**DEED OF AGREEMENT FOR DATA SHARING**

**BETWEEN: Sunshine Coast Health Network Ltd ABN 21 156 526 706 (“PHN”)**

**AND: (“the Data Recipient”)**

**Individual or Business Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

**Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(“The Parties”)**

**Recitals**

1. This Agreement sets out the framework for the sharing of Data by the PHN
2. This Agreement defines the principles and procedures that the Parties shall adhere to and the responsibilities that each Party owes in respect of the other in relation to the sharing of Data.

**IT IS AGREED**

1. Defined terms and interpretation
   1. Defined Terms

In this Agreement –

**Agreement** means these terms and conditions, the Schedules, the Data Sharing Request Form and any Data Sharing Assessment Notice;

**Commencement Date** means the date on which this Agreement is executed by the second of the Parties;

**Confidential Information:**

* + - 1. means the information, forms, manuals, specifications, intellectual property, know how, ideas, computer software, financial information and records, processes, publications, statements, and data concerning this Agreement and/or the Services, and includes:
         1. the matters contained in this Agreement;
         2. information relating to the operations, workings, techniques and/or dealings of a Party;
         3. all information obtained (whether in writing, pictorially, in machine readable form, orally or by observation) in connection with the provision of the Services;
         4. information delivered by presentation, orally, visually or materially in discussions between the PHN and Service Provider;
         5. finances, technology, supplier information, market intelligence, marketing and other commercial information of a confidential nature;
         6. any information belonging to a Party and/or any third party which, by its nature, is confidential or that a reasonable person would consider to be confidential;
         7. any information which is designated by a Party as confidential; or
         8. any other information that a party knows or ought to know is confidential;
      2. but does not include information:
         1. that is independently created or rightfully known by, or in the possession or control of, the other party and not subject to an obligation of confidentiality on the other party; or
         2. which is or becomes public knowledge (otherwise than as a result of a breach of this Agreement or any other confidentiality obligation); or
         3. required to be disclosed by Law.

**Data** means any information, however stored or recorded and includes identifiable, re-identifiable, non-identifiable (de-identified) data, metadata

**Eligible Data Breaches** means a data breach that is likely to result in serious harm to any of the individuals to whom the information relates as defined under the *Privacy Act 1988*.

**Identifiable Data** means Data about an individual whose Personal Information is apparent or can reasonably be ascertained, from the Data;

**Intellectual Property** includes, but is not limited to all copyright, all rights in relation to inventions (including patents and patent rights), all trade mark rights, all registered and unregistered design rights and all other rights resulting from intellectual activity in the industrial, professional, legal, scientific, literary or artistic fields in Australia or elsewhere, irrespective of whether such rights are capable of being registered;

**Non-identifiable Data** means Data about an individual whose Personal Information is not apparent or cannot reasonably be ascertained, from the Data;

**Notifiable Data Breaches Scheme** means the scheme requiring entities to notify particular individuals and the Australian Information Commissioner about Eligible Data Breaches as outlined in the *Privacy Act 1988*.

**Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth).

**PHN Security Framework** means the PHN Security Framework as notified by the PHN to the Data Recipient from time to time.

**Re-identifiable Data** means Data that requires a code to access Identifiable Data;

**Specified Purpose** means the purpose if any advised by the PHN pursuant to clause 3.2 for which the Data Recipient may use the Data.

**Supplied Data** means the Data which is supplied to the Data Recipient by the PHN pursuant to the terms of this Agreement from time to time.

* 1. Interpretation
     1. If an act must be done on a specified Calendar Day that is not a Business Day, it must be done on or by the next Business Day.
     2. Words in the singular include the plural and vice versa.
     3. Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
     4. If a period of time is specified and dates from a given Calendar Day or the Calendar Day of an act or event, it is to be calculated exclusive of that Calendar Day.
     5. Headings are inserted for convenience and do not affect the interpretation of this Agreement.
     6. A reference to:
        1. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and (as the case may be) the person's legal personal representatives, successors, assigns and persons substituted by novation;
        2. an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
        3. a right includes a benefit, remedy, discretion or power;
        4. time is to local time in the place where the PHN's contact person as defined in Item 2 of the Schedule is located;
        5. "$" or "dollars" is a reference to Australian currency;
        6. the word "includes", and any variants of that word, will be read as though followed by the words "without limitation";
        7. this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
        8. writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
        9. this Agreement includes the Schedule, appendices and annexures to it.
     7. Where this Agreement refers to an Act of Parliament that reference is taken to be a reference to the specific Act as amended or replaced from time to time, as the case may be.

