
**END USER LICENCE AGREEMENT
WAPHA PORTAL**

Western Australia Primary Health Alliance Limited

1. Acceptance of terms

1.1 *You* agree to access and use the *WAPHA portal* on and subject to the terms and conditions of this *agreement* between *you* and *WAPHA*.

1.2 By accessing and/or using the *WAPHA portal*, *you* warrant that *you*:

- (a) have read and agree to be bound by the terms and conditions of this *agreement* and the terms and conditions of *WAPHA*'s privacy policy, which is published at <https://www.wapha.org.au/policies/wapha-privacy-policy/>; and
- (b) are accepting, and have the authority to accept, the terms and conditions of this *agreement* on behalf of the *general practice*.

2. Grant of Licence

2.1 *You* have been granted a non-exclusive, non-transferable, revocable licence to use the *WAPHA portal*, subject to the terms and conditions of this *agreement*.

2.2 All updates to the *WAPHA portal* that are provided by or on behalf of *WAPHA* to update, supplement or replace any aspect of the *WAPHA portal* are subject to this *agreement*, except where expressly stated otherwise in a separate licence applicable to the update.

2.3 *WAPHA* may suspend *your* rights under this *agreement* if *you* fail to comply with any of the terms and conditions of this *agreement*.

3. Access, use and restrictions

You:

- (a) are responsible for maintaining the security and privacy of your unique *access information*, and must not provide it to any other person;
- (b) are responsible for maintaining and monitoring your registered administrative email address inbox

to which messages will be sent relating to the use of or access to the *WAPHA portal*, including any spam and/or junk folder;

- (c) are responsible for updating *WAPHA* as to any change to your registered administrative email address;
- (d) are responsible for ensuring all security updates and/or patches issued by your clinical information system provider, or by your relevant data extraction provider (if one is used) are installed promptly on becoming available;
- (e) must not access and/or use the *WAPHA portal* other than for the *permitted purpose*;
- (f) must not or attempt to modify, copy, adapt, reproduce, disassemble, decompile, tamper, interfere or reverse engineer the *WAPHA portal* or in any manner affect the functionality or proper working of the *WAPHA portal*;
- (g) must not manipulate or attempt to manipulate any content or *material* of the *WAPHA portal* or the *shared data*;
- (h) remove or obscure *WAPHA*'s trade mark or other proprietary notices from any of the *materials* displayed on or downloaded from the *WAPHA portal*;
- (i) must not sell, rent, lease, sub-licence, transfer, assign, distribute, grant a security interest over, provide outsourced services for or in any way commercially exploit the *WAPHA portal*;
- (j) must immediately notify *WAPHA* of any unauthorised use of *your* unique *access information* or any unauthorised access to the *WAPHA portal*;

- (k) must not make illegal use of the *WAPHA portal* or use it for illegal purposes;
- (l) must not interfere with anyone who is a user of the *WAPHA portal* in their use of the *WAPHA portal*;
- (m) must not access the *WAPHA portal* in any manner contrary to *WAPHA's* instructions;
- (n) must not breach or attempt to breach any security measures of the *WAPHA portal*; and
- (o) must not impersonate any person, entity or *general practice* or misrepresent *yourself*, *your* affiliation with any third party, or a *general practice*.

4. Shared Data

- 4.1 *WAPHA* will send *you* a temporary unique time linked uniform resource locator for *you* to upload the *shared data* to the *WAPHA portal* every quarter per annum or as otherwise directed by *WAPHA*.
- 4.2 *You* must upload the *shared data* within the time frame specified in the uniform resource locator or as otherwise reasonably directed by *WAPHA*.
- 4.3 The temporary unique time linked uniform resource locator will expire at a specified time, after which *you* will not be permitted to upload the *shared data*.
- 4.4 *You* must only upload the *shared data* in accordance with the requirements of the *data sharing agreement* and the *specifications*.
- 4.5 *You* must not upload any *contribution* to the *WAPHA portal*:
 - (a) which is false, misleading, illegal, defamatory or inaccurate;
 - (b) that does not comply with the standards as set out in *WAPHA's* policies or as directed by *WAPHA* from time to time;
 - (c) that includes *personal information*;
 - (d) that contains any computer viruses, worms, malware, spyware or defects.
- 4.6 *You* are solely responsible for uploading a *contribution* within the time required and that complies with the terms of this *agreement*, and *you* release and

indemnify *WAPHA* from all *claims* and *loss* you may suffer or incur in relation to a non-compliant *contribution*. If *you* upload a non-compliant *contribution*, you must comply with all reasonable directions given by *WAPHA* in relation to the non-compliant *contribution*.

