

# NASH Organisation Certificate Tracker Software

## Software Licence Terms and Conditions

THESE TERMS AND CONDITIONS FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND NEHTA. YOU ACKNOWLEDGE AND AGREE THAT THESE TERMS AND CONDITIONS APPLY TO YOUR ACCESS TO, AND USE OF, THE NASH ORGANISATION CERTIFICATE TRACKER SOFTWARE. IN INSTALLING, ACCESSING OR USING THE NASH ORGANISATION CERTIFICATE TRACKER SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD, AND AGREE TO BE BOUND BY, THESE TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, THEN YOU MUST REFRAIN FROM THE INSTALLATION OF THE NASH ORGANISATION CERTIFICATE TRACKER SOFTWARE OR, ONCE INSTALLED, UNINSTALL AND DISCONTINUE ANY USE OF THE NASH ORGANISATION CERTIFICATE TRACKER SOFTWARE.

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### 1. Grant of Licence

Subject to these terms and conditions, NEHTA grants to You a worldwide, non-exclusive, non-transferable, royalty-free licence (without any right to sub-license) for the Term to install, access and use the NASH Organisation Certificate Tracker Software for the sole purpose of searching and inspecting NASH PKI Organisation Certificates issued to You.

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### 2. Licence Conditions

2.1 You acknowledge and agree that the NASH Organisation Certificate Tracker Software must only be installed, accessed and used:

- (a) for Non-Production Use;
- (b) in accordance with the normal operating procedures specified by NEHTA included as part of the NASH Organisation Certificate Tracker Software or as otherwise notified by NEHTA from time to time; and
- (c) in compliance with all Applicable Laws (including *My Health Records Act* 2012 (Cth), *Healthcare Identifiers Act* 2010 (Cth) and *Privacy Act* 1988 (Cth)).

2.2 You acknowledge and agree that You:

- (a) have obtained the NASH Organisation Certificate Tracker Software from NEHTA's website;
  - (b) are solely responsible for the installation, access, use, supervision, management and control of the NASH Organisation Certificate Tracker Software (including the correct installation and operation of the NASH Organisation Certificate Tracker Software);
  - (c) must ensure that the NASH Organisation Certificate Tracker Software is protected at all times from misuse, damage, destruction or any form of unauthorised access or use; and
  - (d) promptly notify NEHTA of any misuse, damage, destruction or any form of unauthorised access to or use of the NASH Organisation Certificate Tracker Software by any person.
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## 2.3 You must not:

- (a) transfer, distribute, hire, rent or lease the NASH Organisation Certificate Tracker Software;
- (b) directly or indirectly cause, permit or assist any other person to obtain a copy of the NASH Organisation Certificate Tracker Software through any means other than by directing them to NEHTA's website;
- (c) provide use of or access to the NASH Organisation Certificate Tracker Software through any service bureau, timesharing, application service provider or other similar managed or distributed provision of software services via a network. The foregoing shall not prohibit the installation of the NASH Organisation Certificate Tracker in a hosted or cloud computing environment accessible solely by You;
- (d) copy, modify or reproduce the NASH Organisation Certificate Tracker Software except to the extent expressly permitted or authorised by these terms and conditions or under an Applicable Law;
- (e) disassemble, decompile, reverse assemble, reverse compile or otherwise reverse engineer the whole or any part of the NASH Organisation Certificate Tracker Software except to the extent expressly authorised by an Applicable Law;
- (f) attempt to do any of the above acts in paragraphs (a), (b), (c), (d) and (e); or
- (g) cause, permit or assist any other person directly or indirectly to do any of the above acts in paragraphs (a), (b), (c), (d), (e) and (f),

except and only to the extent expressly permitted by Applicable Law.

- 2.4 Portions of the NASH Organisation Certificate Tracker Software contain third party software and are subject to separate terms and conditions set out in clause 4 (**Third Party Software Licence Terms**). You agree that Your access to and use of the NASH Organisation Certificate Tracker Software is subject to, and You must comply with, those Third Party Software Licence Terms.

