



Australian Government
Australian Digital Health Agency



My Health Record

Portal Operator Registration Agreement

My Health Record system: View and Share for Nominated Representatives, Authorised Representatives and Registered Healthcare Recipients

between the

Australian Digital Health Agency

ABN 84 425 496 912

and

Click here to enter Portal Operator name.

ABN Click here to enter Portal Operator ABN.

in relation to

Click here to enter description of services.

OFFICIAL

Reference No: Click here to enter contract reference number.

PREVIEW COPY

Note to Portal Operator: The purpose of this Agreement is to satisfy the System Operator that the person applying to be a Registered Portal Operator:

- complies with the My Health Records Act and Rules, and
- agrees to be bound by the conditions of registration outlined in this document.

By entering into this Agreement you are applying for the System Operator to register you as a Registered Portal Operator under section 47 of the My Health Records Act 2012.

The Portal Operator should note that Schedule 1 sets out the permitted functionality of a Portal and restrictions on how System Data may be used.

This Agreement comes into effect on the date both parties have executed this Agreement. However, you will not be a Registered Portal Operator, under the My Health Records Act 2012, until you have been registered as one by the System Operator.

Parties

Parties: System Operator and Portal Operator

Any queries you have about this agreement should be directed to this person.

Portal operators will need to authorise an employee to be their contact person for the purposes of the My Health Record system, including in connection with this agreement.

The contact person may or may not be the same person who executes this agreement on behalf of the portal operator. This is a matter for the portal operator.

System Operator

("us", "we", "our")

Australian Digital Health Agency

ABN 84 425 496 912

Contact person:

[insert]

Phone number:

[insert]

E-mail address:

[insert]

Postal address:

Level 25, 175 Liverpool Street, Sydney NSW 2000

[Click here to enter Portal Operator Name.](#)

ABN [Click here to enter Portal Operator ABN.](#)

Contact person:

[insert]

Phone number:

[insert]

E-mail address:

[insert]

Postal address:

[insert]

Portal Operator

("you", "your")

Background	A	The My Health Record system (the System) is designed to place individuals at the centre of their own healthcare. It does this by enabling access to important health information when and where it is needed by Registered Healthcare Recipients and their Healthcare Providers.
	B	A range of private and public sector entities will participate in the System, including Healthcare Providers, registered repository operators, registered portal operators and registered contracted service providers to healthcare provider organisations.
	C	Rights and obligations for Participants are set out in a number of places including: <ul style="list-style-type: none"> I the My Health Records Act, My Health Records Rule 2016 (Cth), <i>Healthcare Identifiers Act 2010</i> (Cth) and the Privacy Act and the regulations made under those Acts; and II in agreements similar to this one.
	D	A portal operator wishing to operate an electronic interface that facilitates access to the System must be a Registered Portal Operator. This Agreement is a precondition to the System Operator registering a portal operator as a Registered Portal Operator.
Definitions and interpretation	1	1.1 Definitions and rules for interpreting this Agreement are set out in clause 16.
Commencement and term	2	2.1 This Agreement commences on the date it is executed by both parties and ends when it terminates in accordance with clause 14. 2.2 Despite any other provision of this Agreement or the Production Environment Access Request Form or the Portal Operator Registration Form, the System Operator will not be obliged to register you as a Registered Portal Operator unless the requirements in clause 3.1 are met.
Registration, suspension and cancellation of registration of portal operator	3	3.1 In order to be registered and remain registered as a Registered Portal Operator, you must have accurately completed (and provided applicable updates in compliance with clause 5.34) the Production Environment Access Request Form and Portal Operator Registration Form and we must be satisfied that: <ul style="list-style-type: none"> (a) you satisfy all the requirements of the My Health Records Act for registration as a Registered Portal Operator; and (b) such registration would not compromise the security, integrity or operations of the System. 3.2 Subject to the My Health Records Act and My Health Records Rules, we may suspend or cancel your registration as a Registered Portal Operator if, at any time: <ul style="list-style-type: none"> (a) we are satisfied that:

- i. you do not satisfy all the requirements of the My Health Records Act for registration as a Registered Portal Operator; or
- ii. your registration would compromise the security, integrity or operations of the System;
- (b) the cancellation or suspension is reasonably necessary to prevent a contravention of the My Health Records Act or this Agreement, or is in accordance with the My Health Records Act or My Health Records Rules;
- (c) you fail to comply with the Interoperability Requirements (to the extent applicable to the Portal) and subject to clause 4.4 of this Agreement;
- (d) you request us in writing to suspend or cancel your registration; or
- (e) otherwise in accordance with clause 14.2 of this Agreement.

3.3 If we suspend your registration as a Registered Portal Operator under clause 3.2 (a), (b) or (c), and in our sole opinion:

- (a) your non-compliance is able to be remedied; and
- (b) it is appropriate in all the circumstances and consistent with all applicable Laws to afford to you a period of time to remedy the non-compliance,

we will provide you with an opportunity within a defined timeframe to become compliant and satisfy all requirements of a Registered Portal Operator as set out in the My Health Records Act, the My Health Records Rules, and this Agreement. Nothing in this clause limits our rights to cancel your registration under clause 3.2.

3.4 This Agreement is a condition of your registration with the System Operator as a Registered Portal Operator, permitting you to provide a Portal in accordance with this Agreement, the Interoperability Requirements, the approved Production Environment Access Request Form and Portal Operator Registration Form, and all applicable Laws.

System Operator responsibilities

- 4 4.1 We will endeavour to ensure the System is available as required by Registered Healthcare Recipients and Representatives. However, some parts of the System, and some inputs such as telecommunications services, are outside our control. We do not represent, warrant or guarantee continuity of access to, or operation of, the System or that the System will be error free.
- 4.2 The System and its functionality will change over time. However, we will endeavour to consult with you or your representatives about any significant changes which may affect your access to the System.
- 4.3 We will notify you of any changes to the Interoperability Requirements.
- 4.4 If we give notice under clause 4.3 of changes to the Interoperability Requirements, we will allow reasonable time for you to review, assess

and modify your operations to allow you to meet your obligations under this clause. You will maintain your status as a Registered Portal Operator, unless we are satisfied that you fail to remedy a non-compliance with the Interoperability Requirements within a reasonable time.

- 4.5 We consent to you communicating with us electronically in connection with the System provided that your electronic communications are directed to our Contact person listed above or any replacement Contact person we notify to you from time to time.

Portal Operator responsibilities

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Use of System Data

- 5.1 Subject to obtaining informed consent from the relevant Registered Healthcare Recipients or their Representatives in accordance with clause 5.24, you, as a Registered Portal Operator for a Portal, are permitted to Use System Data for the sole purpose of providing a Portal.
- 5.2 You are not permitted, as a Registered Portal Operator for a Portal to:
- (a) Use System Data to target promotional and advertising material to any Registered Healthcare Recipient, Representative, Participant, individual, Entity or system;
 - (b) provide use of the Portal to any Participant in the My Health Record system other than the System Operator, unless permitted by the My Health Records Act; or
 - (c) use any System Data or facilitate any other person to use any System Data for any Prohibited Purpose as defined in the My Health Records Act .
- 5.3 You must, on the earlier of:
- (a) within 28 days of the System Data being obtained by you (either downloaded or copied) from the System; **or**
 - (b) immediately on the request of the Registered Healthcare Recipient or their Representative,

delete or destroy the System Data and perform such deletion or destruction in an appropriate and auditable manner that ensures that the System Data cannot be re-created, accessed or read, including by forensic tools. If requested by the System Operator, you must provide written certification that deletion or destruction has taken place. This obligation survives termination or expiry of this Agreement.

Compliance with Privacy Act and other Laws

- 5.4 Subject to clause 5.6, you agree that, if you are not bound by the Privacy Act, you opt in to be bound by the Privacy Act and to be treated as an organisation as defined in Section 6C of the Privacy Act.
- 5.5 If clause 5.4 applies, you agree to notify the Information Commissioner, within 30 days after the date of this Agreement, that you have made the choice to be treated as an organisation pursuant to Section 6EA of the Privacy Act.

