

DATED

DAY OF

2017

**DEED OF CONFIDENTIALITY
(INFORMATION ON E-HEALTH SYSTEMS)**

BY

THE ENTITY NAMED IN ITEM 1 OF THE SCHEDULE

("Confidant")

- IN FAVOUR OF -

SOUTHERN ADELAIDE LOCAL HEALTH NETWORK INCORPORATED

("SALHN")

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SCHEDULE

DEED dated the date specified in Item 1 of the Schedule

BY:

THE ENTITY NAMED IN ITEM 1 OF THE SCHEDULE (“Confidant”)

IN FAVOUR OF

SOUTHERN ADELAIDE LOCAL HEALTH NETWORK INCORPORATED of Flinders Drive,
Bedford Park SA 5042 (“**SALHN**”)

BACKGROUND:

- A. SALHN provides health and diagnostic services and conducts research activities for the benefit of the public of South Australia.
- B. In the course of undertaking its activities, SALHN has collected personal or health information of patients and other confidential information and stored such information in various eHealth Systems.
- C. The Confidant intends to undertake activities that requires access to the personal or health information of patients and other confidential information held by SALHN in its eHealth Systems.
- D. The Confidant agrees to comply with the terms and conditions set out in this Deed.

IT IS AGREED:

1. BACKGROUND

The Confidant acknowledges the truth and accuracy of the matters set out in the Background in every particular.

2. INTERPRETATION

2.1 Definitions

- 2.1.1 “**Business Day**” means any day that is not a Saturday or Sunday or a public holiday in South Australia under the *Holidays Act 1910*;
 - 2.1.2 “**Confidant**” means the Party named at Item 2 of the Schedule;
 - 2.1.3 “**Confidential Information**” means information embodied in any form and howsoever recorded that:
 - (a) is by its nature confidential;
 - (b) is designated as confidential by SALHN;
 - (c) the Confidant knows or ought to know is confidential;
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- (d) is confidential by virtue of the circumstances in which a third party may have submitted that information to SALHN;
 - (d) is comprised in or relating to any Intellectual Property Rights of SALHN;
 - (e) is stored on an eHealth System; or
 - (f) is of a personal and sensitive nature, including Personal Information and Patient Information.
- 2.1.4 **“Deed”** means this Deed Poll between the Parties, as amended in writing from time to time;
- 2.1.5 **“disclosure”** means providing any kind of direct or indirect access to original or duplicates of Confidential Information, and ‘disclose’ has a corresponding meaning where the context permits;
- 2.1.6 **“eHealth System”** means any patient record management system which holds clinical and Patient Information for the care of Patients;
- 2.1.7 **“Intellectual Property Rights”** includes copyright, trade mark, design, patent, semiconductor, or circuit board layout rights, trade, business or company names, confidential or other proprietary rights, or any rights to registration of such rights, whether created before or after the date of this Deed and whether created in Australia or elsewhere;
- 2.1.8 **“Notice”** means:
- (a) any notice in writing; or
 - (b) a consent, approval or other communication required to be in writing under this Deed;
- 2.1.9 **“Party”** means either SALHN or the Confidant as the context requires or permits, and **“Parties”** means both of them;
- 2.1.10 **“Patient”** means a person that has received or is currently receiving medical treatment through the South Australian public health system, including SALHN;
- 2.1.11 **“Patient Information”** means clinical and Patient information held in an eHealth System;
- 2.1.12 **“Personal Information”** has the same meaning as in the *Privacy Act 1988* (Cth) and means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- 2.1.13 **“Privacy Act”** means the *Privacy Act 1988* (Cth);
- 2.1.14 **“Specified Purpose”** means the authorised use of the Confidential Information as detailed in Item 5 of the Schedule.

