

CAT PLUS SOFTWARE – PRACTICE AGREEMENT

Parties

1. **ADELAIDE PRIMARY HEALTH NETWORK LIMITED** ABN 18 155 472 067, of 22 Henley Beach Road, Mile End, SA 5031 (**the PHN**)
 2. Practice Name **trading as** Legal Entity Name, ABN: XX XXX XXX XXX of Street, Suburb, Postcode, State (**the Practice**)
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Background

The PHN is funded by the Commonwealth Government to coordinate a number of practice support initiatives to ensure Practices provide evidence-based, best practice care, and have systems in place to measure and demonstrate outcomes, and monitor quality improvements, including:

- supporting Practice in attaining the highest standards in safety and quality through the adoption of evidence based best practice methods to improve the quality of care;
- collecting and reporting data to support continuous quality improvement;
- promoting and improving the uptake of practice accreditation;
- assisting practices in understanding, and meaningful use of eHealth systems in order to streamline the flow of relevant patient information across the local health provider community; and
- supporting health information management to inform quality improvements in health care, specifically the collection and use of clinical data with practices.

In order to support improvements in the delivery of primary health care in South Australia, the PHN is providing Practices in the PHN catchment area a licence for Software.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: this Practice Agreement.

Australian Consumer Law: schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Documentation: any PHN or PenCS marketing materials and any other documents provided by with respect to the Software.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Licence Period: the period of this Agreement described in clause 2.1.

Object Code: software code expressed in machine-readable form.

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

Practice: a medical practice consisting of general practitioners and/or allied health professionals who work from the premises of the practice, who has entered into a Practice Agreement with the PHN.

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

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

Privacy Laws means 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.

Source Code: means software code expressed in human readable form, which when compiled, assembled, interpreted or translated becomes Object Code.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 This agreement may consist of a number of counterparts and the counterparts taken together constitute one instrument. Signing includes signing by electronic means.
- 1.4 Unless the context otherwise requires:
- (a) words in the singular shall include the plural and in the plural shall include the singular;
 - (b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
 - (c) a reference to one gender shall include a reference to the other genders; and
 - (d) the words '**such as**', '**including**', '**particularly**' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation.

2. Terms and conditions

- 2.1 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 ("Licence Period").
- 2.2 The Practice acknowledges that all Intellectual Property Rights in the Software throughout the world belong to PenCS, that rights in the Software are licensed (not sold) to PHN and are sublicensed to the Practice, and that the Practice has no rights in, or to, the Software other than the right to use them in accordance with the terms of the Practice Agreement.
- 2.3 The Practice acknowledges that it has no right to have access to the Software in Source Code form.
- 2.4 The Practice acknowledges that the integrity of the Software is protected by technical protection measures (TPMs) so that the Intellectual Property Rights, including copyright, in the Software are not misappropriated. The Practice must not attempt in any way to remove or circumvent any such TPM,

nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or have in its possession for private or commercial purposes, any means whose sole intended purpose is to facilitate the unauthorised removal or circumvention of such TPM.

- 2.5 The Practice is granted a non-exclusive, non-transferable licence to use the Software and the Documentation for its own internal business only, for the Licence Period. The Practice must not use, and must ensure that the Software and Documentation are not used, other than as expressly permitted by the licence granted pursuant to this paragraph 2.5.
- 2.6 The licence described in clause 2.5 is provided on the condition that the Practice agrees to a separate Data Sharing Agreement with the PHN. If the Practice:
- (a) does not agree to a Data Sharing Agreement that is acceptable to the PHN; or
 - (b) breaches the Data Sharing Agreement; or
 - (c) the Data Sharing Agreement expires or is terminated for any reason, the PHN may terminate this Agreement immediately.
- 2.7 During the Licence Period the Practice agrees to:
- (a) provide consent to the PHN and PenCS to install the Software on the Practice's computer system;
 - (b) make reasonable efforts to participate in training activities identified and/or provided by the PHN;
 - (c) nominate a primary point of contact for issues relating to the Software; and
 - (d) agree to end user terms and conditions built into or required by the Software.
- 2.8 The Practice must not permit any person or entity to use the Software (whether by way of sub-licence or otherwise) other than an employee or subcontractor of the Practice in the course of the employee or subcontractor carrying out medical, nursing, administrative, secretarial, or receptionist services for the exclusive benefit of the Practice.
- 2.9 The Practice must not permit any person or entity to use the Software who is in the business of supplying software competitive with the Software.
- 2.10 The Practice is responsible for all acts and omissions of its employees and subcontractors and any act or omission of an employee or subcontractor of the Practice shall, as between the Practice and PenCS, and as between the Practice and the PHN, constitute an act or omission of the Practice.
- 2.11 Except with respect to any Non-Excludable Guarantees under the Australian Consumer Law or for any proven gross negligence or wilful misconduct, the Practice agrees that neither the PHN nor PenCS is responsible for any non-performance, failure or other aspect of the Software or Documentation;
- 2.12 The Practice must not transfer, assign, charge or otherwise dispose of its rights or obligations under the Practice Agreement. Any purported assignment in breach of this clause is void.
- 2.13 The Practice must not make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs (except as may be expressly permitted by the *Copyright Act 1968* (Cth));

