



## INFORMATION MANAGER AGREEMENT

**BETWEEN:**

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(the “**Customer**”)

- and -

**RED GUAVA PTY LTD.**

(“**Red Guava**”)

This Information Manager Agreement (“**IMA**”) forms a part of Customer Terms of Service found at <https://www.cliniko.com/policies/terms> (the “**Cliniko Agreement**”).

By signing the IMA, Customer enters into this IMA on behalf of itself and, to the extent required under applicable Alberta’s Health Information Act (“**HIA**”), in the name and on behalf of its Affiliates. For the purposes of this IMA only, and except where indicated otherwise, the term “Customer” shall include Customer and Affiliates. All capitalized terms not defined herein shall have the meaning set forth in the Cliniko Agreement.

In the course of providing the services under the Cliniko Agreement (as defined in the Cliniko Agreement), Red Guava may process Health Information on behalf of Customer and where Red Guava processes such Health Information on behalf of Customer the Parties agree to comply with the terms and conditions in this IMA in connection with such Health Information.

### **How to execute this IMA:**

1. This IMA consists of two parts: the main body of the IMA and Schedule A.
2. This IMA has been pre-signed on behalf of Red Guava.
3. To complete this IMA, Customer must complete the information in the signature box and sign on Page 8.
4. Send the completed and signed IMA to Red Guava by email, indicating Customer’s Cliniko subdomain and business name, to [ima@cliniko.com](mailto:ima@cliniko.com).

Upon receipt of the validly completed IMA by Red Guava at this email address, this IMA will become legally binding.

## How this IMA applies to the Customer and its affiliates

If the Customer entity signing this IMA is a party to the Cliniko Agreement, this IMA is an addendum to and forms part of the Cliniko Agreement. In such case, the Red Guava entity that is party to the Cliniko Agreement is party to this IMA.

If the Customer entity signing this IMA is not a party to the Cliniko Agreement, this IMA is not valid and is not legally binding. Such entity should request that the Customer entity who is a party to the Cliniko Agreement executes this IMA.

### 1. Definitions

1.1 Except where noted, words and phrases defined in section 1 of the *Health Information Act* (defined below) have the same meaning in this IMA.

1.2 In this IMA:

1.2.1 “**Cliniko Agreement**” means the agreement for the provision of the Cliniko software application and related platform, and services related thereto (including but not limited to customer support) between the Customer and Red Guava.

1.2.2 “**Health Information**” means Health Information (as that term is defined in section 1 of the HIA) disclosed by the Customer to Red Guava pursuant to the Cliniko Agreement for purpose of receiving the Information Management Services.

1.2.3 “**Health Information Act**” or “**HIA**” means the *Health Information Act*, R.S.A. 2000, c. H-5, as amended from time to time, and the regulations thereunder.

1.2.4 “**Health Information Regulation**” or “**HIR**” means the *Health Information Regulation*, Alta Reg 70/2001, as amended from time to time.

1.2.5 “**Information Management Services**” means the provision of the Cliniko software application and related platform, and services related thereto, including:

- (a) Processing, storing, retrieving and disposing of Health Information;
- (b) Stripping, encoding or otherwise transforming individually identifying Health Information to create non-identifying Health information; and
- (c) Providing information management or information technology services.

1.2.6 “**Red Guava**” means Red Guava Pty. Ltd., a company incorporated in Melbourne, Australia constituted under the laws of Australia.

### 2. Objectives

2.1 The objectives of this IMA are to comply with section 66 of the HIA with respect to the provision of services to the Customer by Red Guava as outlined in this IMA.



- 2.2 The Customer hereby appoints Red Guava as its Information Manager (as defined in the HIA) in accordance with the terms and conditions herein.

### **3. Compliance with Applicable Laws**

- 3.1 Red Guava shall at all times comply with the HIA and the HIR and other applicable privacy legislation.
- 3.2 The parties shall comply with the provisions of the HIA in the processing, storage, retrieval or disposal of Health Information, including the stripping, encoding and transformation of individually identifying health information to create non-identifying health information, and the provision of information management or information technology services.
- 3.3 Nothing in this agreement absolves the parties from complying with other statutory, legal or contractual requirements.
- 3.4 In providing the Information Manager Services in accordance with this IMA, Red Guava may need to have access to, or may need to use, disclose, retain or dispose of Health Information.

