

Data Sharing + Software Licence Agreement (Primary Sense)

Parties

Primary Health Network (PHN): the Party identified in Item 1 of Schedule 1.

and

Practice: the Party identified in Item 2 of Schedule 1.

Background

- A. Primary Sense Software is owned by the PHN who operates within the area identified in Item 1, together with other Participating Primary Health Networks, and is managed and supported by the Software Operator.
- B. The Practice collects and records data about patients in its Practice Management System and has agreed to make Practice Data available to the PHN to be extracted as De-Identified Data.
- C. The PHN has agreed to use the Shared Data solely for the Permitted Purposes and not any Excluded Purpose.
- D. This Agreement replaces the previous 'Data Sharing and Software Licence Agreement' between the Parties.

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 an organisation, 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) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.
- (h) A reference to "including" means without limitation.
- (i) A reference to "data" includes any information in a form capable of being communicated, analysed or processed (whether by an individual or by computer or other automated means).

- (j) Headings are for convenience only and do not affect the interpretation of this Agreement.
- (k) A reference to an agreement or any document includes all amendments to it.
- (l) A reference to a clause or Schedule is to the clauses and Schedules of this Agreement.
- (m) A reference to an Item is a reference to an item in Schedule 1 of this Agreement.
- (n) A reference to a time is to the local time in the State, unless otherwise explicitly stated.
- (o) If there is any conflict between the terms of the main body of this Agreement and its Schedules the terms of the main body of this Agreement will prevail.

1.2 Definitions

ACL	means the Australian Consumer Law in schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) and relevant state fair trading legislation.
Aggregated Data	means Shared Data that has been summarised in a form such that it is not available at the individual patient or medical practitioner record level, and where individual general practices have been de-identified.
Agreement	means this document and includes all schedules.
Australian Commercial Disputes Centre Mediation Guidelines	means the guidelines published by the Australian Disputes Centre Limited (ABN 87 003 042 840) that provide a framework to govern dispute resolution process.
Business Day	means a day which is not a Saturday, Sunday or public holiday in the city in which the PHN's head office is located.
Confidential Information	means information of a Party relating to its business, affairs or to the customers, clients, Personnel or other persons doing business with that Party which: <ul style="list-style-type: none"> (a) is by its nature confidential; (b) is designated as confidential by that Party; or (c) 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, Owner and Sponsor	has the meaning set out 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.
Dispute	means a dispute arising in relation to this Agreement.
EULA	means the End User Licence Agreement for the Software and Materials set out in Schedule 3.
Excluded Purpose	means those excluded purposes set out in Item 8.
Force Majeure	has the meaning set out in clause 13(a).
Government Agency	refers to:

- (a) a government, government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a Law,

whether on a federal, state or local level.

Identified Practices means the branches of the Practice identified in Item 4.

Intellectual Property Rights means all intellectual property rights, whether or not such rights are registered or capable of being registered, including:

- (a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill), logos 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).

Law refers to:

- (a) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
- (b) a constitutional provision or treaty or decree;
- (c) any judgment; and
- (d) any principle or rule of the common law or in equity, as amended, consolidated, replaced or re-enacted.

Licensed Tool means data or software that is licensed to the Software Operator for use in connection with the Software as identified in Item 6.

Mandatory Secondary Purpose Procedures means the procedure set out in Item 7.

Materials 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.

Nominated Contact means the person nominated by the Practice to be the single point of contact for the Practice with respect to this Agreement, as set out in Item 3.

Participating Primary Health Networks means the Primary Health Networks who are owners of the Software.

Party means a party to this Agreement.

Permitted Purpose means the Primary Purpose and the Secondary Purpose and any other purposes agreed in writing by the Parties.

Personal Information means 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, and includes sensitive information, as defined in Privacy Law.

Personnel means any person who is an employee, officer, director,

representative, agent or contractor of a Party and, in relation to the PHN, expressly includes the Software Operator and any person involved in the provision of the Software.

Practice Data	means the De-Identified Data extracted by the Software from the Practice Management System, including the data listed in Item 5. The specific source tables that comprise the Practice Data are available in the Primary Sense Data Extraction Guide.
Practice Management System	means the software program used by the Practice to operate its medical practice, which is made available by the Practice to connect to the Software.
Primary Health Insights (PHI)	means the cloud-based data storage and analytics platform owned by certain participating Primary Health Networks and managed and supported by the Software Operator (in its capacity as Data Steward) for and on behalf of the PHN. More information about PHI can be found at www.primaryhealthinsights.org.au .
Primary Purpose	has the meaning given in Item 7.
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 Extraction Guide	refers to the guide relating to the extraction of Practice Data from the Practice Management System available at www.primarysense.org.au .
Primary Sense Data Governance Framework	means the framework establishing the roles and responsibilities in relation to governance of Data, as set out in Schedule 2.
Privacy Law	means the <i>Privacy Act 1988</i> (Cth), the Australian Privacy Principles and all other Laws relating to the handling of Personal Information or health records.
Secondary Purpose	has the meaning given in Item 7.
Security Incident	means unauthorised modification, loss, misuse or unauthorised disclosure of, or unauthorised access or damage to data, software, an information technology system or network and includes cybersecurity incidents.
Shared Data	means any data which is created by the Software under this Agreement and includes data linkage keys that enable patient records to be linked across general practices with other data sources without needing to provide any identifiable data.
Software	means the Primary Sense software described in Item 6 and at www.primarysense.org.au .
Software Operator	means WA Primary Health Alliance Limited (ABN 11 602 416 697) in its capacity as the 'Lead PHN' appointed to manage and support the hosting and operating environment for the Software for and on behalf of the PHN and includes any contractor, representative, agent or any similar person expressly appointed by it to act on its behalf.
State	means the State or Territory in which the PHN operates as set out in Item 1.
Term	has the meaning set out in clause 2.1.
Third Party	means a person to whom the PHN discloses any part of the Shared Data for a Permitted Purpose (but does not include the PHN's

Personnel or any other PHN) under conditions where that person will then act as the Data Custodian for that copy of that part of the Shared Data.

