National Secure Messaging Network

Declaration of Conformance

To: Australian Digital Health Agency help@digitalhealth.gov.au

From: Vendor name: ABN/ACN:

The Australian Digital Health Agency (the **Agency**) issues this Agency approved form (the **Declaration of Conformance**) which comprises the details in Part A and the Vendor Deed Poll in Part B, for software vendors to declare that their software system, including Software Product and Software Components (**Software System**) conforms to the mandatory requirements in the National Secure Messaging Network Conformance Profile (**Conformance Profile**) stated in Part A section 2.1 and published under the  [National Secure Messaging Network Conformance Assessment Scheme](https://developer.digitalhealth.gov.au/electronic-prescribing) (also known as the **CAS**).

The Vendor’s representations and obligations in this Declaration of Conformance will continue to apply notwithstanding any involvement of the Agency including its approval of the testing organisation and receipt of the test results and notwithstanding the entry of the Software System into the National Secure Messaging Network Register of Conformance (**Register**).

The Register is published at [https://www.digitalhealth.gov.au/about-us/policies-privacy-and-reporting/registers](http://www.digitalhealth.gov.au/about-us/policies-privacy-and-reporting/registers)

**INSTRUCTIONS TO VENDOR**

* Document the evidence confirming that the Software System conforms with the Conformance Profile (see above, Part A and Part B clause 2).
* In this Declaration of Conformance:
	+ enter details in Part A; and
	+ ensure the Vendor Deed Poll in Part B is signed by a person or people with legal authority and witnessed (with the appropriate execution and witnessing blocks ticked).
* Send the completed, signed and witnessed Declaration of Conformance to the Agency at help@digitalhealth.gov.au, unless the Agency directs that a hard copy of the Vendor Deed Poll signed under hand is required by post.
* Please contact the Agency before completing this Declaration of Conformance if:
	+ the Vendor is a trustee of a trust (see Part A section 1.1);
	+ the applicable execution block for the Vendor has not been included; or
	+ the Vendor is not eligible or is not intending to sign the Vendor Deed Poll using electronic signatures in compliance with the

*Corporations Act 2001* (Cth) and the *Electronic Transactions Act 2000* (NSW).

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| **PART A** |
| **SECTION 1: VENDOR AND SOFTWARE SYSTEM DETAILS** |
| **1.1 Vendor details** |
| **Vendor (name of legal entity)** |  |

**ABN/ACN**

## Is the Vendor making the Deed Poll as a trustee of any Trust?

**NO**

**YES** as trustee of *(please specify the name of the trust*):

*If yes, please provide the following documents to the Agency and await directions* ***before*** *completing this Declaration of Conformance:*

* *copy of the current trust deed including any amendments; and*
* *written confirmation from a beneficiary that:*
	+ *the trust deed and all amendments provided are current and complete;* ***and***
	+ *the Vendor is the currently appointed trustee.*

|  |  |
| --- | --- |
| **Contact number** |  |
| **Address** |  |  |
| Suburb: |  | State: |  | Postcode: |  |
| **1.2 Contact details *(telephone requires a direct contact number)*** |
|  |  | Name: |  | Position: |  |
| **Primary contact** |  |  |  |
|  |  |  |
|  |  | Email: | Telephone: |
|  |  | Name: |  | Position: |  |
| **Secondary contact** |  |  |  |
|  |  |  |
|  |  | Email: | Telephone: |

|  |
| --- |
| **1.3 Software System details** |
| * **Sending System**
 |
| * **Sending Edge Node**
 |
| * **Core Node**
 |
| * **Receiving System**
 |
| * **Receiving Edge Node**
 |
| * **Providing Directory**
 |

**PREVIOUS NEXT**

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| **2.1 Conformance Profile** |
| This Declaration of Conformance records your declaration that the Software System conforms to the mandatory requirements of this version of the Conformance Profile:Conformance Profile version number |

**PREVIOUS NEXT**

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| **PART B** |
| **VENDOR DEED POLL** |

This Deed Poll is made by the software vendor whose details are set out in section 1.1 of Part A (the **Vendor**), in favour of the Australian Digital Health Agency (the **Agency**) and the Commonwealth as represented by the Department of Health and Aged Care, Services Australia and their successor entities (the **Commonwealth**).

