

Data Sharing + Software License Agreement (Primary Sense)

Parties to the Agreement:

WA Primary Health Alliance Limited
ABN 11 602 416 697
1 Hood Street
SUBIACO 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 within the three Primary Health Networks in Western Australia- Perth North PHN, Perth South PHN and Country WA PHN area of operation.
- B. The Practice collects Practice Data in its Practice Management System and agrees to make this data available to WAPHA under this Agreement.
- C. WAPHA utilises De-Identified Data from general practices for approved Primary Purposes and Secondary Purposes under this Agreement and will not use the Shared Data for an Excluded Purpose.

Agreed terms and conditions

1. Interpretation and Definitions

1.1 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 to a time is to the local time in the State, unless otherwise explicitly stated.

1.2 Definitions

- Agent** means a contractor, representative, agent or any similar person expressly appointed by the Software Operator to act on its behalf
- Aggregated Data** means Shared Data gathered and expressed in a summary form.
- Agreement** means this document and includes any schedules, appendices and annexures.
- Business Day** means a day which is not a Saturday, Sunday or public holiday in the city in which WAPHA's head office is located, unless otherwise

	stated.
Claim	includes any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), at Law or in equity.
Confidential Information	means information of a Party: <ul style="list-style-type: none">(a) relating to the business and affairs of that Party;(b) relating to the customers, clients, employees, subcontractors or other persons doing business with that Party;(c) which is by its nature confidential;(d) which is designated as confidential by that Party; or(e) which the other Party knows or ought to know, is confidential, and includes all trade secrets, knowhow, financial information and other commercially valuable information of that Party 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.
Data Custodian	is as described in section 2 of Schedule 2.
Data Owner	is as described in section 2 of Schedule 2.
Data Sponsor	is as described in section 2 of Schedule 2.
De-Identified Data	means data that has had all identifiable information removed so it is no longer identifiable to an individual and cannot be reasonably re-identified, and is therefore no longer Personal Information.
EULA	means the End User Licence Agreement as attached to this Agreement and labelled 'Schedule 3'.
Excluded Purpose	means those excluded purposes detailed in Item 7 and as amended from time to time by the Parties in writing.
Identified Practices	means the branches of the Practice identified in Item 3.
Intellectual Property Rights	means all intellectual property rights, including: <ul style="list-style-type: none">(a) patents, copyright, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks) and trade names;(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and(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), whether or not such rights are registered or capable of being registered.
Law	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.
Losses	means liabilities, expenses, losses, damages and costs.
Nominated Contact	means the person nominated by the Practice at Item 2.
Particulars Schedule	means schedule to this Agreement titled "Schedule 1 – Particulars".
Parties	means the parties to this Agreement being WAPHA and the Practice

and includes their lawful successors and assigns.

Permitted Purpose	means the purpose(s) detailed in Item 6 and any other purposes agreed in writing by the Parties.
Personal Information	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.
Personnel	means any natural person who is an employee, officer, agent or professional adviser of a Party and, in the case of WAPHA includes the Software Operator and any Agent, and in the case of the Practice, a subcontractor.
Practice Data	means data collected and stored within the Practice's, and any Identified Practice's or master database used by the Practice, Practice Management System, which is extracted by the Software.
Practice Management System	means the software program used by the Practice to operate its medical practice, including the information of a patient.
Primary Sense Clinical Advisory Group	means an advisory body established and supported by the Software Operator with membership drawn from general practitioners, clinical specialists and health industry peak body representatives.
Primary Sense Data Governance Framework	means the data governance framework as attached to this Agreement and labelled "Schedule 2".
Privacy Act	means the <i>Privacy Act 1988</i> (Cth), the Australian Privacy Principles and all other Commonwealth, state and territory Laws, regulations and codes, including 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.
Shared Data	means the data created by the Software from the Practice Data provided to WAPHA by the Practice under this Agreement and includes the detail outlined in Item 4.
Software	means the computer software identified in Item 5.
Software Operator	means WA Primary Health Alliance Limited (ABN 11 602 416 697), acting as the 'Lead PHN' to manage and support the hosting and operating environment for the Software for and on behalf of WAPHA.
State	means the State or Territory identified in Item 9.

2. Term and Termination

2.1 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.

2.2 Termination for convenience

A Party may terminate this Agreement at any time by giving at least 10 Business Days' written notice to the other Party.

2.3 Termination for default

A Party may terminate this Agreement by giving 10 Business Days' written notice to the other Party if:

- (a) the other Party breaches a provision of this Agreement and either the breach cannot be remedied or the breaching Party having been given at least 10 Business Days' notice to remedy the breach has not remedied the breach; or
- (b) subject to applicable Laws, the other Party becomes insolvent or bankrupt at Law.

2.4 Actions on termination

Subject to clause 6.5, if this Agreement is terminated:

- (a) under clause 2.2 or clause 2.3:
 - (i) WAPHA must take all reasonably necessary steps to give effect to the termination of this Agreement; and
 - (ii) the Practice must take all reasonably necessary steps to uninstall the Software from its Practice Management System as soon as practicable after the termination; and
- (b) under clause 2.3 where and only where WAPHA is the breaching Party:
 - (i) WAPHA must, if requested by the Practice, provide an alternative data extraction tool for a period of no more than 12 months that will enable the Practice to produce any reports or data files that must be produced and submitted by or on behalf of the Practice in order for the Practice to be eligible to continue to receive funding under a State or Government program, where the Practice had previously been relying solely on the Software to produce such reports or data files and the Practice's Practice Management System is not capable of producing such reports or data files; and
 - (ii) WAPHA must procure and provide licenses or other agreements to enable the Practice to install the alternative data extraction tool within no more than 20 Business Days after receipt of the written notice of termination provided by the Practice under clause 2.3.

