributed, or communicated in a manner not authorized under this Agreement.

5.4 Return or Destruction of Confidential Information

Subject to legal requirements, the Recipient shall promptly return to the Alliance all written Confidential Information, together with all copies, extracts or summaries thereof, and permanently erase or destroy all Confidential Information stored in electronic format upon termination of the Services or upon request of the Alliance, at any time in the Alliance’s absolute discretion.

6. Title to Confidential Information

Title to all Confidential Information, and to all information derived therefrom, shall be retained by the Alliance. No proprietary interest of any kind is granted (or implied to be granted) to the Recipient by the conveying of Confidential Information to the Recipient.

7. No Warranty

Except as set out in the Services Agreement, none of the Confidential Information that is disclosed by the Alliance shall constitute any representation, warranty, assurance, guarantee, or inducement by the Alliance to the Recipient with respect to the accuracy or performance of the Confidential Information or to the infringement of trademarks, patents, copyrights, or any rights of privacy or any rights of any third party.
8. **Term and Termination**

This Agreement shall apply to all Confidential Information disclosed following the date of this Agreement, and any preliminary information supplied prior to that date. This Agreement shall terminate with the termination or expiration of the Services Agreement or on mutual written agreement of the parties.

9. **Survival**

The obligations contained in this Agreement shall survive the termination of this Agreement.

10. **General**

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument. This Agreement is governed by the laws of Ontario. The Recipient may not assign its rights or obligations under this Agreement without the prior written consent of the Alliance.

**HURON PERTH HEALTHCARE ALLIANCE**

By: ____________________________________________

Name: __________________________________________

Title: __________________________________________

*I am authorized to bind the Alliance*

Date: __________________________________________

**[NAME OF RECIPIENT]**

By: ____________________________________________

Name: __________________________________________

Title: __________________________________________

*I am authorized to bind the Recipient*

Date: __________________________________________
Schedule A
Recipient's Obligations with respect to Personal Health Information

1. Definition of “Personal Health Information”. Personal Health Information has the meaning given to it in the Personal Health Information Protection Act, 2004 (“PHIPA”), being information in the custody or control of the Alliance that identifies (or that it is reasonably foreseeable could be used to identify) an individual, including:

a. information that relates to the physical or mental health of that individual;

b. that individual’s family health history;

c. that individual’s payment or eligibility for funding for health care;

d. information that relates to that individual’s donation of a body part or bodily substance (or the testing or examination of same);

e. the identity of that individual’s substitute decision-maker;

f. that individual’s health card number; and

g. any identifying information that is not personal health information but that is contained in a record of personal health information.

2. Alliance is a Health Information Custodian. The Alliance is a health information custodian under PHIPA and has statutory obligations to safeguard its patients’ Personal Health Information.

3. Recipient Requires Access to Personal Health Information. The parties agree and acknowledge that the Recipient will require access to Personal Health Information in the course of fulfilling its obligations under this Agreement. The following provisions set out the obligations of the Recipient with respect to its collection, use, disclosure, retention and disposal of Personal Health Information under this Agreement.

4. Recipient is Agent under PHIPA. The parties acknowledge and agree that the Recipient, when accessing Personal Health Information, does so solely on behalf of the Alliance while performing the Services under the Services Agreement. As such, the Recipient is an “agent” of the Alliance, as the term “agent” is defined in PHIPA, and with all the responsibilities of an agent imposed by PHIPA.
5. **Use of Personal Health Information.** The Recipient shall use the Personal Health Information provided by the Alliance solely for the purposes of providing the Services under the Services Agreement and for no other purpose whatsoever.

6. **No Contact with Patients.** Notwithstanding that the Recipient is an agent of the Alliance under PHIPA, the Recipient shall not have any contact with patients for any purpose whatsoever, unless expressly authorized by the Alliance.

7. **Obligations not Conditional.** The Recipient’s obligations under this Schedule A are absolute and are not conditional on the Alliance’s compliance with any of its obligations under the Services Agreement, including its obligation to pay the Recipient.

**Recipient Personnel**

8. **Recipient Personnel.** For the purposes of this Schedule, “Recipient Personnel” includes the Recipient’s employees, contractors, subcontractors, and agents.

9. **Training of Recipient Personnel.** The Recipient has provided training to its Recipient Personnel with respect to the Recipient’s legal obligations with respect to personal information under applicable privacy legislation and will provide additional training with respect to the Recipient’s specific obligations to protect Personal Health Information under this Agreement. The Recipient shall ensure that the Recipient Personnel are aware of the provisions relating to Personal Health Information that are set out in this Agreement.