- 5.6 Unless you are a State or Territory authority and you are bound by your Designated Privacy Law, you must yourself, and must ensure that all of your employees, officers, contractors and agents who deal with Personal Information, are aware of and comply with the Privacy Act and the Australian Privacy Principles, and you must not do anything, and ensure that your employees, officers, contractors and agents do not do anything which, if done by us, would be a breach of an Australian Privacy Principle. You must notify us immediately if you become aware of a breach or possible breach of the Privacy Act, any Australian Privacy Principle or any of your obligations under this clause in connection with any use of the System or this Agreement.
- 5.7 If you are a State or Territory authority and you are bound by your Designated Privacy Law, you agree to be bound by your applicable laws relating to privacy or Personal Information, including any applicable principles, codes or directions issued under the relevant privacy laws.
- 5.8 If clause 5.7 applies, you must yourself, and must ensure that all of your employees, officers, contractors and agents who deal with Personal Information, are aware of and comply with your Designated Privacy Law, and you must not do anything, and ensure that your employees, officers, contractors and agents do not do anything which breaches any applicable laws relating to privacy or Personal Information, including any applicable principles, codes or directions issued under the relevant privacy laws. You must notify us immediately if you become aware of a breach or possible breach of your Designated Privacy Law or any of your obligations under this clause 5 in connection with any use of the System or this Agreement.
- 5.9 You must comply with, and ensure your employees, officers, agents and contractors comply with all Commonwealth and other applicable Laws, including laws applicable to privacy or Personal Information, the My Health Records Act and the My Health Records Rules. You must ensure that all of your Operator officers and other relevant employees, officers, agents and contractors undertake regular compliance training about your obligations under applicable Laws and this Agreement in relation to System Data (including deletion obligations in clause 5.3), and you must provide records of the completed training if requested by us at any time. Nothing in this Agreement, including the Interoperability Requirements, constitutes legal advice to you. You must obtain your own legal advice regarding your compliance with all applicable Laws and this Agreement.
- 5.9A If you enter into a contract with a third party for the performance of services that involve the Portal, you must ensure that the contract does not permit subcontracting of any services relating to the System that involves any System Data.
- 5.10 You must give, subject to reasonable notice during reasonable times and your reasonable security requirements (except where there is an actual or apprehended breach of the Law), the Auditor-General, the Commonwealth Ombudsman, the Information Commissioner and any of their delegates access to your personnel, premises, materials and records in order for any of those persons to be able to inspect and

copy material and records for purposes associated with this Agreement, including your performance under it.

Requirement to notify us of an Eligible Data Breach

- 5.11 Unless you are a State or Territory authority who is bound by your Designated Privacy Law (in which case clause 5.14 applies), if you become aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by you as a result of this Agreement or your operation as a Registered Portal Operator, you agree to:
- (a) notify us in writing immediately on becoming aware; and
 - (b) unless otherwise directed by us, carry out an assessment in accordance with the requirements of the Privacy Act.
- 5.12 Where you are aware that there are reasonable grounds to believe there has been, or where we notify you that there has been, an Eligible Data Breach in relation to any Personal Information held by you as a result of this Agreement or your operation as a Registered Portal Operator, you must:
- (a) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
 - (b) unless otherwise directed by us, take all other action necessary to comply with the requirements of the Privacy Act; and
 - (c) take any other action as reasonably directed by us.
- 5.13 In assessing whether an Eligible Data Breach may have occurred, you must have regard to any relevant guidelines, resources or information developed and made available by the Office of the Australian Information Commissioner in relation to Eligible Data Breaches.
- 5.14 If you are a State or Territory authority and you are bound by your Designated Privacy Law and you become aware that there are reasonable grounds to suspect that there may have been a data breach in relation to any Personal Information held by you as a result of this Agreement or your operation as a Registered Portal Operator, you must notify us in writing as soon as possible, which must be immediately on becoming aware.
- 5.15 If clause 5.14 applies and you are aware that there are reasonable grounds to believe there has been, or where we notify you that there has been, a data breach in relation to any Personal Information held by you as a result of this Agreement or your operation as a Registered Portal Operator, you must:
- (a) take all reasonable action to mitigate the risk of the data breach causing serious harm to any of the individuals to whom the Personal Information relates;

- (b) unless otherwise directed by us, take all other action necessary to comply with the requirements of your Designated Privacy Law; and
- (c) take any other action as reasonably directed by us.

Requirement to notify us of other data breaches and other matters

5.16 You must notify us immediately of all matters you are required to notify to us in accordance with the My Health Records Act, My Health Records Rule, Privacy Act (if applicable), your Designated Privacy Law (if applicable) and other applicable Laws, including:

- (a) any privacy complaint in relation to your handling of Personal Information in connection with being a Registered Portal Operator for the purposes of this Agreement; and
- (b) any data breach or suspected data breach which is required to be notified in accordance with the My Health Records Act, Privacy Act (if applicable), your Designated Privacy Law (if applicable), or which is required to be notified to any person (including any individual or the Information Commissioner) under any Law.

5.17 You must provide us with written notice within 14 days of when you become aware that you cease to be eligible to be registered as a Registered Portal Operator.

5.18 You must notify us in writing within 2 Business Days of any:

- (a) Material Change;
- (b) Change of Control; or
- (c) agreement or arrangement entered into which, if completed, would cause a Material Change or Change of Control (whether or not that agreement or arrangement is subject to conditions).

You must also notify us in writing within 14 days of any decision you make to cease providing the Portal (which, to avoid doubt, excludes outages due to scheduled or unscheduled maintenance on the Portal) and at least 14 days before you cease providing the Portal.

Requirement to comply with directions

5.19 You must comply with all reasonable directions we make to ensure that you or we comply with applicable Laws (including, if applicable, your Designated Privacy Law), and Commonwealth policy.

5.19A In addition to your obligations under clause 5.21, you must comply with all directions we make to you to undertake testing (including penetration testing of the Portal) to a standard specified by us and to provide test results to us.

Portal Operator location is within Australia

5.20 You represent and warrant, and must ensure at all times during the term of this Agreement, that:

- (a) you, your central management and control and your Portal are and will be located in Australia; and
- (b) if you hold records for the purposes of the System or have access to information relating to such records, you have not and will not:
 - (i) hold, take, process or handle such records or information relating to such records; or
 - (ii) cause or permit another person to hold, take, process or handle such records or information relating to the records, outside Australia.

Clause 5.20(b) does not restrict your disclosure of System Data as a permitted functionality of the Portal, subject to this Agreement.

Interoperability Requirements

- 5.21 Subject to clauses 4.3 and 4.4, during the term of this Agreement you must comply with the Interoperability Requirements to the extent applicable to the Portal (including all relevant security requirements).

Communication

- 5.22 You consent to us communicating with you electronically in connection with the System provided that our electronic communications are directed to your Contact person or any replacement Contact person you notify to us from time to time.

Consent

- 5.23 You must ensure that you facilitate access to the System only where:
- (a) the Registered Healthcare Recipient or their Representative has provided informed consent; or
 - (a) you are otherwise authorised by Law to do so.
- 5.24 Subject to the terms of this Agreement, you must only Use System Data in accordance with the informed consent provided by the relevant Registered Healthcare Recipient or their Representative, in accordance with the requirements of the My Health Records Act.
- 5.25 You must ensure that, at or before the time that you seek consent from a Registered Healthcare Recipient or their Representative you explain each of your acts and practices that do or may fall within the scope of that consent (including that you may provide a copy of the consent to us), to ensure that the consent provided is explicit and informed.
- 5.26 To the extent practicable you must ensure that consents are current and specific. You must minimise any use of any bundled or general consents.
- 5.27 You must maintain a record of each Registered Healthcare Recipient's or their Representative's informed consent and, if requested, provide copies of the consent to us. This obligation survives termination or expiry of this Agreement.