3. Practice Responsibilities

3.1 Nominated Contact

- (a) The Nominated Contact shall be the single point of contact for the Practice with respect to this Agreement 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.

3.2 General obligations

The Practice must:

- (a) have in place appropriate processes and practices such that their patients:
 - (i) are reasonably informed that their De-identified Data (as described in the Particulars Schedule) may be included in the Practice Data extracted and supplied to WAPHA by the Software, which does not take any identified personal or sensitive information from the Practice; and
 - (ii) have a reasonable and ongoing capability to withdraw their consent for their Personal Information not to be included in the Practice Data supplied to WAPHA in whole or in part, as the case may be;
- (b) take reasonable steps to ensure that patients who have withdrawn consent for all or part of their Personal Information to be included in the Practice Data supplied to WAPHA as De-identified Data are identified as such in either their Practice Management Software or in the Software provided by WAPHA;
- (c) comply with any guidelines or data governance framework issued by a government agency or PHN relating to the Shared Data;

- (d) comply with all applicable Laws in relation to the collection, storage, access, use or disclosure of the Practice Data (including, where applicable, Privacy Act and obtaining patient consent) in order for it to fulfil its obligations under this Agreement;
- (e) ensure all security updates and/or patches for the Software issued by or on behalf of WAPHA are, or are able to be, installed promptly on becoming available;
- (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 Identified Practice, and unless explicitly stated otherwise, agrees and consents that all Practice Data stored in the master database shared by all Identified Practices within WAPHA's area or operation as specified in Background clause A may be shared under this Agreement; and
- (g) disclose to WAPHA if its Practice Management System, or the network where that system resides, is or may be compromised or subject to a cybersecurity or data breach.

3.3 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; and
- (b) WAPHA's access to and use of the Practice Data under this Agreement will not infringe any Laws or the Intellectual Property Rights of any person with respect to the Practice Management Software.

4. PHN Responsibilities

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) notwithstanding the intention to extract and store only De-Identified Data from the Practice, ensure that any Personal Information obtained from a Practice, intentional or otherwise, is handled in accordance with the applicable Privacy Laws;
- (c) securely store the Shared Data received from the Practice under this Agreement;
- (d) comply with any applicable guidelines or data governance framework issued by a government agency that relate to the Shared Data; and
- (e) comply with any withdrawal of or limitation on a patient's consent for their Personal Information to be extracted as De-identified Data by the Software from the Practice's Practice Management System.

5. Software and Support

5.1 WAPHA obligations

WAPHA is responsible for providing the Software as set out in the Particulars Schedule, and will, at no cost to the Practice:

- (a) provide a 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 3.2(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.

5.2 Practice obligations

- (a) The Practice must arrange for or undertake 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 set out in the EULA.

6. Data

6.1 Provision of Practice Data

- (a) The Practice shall enable and authorise the Practice Data to be provided to WAPHA by the Software and shall comply with any additional terms specified in the Particulars Schedule.
- (b) The Practice Data will be provided by allowing WAPHA to extract the Practice Data directly from the Practice Management System via the Software.
- (c) Practice Data provided by the Practice to WAPHA will be De-Identified Data and shall not contain patient or clinician names, addresses, Medicare numbers or any other identifying data.
- (d) Practice Data provided by the Practice to WAPHA may be accessed by the Software Operator or an Agent, for the purpose of operating, supporting and maintaining the Software or other systems used by WAPHA, and WAPHA warrants that the Software Operator and all Agents undertake to comply with the Privacy Act and to retain confidentiality of the Shared Data and any other information related to the Practice's patients, staff or business operations, including all patient clinical and demographic data.

6.2 Creation of Shared Data

The Shared Data is created by the Software processing the Practice Data provided to it by the Practice. WAPHA and the Practice both acknowledge that:

- (a) the Practice Data and the Shared Data are to be treated as two separate items, irrespective of the fact that they may relate to the same underlying information;
- (b) the Software utilises algorithms and functions in creating the Shared Data that may add data that is not present in the Practice Data. This may include:
- (i) risk stratification scores created through use of The Johns Hopkins University Adjusted Clinical Groups® (ACG®) tool;
 - (ii) mapping to ICPC-2 PLUS standard through use of University of Sydney clinical terminology classification; and
 - (iii) other mappings and scorings as may be included in the Software;
- (c) reports, alerts, notifications and any other provision of information by the Software comes from the Shared Data, and may contain data that is not present in the Practice Data; and
- (d) the Shared Data is not created by the Practice's Practice Management System, and any use or reliance on the Shared Data by the Practice, whether through functionality provided by the Software or otherwise, has no bearing on the Practice Management System and does not create any liability or responsibility on the part of any Party or third party, including the vendor providing the Practice Management System.

6.3 Data Breaches

WAPHA agrees 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. Since the Shared Data contains only De-Identified Data, this is in addition to any requirements WAPHA must comply with under the Privacy Act.

