



Australian Government
Australian Digital Health Agency



My Health Record

Portal Operator Registration Agreement

My Health Record System
View only access



Note: The purpose of this Agreement is to satisfy the System Operator that the person applying to be a View Only 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 to be a portal operator under section 47 of the My Health Records Act 2012.

This Agreement comes into effect on the date both parties have executed this Agreement and you have signed the required application and registration forms, making you a Registered Portal Operator for the purposes of the My Health Records Act 2012.

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, 56 Pitt Street, Sydney NSW 2000

Portal Operator ("you", "your")

[insert company name]

ABN [insert]

Contact person:

[insert]

Phone number:

[insert]

E-mail address:

[insert]

Postal address:

[insert]

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 Provider organisations, registered repository operators and registered portal operators and registered contracted service providers to registered Healthcare Providers.
- C** Rights and obligations for Participants are set out in a number of places including:
 - I. the *My Health Records Act 2012*, *My Health Records Rule 2016*, *Healthcare Identifiers Act 2010* 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 the portal operator as a Registered Portal Operator. This Agreement is limited to a View Only Portal.

Definitions and interpretation

1 Definitions and rules for interpreting this Agreement are set out in clause 16.

Commencement and term

- 2**
 - 2.1 Subject to clause 2.2, this Agreement commences on the date it is executed by both parties and ends when it terminates in accordance with clause 14.
 - 2.2 The provisions of this Agreement, other than this clause 2 and clause 16 (Definitions and interpretation), 8 (Costs) and 15 (Miscellaneous), do not become binding unless and until you complete the Production Environment Access Request Form and the Portal Operator Registration Form and they are approved in writing by the System Operator (**Condition Precedent**).
 - 2.3 The Condition Precedent is for the benefit of the System Operator and may only be waived in writing by the System Operator in its absolute discretion.
 - 2.4 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**

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3.1 In order to be registered and remain registered as a Registered Portal Operator, you must have accurately completed the Production Environment Access Request Form and Portal Operator Registration Form and we must be satisfied that:

- (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:

- (a) we are satisfied that you do not satisfy all such requirements;
- (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 View Only 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 sets out conditions of your registration with the System Operator as a Registered Portal Operator, permitting you to provide a View Only Portal in accordance with this Agreement, the Interoperability Requirements, the approved Production Environment Access Request Form, Portal Operator Registration Form and all applicable Laws. You must not copy, record or store any System data. Except as required by compulsion of law, you must not use or disclose any System data for any purpose other than providing a View Only Portal.
- 3.5 You are not permitted, as a Registered Portal Operator for a View Only Portal, to hold any records of any System data and, if and to the extent you do hold any records of any System data, without limitation to any remedy available to the System Operator, you must delete all copies of that data.

**System
Operator
responsibilities**

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- 4.1 We will endeavour to ensure the System is available as required by Registered Healthcare Recipients and Participants. 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.

Compliance with Privacy Act and other Laws

- 5.1 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.
- 5.2 If clause 5.1 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.
- 5.3 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.
- 5.4 You must comply with, and ensure your employees, officers, agents and contractors comply with all Commonwealth and other applicable Laws, including the Privacy Act, the My Health Records Act and the My Health Records Rules. 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.
- 5.5 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 Privacy Commissioner, the Ombudsman, the Information Commissioner, the FOI 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.

Eligible Data Breach obligations

- 5.5A.1 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 as soon as possible, which must be no later than within three (3) days of becoming aware; and
- (b) unless otherwise directed by us, carry out an assessment in accordance with the requirements of the Privacy Act.

5.5A.2 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 operations 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.

5.5A.3 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.

Requirement to notify us of certain things

5.6 You must notify us of all matters you are required to notify to us in accordance with the My Health Records Act, My Health Records Rule, Privacy Act 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 or which is required to be notified to any person (including any individual or the Information Commissioner) under any Law.

5.7 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.

5.7A 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 View Only Portal (which, to avoid doubt, excludes outages due to scheduled or unscheduled maintenance on the View Only Portal) and at least 14 days before you cease providing the View Only Portal.

Requirement to comply with directions

5.8 You must comply with any reasonable direction we make to ensure that you or we comply with any applicable Law or Commonwealth policy.

Portal Operator location is within Australia

5.9 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 the portal you operate 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.

Interoperability Requirements

5.10 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 View Only Portal (including all relevant security requirements).

Communication

- 5.11 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

- 5.12 You must ensure that you facilitate access to the System only where:
- (a) the Registered Healthcare Recipient or their Representative has provided consent; or
 - (b) you are otherwise authorised by Law to do so.
- 5.13 You must ensure that, at or before the time that you seek consent of a Registered Healthcare Recipient from that recipient or his or her Representative, you explain each of your acts and practices that do or may fall within the scope of that consent.
- 5.14 To the extent practicable you must ensure that consents are current and specific. You must minimise any use of any bundled or general consents.