No endorsement

- 5.28 You must, unless otherwise agreed in writing by the System Operator, include a statement on your Portal (that is sufficiently prominent to be easily noticed by users of the Portal), to the effect that, although the System Operator has registered you as a Registered Portal Operator pursuant to its obligations under the My Health Records Act, such registration does not imply:
- (a) that the System Operator endorses the Portal or any content, information or services provided through it or by you or your Associates;
 - (b) any affiliation of the System Operator with you, other than to register you as a Registered Portal Operator, in accordance with the requirements of the My Health Records Act, or your Associates; or
 - (c) any sponsorship by the System Operator of you or your Portal or any service or content provided by you or your Associates.
- 5.29 You must ensure that your marketing or promotional material and your terms of use of the Portal do not state or imply any of the things referred to in clause 5.28 (a) to (c).

Customer communications

- 5.30 You must ensure that your communications with each Registered Healthcare Recipient or their Representative:
- (a) at the time they become your customer; and
 - (b) again, at the time they de-link their access to the System through use of the Portal,

make clear that if they wish to withdraw consent and cease accessing the System through facilitation of your Portal, that does not mean they are deregistering with the System Operator as a Registered Healthcare Recipient or ceasing to be a Representative for a My Health Record. You must advise your customers that, if they wish to cease to be a Registered Healthcare Recipient or a Representative of a Registered Healthcare Recipient, with a My Health Record, they should go to <https://www.digitalhealth.gov.au/initiatives-and-programs/my-health-record>.

- 5.31 If a Registered Healthcare Recipient or their Representative is unable to access the relevant My Health Record through your Portal, you must:
- (a) not attempt to explain the reason why their access has been denied, unless you reasonably consider that the Registered Healthcare Recipient or their Representative (as relevant) is unable to access your Portal solely due to a technical issue within your control and capable of remedy; and
 - (b) if the inability to access your Portal is not due to a technical issue within your control and capable of remedy, direct the Registered Healthcare Recipient or their Representative (as relevant) to contact the My Health Record help desk.

- 5.32 You must not use any deceptive or manipulative practices, including any Portal design features that cause factual omissions, which may hinder the genuine decision making opportunities of Registered Healthcare Recipients or their Representatives.

Trademark licence

- 5.33 We grant you a licence to use our trade marks on the terms set out in the trade mark licence terms at Annexure A to this Agreement.

Changes to your registration information

- 5.34 As soon as possible after becoming aware that any information you submitted to the System Operator in the Production Environment Access Request Form or Portal Operator Registration Form for the purposes of becoming a Registered Portal Operator is no longer accurate or is likely to become inaccurate, you must provide to the System Operator with an amended Production Environment Access Request Form and an amended Portal Operator Registration Form that clearly set out the changes required to address the inaccuracies for the System Operator's consideration under clause 3.

**Audit and
access**

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- 6.1 You will be responsible for ensuring that you maintain records (including Access Audit Logs) in line with Commonwealth, State or Territory requirements concerning the retention of records. Upon our request you must provide us with access to your records and associated audit logs.
- 6.2 You acknowledge and agree that the System Operator or its nominees:
- (a) will monitor, log, and review your access and any of your end users' access to the System through your Portal; and
 - (b) without limitation to the System Operator's rights under this Agreement or at Law, may investigate (including by conducting an audit in accordance with this clause 6) any identified or suspected anomalous access to the System, including anomalous access patterns.
- 6.3 You agree that, during the term of this Agreement, you must promptly provide to the System Operator, or its nominees, all necessary assistance required for any purpose associated with this Agreement or requested in accordance with any applicable Law, including and subject to reasonable notice and your reasonable security requirements (except where there is an actual or apprehended breach of the Law), access to your premises, materials, records and personnel associated with this Agreement to audit or review your policies, procedures and records that relate to the performance of your obligations under this Agreement and compliance with applicable Laws.

**Changes to this
agreement**

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- 7.1 If we consider it is necessary to vary the terms of this Agreement:
- (a) we will, except in urgent circumstances:
 - (i) give you at least 28 days' notice of the changes (Variation Notice); and

		(ii)	endeavour to consult with you; and
		(b)	we will give you a written copy of any new and varied terms and an explanation of their purpose.
	7.2		If you do not, within 28 days of the date of the Variation Notice, confirm by notice to us that you agree to the new terms:
		(a)	either party may terminate this Agreement by notice to the other party (Termination Notice); and
		(b)	your registration as a Registered Portal Operator will be cancelled effective from the date of the Termination Notice.
Costs	8		Each party bears their own costs in the preparation, negotiation and complying with their obligations under this Agreement.
Indemnity	9		You indemnify us, our employees, other officials, officers, agents and contractors (each an Indemnified Person) from and against any:
		(a)	Loss incurred by an Indemnified Person, including in dealing with any claim made against or threatened against the Indemnified Person; and
		(b)	Loss of or damage to the property of an Indemnified Person, arising out of or in connection with:
		(c)	your breach of this Agreement;
		(d)	any negligent or Wilful act or omission of, or breach of Law by, you, your employees, agents or contractors arising out of or in connection with:
		(i)	this Agreement; or
		(ii)	your operations as a Registered Portal Operator.
Representations and warranties	10		By executing this Agreement, you represent and warrant to us that:
		(a)	the Portal Operator has full power and authority to enter into, perform and observe its obligations under this Agreement;
		(b)	the execution, delivery and performance of this Agreement has been duly and validly authorised by the Portal Operator; and
		(c)	the information you have supplied in and pursuant to this Agreement (including in the Production Environment Access Request and Portal Operator Registration Form) is accurate, complete, up to date and not misleading.
Resolving disputes	11	11.1	If the parties are in dispute, each party must continue to perform its obligations under this Agreement.
		11.2	Neither party may commence legal proceedings relating to a dispute arising under this Agreement until the dispute resolution process required by this clause has been followed.
		11.3	A party claiming that there is a dispute must send the other party a written notice setting out the nature of the dispute.
		11.4	The parties must try to resolve a dispute notified under clause 11.3 through direct negotiation, including by referring the matter to

persons within the parties who have the authority to intervene and direct some form of resolution.

- 11.5 If:
- (a) after 28 days from the date of the notice under clause 11.3:
 - (i) the parties have not resolved the dispute; and
 - (ii) the parties have not agreed to submit the dispute to mediation or some alternative dispute resolution procedure (including an agreement on the identity of the mediator or the facilitator of any other alternative dispute resolution); or
 - (b) the dispute has been submitted to mediation or some other form of alternative dispute resolution procedure, and the dispute is not resolved within 21 days of the submission, or a longer time agreed in writing by the parties,

either party may commence legal proceedings.

11.6 Nothing in this clause 11 limits or restricts any function, power, right or entitlement of the System Operator under this Agreement or under the My Health Records Act or My Health Records Rule.

11.7 This clause 11:

- (a) does not apply to any action by us under or purportedly under clauses 14.3 or 14.4; and
- (b) does not prevent a party commencing legal proceedings for urgent interlocutory relief.

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Insurance

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12.1 You represent and warrant that you have taken out, and will maintain for the periods set out in clauses 12.2 and 12.3 of this Agreement, as applicable, all appropriate types and amounts of insurances with a reputable insurer, that a prudent insured would give effect to in relation to your obligations under this Agreement, which insurances must include the following:

Type	Coverage
IT liability/professional indemnity/product liability insurance	\$20,000,000 in respect of any single claim and in the annual aggregate
Public Liability	\$20,000,000 in respect of any single claim and in the annual aggregate

12.2 If you take out a “claims made” insurance policy, you must maintain the insurance policy during the term of this Agreement and for seven years after the termination of this Agreement.

12.3 If you take out an “occurrence” based insurance policy, you must maintain the policy in effect during the term of this Agreement.