6.4 Use of Data by WAPHA

- (a) WAPHA may use the Practice Data solely for the creation of the Shared Data and must not access, store or retain Practice Data beyond this use.
- (b) WAPHA may only use the Shared Data for any Permitted Purpose, including publishing and dissemination of Aggregated Data to third parties, and must not use the Shared Data for an Excluded Purpose.
- (c) WAPHA agrees to not intentionally re-identify, attempt to re-identify, or permit any third party to re-identify or permit to re-identify, any of the Shared Data.
- (d) For the avoidance of doubt, WAPHA will not sell or otherwise provide, or provide access to, the Shared Data in whole or in part, including any Aggregated Data, under any commercial agreement for the purposes of making a profit. WAPHA is permitted to charge a third party a fee for the use of the Shared Data and / or the Aggregated Data on a reasonable cost recovery basis only for any effort required under the Permitted Purpose.

6.5 Treatment of Data on Termination

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

6.6 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 a royalty free, non-exclusive licence for the term of this Agreement to use, reproduce and communicate data relevant to the Practice Data within the Practice's Practice Management System only for a Permitted Purpose.
- (c) WAPHA must not dispose of, purport to sell, let for hire, assign rights in, or otherwise dispose of, any data licensed under clause 6.6(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 the Shared Data to WAPHA provided that WAPHA only uses this data in accordance with this Agreement and specifically clause 6.4.
- (e) The Parties agree with the roles, responsibilities and ownership of the Practice Data and the Shared Data as described in the Primary Sense Data Governance Framework.
- (f) To the extent required for the purposes of exercising its rights or obligations under this Agreement, WAPHA grants to the Practice a 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.

6.7 Compliance with Privacy Requirements

- (a) Each Party agrees that it will handle any Personal Information (as defined in *the Privacy Act 1988* (Cth)) collected, disclosed, transferred, received or otherwise used by/to/from the Party in accordance with the Privacy Act.
- (b) WAPHA shall at all times adhere to WAPHA's Privacy policy, and Privacy Code of Practice and Information Management Policy, as updated from time to time, which is deemed to be incorporated into this Agreement and can be accessed at <https://www.wapha.org.au/policies/>.

7. Audit Access

7.1 Practice audit access

- (a) The Practice may request and WAPHA must facilitate the Practice in obtaining reasonable access to the Practice Data for the purpose of ensuring that their data is being handled in accordance with the Primary Sense Data Governance Framework.
- (b) WAPHA must procure access for the Practice to the data from the Software Operator, who must grant such access in accordance with the Primary Sense Data Governance Framework.

8. Liability

- (a) To the full extent permitted by Law, neither Party has any liability to the other Party under this Agreement except as explicitly stated under this clause.
- (b) 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.
- (c) To the full extent permitted by Law, if WAPHA materially breaches any of its obligations under clause 4, 5, 6.3 or 6.4, then the total aggregate liability of WAPHA under this Agreement, shall be, at the Practice's election, limited to:
 - (i) WAPHA procuring a fix of the Software to address the error and (if applicable) the deletion of the affected data and the extraction of the appropriate data; or
 - (ii) if the Practice no longer wishes to use the Software:
 - (A) the supply of an alternate software, which is materially similar in all respects to the Software and which software WAPHA is entitled to supply, by WAPHA to the Practice pursuant to a new data sharing agreement; or
 - (B) the payment of the cost of the software licence fee for a period of 12 months incurred by the Practice in procuring an alternate software which is materially similar in all respects to the Software.

9. Confidentiality

- (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 in so far as such disclosure is required under WAPHA's funding agreement with the Commonwealth Department of Health;
 - (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 9(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.

10. Dispute resolution

- (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 10.

- (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 request the Dispute be referred to private mediation by notice to the other Party.
- (e) If the Parties proceed to private mediation by agreement, 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.

11. General

11.1 Governing Law and jurisdiction

- (a) The laws of the State govern this Agreement.
- (b) The Parties submit to the exclusive jurisdiction of the Courts of the State or, where the Courts of the State do not have jurisdiction, to jurisdiction of the Federal Court of Australia.

11.2 Variation

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

11.3 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.

11.4 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.

11.5 No waiver

No Party may rely on the words or conduct (including any delay to exercise a right) of any other Party as being a waiver of any right, power or remedy arising under or in connection with this Agreement. A waiver must be in writing, signed by the Party granting the waiver.

11.6 Entire Agreement

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

11.7 Further action

Each Party must, at its own expense, do all things (including completing and signing all documents) reasonably requested by the other Party that are necessary to:

- (a) bind the Party and any other person intended to be bound by this Agreement;
- (b) give full effect to this Agreement,

and use all reasonable endeavours to procure that any third parties do the same.

11.8 Survival

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

11.9 Relationship

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

11.10 Signatures

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

11.11 Counterparts

- (a) The Parties may execute this Agreement in any number of counterparts, which taken together constitute one instrument.
- (b) The Parties may exchange counterparts by scanning the entire duly executed counterpart and emailing it to the other Party.

11.12 Notices

- (a) A notice to be given under this Agreement must be in writing and a notice to WAPHA addressed as set out in the Particulars Schedule.
- (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.