## Deed Poll and inconsistency

1. This Deed Poll comprises the following parts:
	1. clauses 1 to 38 of Part B; and
	2. sections 1 and 2 of Part A;

To the extent that there is an inconsistency between any of the terms in those documents, the terms of the document higher in the list will govern to the extent of the inconsistency.

Subject to clause 28 no confirmation, licence, invoice or similar document issued by or on behalf of the Vendor or any of its personnel will vary or form part of this Deed Poll.

## Attestation of Software System conformance

1. The Vendor submits this Declaration of Conformance with signed Deed Poll to attest that:
	1. the information entered in Part A is true and correct, and the Vendor agrees to be bound by the warranties, terms and conditions in Part B; and
	2. the Software System conforms to all mandatory conformance requirements in the Conformance Profile version specified in Section 2.1 of Part A.
2. The Vendor acknowledges that giving false or misleading information to a Commonwealth entity is a serious offence under sections 136.1 and 137.1 of the schedule to the *Criminal Code Act 1995* (Cth).

## Delivery, commencement of operation and expiration of this Deed Poll

1. This Deed Poll commences on the date the Deed Poll is validly executed by the Vendor and continues in operation until the Deed Poll is terminated under clause 23. The Agency may request and the Vendor agrees to provide a new Declaration of Conformance with signed Deed Poll at any time.

## Interpretation

1. The Vendor acknowledges that for the purposes of this Deed Poll:
	1. **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.

## Vendor obligations

1. The Vendor must comply and remain compliant with the *National Secure Messaging Network Conformance Assessment Scheme* as amended from time to time.
2. Any updates will be communicated via the Developer Portal.
3. The Vendor must not represent that any level of conformance or listing in the Register is any endorsement, affiliation or sponsorship of the Vendor or of any part of the Software System. The Vendor is not granted any right to use the trade marks or logos of the Agency or the Commonwealth through this Deed Poll or through the Vendor’s participation in secure messaging. The Vendor acknowledges that any use of the trade marks or logos of the Agency or of the Commonwealth would be subject to a separate trade mark license deed or other contract.
4. The Vendor provides this Declaration of Conformance to the Agency. The Vendor must retain evidence of their conformance for the term of this Deed Poll and for a period of seven years following termination.

**PREVIOUS NEXT**

#  VENDOR DEED POLL continued

1. The Vendor acknowledges that the Agency or its representatives may from time to time conduct, handle or facilitate:
2. quality assurance analysis of the conformance and compliance of the Software System against the relevant Conformance Profile (**Quality Assurance Analysis**); and
3. administrative or statutory reviews, inquiries, investigations, audits or complaints in connection with National Secure Messaging Network systems (including data related issues).

At the Agency’s request, and on reasonable notice, the Vendor must at its cost provide reasonable assistance in relation to any such activities. This may include, but is not limited to, providing access to material, records, personnel and computer hardware, software and equipment associated with the Software System and, when requested, copies of the Software Product and Software Components. To avoid doubt, the Vendor agrees that the Agency or its representatives are not obligated to treat information in connection with a Quality Assurance Analysis as confidential information.

