

# END USER LICENCE AGREEMENT (EULA)

## for use of the Aged Care Census Database in Power BI

### 1. DEFINITIONS

**Access Link** means an individual access link or links either provided inclusive with your Subscription or purchased by you for an additional Fee with your Subscription.

**Additional Services** means any services or Materials provided to you separate to your Subscription including services and Materials tailored to you.

**EULA** means these End User Licence Agreement terms and conditions and the additional terms and conditions set out in your Subscription, including all forms we required you to complete as well as any schedules or documents referred to in them as varied from time to time.

**Fee** paid by you or on your behalf for your Subscription and each additional Access Link.

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, moral rights, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in a relevant Law.

**Subscription** means subscription level for Portal access nominated by you including the additional terms and conditions specific to that type of subscription.

**Law** means any law in force, available, in effect or applicable within the jurisdiction of this document made by a relevant Authority without limitation.

**Material** means any thing including any data, service, analysis, report, product, information, information product, documents or material in any form whatsoever that is made available to you from time to time via the Portal.

**Portal** means the online portal maintained by us to which you will be provided access in connection with your Subscription on the terms contained in this EULA

**Service Hours** means 9.00am – 5.00pm Monday to Friday excluding public holidays.

**Term** means the term commencing from the time of purchase of your Subscription for a period of one (1) year, or such other period nominated or specified when you purchased your Subscription, or until this EULA otherwise lawfully ends (including without limitation by the effect of any Law or termination by any party).

**Usage Rules** means the additional rules (if any) that we adopt from time to time for the access to and use of the Portal and Material.

**We / our / us** means BPA Analytics Pty Ltd ACN 056 722 288 and as applicable our employees, contractors, associates, agents, authorised representatives, successors and/or assigns.

**You / your** means the end user party who purchased a Subscription from us, and as applicable, your direct employees.

### 2. YOU AGREE TO BE BOUND

By purchasing your Subscription (including where the Fee was paid on your behalf by another party), purchasing any additional Access Links and/or accessing the Portal, you agree to be bound by the terms and conditions of this EULA, your Subscription and our Usage Rules.

### 3. WE GRANT YOU A LIMITED LICENCE

We grant you for the Term one limited, non-exclusive, non-transferable, non-sublicensable, licence per Access Link (whether provided inclusive with your Subscription or purchased by you at any time) to access the Portal and Material solely for your personal purposes or the internal purposes of your organisation (as is applicable), under the terms of the Subscription that you purchased and this EULA.

### 4. INTELLECTUAL PROPERTY

- (a) We own all Intellectual Property Rights which arise, subsist in the Material or are created as a result of or in connection with your use of the Portal, your Subscription or Additional Services we provide to you from time to time. To the extent that you hold any right or interest in any part of our Intellectual Property Rights, you assign those rights to us on creation or, where those rights are not capable of being assigned, you grant to us a perpetual, non-exclusive, royalty free, transferable, unlimited, infinitely sublicensable and irrevocable licence to use such rights or interests on and from the date of their creation.
- (b) You do not acquire any right, title or ownership in our Intellectual Property Rights whatsoever, including without limitation any Material that you are permitted access to in connection with your Subscription or that we create in connection with your Subscription or providing you with Additional Services. We reserve all our rights, and the rights of any of our affiliates or suppliers or licensors, in the Material or any other Intellectual Property Rights not expressly granted to you in this EULA

- (c) We will be able to reuse techniques, ideas, concepts and know-how which are developed or we become aware of in connection with your Subscription and access to the Portal provided that, in doing so, there is no infringement of the Intellectual Property Rights of any other party.

### 5. RESTRICTIONS

You agree not to, and will not permit others to do any of the following without our prior written consent (which may be withheld in our absolute discretion):