2.2 Interpretation

The following rules of construction apply in the interpretation of this Deed:

- 2.2.1 a reference to this Deed is a reference to this Deed as amended, varied, novated or substituted from time to time;

- 2.2.2 a reference to any legislation or to any provision of any legislation includes all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision, and any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision;
- 2.2.3 any reference to:
- (a) the singular includes the plural, and vice versa; and
 - (b) a gender includes every other gender;
 - (c) individuals includes corporations, unincorporated associations, partnerships, trusts and joint ventures;
 - (d) a Party in this Deed includes its administrators, successors and permitted assigns
 - (e) two or more persons is a reference to those persons jointly and severally;
 - (f) a clause or schedule is a reference to a clause of, or a schedule to, this Deed;
 - (g) a clause number includes a reference to all of its subclauses;
 - (h) the word 'or' is not exclusive;
- 2.2.4 clause headings are for convenience only and do not affect interpretation or form part of this Deed;
- 2.2.5 If any act pursuant to this Deed would otherwise be required to be done on a day which is not a Business Day then that act may be done on the next Business Day;
- 2.2.6 where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has corresponding meaning; and
- 2.2.7 where general words are associated with specific words that define a class, the general words are not limited by reference to that class.

3. CONFIDANT MUST APPLY FOR ACCESS TO EHEALTH SYSTEM

- 3.1 Without affecting any other clause of this Deed, the Confidant acknowledges and agrees that:
- 3.1.1 this Deed does not give the Confidant any right to access or use any eHealth System;
 - 3.1.2 the Confidant must apply for access to and use of any eHealth System in accordance with any requirements stipulated by SALHN; and
 - 3.1.3 SAHLN may grant or deny the Confidant access and use of any eHealth System in its absolute discretion.
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4. USE OF CONFIDENTIAL INFORMATION

- 4.1 The Confidant must only access and use Confidential Information for the Specified Purpose and no other purpose.
- 4.2 The Confidant acknowledges and agrees that SALHN may, in its absolute discretion, at any time:
 - 4.2.1 deny the Confidant access to any Confidential Information; and/or
 - 4.2.2 require the Confidant to cease to use any Confidential Information; and/or
 - 4.2.3 require the Confidant to return and/or destroy any Confidential Information pursuant to clause 10 of this Deed; and/or
 - 4.2.4 require the Confidant to execute such further agreements and/or undertakings in connection with the Confidential Information.
- 4.3 Nothing in this Deed obliges SALHN to disclose any particular information to the Confidant.
- 4.4 This Deed is not an exclusive arrangement and does not limit the right of SALHN to disclose its Confidential Information to a third party.

5. NON-DISCLOSURE

- 5.1 The Confidant must
 - 5.1.1 keep the Confidential Information secret and confidential; and
 - 5.1.2 not disclose, publish, release or make available, the Confidential Information, directly or indirectly, to any third person, except as permitted by this Deed; and
 - 5.1.3 not make, or allow others to make, copies of, or store, any part of the Confidential Information, whether printed, electronic, or other form, except to the extent necessary for the Specified Purpose; and
 - 5.1.4 not use Confidential Information in any way which would be harmful to the best interests of SALHN.

6. AUTHORISED DISCLOSURE

The Confidant may disclose Confidential Information if it is permitted to be disclosed by this Deed or it is required to be disclosed by operation of law.

7. UNCERTAINTY

If at any time during the course of this Deed, the Confidant is uncertain whether information is Confidential Information, the Confidant must treat the information as Confidential Information unless and until SALHN agrees in writing that the information is not Confidential Information.

8. UNAUTHORISED DISCLOSURE OR USE OF CONFIDENTIAL INFORMATION

- 8.1 The Confidant must immediately notify SALHN when it becomes aware of:
 - 8.1.1 any breach of this Deed;
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- 8.1.2 any unauthorised disclosure or use of Confidential Information; or
- 8.1.3 any suspected or potential unauthorised disclosure or use of the Confidential Information.
- 8.2 The Confidant must take any and all steps required by SALHN, in relation to:
 - 8.2.1 any breach of this Deed;
 - 8.2.2 any unauthorised disclosure or use of Confidential Information; or
 - 8.2.3 any suspected or potential unauthorised disclosure or use of the Confidential Information.
- 8.3 When the Confidant is aware of any proceedings being issued by a third party to compel the Confidant to disclose Confidential Information, the Confidant must:
 - 8.3.1 promptly notify SALHN; and
 - 8.3.2 to the extent legally permitted, defer and limit the disclosure with a view to preserving the confidentiality of the Confidential Information as much as possible; and
 - 8.3.3 do anything reasonably required by SALHN to oppose or restrict that disclosure, including the institution and conduct or defence of legal proceedings at SALHN's direction and expense.