5. Maintenance

- 5.1 The *WAPHA portal* is provided to *you* on an "as is", "as available" and "where is" basis, without any warranty of any kind other than those expressly stated in this *agreement* or mandatory provisions implied by *law*.
- 5.2 To the full extent permitted by *law*, *WAPHA* does not warrant:
 - (a) the accuracy of any links provided on the *WAPHA portal*, nor the suitability of any content located in the *WAPHA portal*. Hyperlinks, hotlinks and frames connecting the *WAPHA portal* with other applications are for convenience only and does not mean that *WAPHA* endorses or approves those other applications, their content or the people who run or contribute to them. Use of hyperlinks or hotlinks within the *WAPHA portal* is at *your* sole risk; and
 - (b) *materials* obtained from or through the *WAPHA portal* or as provided by *WAPHA* are free from computer viruses, worms, malware, spyware or defects.
- 5.3 *WAPHA* may update, amend or replace the *WAPHA portal* or any aspect of it from time to time as it considers necessary, including conducting website, firmware and software updates. *You* must perform or execute all updates to, or download all new versions of, the *WAPHA portal* and software updates, as required, and as directed by *WAPHA* (if applicable).
- 5.4 *WAPHA* will provide *you* with at least 2 *business days* prior notice of any proposed maintenance, servicing or update to the *WAPHA portal* where such maintenance, servicing or update will render the *WAPHA portal* temporarily inoperable for a period of more than 4 hours, other than emergency or urgent maintenance for which prior notice cannot reasonably be provided.

5.5 WAPHA will take all reasonable steps to ensure that the WAPHA portal is operational and error free, but WAPHA does not warrant that the operation of the WAPHA portal will be uninterrupted or error free and does not warrant against loss or damage caused by accident, abuse or misapplication of the WAPHA portal by you or any third party.

5.6 To the extent permitted by law, WAPHA is not liable, and you must not make any claim against WAPHA, for any loss or damage suffered or incurred by you or any third party whatsoever as a result of:

- (a) the WAPHA portal being inoperable whilst undergoing maintenance, servicing or updates by WAPHA; or
- (b) any inoperability, malfunction or error in the systems, equipment or infrastructure of third party telecommunication services providers, internet service providers or data storage providers.

6. Internet Access

6.1 You will be responsible for procuring adequate internet access from a third party internet service provider to enable the operation of the WAPHA portal, at your own cost. WAPHA is not liable for any data or internet usage costs and expenses that you incur while using the WAPHA portal.

6.2 The WAPHA portal may enable access to other applications, third party services and websites, the use of which may require internet access. You may be required to use third party services at your sole risk and, to the extent permitted by law, WAPHA is not liable for any loss or damage that you may suffer or incur.

7. Consent to Data Collection

7.1 You agree that WAPHA may collect, store and use technical data and related information, including technical information about the WAPHA portal, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you or any third parties (if any) related to the WAPHA portal.

7.2 WAPHA may use the information or statistics based on that information in clause 7.1, as long as it is in a form that does not personally identify you, to improve WAPHA's products or to provide services or technologies to you or other users of the WAPHA portal.

7.3 You acknowledge and agree that it is your sole responsibility to comply with all privacy laws when using the WAPHA portal.

8. Liability

8.1 All express and implied terms, conditions, guarantees and warranties which might apply to, or arise out of, this agreement or the transactions that it contemplates are excluded to the full extent permitted by law.

8.2 To the full extent permitted by law, each party's liability is limited under this agreement as set out in this clause 8.

8.3 The total aggregate liability of the general practice in relation to this agreement in no event shall exceed and is limited to \$50,000.

8.4 The total aggregate liability of WAPHA in relation to this agreement, shall be limited at its election to the:

- (a) re-supply of the services to be supplied by WAPHA under this agreement; or
- (b) payment of the cost of having the services re-supplied.

