

# Data Sharing Agreement

## Parties to the Agreement:

**WA Primary Health Alliance Limited**  
ABN: 11 602 416 697  
2-7, 7 Tanunda Drive  
RIVERVALE WA 6103  
(WAPHA)

**The Practice**  
The details of which are set out in  
Item 1 of the Particulars Schedule  
  
(Practice)

## Background

- A. WAPHA is responsible for operating the three Primary Health Networks (PHNs) in Western Australia - Perth North PHN, Perth South PHN and Country WA PHN.
- B. WAPHA utilises De-Identified Data from general practices for the purposes of statistical reporting (including practice reports), service planning, practice support and population health mapping, evaluation and research, including providing to third parties, in accordance with any required ethics approvals .
- C. The Practice collects Practice Data and agrees to make this data available to WAPHA under this Agreement.

## Agreed terms and conditions

### 1. Term and Termination

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#### 1.1 Term

This Agreement begins on the date that this Agreement is executed by the last Party to do so and continues until terminated under this Agreement and each Party enters into this Agreement in consideration of the mutual obligations of each Party.

#### 1.2 Termination for convenience

A Party may terminate this Agreement at any time by giving at least 20 Business Days' written notice to the other Party.

#### 1.3 Termination for default

A Party may terminate this Agreement by giving 14 days' written notice to the other Party if:

- (a) the other Party breaches a provision of this Agreement; or
- (b) subject to applicable Laws, the other Party becomes insolvent or bankrupt.

### 2. Practice Responsibilities

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#### 2.1 Nominated Contact

- (a) The Nominated Contact shall be the single point of contact for the Practice and WAPHA shall use these details for giving notices under this Agreement.
- (b) The Practice must ensure that the details of the Nominated Contact are kept current and may amend the Nominated Contact by giving WAPHA no less than five Business Days' written notice.

## 2.2 General obligations

The Practice must:

- (a) take reasonable steps to ensure that the Practice Data is and remains accurate and complete;
- (b) comply with any guidelines or data governance framework issued by a government agency or WAPHA relating to the Shared Data;
- (c) comply with all applicable Laws in relation to the collection, storage, access, use or disclosure of the Practice Data (including, where applicable, Privacy Laws and obtaining patient consents) in order for it to fulfil its obligations under this Agreement;
- (d) ensure all security updates and/or patches issued by the Practice's clinical information system provider, or by the relevant data extraction provider (if one is used) are installed promptly on becoming available;
- (e) work in collaboration with WAPHA to undertake continuous quality improvement activities; and
- (f) disclose to WAPHA as soon as is practicably possible, at any time during the term of this Agreement, if it has a practice management system that stores Practice Data on a master database which is shared by more than one physical Practice location, and otherwise agrees and consents that all Practice Data stored in the master database shared by all physical locations of the Practice, may be shared under this Agreement.

## 2.3 Practice warrants

The Practice warrants that:

- (a) it has complied with all applicable Laws and applicable government agency guidelines in relation to the collection, access, use or disclosure of the Practice Data that is relevant to the creation of the Shared Data under this Agreement;
- (b) where WAPHA provides the Software to the Practice under this Agreement, WAPHA's access to and use of Practice Data under this Agreement will not infringe any Laws or the Intellectual Property Rights of any person; and
- (c) where WAPHA **does not** provide the Software under this Agreement:
  - (i) WAPHA's ownership and use of Shared Data under this Agreement will not infringe any Laws or the Intellectual Property Rights of any person;
  - (ii) if applicable, the Practice has entered into an agreement with the Software Vendor at its own cost to provide the Shared Data through the PenCS PHN Portal; and
  - (iii) the Practice has complied with the Data Sharing Format to provide the Shared Data and otherwise in compliance with its obligations under clause 5.1 (as applicable).

## 3. WAPHA Responsibilities

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WAPHA must:

- (a) establish and maintain safeguards against the misuse, damage, or disclosure of the Shared Data in the possession or control of WAPHA that comply with all Laws;
- (b) ensure that any Personal Information is handled in accordance with the applicable Privacy Laws;
- (c) securely store the Shared Data received from the Practice under this Agreement; and

- (d) comply with any guidelines or data governance framework issued by a government agency that relate to the Shared Data.

