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| HEALTH ADMINISTRATION CORPORATIONAND |
| Health Outcomes and Patient Experience IT Platform – Participation Agreement |

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AGREEMENT DETAILS

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| --- |
| Duration of Agreement |
| Commencement Date |  |
| Term |  |
| Agency Details |
| Agency | Health Administration Corporation  |
| Division | Health System Strategy and Planning |
| Address | 1 Reserve Road St Leonards NSW 2065  |
| ABN | 45 100 538 161 |
| Agency Representative | Agency for Clinical Innovation – Melissa Tinsley |
| Telephone | 0475 960 036 |
| Email | Melissa.Tinsley@health.nsw.gov.au |
| Primary care provider Details |
| Name  |  |
|  |  |
| Address |  |
| ABN |  |
| Primary care provider Representative  |  |
| Telephone |  |
| Email |  |

Participation agreement

Parties

This Agreement is made between:

**Health Administration Corporation** (ABN 45 100 538 161)  **(“the Agency”)**

**and;**

**[Insert Primary care provider legal entity and ABN] (“the Primary care provider”)**

Background

1. NSW Health has a vision for a sustainable health system health system that delivers outcomes that matter most to patients and the community, is personalised, invests in wellness and is digitally enabled. Building on Future Health, which includes value based healthcare and patient safety and experiences, NSW Health is investing in an IT platform, Health Outcomes and Patient Experience (“HOPE information system”) to improve consistency in the collection and use of patient reported measures (“PRMs”).
2. This Agreement pertains to the HOPE information system which will provide the infrastructure and technology to allow the user-friendly collection of PRMs data at scale across the healthcare system. Using the HOPE information system patients will be able to complete surveys and access their reports and clinicians will be able to access completed surveys in real-time to inform care and decision making. The HOPE information system will integrate with local hospital eMR systems (Phase 2) and primary care desktop systems (Phase 3). The information and reports which it collects will be viewable along the patient journey to include; inpatient, outpatient and primary care settings enabling patients and multidisciplinary care teams to capture, review and act on the PRMs data in a timely, holistic manner.
3. This Agreement sets out the terms and conditions under which the Agency will provide the Primary care provider with access to the HOPE information system and how the Primary care provider may:
	1. collect PRMs data using the HOPE information system; and
	2. access and use PRMs data in the HOPE information system.

**Operative Provisions**

# Definitions

In this Agreement except where a contrary intention appears:

**Agreement** means the agreement between the Parties which is set out in this document, and the *“Patient Reported Measures Data Governance and Management Framework* (the Framework). In the event of any inconsistency between the provisions of this document, and the Framework, the provisions of the Framework shall prevail.

**Agreement Details** means the details set out on the page of this document headed “Agreement Details”.

**Approved Purpose** means the purposes envisaged by the Framework.

**Business Day** means any day that is not a Saturday, Sunday or gazetted public holiday in the State of New South Wales.

**Commencement Date** means the date so specified in the Agreement Details.

### **Confidential Information** means any information disclosed (whether in writing or orally) between the Parties in connection with this Agreement whether before or after the Commencement Date, that:

### is by its nature confidential;

### is designated as confidential; or

### the Parties know or ought to know is confidential,

and includes:

### (d) Personal Information; and

### (e) Health Information,

### but does not include information which is or becomes public knowledge other than by breach of this Agreement.

**Framework** means the *“Patient Reported Measures Data Governance and Management Framework*” which is attached in Annexure 1, all as amended from time to time.

**Health Information** has the meaning contained in the *Health Records and Information Privacy Act 2002* (NSW);

**HRIP Act** means the Health Records and Information Privacy Act 2002 (NSW)

**Other PRMs data** means PRMs data provided to the HOPE information system by people other than the Primary care provider.

**Party** means a party to this Agreement and **Parties** means both.

**Party’s Representative** means, in relation to each Party, the person named as such in the Agreement Details or such other person as the Party may, from time to time, nominate in writing.

**PCP PRMs data** means that PRMs data which a Primary care provider provides to the HOPE information system.

**Personal Information** has the meaning contained in the *Privacy and Personal Information Protection Act 1998* (NSW);

**Term** means the period so specified in the Agreement Details, as extended by agreement of the Parties.

# Term

### This Agreement commences on the Commencement Date and will continue for the Term unless earlier terminated.

### The Parties may extend the Term for a further period, or periods, by agreement in writing.

# Agency’s role

The Agency will:

### provide the Primary care provider with access to the HOPE information system in accordance with this Agreement;

### provide the Primary care provider with implementation support in using the HOPE information system through:

#### guidance, capability development and Primary care provider support to embed the collection of PRMs data into models of care, patient cohorts, Primary care provider workflows, processes and results systems;

#### coordination of the endorsement of PRMs data and patient reported experience measures for primary care; and

#### assistance with technical support to implement the HOPE information system;

### foster collaboration;

### update the Framework from time to time to ensure it is fit for purpose and keep the Primary care provider informed about any update;

### work with the Primary care provider to provide timely implementation support and advice. If timelines are unable to be met, the Agency will provide acceptable notification and mitigation to the Primary care provider in advance, including working with the Primary care provider to reschedule any go-live implementation schedules, education and/or training; and

### assume, and carry out, the roles and responsibilities which the Framework allocates to it or, for which it can be inferred from the Framework it is responsible, including, without limitation, the role of Centralised Data Steward.