- (a) allow an Access Link to be used by more than one user or on more than one device at the one time;
- (b) publish, distribute or reproduce any Material in a way that makes that Material available to the public or to multiple devices or users at the one time unless;
  - (i) you appropriately and prominently acknowledge us as the source of the Material and owner of the associated Intellectual Property Rights in the Material; and
  - (ii) ensure that no survey questions are included in the Material to be published, distributed or reproduced; and
  - (iii) such use of the Material is for government (including policy, decisions and inquiries), non-commercial and/or academic purposes.
- (c) use any of our Intellectual Property Rights and/or Material for any purpose other than as expressly permitted by your Subscription and this EULA;
- (d) use any of our Intellectual Property Rights and/or Material for any purpose that will compete with the services and products provided by us or that would reasonably cause detriment (including financial, missed opportunity or otherwise) to us including without limitation, using any Material (including without limitation our questions) to conduct your own organisational surveys whether for internal or commercial purposes;
- (e) use any of our Intellectual Property Rights and/or Material to derive commercial or financial gain or benefit other than such gains or benefits that arise as a result from improvements or changes to your organisation implemented following consideration of our Intellectual Property Rights and/or Material;
- (f) use your Subscription on any device that you do not own or control;
- (g) use your Subscription on any device for which you have not taken reasonable steps to ensure that it is protected and free from malicious software or code of any kind;
- (h) access your Subscription in any public place or location where the Portal or Material may be capable of being viewed by any non-subscriber third-party;
- (i) remove, alter or copy any references, notices, labels or legends referring to us from the Material or any part of our Intellectual Property Rights;
- (j) create derivative works, modify, disassemble, reverse engineer the Material or our Intellectual Property Rights; or
- (k) do anything to or manipulate the Material or other Intellectual Property Rights with a purpose to facilitate, or in such a way that would allow, you or any other person whatsoever to identify any people or organisations from de-identified Material (whether or not aggregated with data or Material from other parties).

### 6. UPGRADE TO PORTAL

You consent to the automatic update of the Portal (whether the software supporting the Portal or the data or materials available on the Portal) without additional notice to you or requiring your further consent. You acknowledge that you may be required to install updates or to update your devices in order to use your Subscription or access the Portal.

### 7. PRIVACY

- (a) You consent to us collecting, using and disclosing personal and sensitive information about you as defined in the Privacy Act 1988 (Cth) or other applicable Law, for the purposes set out in our privacy policy. We will provide you with a copy of that policy on request, or you may view it on our website at [www.bpanz.com](http://www.bpanz.com).
- (b) You consent to us verifying your identity including by contacting any relevant authorities. You agree to comply with our identify verification requirements from time to time including by providing us with certified copies of any documents we may require to verify your identity. You further agree to promptly sign and return any authority that a relevant authority may be required in order to deal with us directly.
- (c) You further agree and consent to us (or our affiliates or suppliers) collecting, using, monitoring or selling to third parties data, information and statistics on your use of

- (d) the Portal and/or your Subscription as well as the information and data collected by us in connection with your use of the Portal and/or Subscription. We agree that any data or information will be de-identified prior to being provided to any third parties.

You agree that we may obtain, exchange, retain and use credit reporting information about you from or to a credit reporting body or other credit providers in order to:

- (i) to assess your credit worthiness;
- (ii) to perform, or exercise any rights under this EULA;
- (iii) enabling the daily operation of your account and the collection of amounts outstanding in your account including the processing of any payment instructions, direct debit facilities and/or credit facilities requested by you;
- (iv) allow a credit reporting body to create or maintain a credit information file containing information about you;
- (v) to exchange information with other credit providers as to the status of your credit account where you are in default with us or other credit providers; and
- (vi) as otherwise required or permitted by Law from time to time.

## 8. CONFIDENTIALITY

You must not divulge any data, information, document, communication or material provided in connection with your Subscription that is not public knowledge to any third party without our prior consent in writing except to the extent doing so is:

- (a) expressly permitted under the terms of this EULA (e.g. clause 5(b)) or your Subscription and you fully comply with any stipulated requirements or conditions of doing so; or
- (b) reasonably required to engage professional advisors or to comply with any Law.

## 9. WARRANTIES AND GUARANTEES

Where you are considered to be a consumer for the purposes of the Australian Consumer Law clauses 9.1 and 9.2 of this EULA do not apply and you should refer to clause 9.3.

### 9.1 Warranty Disclaimer

Where you are not considered to be a consumer for the purposes of the Australian Consumer Law then, to the extent permitted by Law, and notwithstanding anything implied or expressed to the contrary:

- (a) the Subscription and the access to the Material are provided as-is with all faults and we exclude all express or implied warranties, guarantees and conditions whatsoever (including specifically fitness for any purposes, reliability, accuracy, meeting your requirements and non-infringement of any third-party rights);
- (b) we do not guarantee, and exclude all express or implied warranties that the Portal (or Material accessed via the Portal) or any electronic communication with us will be uninterrupted, free of viruses, secure, free from harmful or malicious code, secure, error-free, reliable or timely; and
- (c) use of the Subscription and any Material accessed via the Portal is at your sole risk.