No endorsement

- 5.18 You must, unless otherwise agreed in writing by the System Operator, include a statement on your View Only Portal (that is sufficiently prominent to be easily noticed by users of the View Only 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 View Only 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 View Only Portal or any service or content provided by you or your Associates.

- 5.19 You must ensure that your marketing or promotional material and your terms of use of the View Only Portal do not state or imply any of the things referred to in clause 5.18 (a) to (c).

Customer communications

- 5.20 You must ensure that your communications with each Registered Healthcare Recipient:

- (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 View Only Portal,

make clear that if they wish to withdraw consent and cease accessing the System through facilitation of your View Only Portal, that does not mean they are deregistering with the System Operator as a Registered Healthcare Recipient for a My Health Record. You must advise your customers that, if they wish to cease to be a Registered Healthcare Recipient with a My Health Record, they should go to www.myhealthrecord.gov.au.

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 agree that, during the term of this Agreement, you must promptly provide to the System Operator, or its nominees, all assistance reasonably requested for any purpose associated with this Agreement or requested in accordance with any applicable Law, including and subject to reasonable notice, during reasonable times 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. The form and facilitation of access will be agreed in writing prior to access.

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	<p>You indemnify us, our employees, other officials, officers, agents and contractors (each an Indemnified Person) from and against any:</p> <ul style="list-style-type: none"> (a) Loss incurred by an Indemnified Person, including in dealing with any claim made against or threatened against the Indemnified Person; (b) Loss of or damage to the property of an Indemnified Person, <p>arising out of or in connection with:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) this Agreement; or (ii) your operations as a Registered Portal Operator.
Representations and warranties	10	<p>By executing this Agreement, you represent and warrant to us that:</p> <ul style="list-style-type: none"> (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 is accurate, complete, up to date and not misleading.

Resolving disputes

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- 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 14.3A; and
 - (b) does not prevent a party commencing legal proceedings for urgent interlocutory relief.

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

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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 13.5 and 13.6, 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:
- (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 under the Privacy Act;
 - (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

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- 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 My Health Record 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; or
- (g) you fail to satisfy any of your obligations under this Agreement and, in our reasonable opinion, the failure is not capable of remedy.

14.3A Without limiting the termination rights at clauses 14.1, 14.2 and 14.3, if our Chief Executive Officer forms 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.

14.4 Upon termination, 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 View Only Portal that you will be suspended from being, or will cease to be, a Registered Portal Operator;
- (b) your right to access the System will cease immediately at the time notified by us or as otherwise agreed in writing; and
- (c) in addition to your obligation in clause 14.4(a), you will take reasonable steps to minimise any Loss resulting from that termination, suspension or cancellation as a Registered Portal Operator.

14.5 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.

- 14.6 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 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.
- 15.7 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.
- 15.8 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

- 15.9 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) in relation to the System Operator, as permitted by clause 15.10; 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.

15.10 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;
- (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 15.9.

Reasonable Assistance by System Operator

15.11 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

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16.1 Unless a contrary intention appears, 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 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*.

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 View Only 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; or
- (g) is notified to us pursuant to clause 5.7A regarding your decision to cease providing the View Only Portal.

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)*.

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 the Australian Information Commissioner (OAIC).

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 "Operational Requirements", "Security Requirements" and "Consent Requirements" set out in the Schedule.

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 Rules.

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 Records 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 1988* (Cth).

Portal Operator Registration Form means a document of that name substantially in the form attached in **Annexure B** to this Agreement, as amended by the System Operator from time to time.

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 **Annexure A** 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.

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

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

View Only Portal means an electronic interface that facilitates access to the System by Participants and Registered Healthcare Recipients and does not copy, record or store that data.

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) a word or expression defined in the My Health Records Act has the meaning given to it in the My Health Records Act;
- (h) “including”, “includes”, “such as” and “in particular” do not limit the generality of the words which precede them or to which they refer;
- (i) 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;
- (j) 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;
- (k) 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
- (l) headings, footnotes and explanatory notes in the left hand column are for convenience and do not affect interpretation of this Agreement.

16.3 The italicised notes in the left hand column have been provided for convenience, and are for information only. They do not form part of this Agreement.

SCHEDULE - Interoperability Requirements

Part 1 – Operational Requirements

SCHEDULE - Interoperability Requirements

Part 2 - Security Requirements

SCHEDULE - Interoperability Requirements

Part 3 - Consent Requirements

Signing page

Executed as a Deed on _____

2018

System Operator

SIGNED, SEALED and DELIVERED by the Chief Executive Officer of the Australian Digital Health Agency

Tim Kelsey
Chief Executive
Australian Digital Health Agency

Portal Operator

Executed as a Deed on _____

2018

SIGNED, SEALED and DELIVERED by
[insert company name]
in the presence of:

Signature of witness

Full name and designation

Date

) _____
) *Signature of representative who by executing this agreement*
) *warrants that they are duly authorised to execute this deed*
) *on behalf of*
) _____
) _____
) _____
) *Full name and designation*

Annexure A - Production Environment Access Request Form

Annexure B - Portal Operator Registration Form