



1 Grant of Licence

Licence

- 1.1 The Department of Human Services grants You a non exclusive, non transferable, royalty free, fee free, worldwide, perpetual licence to use and copy the NASH PKI certificate Software and Materials to develop Your Software Product for the Designated Purpose.
- 1.2 Nothing in the grant of this Licence in any way transfers ownership of the Intellectual Property in the NASH PKI certificate Software and Materials to You.
- 1.3 This Licence gives You the right to use, copy and/or incorporate the NASH PKI certificate Software and Materials into Your Software Product and systems solely for use for the Designated Purpose.
- 1.4 Subject to clause 1.5, You are permitted to use the NASH PKI certificate Software and Materials so long as You comply with, and continue to comply with, this Licence and it has not been terminated.
- 1.5 To the extent that any of the NASH PKI certificate Software and Materials consist of source code which is incorporated into Your Software Product, the licence granted in respect of such NASH PKI certificate Software and Materials survives the termination of this Licence under clause 6.1 and continues in force and effect for so long as such NASH PKI certificate Software and Materials continue to be incorporated into Your Software Product.

Restrictions on the Department of Human Services

- 1.6 Unless you receive the written consent of the Department of Human Services, you may not:
 - a) use or make copies of the NASH PKI certificate Software and Materials contrary to this Licence
 - b) disclose the NASH PKI certificate Software and Materials to any person other than as provided for in this Licence
 - c) license, sub-license, lend, sell, assign or transfer the NASH PKI certificate Software and Materials, or any rights granted in this Licence, contrary to this Licence, **or**
 - d) remove any copyright notices or proprietary legends from the NASH PKI certificate Software and Materials, including any copyright notices or proprietary legends of third parties relating to third party Intellectual Property.

Use of the NASH PKI certificate Software and Materials

- 1.7 The Department of Human Services are not the developers of the NASH PKI certificate Software and Materials and so cannot verify that they are virus free. You agree that You are responsible for virus scanning all NASH PKI certificate Software and Materials before opening or copying to Your computer system.
- 1.8 You agree that the Department of Human Services is not responsible for the compatibility of Your Software Product or third party products developed using the NASH PKI certificate Software and Materials.

- 1.9 You agree to notify the Department of Human Services, as soon as practicable of any faults, inaccurate or incomplete information, or lack of third party notices or licences You identify in the NASH PKI certificate Software and Materials. The Department of Human Services will use reasonable endeavours to resolve issues.
- 1.10 You agree that the NASH PKI certificate Software and Materials and any accompanying or related files or documents are provided on an 'as is' basis and that the Department of Human Services does not provide any warranty with respect to the NASH PKI certificate Software and Materials.

2 Changes to NASH PKI certificate Software and Materials

- 2.1 You acknowledge and agree that:
 - a) some of the NASH PKI certificate Software and Materials provided under this Licence are not in final form and are subject to constant development and may change or be replaced at any time, **and**
 - b) the NASH PKI certificate Software and Materials may otherwise be added to or supplemented with additional materials.
- 2.2 It is Your responsibility to:
 - a) check the relevant Department of Human Services website, or otherwise contact the Department of Human Services, for any updates or additions to the NASH PKI certificate Software and Materials, **and**
 - b) decide whether you will use the NASH PKI certificate Software and Materials currently provided to develop Your Software Product, or otherwise wait for a later version of the relevant NASH PKI certificate Software and Materials to be released in order to develop Your Software Product.
- 2.3 Any revised drafts or replacements of, or additions to, the NASH PKI certificate Software and Materials form part of the NASH PKI certificate Software and Materials and are subject to this Licence.
- 2.4 For the avoidance of doubt and without limiting any other provisions of this Licence, the Department of Human Services assumes no liability for any loss or liability suffered by you as a result of developing Your Software Product using NASH PKI certificate Software and Materials which are subsequently updated or replaced by the Department of Human Services.

3 Duration of Licence

- 3.1 This Licence takes effect from the time the NASH PKI certificate Software and Materials are used by You in any way (whether authorised or not) and continues in force and effect until it is terminated by either You or the Department of Human Services.

4 Intellectual Property

NASH PKI certificate Software and Materials

- 4.1 The Department of Human Services acknowledges and agrees that all Intellectual Property rights in Software Products and other items developed by You in exercising Your rights pursuant to this Licence remain Your property.
- 4.2 You acknowledge and agree that all Intellectual Property rights in NASH PKI certificate Software and Materials vest in the Department of Human Services. You must secure all copies of the NASH PKI certificate Software and Materials within Your control against loss and unauthorised use or disclosure. You must promptly notify the Department of Human Services if you become aware of or suspect:
- any unauthorised use of, or access to, or disclosure of the NASH PKI certificate Software and Materials, **or**
 - a breach of the Department of Human Services Intellectual Property rights in the NASH PKI certificate Software and Materials.
- 4.3 On the termination of the Licence, you must deliver to the Department of Human Services or, in accordance with its directions, erase or otherwise deal with all copies of the NASH PKI certificate Software and Materials (to the extent not incorporated into the Software Product), unless notified otherwise by the Department of Human Services in writing.