Signatures

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

Print Name

Role

Role

Date

Date

Schedule 1 – Particulars

Item 1 The Practice

Name: ABN:
Address: Telephone:
Address for the purposes of a notice if the above address is not appropriate:
Address:
Email:

Item 2 Nominated contact

Name: Telephone:
Email:

Item 3 Identified Practices *[add rows if required]*

Practice 1 Name: Telephone:
Address:
Practice 2 Name: Telephone:
Address:

Item 4 Shared Data

The Practice is to refer to the Primary Sense Data Extraction Guide available at www.primarysense.org.au for its Practice Management System which will detail the specific source tables that shall comprise the Practice Data. Primary Sense only extracts data required for the reports, alerts and prompts that are provided through the Software. Practice Data extracted to create the Shared Data may include but is not limited to:

- de-identified list of active patients at each Identified Practice;
- de-identified list of staff at each Identified Practice;
- pathologies ordered for each patient – test and interventions requested, as well as results (past five years only, except for certain genetic tests);
- visits for each patient for linking to MBS items only (past five years only);
- allergic reactions for each patient;
- clinical history of diagnoses for each patient;
- consultations for each patient (past five years only, excludes any progress notes);
- list of documents for each patient (e.g. discharge summaries) (past five years only);
- immunisations for each patient;
- MBS service items for each patient (past five years only);
- prescriptions for each patient (prescribed by a Practice practitioner) (past five years only);
- medications for each patients (includes those entered but not prescribed by a Practice practitioner, e.g. specialist) (past five years unless ceased data is null);
- observations for each patient (past five years only);
- patient lifestyle records for each patient (e.g. smoking status, alcohol, etc.);
- pregnancies for each patient;
- appointment dates for each patient (in advance at least two weeks);
- pap smear and cervical screening tests for each patient (past five years only); and
- birth records for each patient.

privacy-preserving data linkage keys that enable patient records to be linked across Practices and with

other data sources without needing to provide any identifiable data to any third party.

Item 5 Software

Under this Agreement WAPHA is providing the Software to the Practice.

The Software is Primary Sense 2, owned by WAPHA together with other Primary Health Networks as tenants-in-common, and managed and supported by the Software Operator for and on behalf of WAPHA.

The Software installed at the Practice consists of:

- Primary Sense 2 Desktop (installed on one or more Practice workstations); and
- Primary Sense 2 Server (installed where the Practice Management Software database is accessible).

The Software also consists of the Primary Sense 2 Core, installed and operating within the Primary Health Insights platform, a highly-secure cloud-based data storage and analytics platform owned by Primary Health Networks nationally, and also managed and supported by the Software Operator for and on behalf of WAPHA.

The Practice only has access to the Software installed at the Practice, however functionality provided via the Primary Sense 2 Desktop is supported by data processing and analytics undertaken within the Primary Sense 2 Core, which access the Shared Data extracted by the Primary Sense 2 Server.

More information about the Software can be found at www.primarysense.org.au and more information about the Primary Health Insights platform can be found at www.primaryhealthinsights.org.au.

Details of the licence terms and conditions that the Practice must comply with in using the Software are set out in the End User License Agreement (**EULA**) detailed in Schedule 3.

Item 6 Permitted Purpose

Shared Data may be used by WAPHA, and disclosed to third parties by WAPHA, only for the Primary Purposes and the Secondary Purposes, as specified below:

Primary Purposes

WAPHA can use the Shared Data for the following primary purposes:

- (a) Providing reports, alerts and notifications back to the Practice via the Software;
- (b) Generate, process and submit data for PIP QI;
- (c) Provide reports, advice and feedback on quality improvement and other practice improvement areas by WAPHA to the Practice via reports, phone calls, emails, in-person meetings and other forms of communication;
- (d) Undertake and publish population health analysis and research to improve community health outcomes by:
 - (i) additional statistical reporting for the Practice;
 - (ii) commissioned service planning;
 - (iii) population health planning;
 - (iv) public health service mapping;
 - (v) development and further enhancement of community health promotion and prevention strategies;
 - (vi) assist in the comparison of Aggregated Data with current health trends;
 - (vii) identification of health service gaps;
 - (viii) evaluation of commissioned services and other health service programs; and
 - (ix) supporting the commissioning of services in accordance with the Department of Health's Commissioning Framework.
- (e) Create Aggregated Data to provide to the Commonwealth Department of Health and other Local, State and Federal government bodies to support health policy and program planning, development and evaluation, including health workforce policy and programs; and
- (f) Collaborate and work with other Primary Health Networks to support Primary Purposes (a), (b), (c) (d) and (e) at regional, state and national levels.

Secondary Purposes

- A. WAPHA can use the Shared Data for the following secondary purposes:
- (a) Provide Shared Data (Aggregated or not) to third parties, including health industry peak bodies, for research or other purposes where:
 - the purpose aligns to and supports one or more Primary Purposes;
 - the scope of the Shared Data to be shared has been documented, including any data linkage;
 - any research that will use the Shared Data has received all required Ethics approvals;
 - the third party has agreed to abide by data security, privacy and consent requirements in line with this Agreement and all relevant Privacy Laws; and
 - a proposal or other documentation containing sufficient detail to demonstrate that (i) through (iv) above, inclusive, have been satisfied has been:
 - (1) reviewed by the Primary Sense Clinical Advisory Group, or another body that is external to WAPHA and the third parties and which contains individuals with appropriate and relevant experience and expertise in primary health care and general practice; and
 - (2) endorsed by the Primary Sense Clinical Advisory Group, or other body as specified in A, as a result of the review as having sufficiently demonstrated compliance with (i) through (iv), above.
- B. WAPHA can only use the Shared Data for a secondary purpose if WAPHA has:
- (a) maintained a record that the purpose has been approved in line with clause A, above, that includes sufficient detail to demonstrate how the purpose complies with the requirements of that clause;
 - (b) made that record easily accessible to the Practice (such as on a website, newsletter or by direct communication to the Practice);
 - (c) provided a means whereby the Practice can easily opt out by notifying WAPHA that:
 - (i) their Shared Data in part or in its entirety is not permitted to be used for that particular purpose; or
 - (ii) their Shared Data in part or in its entirety is not to be used for any secondary purpose,
 - (d) maintained a record of all Practice opt out notifications received from any Practice under sub-clause (c); and
 - (e) complied with any opt out notification provided by the Practice under sub-clause (c).