# Primary care provider role and responsibilities

### The Primary care provider agrees to:

### access the HOPE information system in accordance with, and comply with the guiding principles of, the HRIP Act, Framework and this Agreement;

### assume the roles, obligations and responsibilities that the Framework allocates to Primary care providers, or for which it can be inferred from the Framework that Primary care providers are responsible.

### The following is a summary only\* of certain roles and what they entail:

### **Data Custodian**

### Clinical responsibilities:

* + collect and store, in the HOPE information system, data and information (including demographic information and responses to PRMs surveys) for the purpose of a Primary care provider using that data and information to inform its client’s care and treatment. This information is provided by the patients with the understanding that their information will be secure and will only be accessed by authorised users;
* provide PRMs data to, or receive PRMs data from, the HOPE information system for the Primary care provider’s patients across care settings;

Note: The HOPE information system will support the primary purpose and use of PRMs data and directly related secondary purposes, such as using PRMs data for Primary care provider quality assurance activities;

* support collection of PRMs data from Primary care provider patients where those patients agree to their PRMs data to be collected in an in-clinic setting;
* use PRMs data collected in the Primary care provider and in NSW Health services to inform care for Primary care provider patients;
* advocate for the role of PRMs data in contributing to the overall holistic approach to person centred care;

### comply with the Framework in relation to the primary and secondary uses of the PRMs data within the Primary care provider being:

Primary use

* + PRM data (survey responses) will be collected from patients and used by clinicians to contribute directly to the care and treatment of patients. PRMs will be used by patients and caregivers to help decide their choice of treatment, and to improve their ability to manage the quality of care received as relevant to their health care needs.
	+ Generally, NSW Health entities and primary health care providers may use and disclose PRM data only for the primary purpose for which PRMs were collected.

Secondary use

* Using de-identified PRMs data for quality assurance activities or for reporting outcomes of patient cohorts or models of care within the Primary care provider;

### Administrative responsibilities:

* ensure Primary care provider personnel who access, input, amend, delete, extract, and analyse PRMs data held by the HOPE information system do so in accordance with the Framework;
* ensure the safety (privacy and security) and integrity of the PRMs data which the Primary care provider’s personnel access;
* allocate the role of Local Data Steward and StaffLink Administration Manager;
* ensure Primary care provider clinicians and clerks comply with all applicable laws, NSW Health policies and the Framework;
* deal with applications to access PRMs data as follows:
	+ for applications requesting access to local PRMs data (i.e. PRMs data owned by one NSW Health entity or another medical Primary care provider), the application should be directed to the Data Custodian of the relevant NSW Health entity or another medical Primary care provider for the requested PRMs data held within the HOPE information system. The Data Custodian will perform a data risk assessment and assurance process to assess the request for the secondary use of PRMs data, approve / deny the request, and specify in an agreement with the relevant NSW Health entity or other medical Primary care provider, what PRMs data is available and the conditions of use.
	+ secondary uses of PRMs data for the management of health services and research will be facilitated through value added copies of the PRMs data held within the HOPE information system. These copies are considered separate data assets subject to their own data governance and management framework. Organisations/ individuals requesting access to PRMs data for secondary use purposes are responsible for following an appropriate process for requesting access to such data;
* participate in the refinement of the state-wide PRMs program to ensure the program meets the needs of all care providers across NSW;
* contribute to the refinement of the HOPE information system to ensure clinical workflows and seamless integration for primary care clinicians;

### **Local Data Steward:**

### responsible for the day-to-day operation and implementation of the HOPE information system and the Primary care provider’s PRMs data held on the HOPE information system; and

### **StaffLink Administration Manager:**

### responsible for communicating to the Agency’s PRMs data manager or delegate the details of new staff to onboard for StaffLink allocation and immediately advise of staff leaving the Primary care provider so they can be offboarded.

\* In the event of any inconsistency between the provisions of this clause 4 and the Framework the provisions of the Framework prevail to the extent of any inconsistency.

# Relationship

### In carrying out their respective roles under this Agreement, the Parties agree to co‑operate in a timely and effective manner with each other and to act in good faith.