10. **Access by Recipient Personnel.** The Recipient shall give access to Personal Health Information only to those members of the Recipient Personnel who have a legitimate need to access the Personal Health Information in order to fulfill the Recipient’s obligations under the Services Agreement.

11. **Removal of Personnel.** In the event of a breach of these provisions by any of the Recipient Personnel, the Alliance may require that personnel member to cease providing Services under the Services Agreement.

**Recipient’s Own Privacy Practices**

12. **Compliance with Privacy Legislation.** The Recipient has a privacy policy in compliance with applicable privacy legislation, addressing its practices relating to the collection, use, disclosure, retention and disposal of personal information. The Recipient monitors and enforces compliance with its own privacy policy.
13. **Privacy Compliance Officer.** The Recipient has an appointed privacy compliance officer who shall be given the responsibility for the Recipient’s compliance with the privacy and security terms and conditions under this Schedule.

14. **Safeguards.** The Recipient has in place effective administrative, technological and physical safeguards to stop theft, loss and unauthorized access, copying, modification, use, disclosure or disposal of personal information. These safeguards are consistent with industry practice.

**Confidentiality and Security Safeguards with respect to Personal Health Information**

15. **Receipt of Alliance’s Privacy Policy.** The Recipient acknowledges receipt of the Alliance’s privacy policy and will only collect, use, disclose, retain and dispose of Personal Health Information as permitted by the Alliance.

16. **Monitoring of its Activities.** The Recipient shall monitor its activities to ensure that its Recipient Personnel are complying with the privacy and security terms and conditions of this Schedule. In particular, the Recipient shall monitor and report to the Alliance, upon the reasonable request of the Alliance, the Recipient’s access, use and disclosure of Personal Health Information under this Agreement.

17. **Theft, Loss or Unauthorized Access of Personal Health Information.** In the event that the Recipient becomes aware that Personal Health Information has been stolen or lost, or a person has obtained unauthorized access to Personal Health Information, or the Recipient has used, disclosed or disposed of the Personal Health Information other than as contemplated in this Agreement, the Recipient shall at the first reasonable opportunity notify the Alliance’s privacy officer by telephone followed by written notice.

18. **Indemnity.** The Recipient hereby agrees to indemnify and hold harmless the Alliance from all costs, damages, fines, penalties or other liabilities arising out of a breach of the Recipient’s obligations under PHIPA and this Agreement with respect to the Recipient’s failure to comply with the privacy and security terms and conditions of this Schedule.

19. **Alliance’s Review of Recipient’s Practices and Procedures.** The Alliance may, upon reasonable notice, assess and review the Recipient’s practices and procedures for receiving and processing Personal Health Information under this Agreement, for the purposes of ensuring that the privacy and security terms and conditions of this Agreement are being complied with. For these purposes, the Recipient shall provide the Alliance with reasonable access to the policies, procedures and protocols used for purposes of providing the Services and any other documents that may be relevant.
20. **Cooperation with Privacy Assessment or Audit.** The Recipient will cooperate with any privacy assessment or audit conducted by the Alliance or any third party retained by the Alliance.

**Handling Complaints**

21. **Complaint by the Alliance.** In the event that the Alliance makes a complaint to the Recipient in respect of the Recipient's compliance with the privacy and security terms and conditions of this Schedule, the Recipient shall, within five (5) business days of receipt of the complaint, investigate the matter and provide the Alliance with an oral report stating the cause of the deficiency, if any, and the steps taken to prevent a recurrence, if required. Within a further five (5) business days, the Recipient shall provide the Alliance with a written report documenting the complaint, investigation, deficiency, if any, and the steps taken to prevent a recurrence, if required.

22. **Cooperation with Complaint to Alliance.** The Recipient shall cooperate with the Alliance in responding to any complaints about Personal Health Information that may relate to the Recipient's obligations under this Agreement.

23. **Injunctive Relief.** The Recipient hereby recognizes that any breach of the privacy and security terms and conditions of this Agreement will result in irreparable harm to the Alliance that cannot be calculated or fully or adequately compensated by the recovery of damages. As a result, the Alliance shall, in addition to any other relief available to it, be entitled to the remedy of injunction without having to establish the inadequacy of any other remedy available to it. The Recipient hereby undertakes not to make any defense in proceedings regarding the granting of an injunction or specific performance based on the availability to Alliance of other remedies.

**Termination of this Agreement**

24. **Survival.** The Recipient's obligations with respect to Personal Health Information shall survive the expiration or termination of this Agreement for any reason.