8.5 In no event shall a party be liable for indirect or consequential loss suffered or incurred by the other party under or in relation to this agreement.

9. Intellectual Property Rights

9.1 You acknowledge and agree that all intellectual property rights comprised in or relating to the WAPHA portal (including any updates) remains vested in WAPHA (or its third party licensors) and nothing in this agreement or otherwise provides, or is intended to provide, you with any legal or beneficial ownership interest in such intellectual property rights whatsoever.

9.2 You agree that all intellectual property rights in any contribution to the WAPHA portal vests in WAPHA upon it being uploaded to the WAPHA portal. You agree to assign all of your existing and future right, title and interest (including all

intellectual property rights) in and to *contributions* to WAPHA.

10. Termination

- 10.1 This *agreement* is effective until terminated by *you* or WAPHA.
- 10.2 *You* may terminate this *agreement* at any time, by ceasing to use the WAPHA *portal*.
- 10.3 WAPHA may terminate this *agreement* by giving at least 20 Business Days' written notice to *you*.
- 10.4 The licence and *your* rights under it automatically terminate if *you* fail to comply with any provision of this *agreement* and/or upon the termination of the *data sharing agreement*.
- 10.5 Upon termination, *you* must cease all access and use of the WAPHA *portal*.

11. Force Majeure

- 11.1 If WAPHA is prevented, hindered or delayed in or from performing any of its obligations under this *agreement* by an event or circumstance beyond its reasonable control, it will notify *you* of the event and the likely duration and effect of the event and must use its reasonable endeavours to mitigate the effect of the event.
- 11.2 If WAPHA has complied with clause 11.1, it is not in breach of this *agreement* or otherwise liable, and *you* release it from any such *loss* *you* suffer or incur, for any such failure or delay in the performance of such obligations and the time for performance of such obligations is extended accordingly.

12. Notices

- 12.1 All notices from WAPHA to *you* shall be by email to the registered administrative email address.
- 12.2 All notices by *you* to WAPHA shall be by email to practiceassist@wapha.org.au or in writing to WAPHA, 2-7, 7 Tanunda Drive, Rivervale, WA 6103, attention PracticeAssist Manager.
- 12.3 Notices shall be deemed received 5 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- 12.4 If a notice would be regarded as given and received outside the period between

9.00 am and 5.00 pm (addressee's time) on a *business day*, then the notice will instead be given and received at 9.00am on the following *business day*.

13. General

- 13.1 The laws of Western Australia govern this *agreement* and the parties submit to the exclusive jurisdiction of the courts of Western Australia and the Federal Court of Australia.
- 13.2 This *agreement*, together with the *data sharing agreement*, contains the complete agreement between the parties with respect to the subject matter, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written.
- 13.3 WAPHA reserves the right to review and amend this *agreement* at any time at its absolute discretion. If WAPHA amends this *agreement*, that change will take effect from the date on which WAPHA notifies *you* of such amendment. If *you* do not agree with the change to this agreement, *you* may cease using the WAPHA *portal*.
- 13.4 *You* may not assign or transfer any rights or licences granted to *you* under this *agreement*.
- 13.5 This *agreement* does not create a joint venture, partnership, employment, trust or agency relationship between the parties.
- 13.6 If a provision of this *agreement* is invalid, illegal or unenforceable, that provision must be severed from and ignored in the interpretation of this *agreement* to the minimum extent necessary, with the intent that the remaining provisions of the *agreement* remain in full force and effect.
- 13.7 A single or partial exercise or waiver by WAPHA of any rights under or relating to this *agreement* will not prevent any exercise of that right or the exercise of any other right.
- 13.8 Any term by its nature intended to survive termination or expiry of this *agreement* survives termination or expiry of this *agreement*.
- 13.9 Except as provided in this *agreement* and permitted by *law*, the rights, powers and remedies provided in this agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this *agreement*.