Variation Notice means a written notice issued under clause 15.12, or by some other electronic means (such as an alert 'pop-up' message in the Software), by which the content of the variation is brought to the attention of the Nominated Contact.

2. Term and Termination

2.1 Term

This Agreement begins on the date it is signed by the last Party to do so and continues until terminated under this Agreement (**Term**) and each Party enters into this Agreement in consideration of the mutual obligations of each Party.

2.2 Termination for Convenience

- (a) A Party may terminate this Agreement:
 - (i) at any time by giving at least 10 Business Days' written notice to the other Party; or
 - (ii) if an event of Force Majeure continues for a continuous period of 30 days, or for successive periods totaling more than 30 days over a continuous 120 day period, by written notice to the other Party.
- (b) The Practice may terminate this Agreement under clause 3(d).

2.3 Termination for Default

A Party may terminate this Agreement with immediate effect by giving 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 20 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

- (a) Upon termination of this Agreement:
 - (i) the Parties must take all reasonably necessary steps to give effect to the termination of this Agreement; and
 - (ii) the Practice must:
 - (A) immediately cease use of the Software; and
 - (B) as soon as practicable, uninstall the Software from its Practice Management System (acknowledging that failure to do so may have unintended and adverse impacts on its Practice Management System and other information technology systems); and
 - (iii) the PHN:

- (A) must, as soon as reasonably practicable, cease the extraction of Practice Data;
 - (B) will retain Shared Data created prior to the date of termination in accordance with the PHN's data retention policy and this Agreement; and
 - (C) must delete any Practice Data received by the PHN from the Practice after the date of termination.
- (b) If the Practice was relying solely on the Software to produce reports or data to be eligible to receive funding under a Government program, and the Practice Management System is not capable of producing such reports or data, the PHN must no more than 20 Business Days after receipt of the written notice of termination from the Practice under clause 2.3(a):
- (i) 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 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 Government program; and
 - (ii) procure and provide licences or other agreements to enable the Practice to install the alternative data extraction tool.

3. Variation

- (a) The PHN may vary this Agreement by issuing a Variation Notice to the Nominated Contact at least 30 days before the date that the PHN proposes the variation will take effect.
- (b) The Variation Notice must set out:
 - (i) the details of the variation;
 - (ii) the date that the variation will take effect;
 - (iii) the due date by which the Practice must confirm that it agrees to and accepts the variation;
 - (iv) the method by which the Practice can agree to the variation; and
 - (v) the consequences if the Practice does not agree to the variation or does not respond by the due date.
- (c) If the Practice confirms its agreement by the due date, the variation will take effect on the effective date set out in the Variation Notice.
- (d) If the Practice does not agree to the variation, or fails to respond, by the due date set out in the Variation Notice:
 - (i) the Practice is deemed to have terminated this Agreement for convenience;
 - (ii) within 5 Business Days after the due date, the PHN must:
 - (A) deactivate the connection between the Software and the Practice's Primary Sense Core; and

- (B) cease to extract the Practice Data; and
- (iii) clause 2.4 applies.
- (e) If the Practice informs the PHN that it accepts and agrees to the variation after the due date in the Variation Notice, but before the date the Practice uninstalls the Software, the PHN must as soon as is reasonably practicable re-activate the Software, and the Practice agrees:
 - (i) that re-activation of the Software will cause the Software to extract Practice Data on and from the date of deactivation; and
 - (ii) the varied terms will apply to the Parties from the variation effective date set out in the Variation Notice.

4. Data

4.1 Primary Sense Data Governance Framework

The Parties understand that the Primary Sense Data Governance Framework governs and manages the use, disclosure and ownership of Practice Data and Shared Data, and the respective roles and responsibilities of the Parties in relation to the Practice Data and Shared Data under this Agreement.

4.2 Collection of Data

- (a) The Practice agrees to enable, authorise and facilitate the PHN and the Software Operator to extract Practice Data using the Software directly from the Practice Management System in accordance with this Agreement.
- (b) The Parties agree that the Practice Data provided by the Practice to the PHN must only be collected, accessed, used, disclosed and retained by the PHN and the Software Operator for:
 - (i) the creation of the Shared Data; and/or
 - (ii) the purpose of operating, supporting and maintaining the Software or other systems used by the PHN.
- (c) The Practice acknowledges and agrees that the components of the Software which are installed at the Practice may access other data in the Practice Management System (including Personal Information) for the purpose of:
 - (i) de-identifying the data prior to the Practice Data being collected and used by the Software;
 - (ii) creating Shared Data;
 - (iii) re-identifying Shared Data sent to the Practice prior to it being stored or displayed at the Practice by Primary Sense 2 Desktop; and
 - (iv) creating data linkage keys.

For the avoidance of doubt, the Software does not extract data from the Practice unless it is, or becomes, De-Identified Data.