### 9.2 Limitation of Liability

To the extent permitted by Law:

- (a) we will not be liable for, and you release us from any claims for any direct, indirect, consequential, punitive, exemplary, special or incidental damages, costs, damages or losses whatsoever and howsoever arising in connection with this EULA, your Subscription, the Material and the Portal;
- (b) we disclaim all liability whatsoever caused or contributed to by our affiliates, service providers, suppliers and/or licensors; and
- (c) to the extent our liability to you is not capable of being released, our cumulative liability to you for all claims will be limited to, in our discretion, either re-performing any services provided to you or otherwise to the total of our Fee.

### 9.3 Australian Consumer Law mandatory text

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (a) to cancel your service contract with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

## 10. INDEMNITY

You indemnify us for any loss, damage or expense (including consequential or indirect loss) we incur as a result of your negligent or wilful acts, omissions or default of your obligations under this EULA including without limitation in paying any amount due to us for infringing on our Intellectual Property Rights. This indemnity extends to all costs we incur in recovering our loss from you, including without limitation collection agency fees and legal costs on an indemnity basis.

## 11. SUSPENSION OR TERMINATION DUE TO EVENTS OUTSIDE OF OUR CONTROL

In the event we are unable to provide your Subscription due to any event outside our control (e.g. fire, explosion, other accidental cause, decision of an authority, epidemic/pandemic, labour dispute, being unable to obtain required Intellectual Property Rights or Law), we may in our absolute discretion either temporarily suspend your Subscription (or any part it) or cancel your Subscription.

## 12. VARIATIONS

We may vary the terms of this EULA, your Subscription and/or the Usage Rule whensoever and howsoever in our sole discretion. No variation will invalidate your Subscription or the terms of this EULA.

## 13. CANCELLATION OF SUBSCRIPTION

- (a) You may cancel your Subscription without fault in the following circumstances by contacting us:
  - (i) where this EULA has been suspended under clause 11 and/or inaccessible during the Service Hours, for a total of thirty (30) or more days during the Term; and
  - (ii) any time prior to 5.00pm on the fifth (5th) business day after receiving notice that his EULA has been varied pursuant to clause 12.
- (b) We may immediately cancel your Subscription for your breach of this EULA or for any other reason.
- (c) Where your Subscription is cancelled without any default by you, on receiving a written request from you we will provide a proportional refund of the Fee with reference to the balance of the Term remaining immediately prior to the time of the cancellation. To the extent permitted by Law, this will be your only remedy against us.

## 14. OBLIGATIONS AT THE END OF LICENCE

On the termination or cancellation of your Subscription or this EULA for any reason:

- (a) you must immediately cease any and all access to and use of the Portal and any Material;
- (b) you must promptly return to us any Access Links, Materials, documents containing our confidential information and Intellectual Property Rights which you may have in your possession or control for any reason; and
- (c) you will have no recourse against us, our affiliates or suppliers or licensors for your inability to access and use the Portal or the accompanying Material.

## 15. COMMUNICATIONS WITH YOU

You authorise us to communicate with you by any electronic means or phone for all matters and things in connection with your Subscription and this EULA. You acknowledge that communication by electronic means (including email) may not be secure, and accept the risk of (and we have no responsibility for) any unauthorised interception, manipulation, or copying of, non-delivery of, or malware transmitted by, any electronic communication sent between us.

## 16. GENERAL

- (a) We may subcontract or transfer the whole or any part of our obligations in connection with your Subscription or under this EULA without notice or your prior written consent.
- (b) If any part of this EULA is void, unenforceable or illegal it is severed, and the remainder of this EULA is not affected, unless the severance materially alters the nature or intended effect of this EULA.
- (c) Rights accrued to, and the indemnities and obligations of confidence given by, a party survive the end of this EULA.
- (d) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this EULA. This EULA is governed by the Laws in force in Queensland. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland.
- (e) The parties consent to this EULA being entered into by electronic means including without limitation usage of an electronic signature platform and/or electronic signature that meets the requirements for signatures under the Electronic Transactions (Queensland) Act 2001 (Qld) or other applicable Law.