#  VENDOR DEED POLL continued

1. The Vendor must promptly notify the Agency if:
2. the Software System becomes non-conformant, or the Vendor suspects that the Software System may no longer conform, with the Conformance Profile;
3. there are changes or upgrades to the Software System;
4. there is an error or other issue in the Software System that will or has the potential to impact on the operation, security, integrity, clinical safety or reputation of secure messaging;
5. there is a material change in the Vendor’s legal structure, or the Vendor is involved in a merger or acquisition; or
6. the Vendor’s nominated contact person(s), or their contact details, change.
7. The Vendor agrees that the Software System will not introduce any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code (**Harmful Code**) in any way. If the Vendor becomes aware that Harmful Code has or might have been introduced, the Vendor must immediately notify the Agency, giving details of the circumstances.
8. If:
9. the Vendor notifies the Agency of an error or other issue in the Software System under clause 10 or clause 11;
10. a Quality Assurance Analysis of the Software System reveals an issue with the Software System;
11. the Software System has or may have introduced Harmful Code into secure messaging systems; or
12. the Agency becomes aware of an error or issue, or potential error or issue, in the Software System, the Vendor must:
13. (to the extent the error, issue or introduction of Harmful Code has not been confirmed) promptly confirm whether or not the error, issue or introduction of Harmful Code has occurred and inform the Agency;
14. follow Agency direction on remediation actions and timeframes to address the error or issue ; and
15. implement at the Vendor’s own cost the agreed remediation actions in the agreed timeframes.
16. The Vendor acknowledges that if:
17. the Agency and Vendor cannot agree on the existence or cause of an error or other issue (including a non-conformance issue); or
18. the Vendor fails to implement the remediation actions and in the timeframes directed by the Agency,

the Agency may take any action it considers necessary including withdrawing or removing the Software System from

the Register, and the Vendor will remain liable for any non-conformance notwithstanding any detection by the Agency of non- conformance, errors or other issues or Agency directions to remediate them.

**PREVIOUS NEXT**

#  VENDOR DEED POLL continued

## Audit

1. The Vendor must:
2. keep adequate records in sufficient detail to allow the Agency to determine the Vendor’s compliance with this Deed Poll;
3. give the Agency or its representatives access on reasonable notice to conduct audits and request evidence of conformance in connection with secure messaging systems (including data related issues); and
4. at its own cost provide reasonable assistance in relation to any activities referred to in clause 14b, including but not limited to providing access to material, records, personnel, computer hardware, software and equipment associated with the Software System.

## Variation to Conformance Assessment Scheme and Conformance Profile

1. The Vendor acknowledges that the Conformance Assessment Scheme, the Conformance Profile and associated technical framework documents forming part of the Conformance Assessment Scheme will be updated or replaced from time to time, and that the Agency will withdraw support for previous versions. The Vendor must complete self-assessment for any new or updated conformance requirements to ensure that its product/s adhere to any new or updated conformance requirements and comply with any directions issued by the Agency. If a Conformance Profile is not supported (or notice of withdrawal of support has been provided by the Agency), the Agency may, at its absolute discretion, take any action it considers necessary including withdrawing or removing the applicable Software System from the Register.

## Warranties

1. The Vendor represents and warrants that:
2. everything in the Declaration of Conformance is true and correct;
3. it has not placed any reliance upon any representation or statement made by the Agency or the Commonwealth, or any of the Agency or the Commonwealth’s officers, employees, contractors or agents for the purposes of entering into this Deed Poll;
4. it enters into this Deed Poll based on its own investigations, interpretations, deductions, information and determinations and that it has and will be deemed to have satisfied itself as to all matters which affect or may affect its obligations under this Deed Poll;
5. the Software System will not infringe the intellectual property rights or other rights of any person; and
6. it has the requisite power and authority to enter into this Deed Poll and to carry out the obligations contemplated by this Deed Poll.

**PREVIOUS NEXT**

# VENDOR DEED POLL continued

## Limitation of liability

1. Neither the Agency or the Commonwealth has any liability to the Vendor, or to any other party claiming through the Vendor, in respect of any loss the Vendor might incur or suffer (including as a result of negligence) that is directly or indirectly related to the Software System’s participation or non-participation in secure messaging which includes, without limitation, any decision to include, withdraw or remove the Software System from the Register, or any amendment to, replacement or deprecation of, a Conformance Profile.