- (d) The Practice acknowledges and agrees that the Software may collect, share and use technical information, including information about the software and hardware used by the Practice, to facilitate the operation of the Software and improve its performance.

4.3 Shared Data

- (a) Shared Data is created by the Software processing either or both of the Practice Data and other data in the Practice Management System and incorporating algorithms, functions and other data that is not present in the Practice Data.
- (b) The Software produces Material, reports, alerts, notifications and any other information from the Shared Data.
- (c) The PHN and the Practice acknowledge that 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 person, including the vendor providing the Practice Management System.

5. Software and Support Services

5.1 Software

The PHN grants a licence to the Practice to use and install the Software under the EULA.

5.2 Use of the Software by the Practice

- (a) The Practice must:
 - (i) arrange for, or undertake, the installation of the Software, to the extent that the Software is compatible with the Practice's information technology systems, and acknowledges that the Software may not be available to operate on all operating systems or versions of those systems;
 - (ii) comply with the terms and conditions set out in the EULA; and
 - (iii) ensure all security updates and/or patches for, or new versions of, the Software issued by or on behalf of the PHN, or which are available to download, are installed, or permitted to be automatically installed, promptly on becoming available.
- (b) The Practice understands and agrees that failure to comply with clause 5.2(a)(iii) may impact the functionality of the Software and validity of the Practice Data and Shared Data and may affect compatibility with the Practice Management System.

5.3 Software Support Services

- (a) During the Term, the PHN agrees to provide, or arrange for the provision of, support to the Practice and its Personnel to assist it with its use of the Software where required for:
 - (i) issues experienced with the initial installation of the Software by the Practice or its Personnel;
 - (ii) day-to-day user issues, such as reasonable assistance with:
 - (A) use of the Software to enhance clinical and business potential within the Practice; and

- (B) extraction of Shared Data using the Software and submission of the Shared Data; and
 - (C) assisting with escalation of technical issues to the Software Operator to provide further reasonable support.
- (b) The Parties acknowledge and agree that the provision of support by the PHN to the Practice and its Personnel under clause 5.3(a), does not include:
- (i) installation of the Software for the Practice;
 - (ii) directly or remotely accessing or logging into the Practice Management System or other information technology systems of the Practice; and
 - (iii) uninstalling the Software for the Practice.

6. Practice's Obligations and Responsibilities

The Practice must:

- (a) provide the PHN with a Nominated Contact and ensure that the details of the Nominated Contact are kept current and may amend the Nominated Contact by giving the PHN no less than 5 Business Days' written notice;
- (b) ensure (by establishing and maintaining robust systems and safeguards):
 - (i) its ongoing compliance with clause 8.1;
 - (ii) the PHN's use of the Practice Data under this Agreement will not infringe any Laws or Intellectual Property Rights of any person including in respect of the Practice Management Software;
 - (iii) its patients:
 - (A) are reasonably informed that the information which the Practice has collected about them (and included in the Practice Data) may be extracted and supplied to the PHN by the Software as De-identified Data for a Permitted Purpose; and
 - (B) have reasonable and ongoing capability to withdraw their consent for their De-identified Data to be included in the Practice Data supplied to the PHN in whole or in part, as the case may be;
 - (iv) that any patients who have withdrawn consent for all or part of their De-identified Data to be included in the Practice Data are expressly identified as such in either the Practice Management Software or in the Software;
- (c) disclose to the PHN as soon as is practicably possible, at any time during the Term, if its Practice Management System which stores Practice Data on a master database is shared by more than one Identified Practice, and agrees and consents that all Practice Data stored in the shared master database shared by all Identified Practices within the PHN's area of operation (as identified in Item 1) may be shared under this Agreement, unless the Parties agree otherwise;
- (d) comply with any guidelines or data governance framework issued by a Government Agency in relation to the collection, access, use or disclosure of the Practice Data and Shared Data;

- (e) participate in training relating to use of the Software whenever reasonably required by the PHN; and
- (f) comply with all applicable Laws in relation to the collection, storage, access, use and disclosure of the Practice Data and otherwise to fulfill its responsibilities and obligations under this Agreement.

7. PHN's Obligations and Responsibilities

7.1 General

The PHN must:

- (a) provide the Software and services under clause 5 to the Practice at no cost to the Practice;
- (b) establish and maintain systems and procedures to ensure its and the Software Operator's ongoing compliance with this Agreement;
- (c) comply with the Primary Sense Data Governance Framework;
- (d) comply with any guidelines or data governance framework issued by a Government Agency in relation to the collection, access, use or disclosure of the Practice Data and Shared Data;
- (e) notwithstanding the intention to extract and store only De-Identified Data from the Practice, ensure that any Personal Information obtained from the Practice is handled in accordance with the applicable Privacy Laws;
- (f) securely store the Shared Data;
- (g) comply with any notice received from the Practice relating to the withdrawal of, or limitation on, a patient's consent for the De-identified Data to be extracted by the Software from the Practice Management System; and
- (h) comply with all applicable Laws in relation to the collection, storage, access, use and disclosure of the Shared Data and otherwise to fulfill its responsibilities and obligations under this Agreement.

7.2 Use and Disclosure of Data

- (a) The PHN may only use the:
 - (i) Practice Data for the creation of the Shared Data and must not access, store or retain Practice Data beyond this use; and
 - (ii) Shared Data for either or both of a Primary Purpose and a Secondary Purpose (providing it complies with the Mandatory Secondary Purpose Procedures).
- (b) The PHN must ensure that:
 - (i) it informs its relevant Personnel of the PHN's obligations under this Agreement; and
 - (ii) any agreement entered into by the PHN with a Third Party contains the same or equivalent terms as those required under this Agreement in respect of the use and disclosure of Shared Data.
- (c) The PHN must treat the Practice Data and the Shared Data as two separate datasets, irrespective of the fact that they may relate to the same underlying information.

