

**END USER LICENCE AGREEMENT
NBMPHN PORTAL**

Wentworth Healthcare Limited (WHL) as provider of Nepean Blue Mountains Primary Health Network (NBMPHN)

1. Acceptance of terms

1.1 *You* agree to access and use the *NBMPHN Portal* on and subject to the terms and conditions of this *agreement* between *you* and *WHL*.

1.2 By accessing and/or using the *NBMPHN 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 *WHL*'s privacy policy, which is published at <https://www.nbmphn.com.au/Resources/About/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. Definitions and Interpretations

2.1. 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 *NBMPHN 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 Sydney, New South Wales.

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 *NBMPHN Portal*, including the *shared data*.

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

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.

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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.

WHL means *Wentworth Healthcare Limited (ABN 88 155 904 975)* of Werrington Park Corporate Centre, Level 1, Suite 1, 14 Great Western Hwy, Kingswood NSW 2747

NBMPHN Portal means the platform owned by, or licensed to, *WHL* 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 *NBMPHN Portal*, on behalf of the *general practice*, and the *general practice* and its *personnel*.

2.2. 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:

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- (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 Eastern Standard Time in Sydney, New South Wales;
- (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.

3. Grant of Licence

- 3.1. *You* have been granted a personal, non-exclusive, non-transferable, non-assignable, revocable licence to use the *NBMPHN Portal*, subject to the terms and conditions of this *agreement*.
- 3.2. All updates to the *NBMPHN Portal* that are provided by or on behalf of *WHL* to update, supplement or replace any aspect of the *NBMPHN Portal* are subject to this *agreement*, except where expressly stated otherwise in a separate licence applicable to the update.
- 3.3. *WHL* may suspend *your* rights under this *agreement* if *you* fail to comply with any of the terms and conditions of this *agreement*.

4. 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 *NBMPHN Portal*, including any spam and/or junk folder;
- (c) are responsible for updating *WHL* 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 *NBMPHN 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 *NBMPHN Portal* or in any manner affect the functionality or proper working of the *NBMPHN Portal*;
- (g) must not manipulate or attempt to manipulate any content or *material* of the *NBMPHN Portal* or the *shared data*;

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- (h) must not remove or obscure *WHL's* trade mark or other proprietary notices from any of the *materials* displayed on or downloaded from the *NBMPHN 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 *NBMPHN Portal*;
- (j) must immediately notify *WHL* of any unauthorised use of *your* unique *access information* or any unauthorised access to the *NBMPHN Portal*;
- (k) must not make illegal use of the *NBMPHN Portal* or use it for illegal purposes;
- (l) must not interfere with anyone who is a user of the *NBMPHN Portal* in their use of the *NBMPHN Portal*;
- (m) must not access the *NBMPHN Portal* in any manner contrary to *WHL's* instructions;
- (n) must not breach or attempt to breach any security measures of the *NBMPHN 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*.

5. Shared Data

- 5.1. *WHL* will send *you* a temporary unique time linked uniform resource locator for *you* to upload the *shared data* to the *NBMPHN Portal* every quarter per annum or as otherwise directed by *WHL*.
- 5.2. *You* must upload the *shared data* within the time frame specified in the uniform resource locator or as otherwise reasonably directed by *WHL*.
- 5.3. 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*.
- 5.4. *You* must only upload the *shared data* in accordance with the requirements of the *data sharing agreement* and the *specifications*.
- 5.5. *You* must not upload any *contribution* to the *NBMPHN Portal*:
 - (a) which is false, misleading, illegal, defamatory or inaccurate;
 - (b) that does not comply with the standards as set out in *WHL's* policies or as directed by *WHL* from time to time;
 - (c) that includes *personal information*;
 - (d) that contains any computer viruses, worms, malware, spyware or defects.
- 5.6. *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 *WHL* 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 *WHL* in relation to the non-compliant *contribution*.

6. Maintenance

- 6.1. The *NBMPHN 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*.
- 6.2. To the full extent permitted by *law*, *WHL* does not warrant:

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- (a) the accuracy of any links provided on the *NBMPHN Portal*, nor the suitability of any content located in the *NBMPHN Portal*. Hyperlinks, hotlinks and frames connecting the *NBMPHN Portal* with other applications are for convenience only and does not mean that *WHL* endorses or approves those other applications, their content or the people who run or contribute to them. Use of hyperlinks or hotlinks within the *NBMPHN Portal* is at *your* sole risk; and
 - (b) *materials* obtained from or through the *NBMPHN Portal* or as provided by *WHL* are free from computer viruses, worms, malware, spyware or defects.
- 6.3. *WHL* may update, amend or replace the *NBMPHN 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 *NBMPHN Portal* and software updates, as required, and as directed by *WHL* (if applicable).
- 6.4. *WHL* will provide *you* with at least 2 *business days* prior notice of any proposed maintenance, servicing or update to the *NBMPHN Portal* where such maintenance, servicing or update will render the *NBMPHN 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.
- 6.5. *WHL* will take all reasonable steps to ensure that the *NBMPHN Portal* is operational and error free, but *WHL* does not warrant that the operation of the *NBMPHN Portal* will be uninterrupted or error free and does not warrant against *loss* or damage caused by accident, abuse or misapplication of the *NBMPHN Portal* by *you* or any third party.
- 6.6. To the extent permitted by *law*, *WHL* is not liable, and *you* must not make any *claim* against *WHL*, for any *loss* or damage suffered or incurred by *you* or any third party whatsoever as a result of:
- (a) the *NBMPHN Portal* being inoperable whilst undergoing maintenance, servicing or updates by *WHL*; 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.

7. Internet Access

- 7.1. *You* will be responsible for procuring adequate internet access from a third party internet service provider to enable the operation of the *NBMPHN Portal*, at *your* own cost. *WHL* is not liable for any data or internet usage costs and expenses that *you* incur while using the *NBMPHN Portal*.
- 7.2. The *NBMPHN 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*, *WHL* is not liable for any *loss* or damage that *you* may suffer or incur.

8. Consent to Data Collection

- 8.1. *You* agree that *WHL* may collect, store and use technical data and related information, including technical information about the *NBMPHN 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 *NBMPHN Portal*.
- 8.2. *WHL* may use the information or statistics based on that information in clause 8.1, as long as it is in a form that does not personally identify *you*, to improve *WHL*'s products or to provide services or technologies to *you* or other users of the *NBMPHN Portal*.

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8.3. You acknowledge and agree that it is *your* sole responsibility to comply with all *privacy laws* when using the *NBMPHN Portal*.

9. Liability

9.1. 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*.

9.2. To the full extent permitted by *law*, each party's liability is limited under this *agreement* as set out in this clause 9.

9.3. The total aggregate liability of the *general practice* in relation to this *agreement* in no event shall exceed and is limited to \$100.

9.4. The total aggregate liability of *WHL* in relation to this *agreement*, shall be limited at its election to the:

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

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

10. Intellectual Property Rights

10.1. You acknowledge and agree that all *intellectual property rights* comprised in or relating to the *NBMPHN Portal* (including any updates) remains vested in *WHL* (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.

10.2. You agree that all *intellectual property rights* in any *contribution* to the *NBMPHN Portal* vests in *WHL* upon it being uploaded to the *NBMPHN 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 *WHL*.

11. Termination

11.1. This *agreement* is effective until terminated by you or *WHL*.

11.2. You may terminate this *agreement* at any time, by ceasing to use the *NBMPHN Portal*.

11.3. *WHL* may terminate this *agreement* by giving at least 20 *business days'* written notice to you.

11.4. 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*.

11.5. Upon termination, you must cease all access and use of the *NBMPHN Portal*.

12. Force Majeure

12.1. If *WHL* 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.

12.2. If *WHL* has complied with clause 12.1, 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

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performance of such obligations and the time for performance of such obligations is extended accordingly.

13. Notices

- 13.1. All notices from *WHL* to *you* shall be by email to the registered administrative email address.
- 13.2. All notices by *you* to *WHL* shall be marked to the attention of the Chief Data Officer and sent via email to contracts@nbmphn.com.au or in writing to *WHL*, Werrington Park Corporate Centre, Level 1, Suite 1, 14 Great Western Hwy, Kingswood NSW 2747.
- 13.3. 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.
- 13.4. 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*.

14. General

- 14.1. The *laws* of New South Wales govern this *agreement* and the parties submit to the exclusive jurisdiction of the courts of New South Wales and the Federal Court of Australia.
- 14.2. 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.
- 14.3. *WHL* reserves the right to review and amend this *agreement* at any time at its absolute discretion. If *WHL* amends this *agreement*, that change will take effect from the date on which *WHL* notifies *you* of such amendment. If *you* do not agree with the change to this *agreement*, *you* may cease using the *NBMPHN Portal*.
- 14.4. *You* may not assign or transfer any rights or licences granted to *you* under this *agreement*.
- 14.5. This *agreement* does not create a joint venture, partnership, employment, trust or agency relationship between the parties.
- 14.6. 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.
- 14.7. A single or partial exercise or waiver by *WHL* of any rights under or relating to this *agreement* will not prevent any exercise of that right or the exercise of any other right.
- 14.8. Any term by its nature intended to survive termination or expiry of this *agreement* survives termination or expiry of this *agreement*.
- 14.9. 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*.
- 14.10. This *agreement* was last revised on 24 January 2023.