

# End User License Agreement

## Brisbane North PHN Portal

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Partners 4 Health Limited trading as Brisbane North PHN ABN 55 150 102 257 (*the PHN*)

### Terms and Conditions

#### 1 Acceptance of terms

- 1.1 You agree to access and use the *Brisbane North PHN Portal* on and subject to the terms and conditions of this *agreement* between you and the Brisbane North PHN (*The PHN*).
- 1.2 By accessing and/or using the *Brisbane North PHN 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 *Brisbane North PHN's* privacy policy, which is published at <https://brisbanenorthphn.org.au/privacy-policy>; and
  - (b) are accepting, and have the authority to accept, the terms and conditions of this *agreement* on behalf of the *general practice*.

#### 2 Grant of Licence

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

#### 3 Access, use and restrictions

- 3.1 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 *Brisbane North PHN Portal*, including any spam and/or junk folder;
  - (c) are responsible for updating *the PHN* 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 *Brisbane North PHN 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 *Brisbane North PHN Portal* or in any manner affect the functionality or proper working of the *Brisbane North PHN Portal*;

- (g) must not manipulate or attempt to manipulate any content or *material* of the *Brisbane North PHN Portal* or the *shared data*;
- (h) remove or obscure *the PHN's* trade mark or other proprietary notices from any of the *materials* displayed on or downloaded from the *Brisbane North PHN 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 *Brisbane North PHN Portal*;
- (j) must immediately notify *The PHN* of any unauthorised use of *your* unique access information or any unauthorised access to the *Brisbane North PHN Portal*;
- (k) must not make illegal use of the *Brisbane North PHN Portal* or use it for illegal purposes;
- (l) must not interfere with anyone who is a user of the *Brisbane North PHN Portal* in their use of the *Brisbane North PHN Portal*;
- (m) must not access the *Brisbane North PHN Portal* in any manner contrary to *The PHN's* instructions;
- (n) must not breach or attempt to breach any security measures of the *Brisbane North PHN Portal*; and
- (o) must not impersonate any person, entity or *general practice* or misrepresent *yourself*, *your* affiliation with any third party, or a *general practice*.

#### 4 Shared Data

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

#### 5 Maintenance

- 5.1 The *Brisbane North PHN Portal* is provided to *you* on an “as is”, “as available” and “where is” basis, without any warranty of any kind other than those expressly stated in this *agreement* or mandatory provisions implied by *law*.
- 5.2 To the full extent permitted by *law*, *The PHN* does not warrant:
- (a) the accuracy of any links provided on the *Brisbane North PHN Portal*, nor the suitability of any content located in the *Brisbane North PHN Portal*. Hyperlinks, hotlinks and frames connecting the *Brisbane North PHN Portal* with other applications are for convenience only and does not mean that *The PHN* endorses or approves those other applications, their content or the people who run or contribute to them. Use of hyperlinks or hotlinks within the *Brisbane North PHN Portal* is at *your* sole risk; and
  - (b) *materials* obtained from or through the *Brisbane North PHN Portal* or as provided by *The PHN* are free from computer viruses, worms, malware, spyware or defects.
- 5.3 *The PHN* may update, amend or replace the *Brisbane North PHN 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 *Brisbane North PHN Portal* and software updates, as required, and as directed by *The PHN* (if applicable).
- 5.4 *The PHN* will provide *you* with at least 2 *business days* prior notice of any proposed maintenance, servicing or update to the *Brisbane North PHN Portal* where such maintenance, servicing or update will render the *Brisbane North PHN Portal* temporarily inoperable for a period of more than 4 hours, other than emergency or urgent maintenance for which prior notice cannot reasonably be provided.
- 5.5 *The PHN* will take all reasonable steps to ensure that the *Brisbane North PHN Portal* is operational and error free, but *The PHN* does not warrant that the operation of the *Brisbane North PHN Portal* will be uninterrupted or error free and does not warrant against *loss* or damage caused by accident, abuse or misapplication of the *Brisbane North PHN Portal* by *you* or any third party.
- 5.6 To the extent permitted by *law*, *The PHN* is not liable, and *you* must not make any *claim* against *The PHN*, for any *loss* or damage suffered or incurred by *you* or any third party whatsoever as a result of:
- (a) the *Brisbane North PHN Portal* being inoperable whilst undergoing maintenance, servicing or updates by *The PHN*; or
  - (b) any inoperability, malfunction or error in the systems, equipment or infrastructure of third party telecommunication services providers, internet service providers or data storage providers.