- 2.14 The Practice must use reasonable endeavours to ensure that PenCS is able to remotely access the Practice's computer systems for the purposes of providing installation services, training services and support services.
- 2.15 The Practice agrees and acknowledges that PenCS is not responsible for the security of any Practice Data. The Practice must ensure that the relevant data files for the Software installed on the Practice's computer systems are stored in a secure manner so as to prevent unauthorised access and use of Practice Data.
- 2.16 The Practice must comply with the *Privacy Act 1988 (Cth)* and all other applicable Privacy Laws including with respect to the use, possession, disclosure and processing of Practice Data.
- 2.17 The Practice must not infringe any Intellectual Property Rights.
- 2.18 The Practice must not distribute, disclose or permit any third party to access any reports, outputs or data generated by the Software, except as expressly permitted under this Agreement or separately agreed in writing with the PHN.
- 2.19 The Practice must replace the current version of the Software with any updated or upgraded version or new release that the PHN or PenCS provides to the Practice within 14 days of the Practice's receipt of such version or release;
- 2.20 The Practice agrees that the Software and the reports and other information provided by the Software is of a general nature only and does not constitute medical advice or medical opinions of any kind. The Practice must independently verify the correctness of the reports and other information provided by the Software before relying thereupon in any respect or providing any advice or services based on such reports or information. The Practice agrees that neither the PHN or PenCS provide medical services or medical opinions of any kind and that any medical or related services provided by the Practice to any medical patient are provided by the Practice alone and that the PHN and PenCS are not a party to any agreement for the provision of services to any medical patient and are not responsible for the performance of any such agreement.
- 2.21 The Practice agrees that in so far as the Practice Agreement provides rights to PenCS, the Practice Agreement is entered into by the PHN in trust for PenCS and that those rights and the rights of the PHN under the Practice Agreement are enforceable by PenCS.
- 2.22 This Agreement terminates immediately if the Practice breaches any irremediable provision of this Agreement or any provision of this Agreement capable of remedy and fails to remedy the breach within 14 days of notice requiring it to remedy the breach, if the Practice breaches PenCS's Intellectual Property Rights, or if the Practice suffers an insolvency event.
- 2.23 The Practice may terminate this Agreement at any time by giving the PHN 30 days prior written notice.
- 2.24 If the PHN's CAT Plus Software Distribution Agreement with PenCS is terminated for any reason then this Agreement is automatically and immediately terminated. In this situation the PHN will advise the Practice as soon as is reasonably practicable.
- 2.25 The Practice Agreement is subject to and shall be construed in accordance with the laws in force in New South Wales.

3. Support

- 3.1 The PHN will arrange for PenCS to install the Software on the Practice's computer system, provided that the Practice complies with all of the PHN's instructions regarding the installation.
- 3.2 The Practice must advise the PHN of all users that it requires to have login access to the Software. Each user will require a separate username and password to login.
- 3.3 The PHN may identify or arrange training for the Practice in the use of the Software. The Practice agrees to make reasonable efforts to participate any such training.
- 3.4 The PHN will provide initial phone support to the Practice in relation to the Software. This support may be escalated to PenCS if the PHN decides it is required.

4. Disclaimer and exclusion of warranties

- 4.1 In this clause 4 (also including all sub-clauses and paragraphs of this clause 4) where the context allows it any reference to the Software must be read as a reference to both the Software and the Documentation.
- 4.2 The Practice uses the Software at its own risk entirely. The Software is provided on an 'as is' and 'as available' basis, and to the extent permitted by law, all conditions, warranties and representations in relation to the Software, whether expressed or implied by statute, common law or otherwise, are excluded. To the maximum extent permitted by law, all liability in respect of access to or use of the Software is excluded.
- 4.3 Without limitation, the Practice acknowledges that the PHN does not warrant, or represent that the Software, the Software's use and/or results from the Software:
 - (a) are or will be valid or of any commercial value;
 - (b) will achieve specific results or will be conclusive; or
 - (c) is suitable for a particular purpose.
- 4.4 The PHN accepts no responsibility or liability for the Software. While the PHN is under the impression that Software has been tested on a variety of computer systems and in a variety of environments, the PHN does not accept any responsibility for use of the Software in the Practice.

5. Indemnity release and liability

- 5.1 At all times the Practice agrees to release, indemnify, and defend the PHN, its employees, directors, officers, contractors, agents, and PenCS from and against all losses of any kind whatsoever (including but not limited to liabilities, expenses, losses, damages, claims, demands, penalties, fines, charges, taxes, interest and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party)) that the PHN (or any of the other persons listed above) may sustain or incur, arising directly or indirectly, from or in reference to:
 - (a) the Software, the use of the Software, the Documentation, and/or any associated services; and/or
 - (b) any breach of this Agreement by the Practice.

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 PHN to incur an expense or make a payment before enforcing this right of indemnity.

5.2 To the extent permitted by law, the PHN excludes all liability to the Practice in relation to this Agreement including in relation to the Software, the Software's use, and/or results from the Software. Where the PHN's liability cannot lawfully be excluded, it shall be limited to the extent permitted by law, to the PHN:

- (a) re-performing the relevant services or resupply of the relevant goods; or
- (b) paying the Practice the reasonable cost of having the relevant services re-performed by another provider or the reasonable cost of having the relevant goods resupplied,

at the option of the PHN, in its sole and absolute discretion.

5.3 The PHN 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.

5.4 Any claim by a Practice for defective services provided under this agreement must be made within 14 day of the provision of those services.

Executed as an agreement on / / 2020

Executed by Adelaide Primary Health Network Limited

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CEO Signature

Deb Lee
.....
Name (please print)

Executed by the Practice

.....
Signature of Authorised Person

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Name and Position (please print)

SAMPLE