## Vendor indemnities

1. The Vendor indemnifies both the Agency and the Commonwealth and their representatives against all liability, expense, loss, damage or cost reasonably sustained or incurred by the Agency or the Commonwealth (or their representatives) as a result of:
2. the Vendor’s breach of one or more terms of this Deed Poll; or
3. any claim made or threatened, or action taken, by a third party arising out of or in connection with:
	1. any negligent, unlawful or willfully wrong act or omission of the Vendor;
	2. an allegation that the Software System infringes the intellectual property rights or moral rights of the third party; or
	3. the Vendor’s breach of one or more terms of this Deed Poll.
4. The Vendor’s liability in respect of any of the indemnities above will be reduced proportionately to the extent that any negligent or other tortious act or omission of:
5. the Agency or its representatives;
6. the Commonwealth or its representatives; or
7. another vendor in relation to that vendor’s software system entered on the Register (except where the Vendor has any control over that other vendor or has contributed to that other vendor’s software system entered on the Register),

contributed to the relevant liability, expense, loss, damage or cost.

## Disputes

1. A party will not commence court proceedings relating to dispute arising from this Deed Poll except when that party seeks urgent relief from a court or when dispute resolution has failed under clause 21. If a party fails to comply with

clause 25, the other party is not required to undertake dispute resolution for the dispute in accordance with clause 21.

1. The parties will negotiate in good faith to settle a dispute arising between them and, if the dispute cannot be settled by negotiation (including negotiation between senior management of the parties) then, within 30 Business Days of the dispute being notified to senior management, the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute.
2. The Vendor must at all times during the dispute continue to fulfil its obligations under this Deed Poll. The Agency may, during the course of the dispute, take any action it considers necessary including temporarily suspending or removing the applicable Software System from the Register.

## Termination

1. The Vendor may terminate this Deed Poll by giving the Agency at least seven Business Days written notice. Without limiting the Agency’s rights or remedies in any way, if the Vendor terminates this Deed Poll, the Agency may immediately take any action it considers necessary including, without limitation, removing the Software System from the Register. The Vendor remains liable for the performance of its obligations under this Deed Poll up until the date of termination. This clause survives termination.

**PREVIOUS NEXT**

#  VENDOR DEED POLL continued

## Notices

24.A notice under this Deed Poll must be in writing, in English and signed by a person duly authorised by the sender. A notice or other communication is properly given or served by a party if that party:

1. delivers it by hand;
2. posts it; or
3. transmits it by electronic mail,

to the recipient’s address for notices specified below:

*The Agency’s notice details:* Australian Digital Health Agency Level 25, 175 Liverpool Street

Sydney NSW 2000

Chief Operating Officer contracts@digitalhealth.gov.au CC: General Counsel legal@digitalhealth.gov.au

*The Vendor’s notice details*: set out in Part A.

25.A notice given in accordance with clause 24 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

1. if delivered by hand, when the party who sent the notice holds a receipt for it, signed by a person employed by the intended recipient at the physical address for receipt of notices;
2. if sent by post from and to an address within Australia and correctly addressed, after seven Business Days;
3. if sent by post from or to an address outside Australia and correctly addressed, after 20 Business Days;
4. if sent by electronic mail, when received by the addressee party’s computer system or when the sending party’s computer generates written notification that the notice is received by the addressee party, whichever is earlier; and
5. if the delivery, receipt, or transmission of the notice is not on a Business Day or is after 5.00pm on a Business Day, at 9.00am on the next Business Day.