### Neither Party is an employee, agent or partner of the other for any purpose

# Confidential Information

1. Where either Party (“Recipient”) receives Confidential Information of the other Party (“Discloser”), the Recipient must:
2. keep it confidential; and
3. disclose, use or permit the use of the Confidential Information only for the Approved Purpose and in accordance with this Agreement.
4. The Recipient may disclose Confidential Information to any of its directors, officers, Affiliates, employees or professional advisors (Representatives), to the extent necessary for the Approved Purpose, but provided that the Recipient:

#### informs such Representatives that the Confidential Information is confidential and the terms of this Agreement; and

#### procures that such Representatives comply with the terms of this Agreement as if they were a party to it.

1. Where the Recipient obtains Personal and/or Health Information as a result of access to, the use of, or for the purpose of the HOPE information system, it must:

1. ensure that the Personal and/or Health Information is protected against loss and unauthorised access, use, modification or disclosure and other misuse;

2. not use or disclose Personal and/or Health Information other than for the Approved Purpose unless:

* + 1. required or authorised by law; or

ii. authorised in writing by the individual to whom the Personal and/or Health Information relates but only to the extent authorised.

# Privacy and Data Breach

### In this clause, **Privacy and Data Breach Legislation** means the laws current at the time governing privacy and data breaches applicable in New South Wales and the Commonwealth of Australia, and includes any associated rules, codes of practice and guidelines made under those laws.

### Each Party agrees to ensure that its collection, storage, security, access, use and disclosure of the PRMs Data is fully compliant with all Privacy and Data Breach Legislation.

### Each Party agrees to notify the other promptly upon becoming aware of any security or privacy incident in respect of the PRMs Data in the HOPE information system.

# Security

### Each Party agrees to implement appropriate policies and procedures to prevent unauthorised access to or use of the PRMs data in the HOPE information system and otherwise to comply with the Framework, including, via information technology and any other related systems.

### Each Party agrees to use reasonable efforts to ensure that it does not introduce into any PRMs Data or the HOPE information system any viruses, malicious software or other harmful code which may disrupt the operation of the HOPE information system.

### Each Party agrees to comply with the security requirements of the Framework.

# Resolution of issues

### Both Parties agree to act in good faith in carrying out their roles under this Agreement and to attempt to resolve any dispute in good faith.

# Insurance and indemnity

### Each Party will indemnify the other Party against any loss, cost or damages suffered by the party, its officers, employees, students, agents or contractors arising from any wilful or negligent act or omission by its officers, employees, contractors or agents, undertaken in relation to the use of the HOPE information system or in connection with this Agreement, except to the extent that such cost and damages are caused or contributed to by a wilful or negligent act or omission of the other Party.

### Each Party will ensure they have appropriate insurance arrangements in place for public liability and professional indemnity risk, insuring that Party against any claim, loss, cost, damage arising from the negligent act or omission of its officers, employees, contractors or agents. Each Party will carry worker’s compensation coverage for its employees.

### To the extent permitted by law, neither Party will be liable to the other for consequential loss or damage (including under an indemnity)

# Termination and basis of relationship

Both Parties agree to bear their own costs and expenses in relation to this Agreement. Either Party may terminate this Agreement by giving the other Party thirty (30) Business Days written notice.

# Disclaimer

### The Agency may update the HOPE information system, from time to time. The features, functionality and operability of the HOPE information system may change following such update.

### Where possible the Agency will provide the Primary care provider with reasonable notice before performing any planned maintenance, updates or upgrades that will result in the HOPE information system not being available.

# Licence to PRMS data

1. The Agency grants to the Primary care provider a non-exclusive, personal, royalty-free, revocable and non-transferable licence to:

#### use and access the HOPE information system; and

#### view the Other PRMs data,

for the Approved Purpose for the Term.

1. The Primary care provider grants to the Agency a non-exclusive, personal, royalty-free, revocable and non-transferable licence to view the PCP PRMs data for the Approved Purpose for the Term.

# Amendment

All variations to this Agreement and all consents, approvals and waivers made under this Agreement must be evidenced in writing signed by both Parties.

# General

### **Governing law.** This Agreement is governed by the laws in force in New South Wales. The Parties submit to the non-exclusive jurisdiction of the courts of that place.

### **Costs.** Each Party agrees to pay their own legal and other costs and expenses in connection with this Agreement.

### **Severability.** If any provision of this Agreement is illegal, invalid, void, voidable or unenforceable, the relevant provision will be deemed read down as reasonably appropriate to overcome such effect or, if that is not reasonably possible, be deemed severable and the remaining provisions of this Agreement will continue in full force and effect.

### **Survival.** Clauses 6, 7, 8, 9, 10 and 13 with any other provisions of this Agreement which by their nature are intended to survive termination or expiry of this agreement, will continue in full force and effect after termination or expiry.

EXECUTION

**Signed for and on behalf of the Agency**

Name: Melissa Tinsley Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position: Associate Director, Integrated Digital Enablement Accelerator (IDEA) team  Date:

**Signed for and on behalf of the Principal of the Primary care provider**

Name: Dr Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position: Primary care provider Principal Date:

# Annexure 1

[“Patient Reported Measures Data Governance and Management Framework” dated 6 August 2021](https://aci.health.nsw.gov.au/__data/assets/pdf_file/0007/692917/PRMs-data-governance-and-management-framework.pdf)