- (d) The PHN must not:
- (i) use or disclose the Shared Data for an Excluded Purpose;
 - (ii) intentionally re-identify, attempt to re-identify, or knowingly permit a Third Party to re-identify or permit to re-identify, any of the Shared Data other than and unless expressly permitted by this Agreement; or
 - (iii) 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. For the avoidance of doubt, the PHN may charge Third Parties 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.

7.3 Practice audit access

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

8. Warranties

8.1 Practice's Warranties

The Practice warrants that it has:

- (a) obtained all rights, licences or approvals to deal with and provide access to, and for the PHN to use, the Practice Data (and other data) as required under this Agreement and to install the Software; and
- (b) read, understood and agrees to the information provided in the Primary Sense Data Extraction Guide with respect to specific source tables extracted from the Practice Management System that shall comprise the Practice Data.

8.2 PHN's Warranties

The PHN warrants that it has:

- (a) obtained all rights, licences or approvals to license the Software to the Practice and the Practice's use of the Software will not infringe the Intellectual Property Rights of any third party; and
- (b) obtained all approvals to enter into this Agreement.

9. Intellectual Property Rights

- (a) All Intellectual Property Rights in the Practice Data is owned by the Practice (or its licensors). To the extent required to fulfil its obligations under this Agreement, to enable the Shared Data to be created and for the purposes of the operation of the Software, the Practice grants to the PHN and its Personnel a royalty free, non-exclusive licence for the Term to use, reproduce and communicate data relevant to the Practice Data within the Practice's Practice Management System only for a Permitted Purpose.

- (b) All Intellectual Property Rights in the Software and Materials is owned by the PHN or used by the PHN under a licence from a third party.
- (c) Except as expressly set out in this Agreement, nothing in this Agreement transfers or assigns ownership in any Intellectual Property Rights to the other Party.
- (d) All right, title and interest (including all Intellectual Property Rights) in and to the Shared Data vests in the PHN 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 the PHN provided that the PHN only uses the Shared Data in accordance with this Agreement.
- (e) To the extent required for the purposes of exercising its rights or obligations under this Agreement, the PHN grants to the Practice a royalty free, non-exclusive licence to use the Shared Data for any non-commercial purpose and in accordance with the Primary Sense Data Governance Framework.

10. Privacy and Security Requirements

Each Party agrees:

- (a) that it will handle any Personal Information collected, disclosed, transferred, received or otherwise used by it under this Agreement in accordance with all applicable Privacy Laws;
- (b) to take all reasonable steps to mitigate, and establish and maintain safeguards against and respond to, Security Incidents that relate to the data, systems, software (including the Software) used in relation to this Agreement which is under its possession or control; and
- (c) to immediately notify the other Party if it becomes aware of any facts or circumstances which means it reasonably suspects or believes that data used under this Agreement, or the repository in which the data is or was stored in, has been or has likely been the subject of a Security Incident. (For the avoidance of doubt, given Shared Data is De-Identified Data, the requirement under this clause is additional to any requirements under the Privacy Laws for the PHN.)

11. 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 the PHN, to the Government Agency in so far as such disclosure is required under the PHN'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 Personnel 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 11(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.

12. Liability and insurance

- (a) During the Term, each Party must maintain appropriate insurance policies with reputable insurers as would be reasonably expected for the nature of their obligations under this Agreement.
- (b) On request by a Party, the other Party must promptly send a copy of the certificate of currency for any insurance policy it holds under clause 12(a).
- (c) To the full extent permitted by Law, and subject to this Agreement, in no event shall a Party be liable to the other Party for, and each Party releases the other Party from, any direct or indirect or consequential loss or damage arising out of or in connection with the performance or non-performance of this Agreement, including any breach of this Agreement however arising or on any other basis.
- (d) Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the PHN in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services. However, if the PHN is liable to the Practice in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, the PHN's total aggregate liability to the Practice for that failure is limited at the PHN's election to re-supplying the good or service or paying the cost of the good or service to be re-supplied.
- (e) Nothing in this Agreement excludes liability where that liability cannot be excluded or limited by Law.

13. Force Majeure

- (a) A Party shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to an act, omission or circumstance over which the Party could not reasonably have exercised control (other than the obligation to pay money) (**Force Majeure**).
- (b) The Party affected by the Force Majeure must give written notice to the other Party as soon as practicable of any anticipated delay due to Force Majeure and address:
 - (i) the Party's obligations unable to be performed;
 - (ii) the estimated time the Force Majeure will subsist; and
 - (iii) any measures proposed to be adopted to remedy or abate the Force Majeure.
- (c) For the period of delay due to Force Majeure all obligations under this Agreement to be performed by the Party affected by the Force Majeure shall be suspended.

14. Dispute Resolution

- (a) If a Dispute arises between the Parties, before commencing legal proceedings (except proceedings for interlocutory relief), they must comply with the terms of this clause 14.
- (b) If a Party has a Dispute it shall give the other Party a written notice adequately identifying and providing details of the Dispute (**Dispute notice**) and the Parties shall

meet to attempt to resolve the Dispute within 20 Business Days' of the date of the Dispute notice.