9. **STORAGE AND HANDLING OF CONFIDENTIAL INFORMATION**

- 9.1 The Confidant must take all reasonable precautions in all its dealings with the Confidential Information and in particular, must at all times:
 - 9.1.1 ensure that the Confidential Information is stored in a manner such that access is restricted to the Confidant; and
 - 9.1.2 comply with all other procedures and directions issued by SALHN in relation to the Confidential Information.

10. **RETURN OF CONFIDENTIAL INFORMATION**

- 10.1 The Confidant must immediately upon:
 - 10.1.1 the conclusion of the Specified Purpose;
 - 10.1.2 SALHN providing a notice to the Confidant pursuant to clause 1413; or
 - 10.1.3 upon the written request of SALHN,(whichever occurs first) cease using the Confidential Information, and at the option of SALHN, either:
 - 10.1.4 return to SALHN all Confidential Information, and all materials containing Confidential Information, in the Confidant's possession or control; or
 - 10.1.5 destroy and certify in writing that the Confidential Information and all materials containing Confidential Information that are in the possession or control of the Confidant have been destroyed or deleted and are not recoverable.
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10.2 In this clause 10, "materials" includes all materials, records and documents, stored in any form (including on paper, in an electronic information storage and retrieval system, or in any other storage or retrieval system or medium) whether visible to the eye or not.

10.3 The return, destruction or deletion of the Confidential Information under this clause 10 does not relieve the Confidant from any of its obligations under this Deed.

11. DEED IS RETROSPECTIVE

The obligations and responsibilities that arise under this Deed also apply to Confidential Information that has been received by the Confidant prior to the execution of this Deed.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 Any Intellectual Property Rights of SALHN in the Confidential Information are retained by SALHN despite any disclosure to the Confidant.

12.2 The Confidant must not challenge SALHN's ownership of the Confidential Information.

13. PERSONAL OR HEALTH INFORMATION

13.1 The Confidant must ensure that where the Confidant is accessing Confidential Information for research purposes that the activities to be undertaken by the Confidant are subject to current and relevant ethics approvals, including but not limited to endorsement from the ethics committee that the access, collection, use, handling or disclosure of Confidential Information is endorsed as being ethical and approved for research purposes.

13.2 The Confidant must comply with:

13.2.1 all protocols and procedures of SALHN in relation to the access, handling, collection, use and disclosure of Confidential Information;

13.2.2 all requirements of the Privacy Act and any other privacy based regulations or rules existing in South Australia;

13.2.3 the most current version of SA Health's Code of Fair Information Practice; and

13.2.4 all other SALHN and SA Health policies and directives (including information technology policies and directives) that SALHN may require the Confidant to comply with from time to time.

14. DURATION

This Deed will continue in full force and effect until SALHN notifies the Confidant in writing that the obligations of the Confidant under this Deed cease to bind the Confidant.

15. REMEDIES

15.1 The Confidant acknowledges and accepts that SALHN may take legal proceedings against the Confidant or third parties if there is any actual,

threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

- 15.2 The Confidant acknowledges and accepts that in addition to any other remedy which may be available to SALHN in law or equity, SALHN is entitled to injunctive relief to prevent a breach of this Deed and to compel specific performance of this Deed by the Confidant.
- 15.3 The Confidant must immediately reimburse SALHN for all costs and expenses (including legal costs and disbursements on a full indemnity basis) incurred in enforcing the obligations of the Confidant under this Deed.
- 15.4 The rights and remedies provided under this Deed are in addition to, and do not derogate from, any rights and remedies available in law or equity.

16. **INDEMNITY**

The Confidant indemnifies SALHN against all losses, costs, expenses, actions or claims directly or indirectly incurred by SALHN as a result of any disclosure or use of Confidential Information by the Confidant in breach of this Deed.

17. **RELEASE**

- 17.1 The Confidant acknowledges that any Confidential Information provided by SALHN is made available 'as is' and that no warranty, express or implied is made regarding the whole or any part of the Confidential Information, including but not limited to its accuracy, correctness, adequacy, completeness, fitness for any purpose, reliability, usefulness or whether it is up to date.
- 17.2 The Confidant acknowledges that it must make its own assessment of the Confidential Information and satisfy itself as to all matters in connection with the Confidential Information, including accuracy and completeness.
- 17.3 The Confidant releases SALHN in respect of any liability which may arise, from or in connection with, the provision or use of Confidential Information to the fullest extent that the law permits such a release to be given.