		12.4	You must provide us, on our request, with certificates of currency evidencing the insurances effected in accordance with this clause.
Liability	13	13.1	To the extent allowed by Law, we exclude all liability to you in respect of any Loss that you might incur or suffer (including as a result of negligence) in connection with this Agreement, including your access or any of your end users' access to the System.
		13.2	Your liability arising out of, or in connection with, a breach of this Agreement, or in tort (including negligence) or for any other common law, equitable, statutory or other cause of action arising out of, or in connection with this Agreement (including under any indemnity) is, subject to clauses 13.4 and 13.5, limited to a total aggregate amount of \$500,000 per claim and a total aggregate amount of \$1 million (excluding GST) in any 12 month period.
		13.3	Each party must use all reasonable endeavours to mitigate its Losses arising out of or in connection with a breach of this Agreement or any negligent or Wilful act or omission arising out of or in connection with this Agreement.
		13.4	Your liability (including under an indemnity) will be reduced proportionately to the extent that our negligent or Wilful acts or omissions or those of any other Indemnified Person (as defined in clause 9) or their breach of any Law contributed to your liability.
		13.5	The limitation on your liability under this Agreement (including under any indemnity) does not apply in relation to: <ul style="list-style-type: none"> (a) personal injury (including sickness and death); (b) loss of, or damage to, tangible property; (c) any claim alleging infringement of intellectual property rights; (d) a breach of any obligation of confidentiality, security matter or privacy, including under the My Health Records Act, Privacy Act or Designated Privacy Law; (e) a breach of the Interoperability Requirements; (f) fraud, breach of Law, Wilful misconduct or repudiation of this Agreement; or (g) any liability arising under clause 9 for any third party claims against any Indemnified Person.
Termination	14	14.1	You may terminate this Agreement by giving us at least 90 days' written notice. We may terminate the Agreement by giving at least 12 months' written notice to you. If the Agreement is terminated in accordance with this clause, neither party will be liable to the other party for any Loss arising from, or in connection with, the termination.
		14.2	This Agreement will terminate immediately upon our cancellation of your registration as a Registered Portal Operator for any reason, including in accordance with clauses 3.2 or 14.3.

- 14.3 Without limiting our rights under applicable Law, we may cancel your registration as a Registered Portal Operator immediately by written notice to you if:
- (a) you terminate this Agreement in accordance with clause 14.1;
 - (b) you do not agree to any changes to this Agreement, proposed in accordance with clause 7.2;
 - (c) subject to sections 415D, 434J and 451E of the Corporations Act (as the case may be), an Insolvency Event occurs in respect of you;
 - (d) you undergo a Material Change (other than a change of legal name) or Change of Control;
 - (e) you or any of your Associates who Control you:
 - (i) breach any Law; or
 - (ii) engage in any other conduct that we consider, in our absolute discretion, could adversely affect our reputation or the reputation of the System or the Commonwealth of Australia or any of its agencies;
 - (f) you fail to satisfy any of your obligations under this Agreement and, where that failure is capable of remedy, do not remedy that failure within 14 days after being given a written notice from us requiring you to do so;
 - (g) you fail to satisfy any of your obligations under this Agreement and, in our reasonable opinion, the failure is not capable of remedy; or
 - (h) you cease to be specifically prescribed as an organisation under section 6F of the Privacy Act **for a purpose relevant to operating as a Registered Portal Operator.**

- 14.4 Without limiting the termination rights at clauses 14.1, 14.2 and 14.3, if we form the view that this Agreement with you may be contrary to the public interest, we may terminate the Agreement by giving at least 5 Business Days' notice to you.

If the Agreement is terminated in accordance with this clause, we will not be liable to you for any Loss arising from, or in connection with, the termination.

- 14.5 Upon termination of this Agreement, or suspension or cancellation of your registration as a Registered Portal Operator:
- (a) you must take reasonable steps to notify end users who have or may have access to your Portal:
 - (i) that you will be suspended from being, or will cease to be, a Registered Portal Operator; and
 - (ii) about the impact your suspension or cessation from being a Registered Portal Operator will have on the end user's access to System Data;

- (b) your right to access the System will cease immediately at the time notified by us or as otherwise agreed in writing; and
 - (c) you must take reasonable steps to minimise any Loss resulting from that termination, suspension or cancellation.
- 14.6 Clauses 9, 11, 12, 13, 14 and 15 and any definitions or other provisions necessary to give effect to these clauses survive termination of this Agreement.
- 14.7 Termination of this Agreement does not affect any accrued rights or remedies of a party.
- Miscellaneous 15**
 - 15.1 This Agreement is governed by the Laws in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that State and the courts of appeal from them.
 - 15.2 This Agreement constitutes the entire agreement between you and us about its subject matter.
 - 15.3 We acknowledge that you may wish to assign or novate this Agreement to a Related Body Corporate. This will require our prior written consent, which we will not unreasonably withhold. Otherwise, you must not assign or novate this Agreement without our prior written consent. We may assign or novate our rights and obligations under this Agreement to a body that takes over from us as the System Operator. If it is proposed that another body will take over from us as System Operator, we will endeavour to give you reasonable notice of the change.
 - 15.4 Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.
 - 15.5 This Agreement may be executed in counter-parts. All executed counter-parts constitute one document.
 - 15.6 The Agreement may be executed by electronic means (including by applying an electronic signature or by emailing a signed version of this Agreement in scanned format). The parties agree that execution of this Agreement by electronic means is intended and will bind the signing party in the same way, and to the same extent, as if the execution was an original signature.
 - 15.7 Each party must, at its own expense, do everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transactions contemplated by it.
 - 15.8 A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.
 - 15.9 Notices may be given by means of electronic communications as defined in the *Electronic Transactions Act 1999* (Cth) sent to the Contact person of the relevant party.

Confidentiality

15.10 A party must (and must ensure its employees, officers and agents) keep Confidential Information of the other party confidential and must not (and must ensure its employees, officers and agents do not) use such Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement. A party must not disclose the Confidential Information of the other party to a third party unless:

- (a) the other party has first given their written consent;
- (b) the disclosure is made to the party's Related Bodies Corporate, officers, employees, or professional advisers, and those persons undertake to keep confidential any information so disclosed;
- (c) as permitted by clause 15.11; or
- (d) the disclosure is made to the extent reasonably needed to comply with any applicable Law,

but the party must promptly give notice of the intended disclosure to, and consult with, the other party to the extent practicable, and use its reasonable endeavours to minimise disclosure to third parties and to ensure that the information so disclosed will be treated confidentially.

15.11 The parties may disclose Confidential Information:

- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
- (b) in the case of the System Operator only, for public accountability reasons, including disclosure on request to other government agencies, and on request for information by parliament or a parliamentary committee or the Minister with portfolio responsibility for the System Operator; and
- (c) to their contracted third party service providers for the purposes of or in connection with your registration and operation as a Registered Portal Operator where those third party service providers are bound by duties of confidentiality the same or substantially similar to clause 15.10.

Reasonable Assistance by System Operator

15.12 We agree that, during the term of this Agreement, we will provide reasonable assistance in relation to any inquiry, investigation or complaint in connection with your registration and operation as a Registered Portal Operator. You acknowledge that "reasonable assistance" does not include the expenditure of money by us.

Definitions and interpretation

16

16.1

Unless a contrary intention appears:

- (a) a word or expression defined in the My Health Records Act, the My Health Records Rules or any instruments made under them has the corresponding meaning; and
- (b) the following definitions apply:

Access Audit Log means a record of access to a Registered Healthcare Recipient's My Health Record facilitated through your systems' electronic interface with the System.

Agreement means this deed of agreement, including its schedules, annexures and attachments (if any).

Associate includes:

- (a) any officer, employee, Related Body Corporate or shareholder or member;
- (b) any shareholder or member of any of a Related Body Corporate or shareholder; and
- (c) any other person who participates in conduct of your business, or has any Control over you or your business.

Authorised Representative has the same meaning as in the My Health Records Act.

Bankruptcy Act means **Bankruptcy Act 1966** (Cth).

Business Day means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in the place where the act is to be performed.