### **4. Continuing Consent of Customer**

- 4.1 The Customer must inform individuals about the purpose for which Health Information is collected and used in the manner described in section 22(3) of the HIA.
- 4.2 The Customer consents to the release of Health Information to Red Guava in accordance with this IMA, and for the purpose of Red Guava performing the Information Management Services.
- 4.3 Where the Customer designates other custodians or authorized representatives, as outlined at Schedule "A" of this IMA, the other custodians and authorized representatives warrant that they are members of the Customer group and have provided their consent to the release of Health Information to Red Guava on the terms and conditions outlined in this IMA.

### **5. Services to be Provided**

- 5.1 Red Guava shall provide Information Management Services to the Customer in accordance with the terms and conditions of this IMA and the Cliniko Agreement.
- 5.2 The Customer will pay Red Guava a fee for the services in accordance with the Cliniko Agreement between the parties.
- 5.3 Red Guava shall provide Information Management Services with reasonable care, skill and diligence to a professional standard and maintain a high degree of data accuracy in handling Health Information.



- 5.4 The parties agree that in providing the Information Management Services in accordance with this IMA, Red Guava will need to have access to, or may need to use, disclose, retain or dispose of some or all of the Health Information provided by the Customer.
- 5.5 The parties agree that Red Guava shall not collect Health Information, and only the Customer may collect Health Information per section 20 of the HIA and use the Health Information per the purposes set out in section 27 of the HIA.
- 5.6 Red Guava may use the Health Information only in performance of the Information Management Services, unless otherwise agreed to in writing between the parties and in compliance with the HIA.
- 5.7 Red Guava may disclose the Health Information for any of the following reasons:
  - 5.7.1 To third parties, as authorized by the HIA or as otherwise permitted or required by law;
  - 5.7.2 To third parties, in accordance with the specific directions from the Customer and in compliance with the HIA;
  - 5.7.3 To the Customer or any of its designated custodians or authorized representatives outlined at Schedule "A", in a non-identified or identifiable basis.

## **6. Confidentiality**

- 6.1 Red Guava shall treat all Health Information that it has access to under this IMA as confidential. Only those employees or agents of Red Guava who are engaged in the Information Manager Services shall have access to Health Information. The Customer will provide Health Information to Red Guava on a need to know basis. Red Guava shall take all reasonable steps to prevent disclosure of Health Information.
- 6.2 Red Guava shall only use and disclose Health Information for the purposes provided for in this IMA and the Cliniko Agreement.
- 6.3 Red Guava shall limit its use and disclosure of Health Information to only the minimum necessary Health Information required by Red Guava to furnish services or resolve support issues on behalf of the Customer or otherwise perform the Information Management Services. Red Guava shall not retain, save, print, store, or otherwise maintain Health Information after a problem is resolved.
- 6.4 Should any unauthorized disclosure of Health Information occur, Red Guava shall forthwith provide immediate notification to the Customer, including the particulars of the unauthorised disclosure. Red Guava shall take all reasonable steps to mitigate the disclosure immediately and on an ongoing basis, as required by applicable privacy legislation.
- 6.5 Red Guava may provide Health Information to any other Information Managers used by the Customer with authorization by the Customer.



- 6.6 Any expressed wishes to Red Guava from individuals or by their authorized representatives relating to Health Information will be directed to the Customer. Red Guava will not take any other action without authorization by the Customer, unless required by applicable privacy legislation.

## **7. Requests for Health Information**

- 7.1 Any requests to Red Guava from individuals or by their authorized representatives for access to, or correction of, Health Information (“**Request**”) will be directed to the Customer.
- 7.2 Red Guava shall inform the Customer of a Request as soon as is reasonably practicable.
- 7.3 All costs associated with a Request will be borne by the Customer.

## **8. Protection and Security of the Health Information**

- 8.1 Red Guava, its employees, subcontractors, and agents have a duty to protect Health Information that must be equal to or greater than the Custodian’s obligations in section 60 of the HIA.
- 8.2 Red Guava, its employees, subcontractors, and agents must protect the Health Information against such risks as unauthorized access, use, disclosure, destruction or alteration in compliance with applicable privacy legislation.
- 8.3 The Customer will only provide Health Information to Red Guava on a need to know basis.
- 8.4 Red Guava must limit access to the Health Information only to those employees, subcontractors or agents of Red Guava who have a need to know.
- 8.5 Red Guava, its employees, subcontractors, and agents must not modify or alter the Health Information unless that is required as part of the services and only on the written instructions of the Customer providing the Health Information.
- 8.6 Red Guava will ensure that its employees, subcontractors, and agents who may be in contact with the Health Information are informed of the need to fulfill the privacy obligations of the HIA.