## **4. Software and Support – if provided by WAPHA under this Agreement**

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### **4.1 WAPHA obligations**

If WAPHA is responsible for providing the Software as set out in the particulars schedule, WAPHA will, at no cost to the Practice:

- (a) provide, or arrange for the provision of, license(s) to the Practice for the installation and use of the Software at the locations noted in the Identified Practices, or as otherwise advised by the Practice under clause 2.2(f).
- (b) provide, or arrange for the provision of, support and training, where required for the:
  - (i) installation of the Software at the Identified Practices;
  - (ii) use of the Software to enhance clinical and business potential within the Practice;
  - (iii) extraction of Shared Data using the Software and submission of the Shared Data; and
  - (iv) transition to the Software from systems currently used by the Practice;
- (c) provide the Portal for the transfer of patient De-Identified Data from the Practice to WAPHA's secure servers; and
- (d) provide to the Practice's Nominated Contact the account details of the Portal.

### **4.2 Practice obligations**

- (a) The Practice must provide all reasonable assistance to WAPHA and its Personnel to enable the installation of the Software, to the extent that the Software is compatible with the Practice's information technology systems
- (b) The Practice must comply with all Software licence terms and conditions as further set out in the particulars schedule.

### **4.3 Additional Software functionality**

- (a) If the Practice wishes to utilise functionality of the Software which is in addition to the license(s) provided under clause 4.1 the Practice may arrange this directly with the Software Vendor.
- (b) The Practice shall be responsible for all costs associated with arrangements put in place under clause 4.3(a) including installation, training and support, except to the extent that license(s) provided under clause 4.1 provide for any component of the costs detailed in this clause 4.3(a).

## **5. Data**

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### **5.1 Provision of Shared Data**

- (a) The Practice shall provide the Shared Data to WAPHA monthly (or on such other basis as agreed by the Parties) and shall comply with any additional terms specified in the particulars schedule.
- (b) The Shared Data will be provided by:
  - (i) submission from within the Software via the Portal; or

- (ii) allowing WAPHA to extract the Shared Data directly from the Practice via the Portal; or
  - (iii) the Practice extracting the Shared Data and providing it to WAPHA through the PenCS PHN Portal under clause 5.1(d); or
  - (iv) the Practice extracting the Shared Data and providing it to WAPHA through the WAPHA Portal under clause 5.1(e).
- (c) Shared Data provided by the Practice to WAPHA will be patient De-Identified Data and shall not contain specific patient and clinician names, addresses, Medicare numbers or other identifying data.
- (d) If the Practice is **not** using the Software and elects to use the PenCS PHN Portal to provide the Shared Data:
- (i) it must enter into an agreement with the Software Vendor at its own cost;
  - (ii) it is solely responsible for providing, and must provide, the Shared Data in the Data Sharing Format only, by uploading it to the PenCS PHN Portal provided by the Software Vendor; and
  - (iii) WAPHA accepts no liability, and the Practice is solely responsible, for the provision of Shared Data by the Practice by the method under clause 5.1(d)(ii) and indemnifies WAPHA for any Loss suffered or incurred by WAPHA in relation to a breach of this clause by the Practice or its Personnel.
- (e) If the Practice is **not** using the Software and elects to use the WAPHA Portal to provide the Shared Data:
- (i) it is solely responsible for providing, and must provide, the Shared Data in the Data Sharing Format only, by uploading it to the WAPHA Portal in accordance with any reasonable directions and instructions from WAPHA; and
  - (ii) the Practice must comply with the end user licence terms and conditions that apply to the use of, and access to, the WAPHA Portal, and only use it for the purpose of providing the Shared Data.

## 5.2 Completeness of Data

The Practice shall ensure that:

- (a) the Shared Data is a complete, true and accurate representation of the Practice Data at the time the Shared Data is shared; and
- (b) the Practice Data is not amended or manipulated so that the Shared Data is knowingly misrepresentative.

## 5.3 Data Breaches

WAPHA agrees, in accordance with the Privacy Laws, to notify the Practice if WAPHA becomes aware of any facts or circumstances which give reason to reasonably suspect or believe that any Shared Data, or the repository in which the Shared Data is or was stored, has been or has likely been the subject of misuse, interference, unauthorised access, modification (or loss), or unauthorised disclosure.

## 5.4 Use of Data by WAPHA

- (a) WAPHA may use the Shared Data for the Permitted Purpose, including publishing and dissemination of Aggregated Data to third parties.
- (b) WAPHA agrees to not intentionally re-identify or attempt to re-identify any of the Shared Data.