Change of Control means:

- (a) any change in your direct or indirect beneficial ownership, other than as a result of ordinary trading activity on a relevant stock exchange;
- (b) you dispose of the whole or any part of your assets, operations or business other than in the ordinary course of business; or
- (c) you dispose of the whole or any part of your assets, operations or business used by you in connection with the Portal.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by a party as confidential; or
- (c) a party knows or ought to know is confidential;

but does not include the terms of this Agreement (unless expressly provided otherwise) or information which:

- (d) is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means;

- (e) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the other party;
- (f) has been independently developed or acquired by a third party;
- (g) is notified to us pursuant to clause 5.18 regarding your decision to cease providing the Portal; or
- (h) is System Data.

Contact person means, for each party, the person described in the relevant part of the “Parties: System Operator and Portal Operator” section of this Agreement or any replacement Contact person notified by that party from time to time.

Contact details means, for each party, the contact details described in the relevant part of the “Parties: System Operator and Portal Operator” section of this Agreement.

Control:

- (a) has the meaning given in section 50AA of the Corporations Act;
- (b) in respect of an “entity” (as defined in the Corporations Act) also includes the direct or indirect power to directly or indirectly direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity (whether or not the power has statutory, legal or equitable force or arises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in a “marketable security” (as defined in section 9 of the Corporations Act), bonds or instruments of the entity or otherwise); and
- (c) also includes owning or controlling, directly or indirectly, more than 50% of the shares or units in an entity;

Corporations Act means the **Corporations Act 2001** (Cth).

Designated Privacy Law has the same meaning as in the My Health Records Act.

Eligible Data Breach has the same meaning as in the Privacy Act.

Employee has the same meaning as in the My Health Records Act.

Entity means:

- (a) a person; or
- (b) a partnership; or
- (c) any other unincorporated association or body; or
- (d) a trust; or
- (e) a part of an entity (under a previous application of this definition).

External Administrator means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Healthcare Provider has the same meaning as in the My Health Records Act.

Healthcare Recipient has the same meaning as in the My Health Records Act.

Information Commissioner means the office of that name established under the **Australian Information Commissioner Act 2010** (Cth) and includes any other person that may, from time to time, perform the functions of that office.

Insolvency Event means, in respect of a person, any of the following:

- (a) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585 of the Corporations Act;
- (b) except with our consent:
 - (i) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
 - (ii) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;
- (c) an External Administrator is appointed to it or any of its assets or a step is taken to do so or its Related Body requests such an appointment;
- (d) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
- (e) if a trustee of a trust, it is unable to satisfy out of the assets of the trust the liabilities incurred by it as and when those liabilities fall due;
- (f) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate pursuant to the Bankruptcy Act;
- (g) any application (not withdrawn or dismissed within five (5) Business Days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;

- (ii) a personal insolvency agreement;
 - (iii) any other assignment, composition or arrangement (formal or informal) with a person's creditors;
 - (iv) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee; or
 - (v) any agreement or other arrangement of the type referred to in this paragraph (g) is ordered, declared or agreed to;
- (h) a person becomes an insolvent under administration (as defined in the Corporations Act);
 - (i) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
 - (j) it stops or suspends payment to all or a class of creditors generally;

Interoperability Requirements means the requirements published by the System Operator from time to time specifying the technical and compliance prerequisites that entities must meet in order to connect and remain connected to the System, the current version of which, as at the date of this Agreement, consist of the following as set out in or referenced in Schedule 2:

- (a) "Operations Requirements and Guidelines";
- (b) "Security Requirements and Guidelines";
- (c) "Consent Requirements and Guidelines"; and
- (d) "Presentation Requirements and Guidelines".

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere in Australia and includes the common law as applicable from time to time.

Liquidation means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.

Loss means any liability, expense, loss, damage or cost of any kind (including legal costs on a full indemnity basis, whether incurred by or awarded against a party).

Material Change means "material change" as defined in the My Health Records Rule 2016.

My Health Record has the same meaning as in the My Health Records Act.

My Health Records Act means the **My Health Records Act 2012** (Cth).

My Health Records Rules has the same meaning as in the My Health Records Act.

Nominated Representative has the same meaning as in the My Health Records Act.

Operator officer has the same meaning as in the My Health Records Rule 2016.

Participant means Participant in the My Health Record system.

Participant in the My Health Record system has the same meaning as in the My Health Records Act.

Party means a party to this Agreement.

Personal Information has the same meaning as in the Privacy Act, and where there is a Designated Privacy Law, has the meaning given to it in the Designated Privacy Law.

Portal means an electronic interface that facilitates access to the System by Representatives and Registered Healthcare Recipients and has the functionality set out in Schedule 1.

Portal Operator Registration Form means a document of that name:

- (a) substantially in the form set out in or referenced in Schedule 3 to this Agreement, as amended by the System Operator from time to time; and
- (b) completed by you electronically or in hard copy, as required by the System Operator.

Privacy Act means the **Privacy Act 1988** (Cth).

Production Environment Access Request Form means a document of that name substantially in the form attached in or referenced in Schedule 3 to this Agreement, as amended by the System Operator from time to time.

Related Body Corporate has the same meaning as in section 50 of the Corporations Act 2001.

Registered Healthcare Recipient has the same meaning as in the My Health Records Act.

Registered Portal Operator means “registered portal operator”, as defined in the My Health Records Act.

Representative means a Nominated Representative or an Authorised Representative.

State or Territory authority has the same meaning as in the Privacy Act.

System means the My Health Record system, as defined in the My Health Records Act.

System Data means any information or data that is in or from the System including any My Health Record, or that is derived from that information or data, and which the Registered Portal Operator is permitted under this Agreement to access to Use System Data. It is not Confidential Information..

System Operator has the same meaning as in the My Health Records Act.

Test Environment Access Request Form means a document of that name substantially in the form attached in or referenced in Schedule 3 to this Agreement, as amended by the System Operator from time to time.

Use System Data includes accessing, viewing, modifying or disclosing any System Data, but only as permitted by the functionality of the Portal set out in Schedule 1.

Wilful means performed intentionally and with either the intention to cause damage, or with reckless disregard as to the possibility of causing damage.

16.2 In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a person includes the person's permitted successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) "including", "includes", "such as" and "in particular" do not limit the generality of the words which precede them or to which they refer;
- (h) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (i) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (k) any explanatory notes in the left hand column, headings and footnotes are for convenience, for information only, and do not form part of this Agreement.

16.3 If there is any conflict or inconsistency between the documents that together form this Agreement, the earlier mentioned document or document part will prevail to the extent of that inconsistency:

- (a) the terms and conditions including clauses 1 to 16 in this Agreement;
- (b) Annexure A;
- (c) Schedule 1;
- (d) Schedule 2; and
- (e) Schedule 3.

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SCHEDULE 1 – Functionality of the Portal

Note to Portal Operator: This Schedule specifies how the Portal is permitted and required to function.

See clauses 5 and 16.

1. In this Schedule 1, “User” means a Registered Healthcare Recipient, Authorised Representative or Nominated Representative.
2. The System Data that is available to a User through the Portal will be limited to the System Data set out in the notice of connection or production environment access letter from the System Operator (as identified in the corresponding Production Environment Access Request Form) (**Available System Data**).
3. The Portal must have and is limited to the following functionality if it is recorded in, and subject to any further limitation in, the notice of connection or production environment access letter from the System Operator (as identified in the corresponding Production Environment Access Request Form)::
 - a. **view**: the Portal allows the User to view the Available System Data; and
 - b. **share**: when a User consents to the disclosure of any part of the Available System Data (**Selected System Data**) from the Portal, the Portal Operator discloses that Selected System Data to:
 - i. the file system of the device on which the Portal is used; or
 - ii. an application of any party,
as selected by the User.The technology and party receiving the Selected System Data must be unable to directly access the Portal or the System.
4. Subject to clause 5, each of the functions set out in clause 3 include the following functionality:
 - a. **select**: the Portal allows a User to select:
 - i. Selected System Data;
 - ii. the **view** or **share** function to be applied to the Selected System Data; and
 - iii. the technology or party for disclosing the Selected System Data through the **share** function;
 - b. **store**: the Portal may use a temporary cache of Available System Data when performing the **view**, **select** or **share** functions. The cache must remain within the Portal, except when disclosing Selected System Data in accordance with the **share** function, and securely deleted in accordance with clause 5.3 of the Agreement;
 - c. **modify**: the Portal must not modify any System Data in the System. Subject to clause 5 of the Agreement, the Portal may modify any copy of Available System Data that it stores for the purposes of operating the Portal, provided that the value and the integrity of information in the Available System Data is not changed, subject only to any requirements specified in the Interoperability Requirements to mask or delete parts of the Available System Data; and
 - d. **secure delete**: the Portal must erase Available System Data in a manner that prevents re-recovery including by forensic tools, as required by clause 5.3 of the Agreement.

