Practice Data Sharing Agreement

This agreement is between

Adelaide Primary Health Network Ltd, ABN 18 155 472 067, of 22 Henley Beach Road, Mile End, SA 5031 ("**APHN**")

and

Practice Name **trading as** Legal Entity Name**,** ABN: XX XXX XXX XXX of Street, Suburb, Postcode, State ("**the Practice**")

IT IS AGREED:

Agreement Period

This agreement commences on the date it is signed by both parties and expires on 30 June 2020 unless it is terminated earlier in accordance with this Agreement ("**Agreement Period**").

Definitions

The following definitions apply in this Agreement.

Agreement: this Practice Data Sharing Agreement.

De-identified Practice Data: Practice Data that has been extracted from or by the Software in a de-identified form.

PAT CAT: the software known as the Practice Aggregation Tool which is owned by PenCS.

PenCS: Pen CS Pty Ltd, ACN 606 033 112.

Practice Data: data read, captured, extracted and/or produced by the Software (in any form) from any APHN or Practice management system including patient demographic data, patient diagnoses, medications, allergies, diagnostic reports and Medicare item numbers.

Practice Agreement: an agreement between the APHN and the Practice that grants the Practice a licence to use the Software.

Privacy Laws: all applicable legislation relating to the privacy of personal and health information including the *Privacy Act 1988 (Cth),* the *Privacy and Personal Information Protection Act 1998 (NSW)*, and the *Health Records and Information Privacy Act 2002 (NSW),* applicable privacy standards, codes of practice and guidelines in force from time to time.

Software: the computer software known as the Clinical Audit Tool (CAT4), Topbar, PIP QI Professional, and PIP QI for General Practices, all of which are owned by PenCS.

Background

The Practice has entered into a Practice Agreement with the APHN. The Practice has agreed to enter this Agreement in consideration for the licence granted by the Practice Agreement.

The APHN has a licence to use PAT CAT which supports the uploading of De-identified Practice Data to APHN from the Practice. The data can then be displayed in a format which shows the aggregated data for the whole of the APHN region or sub regions.

Ownership and use of the De-identified Practice Data

Once the De-identified Practice Data is uploaded to the APHN the APHN shall own all right, title and interest in and to the De-identified Practice Data and the Practice agrees to do all things necessary to achieve this. The APHN may use the De-identified Practice Data for any purpose it requires, including any one or more of the following:
- effective commissioning of health services for the region;
- contributing to health care planning in the future by making the data available for the internal needs assessment and population health planning activities of the APHN;
- Reporting to any third party the APHN deems necessary, including:
  - the Commonwealth Department of Health (or equivalent);
  - third parties in relation to Quality Improvement Practice Incentive measures reporting.

Notwithstanding the above, the APHN agrees not to sell the De-identified Practice Data for commercial gain.

Obligations of the parties

At any time, Adelaide PHN may prescribe the precise specifications of the De-identified Data that it requires from the Practice.

The Practice agrees to do all the following:

- use the Software to extract De-identified Practice Data that meets the requirements of the APHN's current prescribed specifications;
- upload the De-identified Practice Data to the APHN on the last day of each and every calendar month;
- if required by the APHN and/or PenCS, allow the APHN and/or PenCS to configure the Software to extract the De-identified Practice Data and upload it;
- follow all instructions received from APHN and/or PenCS in relation to the extraction and upload of the De-identified Practice Data;
- ensure that the Practice Data and De-identified Practice Data is of a high standard and quality;
- if required by the APHN, clean and/or improve the quality of the Practice Data and/or the De-identified Practice Data;
- work with the APHN to optimise accumulated data sets;
- nominate a primary point of contact for issues relating to the extraction and upload of De-identified Practice Data.

The APHN agrees to provide (or arrange for the provision of) reasonable assistance to the Practice to extract De-identified Practice Data and upload it to the APHN.

The APHN may provide the Practice with a 'Patient Wellbeing Report' after 12 months (or any lesser period that the APHN decides) of continuous De-identified Practice Data uploads where the data is of a high enough quality and the APHN has the capacity.

Privacy, confidentiality and patient consent

It is not possible to identify patients from the De-identified Practice Data which is uploaded to the APHN.

Nevertheless, APHN agrees to comply with Privacy Laws in relation to its dealings with the De-identified Practice Data and all APHN employees are bound by confidentiality obligations.

