Explanatory Note to Data Sharing Agreement (Primary Sense)

6 September 2022

The purpose of this Explanatory Note is to provide you with a summary of the key terms of the Data Sharing Agreement (Primary Sense) (**DSAPS**) and to address potential queries that may be raised in your use of the Primary Sense Software (**Software**).

Title	Description	DSAPS Clause Ref
Calculation of time:	If a clause refers to a period of time (e.g. Business Days), then the relevant time zone is the State that is listed in Item 9 of the *Particulars Schedule*. The *State* should reflect the most appropriate time zone for your PHN.	11.1(h) *Particulars Schedule Item 9*
Termination:	1. You or WAPHA may terminate the DSAPS for any reason by giving a minimum of 10 Business Days' notice to the other party.	2.2
	2. If you or WAPHA (breaching party) breaches the terms of the DSAPS then the other party (the non-defaulting party) must provide a notice (default notice) to the breaching party setting out what the breach is. The breaching party must attempt to "fix" that breach. If after 10 Business Days from receipt of the default notice the breaching party is unable to "fix" the breach, then the non-breaching party may terminate the DSAPS by giving a minimum of 10 Business Days' notice to the breaching party.	2.3(a)
	3. If your or WAPHA becomes insolvent or bankrupt (insolvent party), then the solvent party may provide a notice to the insolvent party stating that the DSAPS will be terminated on the day that is 10 Business Days' later.	2.3(b)
	4. Upon termination of the DSAPS by you or WAPHA: (a) It is best if you uninstall the Software as soon as practicable after termination. This is to prevent accidental reliance on the data within the Software by practitioners.	2.4
	(b) WAPHA must immediately stop the extraction of the data from your system. Any data received after the terminate date must be deleted immediately by WAPHA.	6.5
Practice's obligations:	1. You are required to ensure that you have received the necessary consents from each patient whose data is extracted by the Software. A patient must be able to withdraw their consent at any time.	3.2

Title	Description	DSAPS Clause Ref
	2. The Software extracts the data from your system, converts the data so that it is "de-identified" and then transfers the data into the Software "warehouse". The Software does not take any identified personal and sensitive information from your system. 3. You must keep the Software up to date with any updates and/or patches provided by WAPHA. 4. You must inform WAPHA if your Practice Management System stores data in a master database used by multiple sites / "Practices". 5. You must inform WAPHA if your system or network is compromised or subject to a cybersecurity or data breach (e.g. hacked or virus).	
Data Governance Framework:	You and WAPHA must comply with any data governance framework issued by a government agency or the National Data Governance Committee.	3.2(c)
WAPHA Responsibilities:	1. WAPHA must ensure that the data extracted from your system is protected and used for the purposes listed in the DSA.	6.4
	2. WAPHA must provide the Software at no cost to you, including training and installation of the Software.	5.1
	3. WAPHA must notify you of any breach of the use of the data that has been extracted from your system.	6.3
	4. Allow you "supervised" sight of the data held by WAPHAyour lockbox. You may request access to see how the data is stored within the Software, WAPHA must give you access to see the data within the Software. WAPHA must not unreasonably reject the request for access.	7
Data ownership, use and purpose:	**Data Ownership** 1. You are the owner of the data in your system.	6.6

Title	Description	DSAPS Clause Ref
	2. The data once extracted into the Software is owned by WAPHA.	
	Data Use 1. All data must be handled in accordance with the Privacy Act 1988. 2. WAPHA may only use the data extracted from a Practice for the Permitted Purposes, which are set out in Item 6 of the Particulars Schedule. WAPHA must not use the data for any other purpose. 3. WAPHA must not re-identify or attempt to re-identify, or permit any third party to re-identify or attempt to re-identify any of the data. 4. WAPHA must not sell (in whole or in part) the data, or provide access to the data, for any commercial profit-making purpose. However, WAPHA may charge a reasonable fee for the use of the data if the data is provided to a third party for a permitted purpose.	6.7 6.4 6.4 6.4
	Termination 1. Upon termination of the DSAPS the data extracted before the termination date may be retained by WAPHA in accordance with any data retention policy and government agency guidelines. 2. If WAPHA receives any data after the termination date, then WAPHA must delete any of that data. 3. Ownership of the data remains unchanged by termination of the DSAPS.	6.5
Liability	1. WAPHA is not liable to you for damages you may suffer as a result of any act or omission performed or not performed under the DSAPS, and vice versa. There are laws that WAPHA cannot contract out of for example fraud or criminal conduct. 2. However, if WAPHA: (a) materially breaches its responsibilities (under clause 4 and 5); (b) does not notify you of a potential or actual data breach (clause 6.3); or (c) uses the data for any purpose other than a Permitted Purpose (clause 6.4), then WAPHA must, at its election: (d) work with you to fix the issue and delete any data that was incorrectly extracted; or	8

Title	Description	DSAPS Clause Ref
	(e) if you no longer wish to use the Software, then: (i) provide to you an alternate software, that WAPHA is entitled to supply, that is materially similar in all respects to the Software. A new data sharing agreement may need to be entered into if the current agreement between you and WAPHA does not cover the alternate software; or (ii) pay the licence fee, for 12 months, of an alternative software, that is materially similar in all respects to the Software, that you have secured yourself. *This liability clause has been redrafted due to the change in circumstances. Under the previous arrangement your contractual liability exposure was capped at $50,000, whereas under this new arrangement your contractual liability under this DSAPA is NIL.* *Under this new arrangement WAPHA's liability is limited to (as set out in full in clause 8 of the DSAPS):* *(a) fixing the software;* *(b) providing an alternate software; or* *(c) paying the 12 month licence fee for an alternate software. WAPHA has provided this option as a good faith gesture as it is more than what is required under law for WAPHA to compensate if there is an issue with the Software.* *This arrangement is more beneficial for you as your liability is now less and WAPHA must do one of the above acts in the event of a breach as per clause 8.*	
Dispute Resolution	If a dispute arises between you and WAPHA then: 1. within 20 Business Days of the dispute arising, either you or WAPHA must issue a notice (dispute notice) to the other party setting out the details of the dispute. 2. You and WAPHA must meet to attempt to resolve the dispute. 3. If the dispute cannot be resolved within 30 Business Days then you or WAPHA may request that the dispute be referred to private mediation – this is done by a notice to the other party.	10

Title	Description	DSAPS Clause Ref
	4. If you and WAPHA agree to proceed with private mediation, then mediation is to be conducted under the Australian Commercial Disputes Centre Mediation Guidelines, unless another format is agreed. 5. While a dispute is being resolved under clause 10, you and WAPHA must continue to comply with the terms of the DSAPS. 6. You will pay your own costs to deal with the dispute, and vice versa. 7. However, you and WAPHA will share (50/50) in the cost of the mediator.	
Particulars Schedule:	1. *Shared Data*: Sets out the type of data that may be extracted from your system. Note this list is no exhaustive and is subject to change over time.	*Particulars Schedule* *Item 4*
	2. *Permitted Purpose:* How the extracted data may be used is listed at this item.	*Item 6*
	3. *Excluded Purpose:* The extracted data cannot be used for the reasons set out in this item.	*Item 7*
EULA:	Both parties are to comply with the terms of the EULA.	Schedule 3