SCHEDULE 2– Interoperability Requirements

Part 1 – Operations Requirements and Guidelines

Refer to the latest version published by the System Operator.

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SCHEDULE 2 – Interoperability Requirements

Part 2 – Security Requirements and Guidelines

Refer to the latest version published by the System Operator.

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SCHEDULE 2 – Interoperability Requirements

Part 3 – Consent Requirements and Guidelines

Refer to the latest version published by the System Operator.

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SCHEDULE 2 – Interoperability Requirements

Part 4 – Presentation Requirements and Guidelines

Refer to the latest version published by the System Operator.

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SCHEDULE 3 – Forms**Part 1 – My Health Record - Portal Operator Registration Form (PORF)**

This includes the Test Environment Request Form.

Refer to the latest version published by the System Operator at
<https://developer.digitalhealth.gov.au/forms/porf>

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SCHEDULE 3 – Forms

Part 2 – My Health Record - Test Environment Request Form (TEAR)

This is included in the Portal Operator Registration Form.

Refer to the latest version published by the System Operator at
<https://developer.digitalhealth.gov.au/forms/porf>

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SCHEDULE 3 – Forms

Part 3 – My Health Record – Production Environment Access Request Form (PEAR)

Refer to the latest version published by the System Operator at
<https://developer.digitalhealth.gov.au/resources/articles/mobile-integration-my-health-record>

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Signing page

Executed as a Deed

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Annexure A Portal Operator Registration Agreement- Trade Mark Licence Terms and Conditions (Licence Terms)

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1. INTERPRETATION

1.1 Definitions

The following definitions apply in these Licence Terms:

App means the application specified in **Attachment A**, in relation to which you are registered as a Registered Portal Operator to provide a Portal, in accordance with the PORA.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Claim means any claim, allegation, cause of action, proceeding, suit or demand made against a person, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Confidential Information means information of ours that:

- (a) is by its nature confidential;
- (b) is designated by us as confidential; or
- (c) you know or ought to know is confidential,

but does not include these Licence Terms or information which:

- (d) is or becomes public knowledge other than by breach of these Licence Terms or by any other unlawful means;
- (e) has been independently developed by you without you relying on, referring to or incorporating the Confidential Information; or
- (f) is or was made available to you by a person (other than us) who was not at the time of disclosure under an obligation of confidence to us in relation to that information.

GST, GST Law, supply, input tax credit and other terms relevant to GST, have any meanings given in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* and any applicable rules of the Australian Taxation Office.

Guidelines means the Agency's brand identity guidelines in relation to the use of the Trade Marks, specified in **Attachment A**, a copy of which is available at <https://www.digitalhealth.gov.au/healthcare-providers/initiatives-and-programs/my-health-record/my-health-record-design-assets>, as amended by us from time to time, and any other guidelines and requirements for use, as specified in **Attachment A**.

Law includes any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time.

Material means any material in any medium or form, including documents, records, equipment, software (including source code and object code), goods, images, cinematograph films, publications, reports, advertising and promotional materials (including television, radio, print/press, outdoor advertisements and advertorials), websites and social media sites (including

individual account pages), signage, newsletters, marketing communications, brochures, stationery and merchandise, other information and data stored by any means including all copies and extracts of the same.

Permitted Purpose has the meaning given in **Attachment A**.

PORA means the Portal Operator Registration Agreement to which these Licence Terms are attached and which form part of the PORA.

Start Date has the meaning given in **Attachment A**.

Term means the term of the Trade Mark Licence, as specified in **Attachment A**.

Territory has the meaning given in **Attachment A**.

Trade Mark Licence means the trade mark licence granted under clause 5.33 of the PORA and clause 3.1(a) of these Licence Terms.

Trade Mark Material means any Material on or in relation to which the Trade Marks will (or are proposed to) appear or be referred to.

Trade Marks means the trade marks and logos set out in **Attachment B**.

Trade Marks Act means the *Trade Marks Act 1995* (Cth).

Web Content Accessibility Guidelines 2.1 means the guidelines available at <http://www.w3.org/TR/WCAG20/> and successor websites.

1.2 Interpretation

In these Licence Terms, unless the contrary intention appears:

- (a) the definitions and rules of interpretation set out in clause 16 of the PORA apply; and
- (b) a reference to an **Attachment** means an attachment to these Licence Terms.

2. TERM

The Trade Mark Licence commences on the Start Date and continues for the Term.

3. LICENCE

3.1 Grant of licence

- (a) We grant to you a non-exclusive, non-transferable, non-assignable, royalty free licence during the Term to use the Trade Marks in the Territory for the Permitted Purpose, on the terms set out in these Licence Terms.
- (b) The Trade Mark Licence supersedes any and all existing licences granted by the Agency to you to use any of the Trade Marks. You agree not to use any of the Trade Marks unless expressly permitted by these Licence Terms.

3.2 No right to sub-licence

The Trade Mark Licence does not include the right to sub-licence the Trade Marks.

3.3 Your acknowledgments

You acknowledge and agree that:

- (a) we are, and will continue to be, the sole owner of all intellectual property rights in and to the Trade Marks, including all current and future registered and unregistered rights, copyright subsisting in any artistic works comprised in the Trade Marks and all current and future goodwill generated through use of the Trade Marks;
- (b) nothing in these Terms gives you any rights or interests in the Trade Marks, other than as licensee under the Trade Mark Licence; and
- (c) all use of the Trade Marks (including goodwill from that use) arises for the benefit of us, without cost to us.

3.4 Relationship of the parties

The parties agree that:

- (a) the parties are independent contractors and not partners, joint venturers or principal and agent; and
- (b) neither of the parties has any authority to bind the other party by contract or otherwise and must not hold itself out as having such authority.

3.5 Excluded powers

The parties agree that, except to the extent expressly granted to you under the Trade Mark Licence, you will have none of the powers conferred on an authorised user of trade marks by section 26 of the Trade Marks Act.

4. USE OF THE TRADE MARKS

4.1 Compliance with directions and guidelines

You must comply with the Permitted Purpose and with all our other directions and guidelines concerning use of the Trade Marks, notified to you by us in writing, including the Guidelines, as amended by us from time to time.

4.2 Form of Trade Marks

Without limiting clause 4.1, you must only use the Trade Marks in the form in which they are registered.

4.3 Notice with Trade Mark use

Unless we first give our written consent otherwise, you must accompany each representation of a Trade Mark with:

- (a) the following notice:
 - “[Trade Mark] is a registered trade mark of the Australian Digital Health Agency and is used under licence by [you].”,
 - or a statement having a similar meaning that is approved or required by us in writing; and
- (b) the ® symbol with each use of the Trade Marks within Australia unless otherwise directed by us;

- (c) the following notice viewable at the same time as the above notice:

“The Australian Digital Health Agency gives no endorsement of the application in respect of which this [Trade Mark] is used and provides no warranty or guarantee in respect of the correctness, accuracy or completeness of any content accessible through this application.”

- (d) any other notice that we may direct.