Item 7 **Excluded Purpose**

Shared Data may not be used by WAPHA, or disclosed to third parties by WAPHA, for any of the Excluded Purposes, as specified below:

Excluded Purposes

WAPHA may not use the Shared Data, or knowingly permit the Shared Data to be used, for the following excluded purposes:

- (a) Any commercial purpose or gain for WAPHA or any other third party for the purposes of making a profit. For the avoidance of doubt, WAPHA is permitted to charge a third party a fee for the use of the Shared Data or Aggregated Data for a Permitted Purpose on a reasonable cost recovery basis; or
- (b) Any performance benchmarking or financial audit undertaken by a Commonwealth or State Government agency or any other funding body, without the express permission of the Practice on each occasion.

Item 8 **Data Governance**

Shared Data and other data used or created by the Software is governed and managed under the Primary Sense Data Governance Framework, as annexed.

Item 9 **State**

[Insert PHN State or Territory].

Schedule 2 – Primary Sense Data Governance Framework

1. General Requirements

Primary Sense 2 (“the Software”) and the Primary Health Insights platform (“PHI”) are required to operate under WAPHA National Data Governance Framework (as updated from time to time), available at www.primarysense.org.au.

The Software Operator must:

- (a) ensure that all architecture, design, development, management, operation and use of the Software must comply at all times with all approved PHI cybersecurity standards, policies and procedures;
- (b) comply with and enforce any Software-specific data governance policy at all times, including in circumstances which, under any such policy, require the Software Operator to provide or prevent access to some or all of the Shared Data to any party, including WAPHA;
- (c) ensure that the currently deployed version of the Software is substantively the same as the version most recently covered by a Privacy Impact Assessment (PIA) with respect to the collection, storage, management, access and use of data;
- (d) ensure that a suitable and appropriate PIA is undertaken as part of the assessment and prioritisation of any proposed change to the Software, and the PIA is taken into account in any scoping, pricing and approval of the change if it is likely to result in a substantive change to the nature, quantity or kind of Practice Data extracted by the Software;
- (e) arrange in each Financial Year for an appropriately qualified and experienced external, independent vendor to undertake a security review and penetration test of the Software in parallel with, and may be undertaken as part of, a similar annual review and test of PHI; and
- (f) report to a Committee, made up of representatives from Primary Health Networks (who are the tenants-in-common owners of the Software), the details of any security review and penetration test findings, and how the Software Operator will address any Critical or High priority findings.