## 6 Internet Access

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

## 7 Consent to Data Collection

- 7.1 You agree that *The PHN* may collect, store and use technical data and related information, including technical information about the *Brisbane North PHN 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 *Brisbane North PHN Portal*.
- 7.2 *The PHN* may use the information or statistics based on that information in clause 7.1, as long as it is in a form that does not personally identify you, to improve *The PHN's* products or to provide services or technologies to you or other users of the *Brisbane North PHN Portal*.
- 7.3 You acknowledge and agree that it is your sole responsibility to comply with all *privacy laws* when using the *Brisbane North PHN Portal*.

## 8 Liability

- 8.1 All express and implied terms, conditions, guarantees and warranties which might apply to, or arise out of, this *agreement* or the transactions that it contemplates are excluded to the full extent permitted by *law*.
- 8.2 To the full extent permitted by *law*, each party's liability is limited under this *agreement* as set out in this clause 8.
- 8.3 The total aggregate liability of the *general practice* in relation to this *agreement* in no event shall exceed and is limited to \$50,000.
- 8.4 The total aggregate liability of *The PHN* in relation to this *agreement*, shall be limited at its election to the:
- (a) re-supply of the services to be supplied by *The PHN* under this *agreement*; or
  - (b) payment of the cost of having the services re-supplied.
- 8.5 In no event shall a party be liable for indirect or consequential *loss* suffered or incurred by the other party under or in relation to this *agreement*.

## 9 Intellectual Property Rights

- 9.1 You acknowledge and agree that all *intellectual property rights* comprised in or relating to the *Brisbane North PHN Portal* (including any updates) remains vested in *The PHN* (or its third party licensors) and nothing in this *agreement* or otherwise provides, or is intended to provide, you with any legal or beneficial ownership interest in such *intellectual property rights* whatsoever.
- 9.2 You agree that all *intellectual property rights* in any *contribution* to the *Brisbane North PHN Portal* vests in *The PHN* upon it being uploaded to the *Brisbane North PHN 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 *The PHN*.

## 10 Termination

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

## 11 Force Majeure

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

## 12 Notices

- 12.1 All notices from *The PHN* to *you* shall be by email to the registered administrative email address.
- 12.2 All notices by *you* to *The PHN* shall be by email to [practicesupport@brisbanenorthphn.org.au](mailto:practicesupport@brisbanenorthphn.org.au) or in writing to The PHN, PO Box 845, Lutwyche, QLD 4030 attention Manager | Primary Care.
- 12.3 Notices shall be deemed received 5 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- 12.4 If a notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (addressee's time) on a *business day*, then the notice will instead be given and received at 9.00am on the following *business day*.

## 13 General

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

13.10 This *agreement* was last revised on 6 April 2023.

## 14 Definitions and Interpretations

14.1 Unless the context otherwise requires, in this agreement:

**agreement** means this End User Licence Agreement.

**access information** means, in relation to *you*, either of the following to allow *you* to login and access the *Brisbane North PHN 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 Brisbane, Queensland.

**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 *Brisbane North PHN Portal*, including the *shared data*.

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

**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:

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

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

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

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

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

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

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

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

**The PHN** means Partners 4 Health Limited trading as Brisbane North PHN ABN 55 150 102 257 (*the PHN*)

**Brisbane North PHN Portal** means the platform owned by, or licensed to, *The PHN* 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 *Brisbane North PHN Portal*, on behalf of the *general practice*, and the *general practice* and its *personnel*.

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

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes any gender;
- (d) the words “includes” and “including” are not words of limitation;
- (e) a reference to a statute includes its subordinate legislation, proclamations, ordinances and a modification, replacement or re-enactment of the same;
- (f) a reference to person, includes a reference to:
  1. 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
  2. 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 Brisbane, Queensland;
- (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.