4.4 Restrictions on use

You acknowledge and agree that you must not:

- (a) assert any right to or over the Trade Marks in any manner inconsistent with your rights under these Licence Terms;
- (b) use the Trade Marks for any purpose other than the Permitted Purpose;
- (c) use the Trade Marks in any way other than in accordance with the Permitted Purpose;
- (d) make any addition to, deletion from, or modification of the Trade Marks;
- (e) do, or authorise the doing of, anything opposing, challenging or impairing our rights or interests in the Trade Marks;
- (f) at any time use the Trade Marks in a manner likely to prejudice the distinctiveness of any of the Trade Marks, the validity of any registration of the Trade Marks, or the value of our goodwill and reputation;
- (g) use or apply to register the Trade Marks, or any trade mark that is substantially identical or deceptively similar with or to any of the Trade Marks, in connection with any goods or services, either alone or in conjunction with any other trade mark or brand name without our prior written consent;
- (h) use or apply to register any of the Trade Marks as your company or business name, or as part of your company or business name or in a domain name;
- (i) take or use the Trade Marks in any manner calculated to represent that you are the owner of the Trade Marks;
- (j) apply or support any application to cancel registration of the Trade Marks or enter any condition or limitation affecting the registration of the Trade Marks or remove any Trade Marks as a registered trade mark;
- (k) take any action which otherwise would or might invalidate, challenge, oppose or otherwise put in dispute our title to the Trade Marks; or
- (l) cause, permit or assist any other person directly or indirectly to do any of the above acts.

5. QUALITY CONTROL

5.1 Use in Trade Mark Material

You must only use the Trade Marks in Trade Mark Material if we have expressly given you our prior written consent to do so and we have given that Material to you, or you have submitted representative Trade Mark Material to us and we have approved the use in writing prior to use.

5.2 Trade Mark Material to meet standards

Subject to clause 5.1, you must ensure that the Trade Mark Material:

- (a) meets our standards and requirements of design, performance and quality notified by us to you from time to time;
- (b) if the Permitted Purpose identifies an existing contract, complies with the standards and requirements of design, performance and quality specified in that contract; and
- (c) complies with all applicable standards, regulations, government guidelines and rules in the Territory, including the following where the Trade Mark Material is a website:
 - (i) Level AA accessibility requirements in the Web Content Accessibility Guidelines 2.1 and government requirements at <https://www.w3.org/WAI/intro/wcag> or any successor website;
 - (ii) World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.1 (2014) at <https://www.humanrights.gov.au/accessibility> or any successor website; and
 - (iii) <https://www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria/9-make-it-accessible>.

6. MAINTENANCE AND PROTECTION OF THE TRADE MARKS

6.1 Assistance with maintenance

At our request but at your expense, you must assist us to maintain the validity of any registrations of the Trade Marks during the Term, including providing documents and deposing to or swearing any declarations, affirmations or oaths.

6.2 Notification of infringements and claims

You must immediately notify us in writing of:

- (a) any actual, suspected or threatened infringement of, or challenge to, the Trade Marks and any conduct in relation to the Trade Marks that may constitute passing off or misleading or deceptive conduct; and
- (b) any claim or proceeding alleging that use of the Trade Marks infringes another person's rights, or constitutes passing off or misleading or deceptive conduct.

6.3 Our discretion to take action

We may, in our sole discretion, decide whether or not to take any action in relation to the matters referred to in clause 6.2 and our decision is final.

6.4 Assistance with action

If we take action in relation to a matter referred to in clause 6.2, you must give all reasonable assistance that we may request, at your expense.

6.5 Your actions

- (a) If we decide not to take action in relation to the matters referred to in clause 6.2, you may, at your expense, take action so long as you first obtain our written consent.
- (b) You must not compromise or settle any action without first obtaining our written consent.

6.6 Our liability

Without limitation, we are not liable for any Claim, loss, liability, expense or tax incurred by you in connection with our failure or inability to take or consent to the taking of any action or the failure of any action under this clause 6.

7. LIABILITY

7.1 Liability in relation to App

You must include in the terms and conditions of the App the following acknowledgements from you and the user:

- (a) an acknowledgement that you are solely responsible for the App and the content of the App (including, but not limited to, the correctness, accuracy and completeness of any content accessible through the App relating to the user's My Health Record electronic health record); and
- (b) an acknowledgement that you are solely responsible for addressing any Claims made by the user or any third party relating to the App or the user's possession and/or use of the App, including but limited to:
 - (i) any Claim for maintenance and support services;
 - (ii) any product liability Claim;
 - (iii) any Claim that the App fails to comply with any Laws; and
 - (iv) any Claim arising under consumer protection or similar legislation.

8. INDEMNITIES

8.1 Licensee's indemnities

You indemnify us, our employees, other officials, officers and agents against any Claim, loss, liability, expense or tax incurred in connection with:

- (a) any of your representations or warranties under the PORA, including these Licence Terms, being or becoming incorrect in any respect;
- (b) you exercising your rights, or performing your obligations, under these Licence Terms, including your use of the Trade Marks;
- (c) any of your obligations under these Licence Terms being wholly or partly illegal, void, voidable or unenforceable;
- (d) any failure or alleged failure by you to comply with these Licence Terms; or
- (e) any Claim by another person against us in connection with your exercise of your rights, or performance of your obligations, under these Licence Terms.

8.2 We act as trustee

You agree that we will be taken to be acting as agent or trustee for and on behalf of each of our employees, other officials, officers and agents from time to time, in respect of their rights under clause 8.1.

8.3 Exclusion of liability

To the full extent permitted by Law, we have no liability (whether in negligence or otherwise) to you for any Claim, loss, liability, expense or tax in connection with the exercise of your rights or obligations under the Trade Mark Licence, including these Licence Terms, including but not limited to the use of the Trade Marks and any Trade Mark Material by you

9. GST

9.1 GST for any supply

In relation to any supply under the Trade Mark Licence (which is exclusive of GST), the recipient must:

- (a) pay to the supplier an amount equal to any GST for which the supplier is liable on any supply by the supplier under or in connection with this document, without deduction or set-off of any other amount; and
- (b) make that payment as and when the consideration or part of it must be paid or provided, except that the recipient need not pay until 7 days after receiving a tax invoice (or an adjustment note) for that supply.

9.2 Adjustments

The supplier must promptly create an adjustment note for, or apply to the Commissioner for, a refund of GST, and refund to the recipient, if an overpayment by the recipient for GST has been made.

9.3 Costs to include GST

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this Contract must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

10. CONFIDENTIAL INFORMATION

10.1 Use and disclosure of Confidential Information

Unless you have obtained our prior written consent, you must:

- (a) keep all Confidential Information secret and confidential;
- (b) not access, use or reproduce any Confidential Information except to the extent necessary to exercise your rights and perform your obligations under these Licence Terms;
- (c) disclose any Confidential Information except as permitted under clauses 10.2 or 10.3; and
- (d) establish and maintain all necessary security measures to maintain the confidential nature of the Confidential Information and ensure that the Confidential Information is kept secure from loss, unauthorised access or use, reproduction, modification, disclosure or other misuse.

10.2 Disclosures to personnel and advisers

- (a) You may disclose Confidential Information to your officers, employees, agents, contractors, or legal, financial or other professional advisers if:
 - (i) the disclosure is necessary to enable you to perform your obligations or to exercise your rights under these Licence Terms; and
 - (ii) prior to disclosure, you inform the person of the confidential nature of the Confidential Information and your obligations in relation to it under these Licence Terms and obtain a confidentiality undertaking from the person to comply with those obligations, a signed copy of which must be provided to us, on request.
- (b) You must ensure that any person to whom Confidential Information is disclosed under clause 10.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 10.2(a).