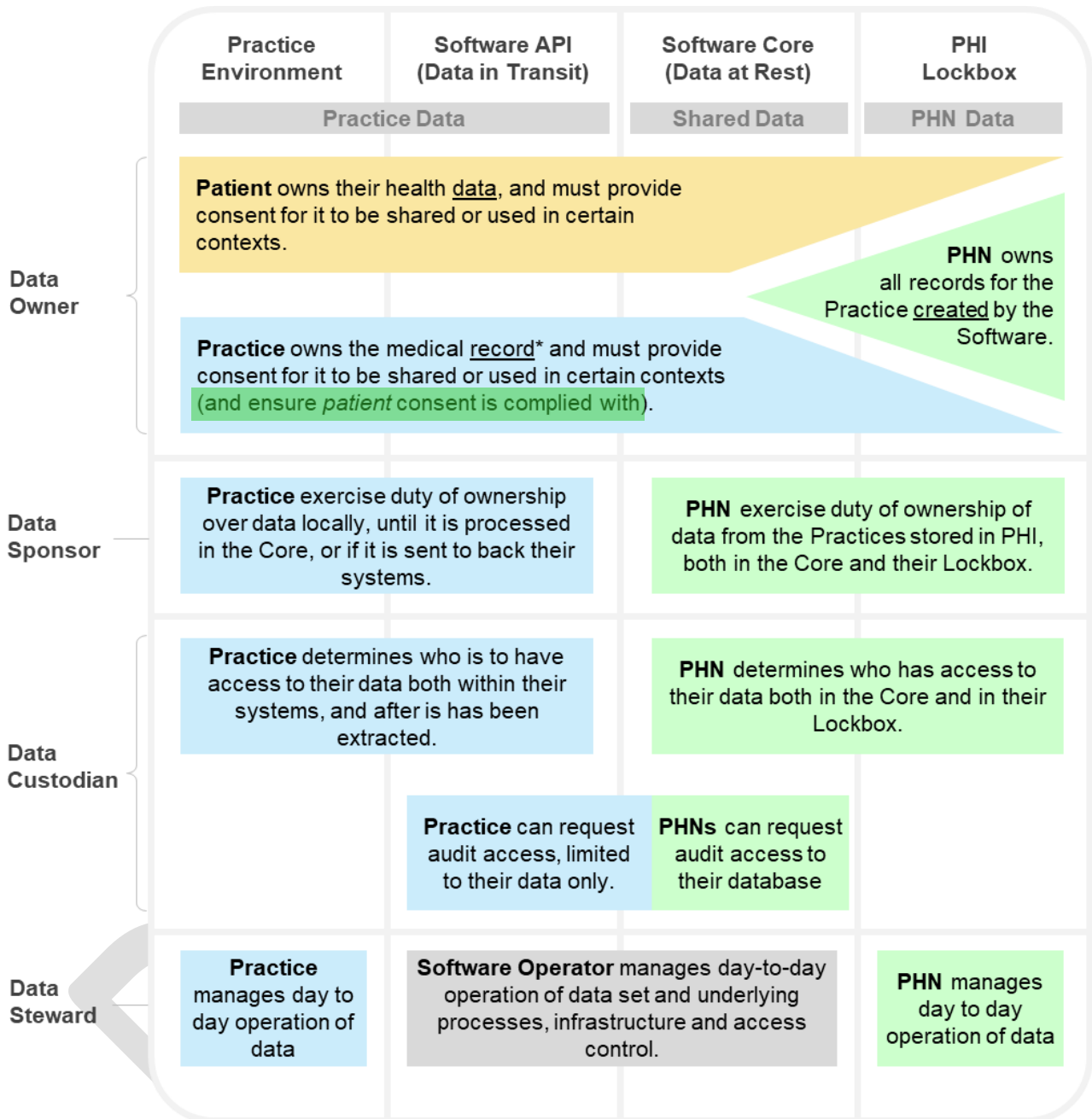
2. Data Governance Roles

The following data governance roles are defined with the context of the Software:

Role	Accountabilities
Data Owner	<ul style="list-style-type: none"> • Agree to the collection and storage of the data • Provide consent and define any conditions on the sharing or use of the data
Data Sponsor	<ul style="list-style-type: none"> • Undertake the duties of ownership on behalf of the Owner • Ensure compliance with any defined conditions
Data Custodian	<ul style="list-style-type: none"> • Ensure data is collected and stored for approved purposes • Define and approve requirements for data storage • Ensure data is not retained if no longer required • Determine and approve who has access to data • Approve and monitor application of data quality framework • Ensure required data protection and security is enforced • Ensure a process exists for responding to breaches • Appoint Data Steward and ensure duties are fulfilled • Notify Data Owner of any breaches or material issues
Data Steward	<p>Manage data set and enforce compliance with all conditions Ensure up-to-date documentation on data set structures Develop and maintain metadata, business rules & guides to use Coordinate documenting business requirements for data set Advise Data Custodian on data management and usage Monitor and provide feedback on data quality issues Escalate material risks and issues to Data Custodian</p>

The following diagram identifies how these roles are applied to data within the Software, as well as within PHI when Shared Data is provided by the Software to WAPHA and stored within WAPHA’s secure Lockbox

within PHI:

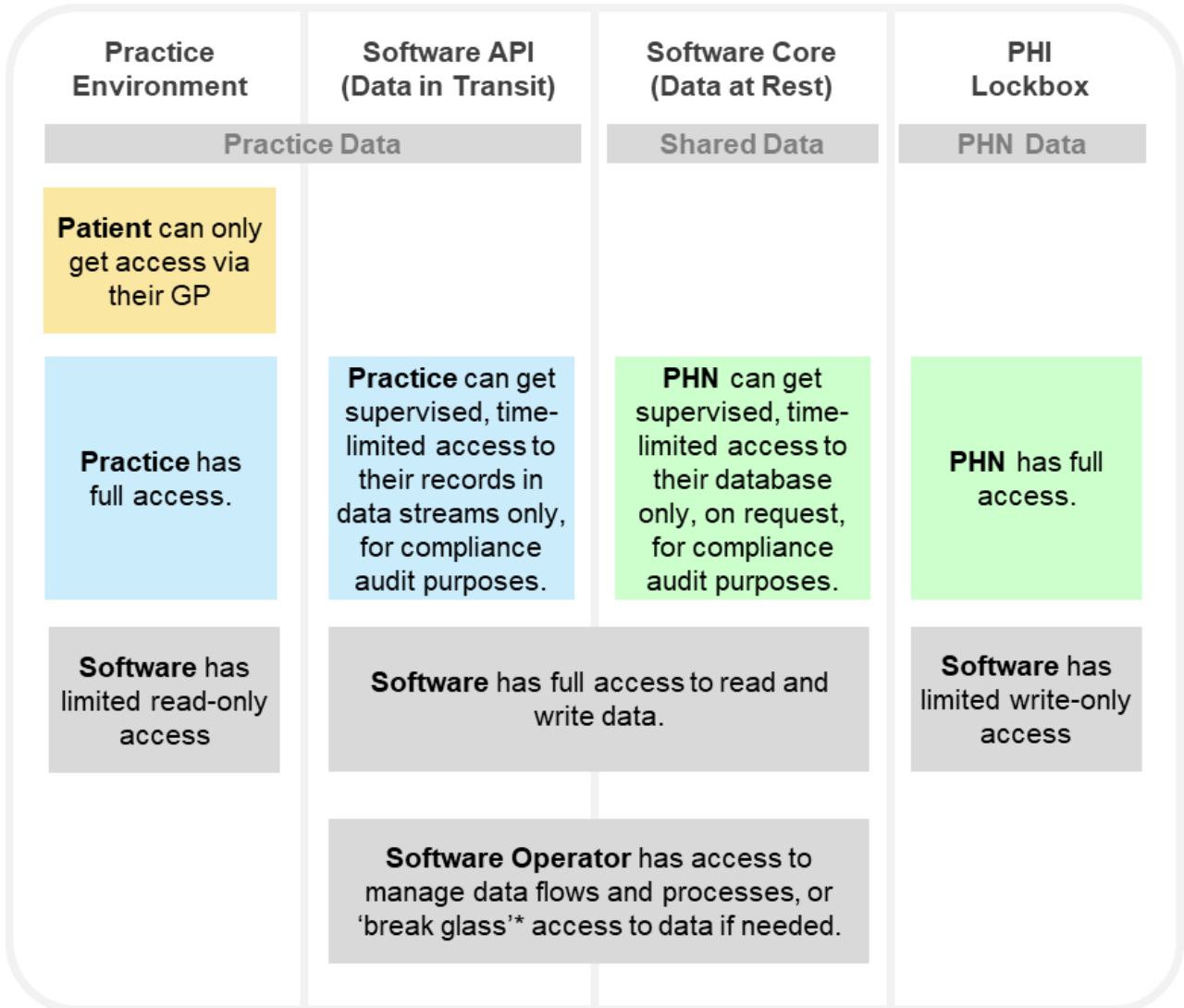


* as per *Breen vs Williams*, which placed ownership of medical records with general practices.

3. Data Access and Security

The following diagram identifies how these data access and security controls are applied to protect data within the Software, as well as within PHI when Shared Data is provided by the Software to WAPHA and

stored within WAPHA's secure Lockbox within PHI:



* 'Break glass' access refers to an administrator account that has sufficient privileges to view data or take an action, but can only be used in an emergency situation or if specifically requested by a Custodian / Sponsor.

Schedule 3 – End User License Agreement (EULA)

Introduction

This is an agreement between You and Us. This EULA applies to Your use of the Software and Material. By using, accessing or installing, or by attempting to use, access or install, the Software and Material on any Device, You irrevocably agree to be bound by these terms and conditions.

If You do not agree with this EULA, You are not authorised to download, install, use or access the Software and Material. The EULA applies in addition to any additional terms provided by Us to You or available on Our website.

We may amend this EULA from time to time. Continued use of the Software and Materials by You and Your Practice will be taken to indicate agreement with the amended EULA. If You do not agree with the amended EULA, You must cease Your use of the Software (and Material) and remove it from Your Device.

Definitions

Consumer has the meaning given to that term in the Consumer Law.

Consumer Law means *Competition and Consumer Act 2010 (Cth)* and similar state and territory laws in Australia.

Device means any computing or mobile device.

EULA means the terms and conditions contained in this end user licence agreement.

Material means any information, text, graphics, logos, icons, images, data compilations, reports, medical alerts, and any form of information or content and design elements, interactivity and functionality forming part of, or made available via, the Software.

Personal Information has the same meaning within the Privacy Act.

Practice means the general practice who provides the Practice Data to, for its reports, real time alerts and research to be produced by, the Software.

Practice Data means a set of de-identified data extracted from Your Practice's computer system through the use of the Software.

Privacy Act means the *Privacy Act 1988 (Cth)*, the Australian Privacy Principles and all other Commonwealth, state and territory laws, regulations and codes, including 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, as applicable.

Software means the primary sense software that provides general practitioners with access to reports, alerts, health information and patient

specific tailored information, and it includes the Johns Hopkins ACG® System for performing risk measurement and case-mix categorisation.

Us, We, or Our means WAPHA or such other entity which is responsible for the Software from time to time and includes our employees, agents, subcontractors, directors and other related bodies.

You or Your means any legal person or entity who downloads, uses, installs, or accesses, or attempts to download, use, install or access the Software or any Material, including a Practice.

Licence

Subject to this EULA, We grant You a non-exclusive, world-wide, royalty free, revocable licence for the sole purpose for your Practice to install, run, display and use the Software on Your Device for its intended purpose. We grant to You a non-exclusive, royalty-free, non-transferable licence to download, store in cache, display, print, copy, communicate, backup and use the Materials made available via the Software.

This licence does not permit Your use of the Software or any Materials for commercial or illegal purposes; alteration or modification of the Software or Materials; use or reproduction of the Software or Materials other than as specifically permitted by this EULA. The Practice must ensure that only its employees or subcontractors have access to and use the Software and Materials in the course of carrying out their duties for the exclusive benefit of the Practice. You must not permit any person or entity to use the Software and Material who is in the business of supplying software competitive with the Software. You agree to notify Us of any unauthorised use or access to the Software.

We may change, add or remove any functionality of the Software and any Material accessible via the Software at any time (including any support We may provide for the Software). If changes are made to the Software or any Material, this EULA will govern any upgrade or change, unless You are notified of replacement terms.

You must not or attempt to modify, copy, adapt, reproduce, disassemble, decompile, tamper, interfere or reverse engineer the Software or in any manner affect the functionality or proper working of the Software.

You must not disclose a user name or password required to access the Software to any other person.

We may terminate this EULA and terminate or suspend Your right to use the Software and Materials at any time. If we notify You that the EULA has been terminated, You agree to stop using the Software and remove the Software from

Your Device. You may terminate this EULA at any time by ceasing to use the Software and removing it from Your Device.

You agree not to sub license, rent, lease or lend the Software to another party. You agree not to sub license Your rights or novate Your obligations under this EULA.

You agree to perform or execute all updates to, or download new versions of, the Software as required and as directed by Us.

Disclaimer

You acknowledge and agree on behalf of your Practice that the Material provided is for information, educational and audit purposes only. It does not replace clinical decision making. The Material made available via the Software has been developed by Us for publication on the Software.

You acknowledge and agree on behalf of your Practice that You are responsible for making Your own enquiries to determine whether any Material is accurate, up to date, and fit for Your purposes. The Software is intended to assist Us to disseminate health information for the benefit of the Practices and their patients.