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### 3. New Releases and Updates

- 3.1 NEHTA may, in its absolute discretion, offer to You at no charge any new releases or updates of the NASH Organisation Certificate Tracker Software (**New Releases and Updates**) that NEHTA generally provides, without charge, to licensees of the NASH Organisation Certificate Tracker Software as and when they become available.
- 3.2 You must take delivery of, and install, any New Release or Update which NEHTA directs You to take delivery of, and install. Without limiting any other provision in these terms and conditions, if You fail to comply with the foregoing:
- (a) NEHTA shall have no liability to You in respect of any Loss suffered or incurred by You directly or indirectly arising from or in connection with such failure; and
  - (b) You must indemnify and keep indemnified NEHTA from and against any and all Loss suffered or incurred by NEHTA directly or indirectly arising from or in connection with such failure.

3.3 Where any New Release or Update is provided by NEHTA under clause 3.1:

- (a) these terms and conditions will continue to apply in all respects to the New Release or Update, which shall be deemed to form part of the NASH Organisation Certificate Tracker Software for the purpose of these terms and conditions; and
- (b) You shall delete all previous copies of the NASH Organisation Certificate Tracker Software (prior to the New Release or Update) or otherwise deal with such copies in accordance with NEHTA's directions.

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#### 4. Warranties, liability and indemnities

4.1 Subject to clause 4.3, the NASH Organisation Certificate Tracker Software is provided to you on an "as is" basis and NEHTA makes no express representations, warranties or guarantees in respect of the NASH Organisation Certificate Tracker Software or its use by You (including any guarantee, condition or warranty of merchantability, acceptable quality, fitness for purpose or fitness for disclosed result).

4.2 Without limiting the generality of clause 4.1, You acknowledge and agree that You are solely responsible for:

- (a) any Loss arising from or in connection with any expired certificates not identified by the NASH Organisation Certificate Tracker Software;
- (b) ensuring that Your access, use or handling of digital certificates or key stores using the NASH Organisation Certificate Tracker Software complies with all Applicable Laws (including any Applicable Laws relating to privacy or health records);
- (c) any Loss arising from or in connection with Your access, use or handling of digital certificates or key stores using the NASH Organisation Certificate Tracker Software.

4.3 To the maximum extent permitted by law, NEHTA's liability under any guarantee, condition or warranty, or any right or remedy, under any legislation or implied into these terms and conditions by any legislation (**Statutory Warranties**) is hereby excluded. Nothing in these terms and conditions removes or limits any of the Statutory Warranties under consumer protection legislation and which are not permitted to be excluded. To the extent that NEHTA has any liability to You under consumer protection legislation and such liability may not be excluded, You agree that NEHTA's liability shall be limited, at the exclusive option of NEHTA, to:

- (a) in the case of a breach relating to the supply of goods: the replacement of the goods, the repair of the goods, the supply of equivalent goods or the payment of the cost of repairing or replacing the goods or supplying equivalent goods; and
- (b) in the case of a breach relating to the supply of services: resupplying the services or payment of or reimbursement for the cost of having the services resupplied,

and you acknowledge that this limitation of liability is fair and reasonable in all the circumstances.

4.4 To the maximum extent permitted by law:

- (a) NEHTA excludes all liability for Loss (including any consequential or indirect loss, loss of or corruption to data, loss of information, loss of business, loss of profits, loss of revenue, loss of business opportunity or loss of or damage to goodwill or reputation or any economic loss) suffered or incurred by You in connection with your access to and use of the NASH Organisation Certificate Tracker Software; and
  - (b) NEHTA's total aggregate liability (whether in contract, tort or otherwise) to You under or in connection with these terms and conditions is limited to the amount of \$1,000.
- 4.5 You agree to indemnify, and keep indemnified, NEHTA and its officers, employees and agents (**those indemnified**) from and against all Loss suffered or incurred by those indemnified in connection with:
  - (a) any breach of any obligation or warranty under these terms and conditions by You; or
  - (b) any negligent, wrongful or unlawful act or omission by You in connection to your access to, or use of, the NASH Organisation Certificate Tracker Software.