13.10 This *agreement* was last revised on 18 September 2020.

14. Definitions and Interpretations

14.1 Unless the context otherwise requires, in this agreement:

agreement means this End User Licence Agreement.

access information means, in relation to *you*, either of the following to allow *you* to login and access the *WAPHA portal*:

- (a) an email signup link which will allow you to set up a unique username, administrative username or uniform resource identifier and password; or
- (b) a unique username or uniform resource identifier and password.

business day means a day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.

claim includes any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), at *law* or in equity.

contribution means any content, information, document, data, or *material* you contribute to the *WAPHA portal*, including the *shared data*.

data sharing agreement means the data sharing agreement a *general practice* has entered into with WAPHA, to provide the *shared data* to WAPHA.

general practice means the general practice identified in the *data sharing agreement*.

intellectual property rights means all rights and interests throughout the world vesting or otherwise in relation to industrial or intellectual property protectable under *law*, whether registered, unregistered or registrable, and whether now existing or that come into existence in the future, including:

- (a) any patent, trade mark, copyright (including future copyright), moral right, design, plant breeder's rights, circuit layout rights or any other corresponding property or right under the laws of any jurisdiction;
- (b) rights in respect of an invention, discovery, trade secret, know-how, concept, idea, methodology,

information (including, where applicable, confidential information), data, algorithm or formula; any right to apply for grant or registration of intellectual property or intellectual property rights; and

- (c) all renewals and extensions and all similar or equivalent rights or forms of protection in relation to intellectual property or intellectual property rights.

law means any legislative requirements; common law; mandatory codes, standards and guidelines; writ, order, injunction or judgment; regulatory requirement of any government agency having jurisdiction over the parties or the services, whether formal or informal, no matter how expressed, including by way of order, notice, determination or direction; and local government legislation, including regional plans, district plans, regulations, by-laws, declarations, ministerial directions and other subordinate legislation.

losses means liabilities, expenses, losses, damages and costs.

material means any material or documents in whatever form (hard or soft copy) and stored or recorded in any medium capable of being stored or recorded (electronic or otherwise).

personal information means 'personal information' within the meaning of the *Privacy Act 1988 (Cth)*, being information or an opinion about an identified individual or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether recorded in material form or not.

permitted purpose means uploading the *shared data*, in accordance with the requirements of the *data sharing agreement* and the *specifications*.

personnel means any natural person who is an employee, officer, agent or professional adviser of a party.

privacy laws means the *Privacy Act 1988 (Cth)*, the Australian Privacy Principles and all other Commonwealth, state and territory *laws*, regulations and codes, including the any orders, directions, directives or other instruments made or issued under any of them, relating to the handling of *personal*

information or health records, or data protection, and the notifiable data breach scheme.

WAPHA means WA Primary Health Alliance Ltd (ABN 11 602 416 697) of 2-7, 7 Tanunda Drive RIVERVALE WA 6103.

WAPHA portal means the platform owned by, or licensed to, WAPHA and made available to *you* under the terms of this *agreement*.

shared data means the PIP-QI dataset to be provided by or on behalf of the *general practice* in accordance with the *data sharing agreement*.

specifications means the JavaScript Object Notation (JSON) file format, which is a standard data interchange format primarily used for transmitting data between a platform and a server.

you and **your** means the individual accessing the *WAPHA portal*, on behalf of the *general practice*, and the *general practice* and its *personnel*.

14.2 In this *agreement*, unless the context otherwise requires:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes any gender;
- (d) the words “includes” and “including” are not words of limitation;
- (e) a reference to a statute includes its subordinate legislation, proclamations, ordinances and a modification, replacement or re-enactment of the same;

- (f) a reference to person, includes a reference to:
 - (i) an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity; and
 - (ii) the person’s personal representatives, successors and assigns (as applicable);
- (g) a term, condition or warranty of this agreement in favour of or on the part of two or more people, benefits or binds them jointly and severally;
- (h) a reference to time is to Australian Western Standard Time in Perth, Western Australia;
- (i) if the date on which an act, matter or thing must be done or take place is not a *business day*, then that act, matter or thing must be done or take place on the next *business day*;
- (j) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event;
- (k) a provision in this *agreement* must not be construed adversely to a party solely on the ground that the party was responsible for the preparing this *agreement* or that provision;
- (l) a reference to “writing” or “written” includes any electronic transmission or communication by facsimile; and
- (m) a reference to a right includes a benefit, remedy, discretion or power.