## 5.5 Treatment of Data on Termination

- (a) On termination of this Agreement, WAPHA will:
  - (i) discontinue the extraction of Shared Data as soon as practicable after the notification has been received; and
  - (ii) retain Shared Data received prior to the date of termination in accordance with WAPHA's data retention policy and any government agency guidelines.
- (b) Any Shared Data received by WAPHA from the Practice after the termination date will be deleted and not stored by WAPHA.

## 5.6 Ownership and Intellectual Property Rights

- (a) Any Intellectual Property Rights in the Practice Data remains the property of the Practice.
- (b) To the extent required to fulfil its obligations under this Agreement, the Practice grants to WAPHA an irrevocable, permanent, royalty free, non-exclusive licence (including the right to sublicense to its authorised third party) for the term of this Agreement to use, reproduce, adapt, modify and communicate data relevant to the Shared Data within the Practice's clinical information system only for the purposes of creating the Shared Data.
- (c) WAPHA must not dispose of, purport to sell, let for hire, assign rights in, or otherwise dispose of, any data licensed under clause 5.6(b) held by it, or to which it has access.
- (d) All right, title and interest (including all Intellectual Property Rights) in and to the Shared Data vests in WAPHA on its creation, and the Practice assigns all of its existing and future right, title and interest (including all Intellectual Property Rights) in and to Shared Data to WAPHA.
- (e) To the extent required for the purposes of exercising its rights or obligations under this Agreement, WAPHA grants to the Practice an irrevocable, royalty free, non-exclusive licence to use the Shared Data for any non-commercial purpose, subject to the terms and conditions of any government agency's guidelines or data governance framework relating to the Shared Data.

## 5.7 Compliance with Privacy Requirements

- (a) Each Party agrees that it will handle any Personal Information or sensitive information (as defined in *Privacy Act 1988* (Cth)) collected, disclosed, transferred, received or otherwise used by/to/from the Party in accordance with all applicable Privacy Laws.
- (b) WAPHA shall at all times adhere to the WAPHA Privacy Policy which is deemed to be incorporated into this Agreement and can be accessed at: <http://www.wapha.org.au/news-and-events/resources-2//>.

## 6. Indemnity and liability

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- (a) A Party (**Indemnifying Party**) indemnifies the other Party and the other Party's employees, directors, officers and agents (**Indemnified Parties**) and will hold those Indemnified Parties harmless, against all Claims and Losses (including legal costs on a full indemnity basis), that they may sustain or incur, directly or indirectly, to the extent caused by any negligent or fraudulent act or omission or wilful misconduct or failure to comply with any Law (including any Privacy Law) of or by the Indemnifying Party.
- (b) The indemnity under clause 6(a) shall be reduced proportionately to the extent that an Indemnified Party caused or contributed to the Claim or Loss.
- (c) To the full extent permitted by Law, each Party's liability is limited under this Agreement as set out in this clause.

- (d) 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.
- (e) The total aggregate liability of the Practice in relation to this Agreement in no event shall exceed and is limited to \$50,000.
- (f) The total aggregate liability of WAPHA in relation to this Agreement, shall be limited at its election to the:
  - (i) re-supply of the goods and services to be supplied by WAPHA to the Practice under this Agreement; or
  - (ii) payment of the cost of having the goods and services re-supplied.

## 7. Confidentiality

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- (a) A Party (**recipient**) must maintain the strict confidence of the Confidential Information provided by or about the other Party (**discloser**) and use or disclose that Confidential Information only:
  - (i) where the Party is WAPHA, to the Commonwealth Government;
  - (ii) if the disclosure is required by Law;
  - (iii) to the extent required to enjoy the benefit of a licence granted under this Agreement or perform the obligations under this Agreement;
  - (iv) to an officer, employee or professional advisor for a proper purpose and on a confidential basis; or
  - (v) with the discloser's written consent.
- (b) If either Party discloses Confidential Information under clause 7(a), that Party must ensure that the information is kept confidential by the person to whom it is disclosed and is only used for the purposes of performing the obligations under this Agreement.

## 8. Dispute resolution

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- (a) If a dispute between the Parties arises in connection with the subject matter of this Agreement (**Dispute**), then before they commence legal proceedings (except proceedings for interlocutory relief), they must comply with the terms of this clause 8.
- (b) Within 20 Business Days of a Dispute arising, either Party shall give the other Party a written notice adequately identifying and providing details of the Dispute (**Notice of Dispute**) and the Parties shall meet to attempt to resolve the Dispute.
- (c) The Parties must co-operate to ensure that the Dispute is resolved as quickly as reasonably possible.
- (d) If the Parties cannot resolve the Dispute within 30 Business Days, a Party may refer the Dispute to private mediation by notice to the other Party.
- (e) If the Parties proceed to private mediation, the mediation must, unless agreed otherwise, be conducted in accordance with the Australian Commercial Disputes Centre Mediation Guidelines.
- (f) While attempting to resolve the Dispute, the Parties must continue to comply with this Agreement.
- (g) Each Party bears its own costs of the Dispute, including half a share of the costs of any mediator.