Nothing in this EULA or Material made available to You via the Software is intended to replace clinical decision making or be used as medical advice and it is not intended to be used to diagnose, treat, cure or prevent any disease, nor should it be used as a substitute for your health professional advice.

Liability and indemnity

To the extent permitted by law, We have no liability (including for negligence) for any loss, damage, cost or expense (whether direct, indirect, consequential or specific) caused by use or reliance on the Software or Material. This includes loss, damage, cost or expense sustained or incurred by You (or to any Device) as a result of:

- a) Your, or any third party's use of, or reliance upon, the Software or any Material made available to You via the Software (including use of Material to achieve a medical outcome);
- b) any unavailability of the Software, loss of functionality, or any difficulty or inability to download or access the Software or Materials (whether caused by Us or by any other event);
- c) any actions or omissions by a third party (including with respect to any inaccuracy of the Materials);
- d) Your failure to conduct any checks that may be necessary to ensure that the Software and Material will not corrupt in any way, damage or delete Your data, IT systems, Device or those of any third party; or

- e) any failure by Us to comply with any of Our legal obligations to a third party.

To the extent permitted by law, We do not warrant or represent that the Software or Material are free from anything which may damage any Device used to access the Software, or that the Software is free from defects, works in a particular way or will not be subject to interruption, delay, interception, a virus, access or alteration by third parties.

Notwithstanding anything in this EULA to the contrary, Consumers may have the benefit of certain rights or remedies pursuant to the Consumer Law in respect of which liability may not be excluded. If so, then to the maximum extent permitted by law, such liability is limited, at Our election to the re-supply of the licence granted under this EULA or payment of the cost of having the licence re-supplied.

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

You indemnify Us against all claims, losses, costs or damage suffered or incurred by Us arising from:

- a) any unauthorised use of the Software by You, or a third party who gains access to the Software You; and
- b) any breach of this agreement by You.

Availability and security

We do not guarantee the availability of the Software and Material although We will make reasonable efforts to make the Software and Material available. The Software may not be available to operate on all operating systems or versions of those systems.

We will provide the following support services to the End User:

- a) assistance with Practice Data extraction;
- b) support, to the extent reasonably required, to assist You to fully utilise the Software; and
- c) collaborate with the Software Operator to provide further support.

You acknowledge and agree that We are not responsible for the security of the data located at the Practice and which resides in the Practice's operating system.

System Requirements

In order to use the Software, You must have a compatible Device with internet access, and which meets the necessary minimum specifications on which the Software can function. You must view the Software in the format in which it is provided. We are not responsible for the

display of information using the Software in any other format. We reserve the right to update or change the format of the information provided.

You 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 Software, including any spam and/or junk folder. You must notify Us of any changes to this email address.

Primary Sense Installation

You must install the Software in accordance with the installation instructions. You must keep a record of the clinical database read-only password created as part of the initial installation instructions. This password will be required for all subsequent Software installations at your Practice.

You must use reasonable endeavours to ensure that We are able to remotely access Your Device for the purposes of providing installation, training and support services and supporting Your compliance with this EULA.

We will provide user training and other support services to You as soon as possible after installation of the Software is complete, and You must participate in user training whenever reasonably required by Us.

You must provide such assistance as may reasonably be required in order to complete the installation and other training and support.

Intellectual property and confidential information

Intellectual property in the Software and Materials is owned by Us or used by Us under licence from a third party. Your licence to use the Software in no way transfers or assigns ownership in any intellectual property rights (including copyright) to You.

Subject to this EULA and any other data sharing agreement You have with Us, to the extent that confidential (non-public) information is shared between You and Us, we both agree to keep such information confidential and not use it other than for the purposes of this EULA and only disclose it to the extent required by law, with consent, or for the purposes of this EULA or to professional advisers.

Collection of personal information

We use the Software to access personal and sensitive information. The access to personal and sensitive information only occurs within the Practice and only to de-identify it prior to the Practice Data being collected and used by Software for conducting population health needs assessment, health improvement activities, research and to produce reports including to test

validity of reports in development.

We do not take any personal and sensitive information from the Practice. You agree to our collection and use of this information for these purposes.

You comply and will continue to comply with the Privacy Act in relation to the provision of this information and the relevant notifications and consents that may be required for Our collection and use of this data for the purposes of the Software and the Material.

You must notify Us as soon as practicable if this situation changes so we can refrain from accessing individual patient's personal and sensitive information.

Collection of non-personal information

We may collect, share and use technical data and related information including information about the Software and Your Device to facilitate the provision of Software updates and improve the performance of the Software. You agree to Our collection and use of this information.

Collection of cookies

Cookies are small files stored by your web browser when You access the Software website. We only use session cookies that are essential to enable You to move around on the Software website and use its secure features. The cookies do not store any personal information about You and do not identify You personally.

General

This EULA is governed by the law of the State as defined in Schedule 1.

You and We will co-operate in good faith to maximise, to the greatest practicable extent, the benefit to each party contemplated by this EULA and to resolve quickly and in an amicable way any dispute or difference arising between us.

Where a party consists of two or more persons the obligations under this EULA bind each of them, and the rights under this EULA benefit each of them, severally and all of them jointly.

Except as expressly stated in this EULA, You have not, in entering this EULA, relied upon any statement, representation, undertaking, warranty or condition made or given by or on behalf of Us in respect of this EULA.

This EULA contains the entire agreement between You and Us with respect to its subject matter.

Enquiries

Please address enquiries about Primary Sense™ Software to WAPHA.