## **9. Retention and Disposition of the Health Information**

- 9.1 Health Information will be stored on servers located outside of the province of Alberta as part of the provision of the Information Management Services. The terms and conditions of this IMA apply to any information stored outside the province of Alberta and comply with all requirements set out in the HIA and HIR, including without limitation section 8(4) of the HIR.



9.2 Red Guava will ensure that all Health Information extractions or copies that are no longer required are destroyed.

**10.** Upon termination of this IMA, Red Guava will return the Health Information to the Customer, together with all modifications, additions and enhancements, and all remaining copies will be destroyed.

## **11. Term and Termination**

11.1 This IMA is effective from the Effective Date and will continue in effect until terminated:

11.1.1 by either party upon providing thirty (30) days' advance written notice to the other party; or

11.1.2 automatically upon the effective date of termination of the Cliniko Agreement.

## **12. Liability and Indemnification**

12.1 Red Guava agrees to be fully and solely responsible for the actions of its employees, subcontractors and agents respecting their use or disclosure of the Health Information during the term of this IMA or after the expiration or earlier termination of the IMA.

12.2 Red Guava agrees to hold the Customers harmless from any third party claims, demands or actions for which the Red Guava is legally responsible, including those arising out of negligence, willful harm or crimes by Red Guava or its employees, subcontractors or agents.

12.3 Red Guava agrees to indemnify the Customer for any and all costs or expenses paid or incurred by the Customer as a result of any breach of any term of condition of this IMA or contravention of the HIA or HIR or arising out of any disclosure by Red Guava of the Health Information in any manner contrary to this IMA. Such indemnification shall survive the termination of this IMA.

12.4 The Customer agrees to be fully and solely responsible for the actions of its employees, subcontractors and agents respecting their use or disclosure of the Health Information during the term of this IMA or after the expiration or earlier termination of the IMA.

12.5 The Customer agrees to hold Red Guava harmless from any third party claims, demands or actions for which the Customer is legally responsible, including those arising out of negligence, willful harm or crimes by the Customer or its employees, subcontractors or agents.

12.6 The Customer agrees to indemnify Red Guava for any and all costs or expenses paid or incurred by Red Guava as a result of any breach of any term of condition of this IMA or contravention of the HIA or HIR or arising out of any disclosure by the Customer of the Health Information in any manner contrary to this IMA. Such indemnification shall survive the termination of this IMA.

### **13. General Provisions**

- 13.1 The provisions of this IMA are binding upon the parties with respect to its subject matter, and may be modified or amended in writing with the mutual agreement of the parties.
- 13.2 All notices or other communication provided under this IMA shall be in writing and shall be deemed to be sufficiently given if delivered to the last known address of the receiving party by email or by any other agreed form of electronic communication.
- 13.3 This Agreement will be governed by and construed in accordance with the laws of the Province of Alberta.
- 13.4 Should any privacy commission, court or other decision maker of competent jurisdiction determine that all or any part of this Agreement is invalid or unenforceable, the remaining terms and provisions will not thereby be affected and will be given full force and effect without regard to the invalid provisions.
- 13.5 This Agreement may be executed and delivered by the parties in one or more counterparts, each of which will be an original and those counterparts will together constitute one and the same instrument. Delivery of this Agreement by facsimile, e mail or other functionally equivalent electronic means of transmission constitutes valid and effective delivery.



The parties' authorized signatories have duly executed this IMA as of \_\_\_\_\_  
("Effective Date")

**On behalf of Customer:**

Name (written out in full): \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

**On behalf of Red Guava:**

Name: Joel Friedlaender

Position: Director

Signature: *Joel Friedlaender*  
Joel Friedlaender (Feb 16, 2021 11:48 GMT+11)





## SCHEDULE "A"

### AUTHORIZED REPRESENTATIVES AND CUSTODIANS

The Customer hereby designate the following as custodians or authorized representative(s) for the purposes of this IMA:

(1)

(2)

(3)

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Acknowledgement of Authorized Representative(s)