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## 5. Intellectual Property Rights

- 5.1 You acknowledge that:
  - (a) NEHTA (or licensors to NEHTA) remain the sole owner of all Intellectual Property Rights in the NASH Organisation Certificate Tracker Software (including any New Releases or Updates); and
  - (b) there is no transfer of title or ownership to You of any Intellectual Property Rights in the NASH Organisation Certificate Tracker Software or any New Releases or Updates of the NASH Organisation Certificate Tracker Software.
- 5.2 If the NASH Organisation Certificate Tracker Software is modified by You, on Your behalf or with any third party (whether or not authorised pursuant to these terms and conditions):
  - (a) all Intellectual Property Rights in the NASH Organisation Certificate Tracker Software so modified shall vest in, or remain with, NEHTA on and from the date of its creation;
  - (b) to the extent that the You have any right or interest in the NASH Organisation Certificate Tracker Software so modified, You assign to NEHTA all Intellectual Property Rights arising out of any modifications to the NASH Organisation Certificate Tracker Software; and
  - (c) You agree to execute all such documents and perform such other acts as are necessary or desirable to give effect to this clause 5.

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## 6. Confidentiality

- 6.1 Each Party must keep the Confidential Information of the other party (**Disclosing Party**) confidential. A party who receives the Disclosing Party's Confidential Information (**Receiving Party**) must not, without the Disclosing Party's prior written consent:
  - (a) directly or indirectly disclose any part of the Confidential Information to any third party; or

- (b) use any of the Confidential Information for any purpose other than in accordance with these terms and conditions.
  - 6.2 A Receiving Party must take all reasonably necessary precautions to prevent any unauthorised disclosure or use of the Disclosing Party's Confidential Information and inform the Disclosing Party of any suspected or actual unauthorised disclosure or use.
  - 6.3 A Receiving Party will not be in breach of its obligations under this clause 6 if it discloses information:
    - (a) that is, or subsequently enters, the public domain, other than through a breach by it of its obligations under this clause 6;
    - (b) that is required to disclose by law;
    - (c) was developed independently by it; or
    - (d) was provided to it by a third party who was not subject to any obligation or duty of confidentiality at the time it was provided to the Receiving Party.
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## **7. Termination**

- 7.1 NEHTA may immediately terminate these terms and conditions if You are in breach of any of these terms and conditions or otherwise by giving You not less than three (3) days' written notice.
  - 7.2 Upon any termination of these terms and conditions:
    - (a) You must uninstall and irretrievably delete all copies of the NASH Organisation Certificate Tracker Software in its possession, custody or control; and
    - (b) the Receiving Party of Confidential Information will immediately destroy or return to the Disclosing Party all such Confidential Information in its possession, custody or control.
  - 1.2 Termination of these terms and conditions shall not affect any accrued rights and obligations of the parties that have arisen prior to the date of termination.
  - 1.3 The provisions of clauses 4, 5, 6, 7 and 2 survive termination of these terms and conditions.
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## **2. General**