## General

1. A reference to this Deed Poll includes the Declaration of Conformance, to which this Deed Poll forms a part.
2. The meaning of general words is not limited by specific examples introduced by including, for example or similar expressions, and words in the singular include the plural and vice versa.
3. The Vendor must not vary this Deed Poll without seeking the Agency’s prior written consent to such variation.
4. The Vendor must not, without the prior written consent of the Agency, assign in whole or in part, its rights under this Deed Poll.
5. Any indemnity under this Deed Poll is independent and survives termination of this Deed Poll and any other term by its nature intended to survive termination of this Deed Poll survives termination of this Deed Poll, including clauses 14 and 16 to 38.
6. Nothing in this Deed Poll limits or restricts any function, power, right or entitlement of the Agency or the Commonwealth.
7. Failure by the Agency or the Commonwealth to enforce a condition of this Deed Poll will not be construed as in any way affecting the enforceability of that condition or this Deed Poll as a whole.
8. The parties acknowledge and agree that:
	1. nothing in this Deed Poll creates any agency, partnership, fiduciary relationship, or trust between the parties; and
	2. nothing in this Deed Poll authorises or permits one party to incur any liabilities or undertake any obligations on behalf of or in the name of the other party.
9. The Vendor must, in the performance of this Deed Poll, comply with and ensure its personnel, officers and contractors comply with the laws from time to time in force in the State, Territory, or other jurisdictions in which any part of this Deed Poll is to be carried out.

**PREVIOUS NEXT**

#  VENDOR DEED POLL continued

1. Where the Agency has received a request for access to a document created by, or in the possession of, the Vendor or any subcontractor that relates to the performance of this Deed Poll (but not to the entry into this Deed Poll), the Agency may at any time by giving notice require the Vendor to provide the document to the Agency and the Vendor must, at no additional cost to the Agency, promptly comply with the notice but in any event no later than 10 Business Days from the date of receipt of the Agency’s request.
2. The Vendor acknowledges and agrees that the primary and secondary contacts nominated in section 1.2 of Part A have consented to their contact details (as set out in section 1.2 of Part A ) being made publicly available in association with the Register.
3. This Deed Poll is governed by, and will be construed according to, the laws of the state of New South Wales.
4. This Deed may be executed by electronic means (including by applying an electronic signature or by emailing a signed version of this Deed in scanned format). The parties to this Deed agree that execution of this Deed 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.

**EXECUTED** as a deed.

* Tick the signature block applicable to your entity type (i.e. BLOCK A, B or C)

*By ticking those boxes you are confirming the correct execution blocks that apply to this deed. If the applicable signature block for your entity type is not included, please inform the Agency so it can be included.*

**INSTRUCTIONS TO VENDOR**

**Vendor name:**

**ABN/ACN:**

in accordance with the requirements of section 127 of the *Corporations Act 2001* on: **Date:**

**SIGNATURE BLOCK A**:*TICK FOR DEEDS EXECUTED BY A COMPANY WITH MULTIPLE DIRECTORS*

## by:

Printed name of Director Signature of Director

Printed name of Director / Company Secretary / Company Secretary

**SIGNED, SEALED AND DELIVERED** for and on behalf of

**SIGNATURE BLOCK B:** *TICK FOR DEEDS EXECUTED BY A COMPANY WITH A SOLE DIRECTOR*

**SIGNED, SEALED AND DELIVERED** for and on behalf of:

## Vendor name:

**ABN/ACN:**

\_\_\_

in accordance with the requirements of section 127 of the *Corporations Act 2001* on: **Date:**

by authority of its sole director/secretary:

Printed name of Sole Director/Secretary Signature of Sole Director/Secretary

**SIGNATURE BLOCK C:** *TICK FOR DEEDS EXECUTED BY A COMPANY TRUSTEE*

## SIGNED, SEALED AND DELIVERED by

**Vendor name:**

**ABN/ACN:**

pursuant to section 127 of the *Corporations Act 2001* on **Date:**

## by:

Printed name of Director Signature of Director

*who represents and warrants that he/she has the authority to bind the Trustee consistent with the terms of the Trust Deed*

# - END OF FORM –

**Save the filled form. Print the form.**

**SAVE**

**PRINT**

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