## 9. General

### 9.1 Governing Law and jurisdiction

- (a) The laws of Western Australia govern this Agreement.
- (b) The Parties submit to the exclusive jurisdiction of the Courts of Western Australia and the Federal Court of Australia.

### 9.2 Variation

This Agreement can only be varied by written variation signed by each Party.

### 9.3 Assignment

A Party may not assign this Agreement or any of its rights or obligations under this Agreement without the other Party's written consent.

### 9.4 Severance

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.

### 9.5 Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, undertakings and agreements.

### 9.6 Survival

Any term by its nature intended to survive termination or expiry of this Agreement survives termination or expiry of this Agreement.

### 9.7 Relationship

Nothing in this Agreement is intended to create a partnership, joint venture or agency between the Parties and the Practice acknowledges that it enters into this Agreement as an independent entity is not, and must not represent itself as being, an officer, employee, partner or agent of WAPHA, or bind or represent WAPHA.

### 9.8 Signatures

Persons whose signatures appear for and on behalf of the Parties represent that they are authorised to do sign and represent and warrant that this agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.

### 9.9 Notices

- (a) A notice to be given under this agreement must be in writing and a notice to WAPHA addressed as follows:

Person	Address	Attention	Email
WAPHA	2-7, 7 Tanunda Drive, RIVERVALE WA 6103	[NAME OF CONTACT]	[EMAIL ADDRESS]

- (b) A notice given and received at the time set out in the table below by one of the methods below, except 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 (**Business Hours Period**), then the notice will instead be given and received at the start of the following Business Hours Period:

Notice delivery method	When Notice is regarded as given and received
By pre-paid post to the nominated address	At 9.00 am (addressee's time) on the third Business Day after the date of posting.
By email to the nominated email address	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.

## 10. Interpretation and Definitions

### 10.1 Interpretation

- (a) This Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Agreement.
- (b) If an act must be done on a specified day that is not a Business Day, it must be done on or by the next Business Day.
- (c) Words in the singular include the plural and vice versa.
- (d) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (e) A reference to a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority and the person's legal personal representatives, successors, assigns and persons substituted by novation.
- (f) A reference to 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.
- (g) A reference to a clause is a reference to a clause in this Agreement and a reference to an Item is a reference to an item in the particulars schedule of this Agreement.
- (h) A reference time is to local time in the Perth, Western Australia.

### 10.2 Definitions

<b>Aggregated Data</b>	means the Shared Data gathered and expressed in a summary form.
<b>Agreement</b>	means this document and includes any schedules, appendices and annexures.
<b>Business Day</b>	means a day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.
<b>Claim</b>	includes any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), at Law or in equity.



<b>Confidential Information</b>	<p>means information of a Party:</p> <ul style="list-style-type: none"><li>(a) relating to the business and affairs of that Party;</li><li>(b) relating to the customers, clients, employees, subcontractors or other persons doing business with that Party;</li><li>(c) which is by its nature confidential;</li><li>(d) which is designated as confidential by that Party; or</li><li>(e) which the other Party knows or ought to know, is confidential,</li></ul> <p>and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party, and in the case of WAPHA, includes Aggregated Data, but does not include any information that is in the public domain or becomes public other than as a result of a breach of this Agreement or has been independently developed by the other Party.</p>
<b>Data Sharing Format</b>	<p>means extracting a 'JSON file' that only includes the PIP QI Eligible Data Set matched to PIP QI Technical Specifications provided by the Commonwealth Department of Health from the Practice's clinical information software and as further prescribed by the Department of Health and (as applicable) either the Software Vendor or WAPHA.</p>
<b>De-Identified Data</b>	<p>means data that has had all identifiable information removed so it is no longer identifiable to an individual.</p>
<b>Identified Practices</b>	<p>means the practices identified in Item 3 Identified Practices in the particulars schedule.</p>
<b>Intellectual Property Rights</b>	<p>means all intellectual property rights, including the following rights:</p> <ul style="list-style-type: none"><li>(a) patents, copyright, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks) and trade names;</li><li>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</li><li>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world (including Australia),</li></ul> <p>whether or not such rights are registered or capable of being registered.</p>
<b>Law</b>	<p>means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, the common law and equity, and any industry codes of conduct and includes the Privacy Law.</p>
<b>Losses</b>	<p>means liabilities, expenses, losses, damages and costs.</p>