- 2.1 NEHTA may vary the terms of these terms and conditions by giving you not less than fourteen (14) days' notice in writing. (Publication of those varied terms and conditions on NEHTA's website shall be sufficient notice in writing to You). Your continued access to, or use of, the NASH Organisation Certificate Tracker Software after that fourteen (14) day period shall be deemed to be acceptance by You of these terms and conditions as varied.
  - 2.2 In these terms and conditions, unless the context otherwise requires:
    - (a) headings do not affect interpretation;
    - (b) singular includes plural and plural includes singular;
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- (c) words of one gender include any gender;
  - (d) another grammatical form of a defined expression has a corresponding meaning;
  - (e) use of the word "including" and similar expressions are not, nor are they to be interpreted as, words of limitation;
  - (f) reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
  - (g) reference to a person includes a corporation, joint venture, association, government body, firm and any other entity;
  - (h) reference to a party includes that party's personal representatives, successors and permitted assigns; and
  - (i) a provision must not be construed against a party only because that party prepared it.
- 2.3 The relationship between the parties is that of independent contractors and these terms and conditions do not constitute, and shall not be interpreted as, an agency, partnership or joint venture between NEHTA and You.
- 2.4 You must not assign, novate, encumber or otherwise deal in any way with any of your rights and obligations under these terms and conditions without the prior written consent of NEHTA. NEHTA may, without the need to obtain Your prior written consent, assign or novate (and You agree to execute all documents reasonably required by NEHTA to novate) its rights and obligations under these terms and conditions.
- 2.5 A provision of these terms and conditions or a right created under these terms and conditions may not be waived except in writing, signed by the party giving the waiver.
- 2.6 These terms and conditions are governed by the law of the State of New South Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the division of the Federal Court of Australia in that jurisdiction, and the courts of appeal from them. No party may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.
- 2.7 If any provision of these terms and conditions is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation it must be read down so that is valid and enforceable (or, if it cannot be so read down, severed) so that the validity and enforceability of the remaining provisions are not affected.

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### 3. Definitions

- 3.1 In these terms and conditions, unless the context otherwise requires:

**Applicable Laws** means any and all statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time which relate, in any way, to your access to or use of the NASH Organisation Certificate Tracker Software or any data or information obtained from it;

**Confidential Information** means the confidential information of a party which relates to the subject matter of these terms and conditions and includes, in NEHTA's case, information

relating to NEHTA, the NASH Organisation Certificate Tracker Software and the NASH PKI Organisation Certificate, but expressly does not include these terms and conditions.

**Disclosing Party** has the meaning given to the term under clause 6.1.

**Intellectual Property Rights** means any and all:

- (a) current and future registered and unregistered rights in respect of copyright, designs, semiconductor or circuit layouts, trade marks, trade names, business names, trade secrets, know-how, confidential information, patents, inventions and discoveries;
- (b) applications for grant of any of the above;
- (c) other rights of a similar nature arising (or capable of arising) under statute or at common law in the Commonwealth of Australia or anywhere else in the world; and
- (d) other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

**Loss** means any loss, damage, cost, expense, charge or liability (including, without limitation, liability to a third party) of any kind.

**My Health Record System** means the shared electronic health record system currently accessible at <https://myhealthrecord.gov.au> and any similar shared electronic health record system which replaces or supersedes it.

**NASH Organisation Certificate Tracker Software** means the software application provided by NEHTA to You for the purpose of searching and inspecting NASH PKI Organisation Certificates and includes any accompanying documents, information and manuals relating to the software application.

**NASH PKI Organisation Certificate** means the public key infrastructure certificate required by You as an health provider organisation to access the My Health Record System and issued to You.

**Non-Production Use** means use solely for a purpose other than Production Use.

**Production Use** means any production use and expressly includes:

- (a) any use related to the administration and processing of personal, medical or patient data in a medical, clinical or operational setting; and
- (b) any use related to the provision of any medical, clinical or therapeutic advice, diagnosis, treatment, operation or procedure.

**Receiving Party** has the meaning given to the term under clause 6.1.

**Term** means from the date You first installed, accessed or used the NASH Organisation Certificate Tracker Software until the date of termination of these terms and conditions.

**You** means the person, business, company or organisation installing, accessing or using the NASH Organisation Certificate Tracker Software.

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## **4. Third Party Software Licence Terms**

### **4.1 Bouncy Castle Crypto APIs**

#### **License**

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The above copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

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