10.3 Disclosures required by Law

- (a) Subject to clause 10.3(b), you may disclose Confidential Information that the you are required to disclose by Law or by order of any court or tribunal of competent jurisdiction or by any government agency, stock exchange or other regulatory body.
- (b) If you are required to make a disclosure under clause 10.3(a), you must:
 - (i) give us prompt and prior written notice of the impending disclosure;
 - (ii) provide reasonable assistance to us in opposing or limiting the disclosure; and
 - (iii) if the disclosure cannot be avoided, only disclose Confidential Information to the extent necessary to comply, and use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

11. TERMINATION AND SUSPENSION OF TRADE MARK LICENCE

11.1 Termination by us

- (a) The Trade Mark Licence terminates immediately on termination of the PORA.
- (b) We may terminate the Trade Mark Licence by written notice effective immediately (or effective from any later date specified) if:
 - (i) we cease to have the right to grant the licence of the Trade Marks on the terms of these Licence Terms; or
 - (ii) you:
 - (A) engage in any conduct or practice that is reasonably likely, in our opinion, to adversely affect the Trade Marks, the goodwill associated with the Trade Marks, our rights to the Trade Marks or our or the Commonwealth's reputation;
 - (B) breach the PORA for any reason;
 - (C) do not comply with any of the standards and requirements of design, performance and quality specified in the PORA (including the Interoperability Requirements);

- (D) breach these Licence Terms and do not remedy that breach or act within 5 Business Days of being notified of the breach or act by us;
- (E) assign, charge or in any way encumber your interest in the Trade Mark Licence, or attempt to do so without our prior written consent;
- (F) subject to sections 415D, 434J and 451E of the *Corporations Act 2001* (as the case may be), an Insolvency Event occurs in respect of you;
- (G) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors;
- (H) you undergo a Material Change (other than a change of your legal name) or Change of Control); or
- (I) have your registration as a registered portal operator suspended or cancelled by us under the My Health Records Act.

11.2 Termination by you

If we cease to have the right to license the Trade Marks, your sole remedy is to terminate the Trade Mark Licence by notice to us in writing.

11.3 Termination for convenience

Either party may terminate the Trade Mark Licence (by giving not less than 6 months' written notice to the other party).

11.4 Consequences of expiry or termination

On termination or expiry of the Trade Mark Licence:

- (a) you must:
 - (i) immediately cease all use of the Trade Marks;
 - (ii) immediately destroy or return to us (at our election) any Material that we provided to you in relation to the Trade Marks, and any Confidential Information provided by us to you in relation to the Trade Mark Licence and these Licence Terms;
 - (iii) within 10 Business Days from the date of termination or expiry of the Trade Mark Licence, destroy or return to us (at our election), all Trade Mark Material within your possession, power or control and you further agree to certify that destruction has occurred if requested by us; and
 - (iv) immediately make all payments which are due and payable to us by you on or before the date of expiry or termination of the Trade Mark Licence.
- (b) Notwithstanding clauses 11.4(a)(ii) and 11.4(a)(iii) you may retain one copy of any Material, Trade Mark Material and Confidential Information to the extent required by Law and, to the extent applicable, subject to clause 10.

11.5 Suspension of Trade Mark Licence

The Trade Mark Licence is suspended, and you must not:

- (a) use the Trade Marks as trade marks; or

- (b) reproduce, communicate to the public and publish any copyright works subsisting in any of the Trade Marks for the purpose of exercising your rights in relation to the Trade Marks under the Trade Mark Licence,

at any time during the period for which your registration as a portal operator is suspended under the My Health Records Act.

11.6 Survival of obligations

The obligations in clauses 1 (Interpretation), 8 (Indemnities), 10 (Confidential Information), 11.4 (Consequences of expiry or termination), 12 (Notices), 14 (Dispute Resolution), and this clause 11.6 survive termination or expiry of the Trade Mark Licence and the PORA.

12. NOTICES

12.1 How a notice is given

- (a) A notice, consent or other communication under or in relation to these Licence Terms is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
- (i) if it is delivered, when it has been left at the addressee's address;
 - (ii) if it is sent by mail, three Business Days after it is posted;
 - (iii) if it is sent in electronic form when the sender receives confirmation on its server that the message has been transmitted;
 - (iv) if it is transmitted by 5.00 pm (Sydney time) on a Business Day – on that Business Day; or
 - (v) if it is transmitted after 5.00 pm (Sydney time) on the Business Day, or on a day that is not a Business Day – on the next Business Day.

12.2 Address for notices

A party's address and email address are those set out in **Attachment A**, or otherwise as the party notifies the other party.

13. AMENDMENT AND ASSIGNMENT

- (a) No variation of the Trade Mark Licence or these Licence Terms is binding unless agreed in writing between the parties.
- (b) We may assign or transfer its rights or obligations under the Trade Mark Licence and these Licence Terms to any person who becomes the owner of the Trade Marks without obtaining your prior consent.
- (c) You must not assign or transfer its rights or obligations under the Trade Mark Licence or these Licence Terms without our prior written consent.

14. DISPUTE RESOLUTION

Clause 11 of the PORA applies to disputes arising in relation to the Trade Mark Licence and these Licence Terms.

15. GENERAL

- (a) No waiver of a term or condition of the PORA, including these Licence Terms, will operate as a waiver of another breach of the same or of any other term or condition of the PORA, including these Licence Terms.
- (b) If a party does not exercise, or delays in exercising, any of its rights under the PORA, including under these Licence Terms or at Law, that failure or delay does not operate as a waiver of those rights.
- (c) A single or partial exercise by a party of any of its rights under this the PORA, including under these Licence Terms or at Law does not prevent the further exercise of any right.

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ATTACHMENT A – TRADE MARK LICENCE DETAILS

Item No	Subject	Details
1	Address for Notices	<p>Us</p> <p>Address: Level 25, 175 Liverpool Street, Sydney NSW 2000</p> <p>Email: help@digitalhealth.gov.au</p> <p>Attention: Chief Digital Officer</p> <p>Copy to: General Counsel: Legal@digitalhealth.com.au</p> <p>You</p> <p>Address: [address]</p> <p>Email: [email address]</p> <p>Attention: [name]</p>
2	App	[insert details of application]
3	Permitted Purpose	For the purpose of operating as a registered portal operator under the My Health Records Act, in accordance with the PORA, to support healthcare recipients' and their Representatives' access to the relevant healthcare recipients' My Health Records, by incorporating and applying the Trade Marks within the App solely for the purposes of describing the App as being able to interface with the My Health Record electronic health record system, operated and maintained by the System Operator.
4	Start Date	The date this PORA is signed by both parties.
5	Term	<p>From the Start Date until the earlier of the following dates:</p> <ol style="list-style-type: none"> the date the Trade Mark Licence expires or is terminated in accordance with these Licence Terms; and the date the PORA expires or terminates, as determined in accordance with the PORA.
6	Territory	Australia
7.	Guidelines	<p>(a) My Health Record Brand Identity Guide version 4.1 last updated 04/12/19, and updated versions available at https://www.digitalhealth.gov.au/healthcare-providers/initiatives-and-programs/my-health-record/my-health-record-design-assets.</p> <p>(b) For the purposes of clause 4.3 Notice with trade mark use, the Agency consents to you including., and you must include the following statement for each Trade Mark used by you, in a prominent notice accessible to users of your App:</p> <ul style="list-style-type: none"> via a menu item named "My Health Record", "About", "Help" or "Settings"; and in directly related user documentation for Portal.

Item No	Subject	Details
		<p>“[Trade Mark] is a registered trade mark of the Australian Digital Health Agency and is used under licence by [you] in Australia.”</p> <p>(c) You may only use the Trade Marks in the form set out in Attachment B:</p> <ul style="list-style-type: none"> (i) to initiate the processing of interfacing your App to the My Health Record system, in accordance with and in the manner depicted in section 2 of the Consent Requirements and Guidelines in the Interoperability Requirements; and (ii) within your App ‘Settings’ to demonstrate connection to the My Health Record system through your App. <p>To the extent of any inconsistency between the <i>Consent Requirements and Guidelines</i>, in the Interoperability Requirements, and these Licence Terms, these Licence Terms prevail to the extent of the inconsistency.</p>

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ATTACHMENT B – TRADE MARK DETAILS

Trade Mark/Logos	Registration/Application No.	Permitted Use
 The logo for My Health Record, featuring a stylized graphic of overlapping geometric shapes in green, blue, red, and orange, with the text "My Health Record" below it.	1713652	As specified in item 3 of Attachment A
 The logo for My Health Record, featuring a stylized graphic of overlapping geometric shapes in green, blue, red, and orange.	1485473	As specified in item 3 of Attachment A

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