- (c) If the Parties cannot resolve the Dispute within 30 Business Days of the date of the Dispute notice, a Party may request the Dispute be referred to private mediation by notice to the other Party.
- (d) 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.
- (e) Whilst attempting to resolve the Dispute, the Parties must co-operate to ensure that the Dispute is resolved as quickly as reasonably possible and continue to comply with this Agreement.
- (f) Each Party bears its own costs of the Dispute, including half a share of the costs of any mediator.

15. General

15.1 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.

15.2 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.

15.3 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.

15.4 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 and signed by the Party granting the waiver, and is only effective to the extent set out in that waiver.

15.5 Entire agreement

- (a) Subject to clauses 15.5(b) and 15.5(c), this Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes any previous agreements the Parties have entered into.
- (b) Any Shared Data created under a previous data sharing agreement between the Parties is permitted to be used in accordance with this Agreement.
- (c) Notwithstanding clause 15.5(a), nothing in this Agreement limits any liability either Party may have in connection with any representations or other communications (either oral

or written) made prior to or during the Term, where such liability cannot be excluded (which may include liability arising under the ACL).

15.6 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.

15.7 Survival

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

15.8 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 the Personnel of the other Party, or bind or represent the other Party.

15.9 Reliance

Except as expressly stated in this Agreement, neither Party has, in entering this Agreement, relied on any statement, representation, undertaking, warranty or condition made or given by or on behalf of the other Party in respect of this Agreement.

15.10 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.

15.11 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 electronic means.

15.12 Notices

- (a) A notice to be given under this Agreement must be in writing and given by pre-paid post or email to the Party's contact details as set out in Schedule 1.
- (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 (recipient'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.

End

Schedule 1 – Particulars

Item 1	PHN	
	Area of Operation: Northern Sydney	New South Wales
	Name: SNPHN Limited trading as Sydney North Health Network (SNHN)	ABN: 38 605 353 884
	Email: primarysense@snhn.org.au	Telephone: 02 -9432 8250
	Address: Level 5, Tower 2, 475 Victoria Avenue Chatswood. NSW. 2067.	
Item 2	The Practice	
	Name:	ABN:
	Email:	Telephone:
	Address:	
Item 3	Nominated Contact	
	Name:	Telephone:
		Email:
Item 4	Identified Practices <i>[add rows if required]</i>	
	Practice 1 Name:	Telephone:
	Address:	Email:
	Practice 2 Name:	Telephone:
	Address:	Email:
Item 5	Practice Data	
	Practice Data may include: (a) de-identified list of active patients at each Identified Practice; (b) de-identified list of employees at each Identified Practice; (c) pathologies ordered for each patient – test and interventions requested, as well as results (past five years only, except for certain genetic tests); (d) visits for each patient for linking to Medicare Benefits Scheme (MBS) items only	

	<p>(past five years only);</p> <p>(e) allergic reactions for each patient;</p> <p>(f) clinical history of diagnoses for each patient;</p> <p>(g) consultations for each patient (past five years only, excludes any progress notes);</p> <p>(h) list of documents for each patient (e.g. discharge summaries) (past five years only);</p> <p>(i) immunisations for each patient;</p> <p>(j) MBS service items for each patient (past five years only);</p> <p>(k) prescriptions for each patient (prescribed by a practitioner) (past five years only);</p> <p>(l) medications for each patient (includes those entered but not prescribed by a practitioner, e.g. specialist) (past five years unless ceased Data is null);</p> <p>(m) observations for each patient (past five years only);</p> <p>(n) patient lifestyle records for each patient (e.g. smoking status, alcohol, etc.);</p> <p>(o) pregnancies for each patient;</p> <p>(p) appointment dates for each patient (in advance at least two weeks);</p> <p>(q) pap smear and cervical screening tests for each patient (past five years only);</p> <p>(r) birth records for each patient.</p>
<p>Item 6</p>	<p>Software</p> <p>The Software consists of the following components:</p> <p>(a) Primary Sense 2 Desktop – which is installed and operates on one or more Practice workstations and accesses both Shared Data sent from the Primary Sense 2 Core and data stored locally in the Practice Management System;</p> <p>(b) Primary Sense 2 Extractor – which is installed and operates where the Practice Management System database is accessible and extracts Practice Data from, and may create Shared Data based on other data stored in, that database;</p> <p>(c) Primary Sense 2 API – which is installed and operative within PHI and which communicates with the Primary Sense 2 Desktop and Primary Sense 2 Extractor to extract data from, and send data to, the Practice from the Primary Sense 2 Core; and</p> <p>(d) Primary Sense 2 Core – which is installed and operative within PHI, which creates and stores Shared Data from the Practice Data, and which provides data processing and analytics which support the functionality of Primary Sense 2 Desktop and Extractor; and</p> <p>(e) Licensed Tools, being:</p> <p>(i) John Hopkins HealthCare LLC (JHU), Johns Hopkins University Adjusted Clinical Groups® tool, which creates risk stratification scores; and</p> <p>(ii) LinXmart Envelope Builder Libraries, which consists of a data processing file (“.dll” file) that processes raw data into privacy-preserving data linkage keys and formats that can be used for data linkage purposes by the LinXmart software.</p>
<p>Item 7</p>	<p>Permitted Purposes</p> <p>Primary Purpose</p> <p>The PHN and its Personnel may use and disclose the Shared Data for the following purposes:</p> <p>(a) provide reports, alerts and notifications back to the Practice via the Software;</p> <p>(b) generate, process and submit data for State or Commonwealth Government programs for which the Practice is enrolled or obligated to participate, such as the Practice Incentive Program for Quality Improvement (PIP QI);</p>