1. Nature of this Agreement
   1. The purpose of this Agreement is to:
      1. set out the responsibilities of the Parties on how Data is to be shared from time to time;
      2. ensure that Data is only used for the Specified Purpose;
2. Data Sharing Request
   1. From time to time the Data Recipient may request and/or the PHN may in its absolute discretion decide to share data with the Data Recipient.
   2. The PHN will advise the Data Recipient in writing:
      1. when and how it discloses the Data;
      2. the purposes for which the Data may be used by the Data Recipient;
      3. any conditions relating to the transfer, storage, access, use or destruction of the Data.
3. Use of Data
   1. The Data Recipient represents and warrants that:
      1. The Data Recipient will not use the Supplied Data other than for the Specified Purpose;
      2. The Data Recipient will not disclose the Supplied Data to any other person unless required or authorised by law, or the PHN consents in writing to that disclosure.
4. Protection of Data
   1. The Data Recipient will ensure that all reasonable, administrative, technical and physical safeguards are taken to protect the Supplied Data from misuse, loss or any unauthorized access, use, modification or disclosure.
   2. The Data Recipient will implement and comply with the PHN Security Framework and all applicable PHN Data Management Policies as may be notified to the Data Recipient from time to time.
   3. The Data Recipient will ensure that its employees, agents, and sub-contractors involved in the performance of this Agreement are aware of and comply with their obligations to protect the Supplied Data from misuse, loss or any unauthorized access, use modification or disclosure and that
   4. The Data Recipient will immediately notify the PHN if the Data Recipient becomes aware of any unauthorized access to, or use or disclosure of the Supplied Data.
5. Protection of Personal Information
   1. The Data Recipient will comply with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles in the use, collection, storage or disclosure of any personal and/or health information.
6. Intellectual Property Rights
   1. All Intellectual Property Rights in the Supplied Data remain the property of the PHN.
   2. The PHN grants the Data Recipient, subject to any conditions, restrictions or directions, as notified by the PHN, a non-exclusive, non-transferable, royalty-free licence to use the Supplied Data solely for the Specified Purpose.
7. Data Breaches
   1. If a Party becomes aware that an Eligible Data Breach has occurred or suspects an Eligible Data Breach may have occurred in relation to Personal Information jointly held by the parties, that Party must notify the other Party within 2 business day of becoming aware of the existence of the Eligible Data Breach or suspected Eligible Data Breach.
   2. If an Eligible Data Breach or suspected Eligible Data Breach has occurred in relation to Personal Information jointly held by the parties, the Data Recipient is responsible for complying with the Notifiable Data Breaches Scheme, including, but not limited to complying with the requirements of section 26WH of the Privacy Act 1988.
8. Publications
   1. Unless otherwise advised by the PHN, at least one month prior to publishing any material or data deriving from the Data the Data Recipient shall provide the PHN with one draft copy of the proposed publication.
9. Confidentiality
   1. Both Parties shall not, and shall ensure that their employees, agents and subcontractors shall not divulge or dispose of or part with possession, custody or control of any Confidential Information provided by the other Party pursuant to this Agreement, other than in accordance with the express written instructions of the other Party or in compliance with statutory requirements.
   2. This clause survives termination of the agreement.
10. Indemnity and Liability
    1. The Data Recipient indemnifies, and shall keep indemnified the PHN against any liability, costs, expenses, losses, claims or proceedings whatsoever arising under any statute or at common law or for breach of contract in respect of:
       1. damage to property, real or personal, including any infringement of third party intellectual property rights; and
       2. any direct economic or financial loss

arising out of, in connection with any act, omission or default of the Data Recipient, its staff agents or subcontractors in relation to the Data, except in so far as such damages or injury shall be due to any negligence of the PHN.

* 1. The PHN takes no responsibility for the accuracy, currency, reliability and correctness of the Data, nor for the accuracy, currency, reliability and correctness of links or references to other information sources and disclaims all warranties in relation to such data, links ad references to the maximum extent permitted by the legislation. The Data Recipient uses or relies on the Data at its own risk.

1. End of Agreement
   1. This Agreement commences from the Commencement Date and will continue in force for as long as the Data Recipient continues to hold the Supplied Data.
   2. The PHN may direct the Data Recipient at any time in writing, to return or destroy all or a specified portion of the Supplied Data and the Data Recipient must, within 30 days of receipt of the written notification, comply with such direction. The return or destruction of any data will not diminish or otherwise affect any other obligations under this Agreement.
   3. In the event that the Data Recipient no longer holds any of the PHN’s data, this agreement will automatically terminate.
   4. Either Party may immediately terminate this Agreement on written notice to the other Party for any reason or without reason.
2. General
   1. This Agreement constitutes the entire agreement between the Parties in relation to the subject matter of this agreement.
   2. The rights and obligations of the Parties under this agreement will not be assignable without the prior written permission of the other Parties.
   3. If any provision of this agreement is held unenforceable or void, the remaining provisions will be enforced in accordance with their terms.
   4. Nothing in this agreement will be construed so as to make any Party an employee, agent, or partner of another, or create any relationship of partnership, agency or trust whatsoever.
   5. This agreement may be signed in any number of counterparts.
   6. This agreement shall be construed and governed in accordance with the laws of Queensland.

SIGNED AS A DEED

|  |  |  |
| --- | --- | --- |
| Signed by Pattie Hudson  Sunshine Coast Health Network ABN 21 156 526 706 on the \_\_\_\_\_\_  day of 2020                 by its duly authorised officer in the presence of: |  |  |
|  |  | Signature of Authorised Officer |
|  |  | Pattie Hudson - Chief Executive Officer |
| Signature of witness |  | Full Name and Office of Authorised Officer (print) |
|  |  |  |
| Name of witness (print) |  |  |

**(“the Data Recipient”)**

**SIGNED** for and on behalf of }

NAME:

**ACN ### ### ###** in the presence of: }

…………………………………………………………………….

Signature of Witness

…………………………………………………………………..

Full Name of Witness

**SIGNED** for and on behalf of }

**######### }** ……………………………………………….

**ACN ### ### ###** in the presence of: } NAME

…………………………………………………………………….

Signature of Witness

…………………………………………………………………..

Full Name of Witness