18. **NO EXCLUSION OF LAW OR EQUITY**

This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

19. **PREMISES**

The Confidant must comply with all workplace health and safety policies and procedures of SALHN and the reasonable directions of SALHN to the extent that the Confidant is granted access to any of SALHN's premises.

20. **NOTICES**

- 20.1 A "notice" means:
- 20.1.1 a notice in writing; or
 - 20.1.2 a consent, approval or other communication required to be in writing under this Deed.
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- 20.2 A notice must be sent on behalf of the sender addressed to the recipient and:
- 20.2.1 delivered to the recipient's address;
 - 20.2.2 sent by pre-paid mail to the recipient's address; or
 - 20.2.3 transmitted by email to the recipient's address.
- 20.3 A notice given to a Party in accordance with this clause 0 is treated as having been given and received:
- 20.3.1 on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
 - 20.3.2 if sent by pre-paid mail, on the third Business Day after posting;
 - 20.3.3 if sent by email,
 - (a) at the time shown in the delivery confirmation report generated by the sender's email system; or
 - (b) if the sender's email system does not provide a delivery confirmation, twenty four hours after the email was sent, unless the sender receives a return email notification that the email was not delivered or otherwise not received.
- 20.4 The address and email address of a Party are those set out in the Schedule.
- 20.5 A Party may from time to time notify its change of address or email address by written notice to the other Party.

21. MISCELLANEOUS

21.1 No Waiver

- 21.1.1 Any waiver of any provision of this Deed is ineffective unless it is in writing and signed by the party waiving its rights.
- 21.1.2 A waiver by either party in respect of a breach of a provision of this Deed by the other party is not a waiver in respect of any other breach of that or any other provision.
- 21.1.3 The failure of either party to enforce at any time any of the provisions of this Deed must not be interpreted as a waiver of that provision.

21.2 Modification

Any modification or variation of this Deed must be made in writing and signed by the Parties.

21.3 Severance

If any provision of this Deed is void or unenforceable the remaining provisions will continue in full force and effect.

21.4 Burden of Proof

The burden of showing that any Confidential Information is not subject to the obligations of confidentiality in this Deed will rest on the Confidant.

21.5 Construction

In the interpretation of this Deed no rules of construction shall apply to the disadvantage of one party on the basis that that party put forward the Deed or any part thereof.

21.6 Assignment

The Confidant must not assign this Deed or any of its rights or obligations under this Deed without the prior written consent of SALHN, which consent may be granted or withheld in its absolute and unfettered discretion, and any consent, if granted, may be conditional.

21.7 Governing Law and Jurisdiction

21.7.1 This Deed is governed by and is to be construed in accordance with the laws in force in South Australia, and the Parties submit to the jurisdiction of its courts.

21.7.2 The Parties agree that the Courts of South Australia will have exclusive jurisdiction to determine any proceedings in relation to this Deed.

21.7.3 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

21.7.4 The Confidant undertakes not to apply to transfer any proceedings to another registry of the Federal Court.

This Deed Poll is executed for the benefit and reliance of SALHN

EXECUTED AS A DEED POLL

EXECUTED by the **CONFIDANT**
in the presence of:

)
)
)
)
)

Signature of Confidant

Print Full Name

Witness Signature

Print Witness Full Name

Date

SCHEDULE

| | |
|---------------------------------------|---|
| ITEM 1 Date of Deed | Date _____ |
| ITEM 2 Confidant | Confidant's Full Name and Title (Please include all middle names): (Prof / Dr / Mr / Mrs / Miss / Ms) (Please circle) _____ Confidant's Residential Address _____ _____ Confidant's Email Address _____ |
| ITEM 3 Specified Purpose | Please specify the purpose that the Confidential Information will be used for: _____ _____ _____ |
| ITEM 4 SAHLN Notice Details | Ms Kate Phillips (Acting) Manager Corporate Governance & Risk Southern Adelaide Local Health Network Flinders Drive, Bedford Park SA 5042 Email: Health.SALHNCorporateGovernanceandRisk@sa.gov.au |