- (c) provide reports, advice and feedback on quality improvement and other Practice improvement areas by the PHN to the Practice via reports, phone calls, emails, in-person meetings and other forms of communication;
- (d) undertake population health analysis, planning, monitoring, evaluation and research intended to improve community health outcomes, including through data linkage and data comparison activities, and may publish any results;
- (e) create Aggregated Data to provide to the Commonwealth Department of Health and Aged Care and other Government Agencies to support planning, development and evaluation of health policy and programs, including health workforce policy and programs;
- (f) collaborate, work with, use and disclose Shared Data to other Primary Health Networks to support Primary Purposes under items (a) to (e) inclusive at regional, state and national levels.

Secondary Purpose

The PHN may disclose Shared Data (whether Aggregated Data or not) to Third Parties (including to health industry peak bodies, universities or other parties, for research or other purposes), providing:

- (a) the Secondary Purpose aligns to, and supports one or more of, the Primary Purposes; and
- (b) the PHN complies with the Mandatory Secondary Purpose Procedures.

Mandatory Secondary Purpose Procedure

Step 1: Preliminary Compliance

The PHN must confirm and document the following:

- (a) the scope of the Shared Data to be used/disclosed, including any data linkage;
- (b) where relevant, that any research that will use the Shared Data has received all required ethics approvals; and
- (c) the Third Party's agreement to comply with the PHN's obligations under this Agreement relating to data security and privacy and all applicable Law.

Step 2: Preliminary Compliance Report

The PHN must prepare or obtain a written report, proposal or other documentation containing sufficient detail to demonstrate compliance with the requirements listed in Step 1 (**Preliminary Compliance Report**).

Step 3: Endorsement of Preliminary Compliance Report

The PHN must:

- (a) provide the Preliminary Compliance Report to the Primary Sense Clinical Advisory Group or another body which contains individuals with appropriate and relevant experience and expertise in primary health care and general practice which is external to the PHN and the respective Third Party/ies (**Alternative Advisory Group**);
- (b) obtain the written endorsement of the Preliminary Compliance Report from the Primary Sense Clinical Advisory Group or Alternative Advisory Group.

Step 4: Opt-Out Mechanism

The PHN must:

- (a) provide a means for the Practice to easily opt out by notifying the PHN that their Shared Data in part or in its entirety is not permitted to be used for that particular purpose or any Secondary Purpose;
- (b) maintain a record of any opt out notifications received from any Practice; and
- (c) comply with any opt out notifications received from any Practice (in accordance with

	<p>Step 5(a)).</p> <p>Step 5: Ongoing Compliance Record</p> <p>The PNH must:</p> <ul style="list-style-type: none"> (a) maintain a record that the Secondary Purpose has been approved in line with the Mandatory Secondary Purpose Procedure, which includes sufficient detail to demonstrate how the Secondary Purpose complies with the requirements of Steps 1, 2 and 3 (Ongoing Compliance Record); and (b) make the Ongoing Compliance Report easily accessible to the Practice (such as on a website, newsletter or by direct communication to the Practice). (c)
<p>Item 8</p>	<p>Excluded Purpose</p> <p>The PHN may not use the Shared Data, or knowingly permit the Shared Data to be used, for the following excluded purposes:</p> <ul style="list-style-type: none"> (a) any commercial purpose for or by the PHN or any Third Party for the purpose of making a profit. For the avoidance of doubt, the PHN 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 Government Agency or any other funding body, without the express written permission of the Practice on each occasion.

Schedule 2 – Primary Sense Data Governance Framework

1. General Requirements

The Software and PHI are required to operate under the PHN National Data Governance Framework, which is available upon request. The relevant parts and requirements of the PHN National Data Governance Framework have been documented in the Primary Sense Data Governance Framework, which is available at www.primarysense.org.au.

In its capacity as Data Steward, 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 person, including the PHN;
- (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 Participating Primary Health Networks, the details of any security review and penetration test findings, and how the Software Operator will address any “critical” or “high” priority findings.