The Practice acknowledges that all responsibilities and obligations provided for by Privacy Laws and/or any other laws (and/or regulations) applying to record keeping remain the sole responsibility of the Practice and the Practice agrees to comply with all such laws at all times. APHN is under no obligation to ensure that the Practice complies with Privacy Laws and/or any other laws (and/or regulations) that may apply to record

keeping and has made no assessment as to the Practice's compliance. Although APHN acknowledges it is responsible for the De-identified Practice Data that has been uploaded to the APHN, at all times that the relevant data remains in the possession of the Practice (including where a copy of the data remains on the Practice's computer system after it has been uploaded to the APHN) it remains the responsibility of the Practice.

The Practice must ensure that it has in place all necessary consents, including under Privacy Laws, from its patients to allow it to provide De-identified Practice Data to the APHN.

Termination

This Agreement terminates immediately if the Practice Agreement between the APHN and the Practice terminates for any reason.

Data management and backup

The Practice must ensure that a clinical system backup is taken before the extraction and upload of De-identified Practice Data. It is the responsibility of the Practice to protect data from risk while the extraction and upload of the De-identified Practice Data is taking place. The Practice releases APHN from any claim in respect of any loss suffered because the Practice does not comply with this requirement.

Indemnity, release and liability

To the extent permitted by law, the APHN excludes all liability to the Practice in relation to this Agreement. The APHN shall not be liable under any circumstances to the Practice for any loss of profit, business, reputation, business opportunity, data (including corruption of data), contracts, revenues, anticipated savings, or for any special, indirect, or consequential damage of any nature, which arises directly or indirectly from the performance of, or any failure to perform, any obligations under this Agreement.

At all times the Practice agrees to release, indemnify, and defend the APHN, its employees, directors, officers, contractors, agents, and PenCS from and against all losses of any kind whatsoever (including liabilities, expenses, losses, damages, claims, demands, penalties, fines, charges, taxes, interest and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party)) that the APHN (or any of the other persons listed above) may sustain or incur, arising directly or indirectly, from or in reference to any one or more of the following:

- the Software;
- the use of the Software;
- any breach of this Agreement by the Practice;
- the extraction and/or upload of the De-identified Practice Data, including:
  - any suspension, interruption, temporary unavailability, loss (including corruption) of data or fault occurring whilst extracting the De-identified Practice Data or uploading it to the APHN; and/or
  - any problems and/or technical malfunction of any computer online systems, servers or providers, computer equipment, software or technical problems, or any combination of them including damage to the Practice's computer system related to extracting the De-identified Practice Data and/or uploading it to the APHN.

This indemnity is a continuing indemnity independent of the Practice's other obligations under this Agreement and survives the expiry or termination of this agreement. It is not necessary for the APHN to incur an expense or make a payment before enforcing this right of indemnity.

General

The parties are independent contractors. Nothing in this agreement constitutes a relationship of employer and employee, principal and agent or partnership, between APHN and the Practice.

The Practice must not represent itself, and must use its best endeavours to ensure that its employees, directors, officers, contractors, and agents do not represent themselves, as being an officer, employee, partner or agent of APHN, or as otherwise able to bind or represent APHN.

Each party acknowledges and agrees that:

- this agreement contains everything the parties have agreed on in relation to this subject matter and supersedes all previous agreements; and
- it has not entered into this agreement in reliance on, or as a result of any statement or conduct of any kind (including without limitation, any representation, warranty, advice or undertaking).

A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement.

If any part of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. In addition, if any part of this agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

Headings do not affect the interpretation of this agreement.

Unless the context otherwise requires:

- words in the singular shall include the plural and in the plural shall include the singular;
- a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- a reference to one gender shall include a reference to the other genders; and
- the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation.

Signing includes signing by electronic means.

This agreement may only be varied in writing signed by an authorised representative of each party.

This agreement shall be governed by the laws of the State of South Australia and the Practice submits to the non-exclusive jurisdiction of those courts and the courts of appeal from them.

The Practice's rights under this agreement may not be assigned without prior written consent of APHN which may be granted or withheld by APHN in its sole and absolute discretion.

This agreement may consist of a number of counterparts and the counterparts taken together constitute one instrument.

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing (email acceptable) and is only effective in respect of the specific instance to which it relates and for the specific purpose for which it is given.

Executed as an agreement on **/   / 2020**

EXECUTED by the APHN:

_____
CEO Signature

Deb Lee

_____
Name

EXECUTED by the Practice:

_____
Signature of Authorised Person

_____
Name and Position (please print)