<b>Nominated Contact</b>	means the person nominated by the Practice at Item 2 in the particulars schedule.
<b>Parties</b>	means the parties to this Agreement being WAPHA and the Practice and includes their lawful successors and assigns.
<b>PenCS PHN Portal</b>	means secure data encryption portal provided by the Software Vendor to the Practice under a separate agreement with the Practice.
<b>Permitted Purpose</b>	means the purpose(s) detailed in Item 6 Permitted Purposes in the particulars schedule and any other purposes agreed by the Parties.
<b>Personal Information</b>	means 'personal information' within the meaning of the <i>Privacy Act 1988</i> (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.
<b>Personnel</b>	means any natural person who is an employee, officer, agent or professional adviser of a Party and, in the case of WAPHA includes any Software Vendor, and in the case of the Practice, a subcontractor.
<b>Portal</b>	means the secure data encryption portal.
<b>Practice Data</b>	means the data collected and stored within the Practice's, and any Identified Practice's or master database used by the Practice, clinical information system.
<b>Privacy Laws</b>	means the <i>Privacy Act 1988</i> (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.
<b>Shared Data</b>	means the data set provided to WAPHA by the Practice under this Agreement and includes the detail outlined in Item 4 Shared Data of the particulars schedule.
<b>Software</b>	means the computer software identified in Item 5 Software of the particulars schedule (if any).
<b>Software Vendor</b>	means Pen CS Pty Ltd (ACN 606 033 112).
<b>WAPHA Portal</b>	means secure data encryption portal provided by WAPHA for use by the Practice under a separate end user licence agreement with the Practice.

## Particulars Schedule

**Item 1 The Practice**

**Name** ABN  
**Address** Telephone

**Item 2 Nominated contact**

**Name** Telephone  
**Email**

**Item 3 Identified Practices**

**Name** **Postcode** **CRM Ref**

**Item 4 Shared Data**

The “PIP QI Appendix” applies, as annexed.

The following is an example only of data that will be provided as Shared Data:

Patient Demographics	Clinical Measures	Pathology
<ul style="list-style-type: none"><li>• Regular client indicator</li><li>• Age group</li><li>• Sex</li><li>• Indigenous status</li><li>• Practice</li><li>• Smoking status recorded indicator</li><li>• Smoking status</li><li>• Alcohol consumption status</li></ul>	<ul style="list-style-type: none"><li>• Diabetes diagnosis</li><li>• Diabetes status</li><li>• Blood pressure measurement recorded indicator</li><li>• Systolic blood pressure measurement result recorded indicator</li><li>• Cardiovascular disease recorded indicator</li><li>• COPD recorded indicator</li><li>• HbA1c measurement recorded indicator</li><li>• Influenza immunisation indicator</li></ul>	<ul style="list-style-type: none"><li>• HbA1C measurement result recorded indicator</li><li>• HDL cholesterol measurement result recorded indicator</li><li>• Total cholesterol measurement result recorded indicator</li><li>• Cervical screening indicator</li></ul>

	<ul style="list-style-type: none"> <li>• Hysterectomy indicator</li> <li>• Body mass index classification</li> <li>• Body mass index recorded indicator</li> </ul>	
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**Item 5 Software**

WAPHA is **not** providing a Software licence of the CAT Plus suite of products to the Practice under this Agreement.

**Item 6 Permitted Purpose**

Shared Data may be used by WAPHA, and disclosed to third parties by WAPHA, for WAPHA’s purpose of improving health outcomes including:

- (a) statistical reporting (including practice reports) for the Practice;
- (b) service planning;
- (c) population health planning;
- (d) public health service mapping;
- (e) development and further enhancement of community health promotion and prevention strategies.
- (f) assist in the comparison of Aggregated Data with current health trends;
- (g) identification of service gaps;
- (h) evaluation and research, including providing to third parties, in accordance with any required ethics approvals; and
- (i) commissioning services in accordance with the Department of Health’s Commissioning Framework (available from <https://www.health.gov.au/internet/main/publishing.nsf/Content/PHNCommissioningResources>).

Signed for and on behalf of **WAPHA** by its duly authorised representative

Signed for and on behalf of the **Practice** by its duly authorised representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

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Print Name

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Role

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