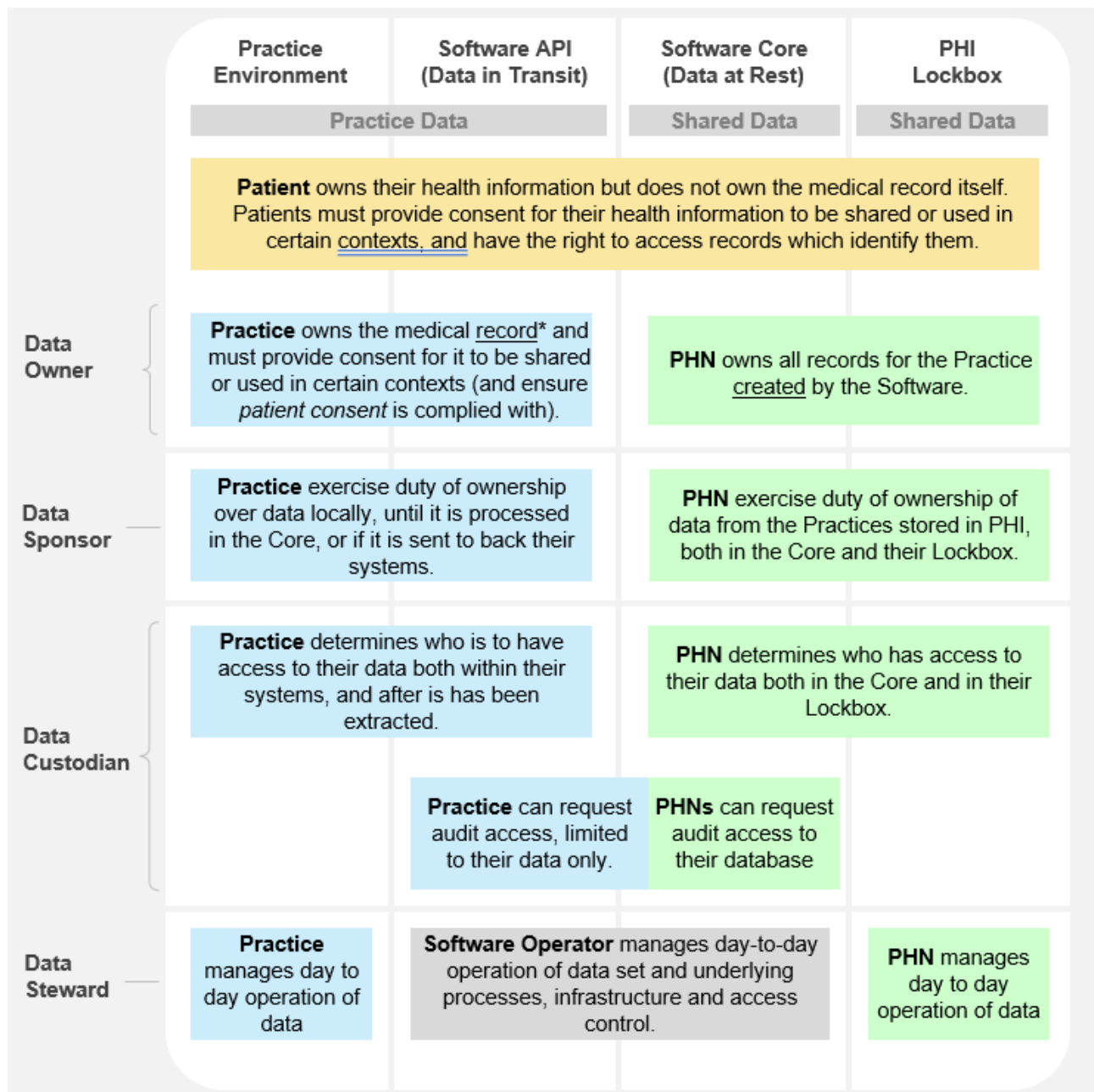
2. Data Governance Roles

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 Data 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	<ul style="list-style-type: none"> • 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

Role	Accountabilities
	<ul style="list-style-type: none"> • Monitor and provide feedback on data quality issues • Escalate material risks and issues to Data Custodian

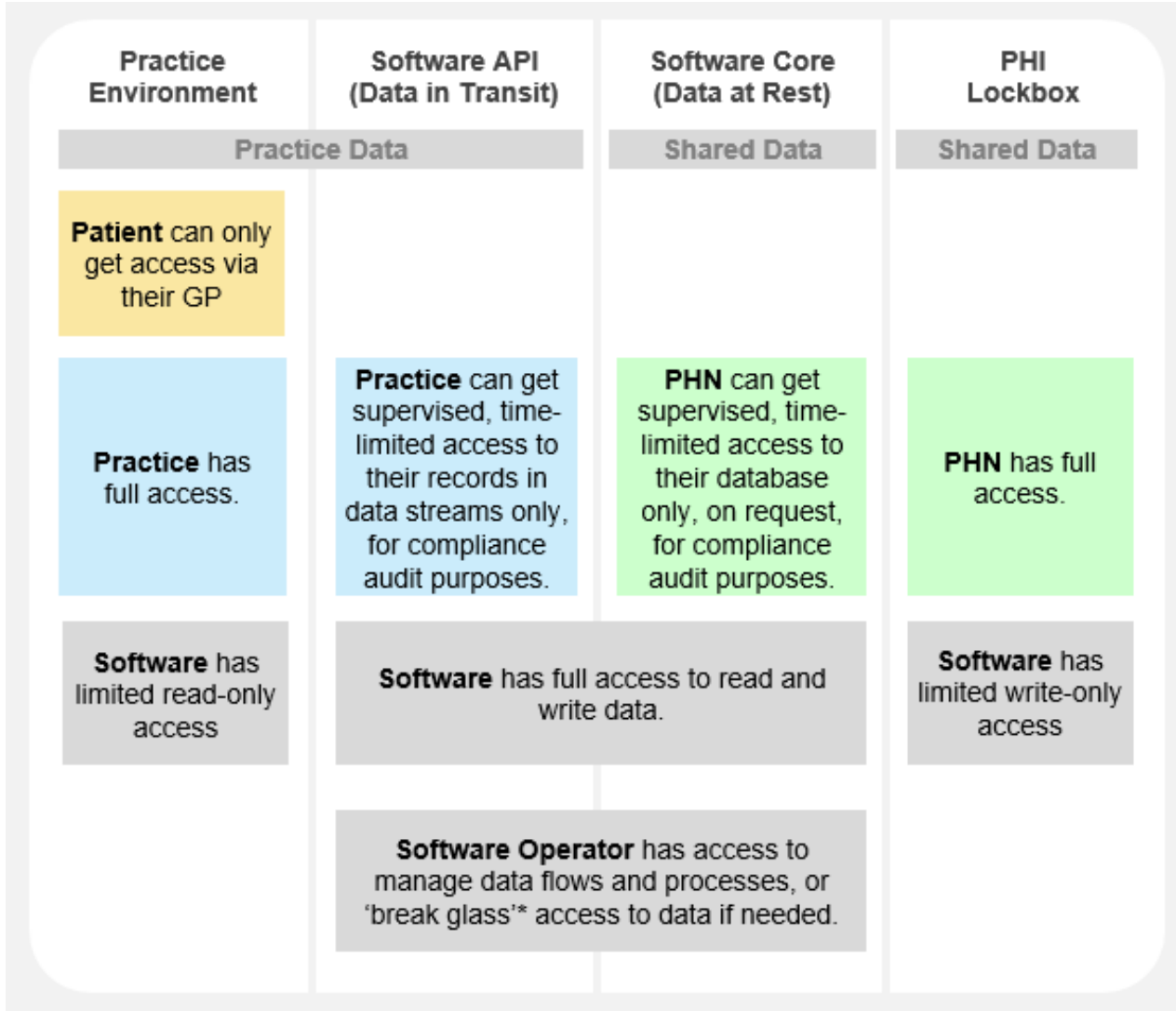
The following diagram identifies how these roles are applied to data within the Software, as well as within PHI when Shared Data is provided by the Software to the PHN and stored within the PHN Lockbox within PHI (which means the secure storage area within PHI that is exclusively controlled by and secured to nominated Personnel of the PHN):



* 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 the PHN and stored within the PHN 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 Licence Agreement (EULA)

1. Introduction

Capitalised terms used in this EULA have the meaning set out in main terms of the Agreement.

By using, accessing or installing, or by attempting to download, use, access or install, the Software and Materials on any IT system, the Practice agrees to this EULA. If the Practice does not agree to the terms of this EULA it is not authorised to download, install, use or access the Software and Material.

The Software is licensed, not sold. This EULA only gives the Practice some rights to use the Software. The PHN reserves all other rights. Unless applicable Law gives the Practice more rights despite this limitation, the Practice may use the Software only as expressly permitted in this EULA.

2. Licence

Subject to this EULA, the PHN grants the Practice a limited, non-exclusive, royalty-free, non-transferable, revocable licence for the Practice to install, run, display and use the Software for the purpose of this Agreement on a computing device at the location of the Identified Practices, or as agreed in writing with the PHN, and 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.

The Practice is not entitled to: (i) sub-license, transfer, rent or lease the Software or Materials to a third party; (ii) use the Software on any operating system other than the operating system authorised by the PHN; (iii) use the Software or any Materials for commercial or illegal purposes or for purposes external to the business of the Practice; (iv) alter, modify, copy, adapt, reproduce, disassemble, decompile, tamper, interfere or reverse engineer the Software or the Materials or in any manner affect the functionality or proper working of the Software; or (v) in any way use or reproduce the Software or Materials other than as permitted by the Agreement.

The Practice may access and use the Software and Materials in the course of carrying out its duties under the Agreement for the exclusive benefit of the Practice. The Practice must not permit any other person to access or use the Software or Material or share or disclose any username or password required to access the Software.

The Practice agrees to notify the PHN

immediately of any use or access to the Software or Material that is prohibited by this EULA or otherwise unauthorised in any way.

3. Licenced Tools

The Software contains Licensed Tools that are not owned or controlled by the PHN and are subject to and provided under additional terms. The Practice must not:

(i) make or release, or permit any person to make or release, any notice, report, public announcement, statement or marketing materials that expressly or impliedly refers to John Hopkins HealthCare LLC as the author of the Software or Materials;

(ii) use trademarks of John Hopkins HealthCare LLC without the prior written consent of the PHN or

(iii) separate, use, copy, alter, modify or reproduce the LinXmart Envelope Builder Libraries “.dll” file other than to use it as part of the Software.

4. Availability and security

To the extent permitted by Law, the PHN does not guarantee the availability of the Software and Material or that it will not be the subject of interruption, interception, delay or viruses, although it makes reasonable commercial efforts to make the Software and Material available. The Software may not be compatible to operate on all operating systems or versions of those systems.

The Practice acknowledges and agrees that the PHN is not responsible for the security of the data located at the Practice and which resides in the Practice's Practice Management System.

5. Disclaimer

To the extent permitted by Law, the Software is licensed “as-is”. The Practice agrees that the Software and Material provided is for information, educational and audit purposes only and does not replace clinical decision making, or to be used to diagnose, treat, cure or prevent any disease, or used as a substitute for any medical or other health professional advice provided by the Practice, and the Practice is responsible for making its own enquiries to determine whether any Material is accurate, up to date, and fit for its purposes.

6. System Requirements

The Practice must have a compatible operating system with internet access, and which meets the minimum specifications on which the Software can function. The Practice must view the Software in the format in which it is provided. The PHN is

not responsible for the display of information using the Software in any other format.

The Practice must install the Software with the PHN's instructions and keep a record of the clinical database password created as part of the initial installation. This password will be required for subsequent Software installations.

End

EXECUTION

Signed as an agreement for and on behalf)
of the **PHN** by its duly authorised)
representative:)

Signature _____

Name _____

Position _____

Date _____

Signed as an agreement for and on behalf)
of **Practice** by its duly authorised)
representative:)

Signature _____

Name _____

Position _____

Date _____