Warranties as to Intellectual Property

- 4.4 The Department of Human Services warrants that:
- it has the right and authority to grant this Licence, **and**
 - in performing its obligations in connection with this Licence, it will not infringe the Intellectual Property rights or moral rights of any person.
- 4.5 You agree that Your sole remedy in relation to any claim You may have against the Department of Human Services for a breach of the warranty set out in clause 4.4 is for the Department of Human Services, at its option, to:
- replace the version of the NASH PKI certificate Software and Materials with a non-infringing version that has substantially equivalent functionality, **or**
 - modify the NASH PKI certificate Software and Materials so as to cause them to be free of infringement, **or**
 - procure, at no additional cost to You, the right for You to continue to use the NASH PKI certificate Software and Materials.
- 4.6 Each party must notify the other party as soon as practicable if any claim, demand or suit is brought, made, commenced or threatened against that party in which it is alleged that the receiving party has infringed the Intellectual Property rights of a third party by its use of the NASH PKI certificate Software and Materials in accordance with this Licence.

5 Disclaimer and limitation of liability

- 5.1 Subject to any statutory rights that cannot be excluded and to the extent permitted by law, the Department of Human Services makes no representations and gives no warranty of any kind, whether express or implied, in respect of the NASH PKI certificate Software and Materials, including in relation to accuracy, adequacy, completeness, merchantability or fitness for any particular purpose.

- 5.2 Without limiting clause 5.1 and to the extent permitted by law, neither the Department of Human Services, nor any of its Representatives is liable to You for any claim, loss, liability or expense (including consequential and indirect loss or damage) incurred by You or Your representatives arising out of, or connected with, the NASH PKI certificate Software and Materials, whether the claim, loss, liability or expense is based in contract, tort, statute or otherwise.
- 5.3 To the extent that the Department of Human Services or any of its Representative's liability cannot be excluded or limited by law (including where liability is the result of a breach of a term implied by law) to the maximum extent permitted by law, their liability is limited at the option of the Department of Human Services to:
- where the liability relates to goods, the replacement of the goods, the supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired, **and**
 - where the liability relates to services, the supplying of those services or the payment of the cost of having the services re-supplied.
- 5.4 In no event will the Department of Human Services, or any of its Representatives be liable for any direct or indirect loss or damage whether through negligence or otherwise (including, without limitation, special, consequential or exemplary damages, damages for loss of profits, goodwill, use or data, or other intangible losses) suffered by You or any other person as a result of, or in connection with Your use of the NASH PKI certificate Software and Materials.

6 Termination

- 6.1 Either party may terminate this Licence immediately at any time by written notice to the other party.
- 6.2 Without prejudice to clause 6.1, the Department of Human Services may terminate this Licence immediately by written notice if You are in breach of this Licence and You fail to rectify the breach **within 30 days** of written notice by the Department of Human Services to You (or within some other timeframe nominated by the Department of Human Services in the notice, whichever is the longer).
- 6.3 Clauses 1.5, 5 and 7 survive the termination of this Licence.

7 Assignment

- 7.1 Unless you receive the written consent of the Department of Human Services, you may not assign or otherwise transfer Your rights and obligations under this Licence.
- 7.2 The Department of Human Services may assign or otherwise transfer its rights and obligations under this Licence to any third party at its sole discretion.

8 Personal Information

- 8.1 This clause 8 applies only where and to the extent that You deal with Personal Information (within the meaning of the *Privacy Act 1988*) for the purposes of this Licence.
- 8.2 You must, when dealing with Personal Information in doing anything connected with this Licence:
- comply with the Australian Privacy Principles (within the meaning of the *Privacy Act 1988*),
 - not do anything that, if done by the Department of Human Services, would be in breach of the *Privacy Act 1988* by the Department of Human Services, **and**

- c) promptly notify the Department of Human Services of any breach of clauses 8.2a) or 8.2b).
- 8.3 You must comply with:
- any reasonable direction regarding Personal Information included in a notice given to You by the Department of Human Services, **and**
 - any guidelines, directions or policies issued by the Office of the Australian Information Commissioner or any adjudicator under an applicable privacy code which are included in a notice given to You by the Department of Human Services.
- 8.4 At the request of the Department of Human Services and on reasonable notice, You must provide reasonable assistance to the Department of Human Services or the Office of the Australian Information Commissioner to access Your premises, files, information technology systems and staff to monitor compliance by You of Your obligations under this clause 8.

9 Audits

- 9.1 You agree to promptly give to the Australian National Audit Office or other auditor appointed by that Office or the Department of Human Services, the assistance they reasonably require in conducting any audits, including full access at all reasonable times and on reasonable notice to all premises, equipment and NASH PKI certificate Software and Materials used or obtained in connection with the performance of this Licence.

10 Freedom of information

- 10.1 In clauses 10.2 and 10.3, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.
- 10.2 You acknowledge that this Licence is a Commonwealth contract.
- 10.3 You must cooperate with and assist the Department of Human Services as it may reasonably requires to enable it to comply with any obligations it may have under freedom of information legislation (including the *Freedom of Information Act 1982*), including:
- by observing the policies and protocols notified to You regarding complying with freedom of information legislation, **and**
 - if the Department of Human Services receives a request for access to a document or other material created by You, or in Your possession or any sub-licensee that relates to the performance of this Licence (and not to the entry into the Licence), providing to it or at its election giving it and its advisers access to and the means to copy, that document or other material.

11 Dispute resolution

- 11.1 You and the Department of Human Services must use all reasonable efforts to resolve any disputes arising in relation to this Licence.
- 11.2 A party may give the other party a notice of dispute (notice) in relation to this Licence and the parties' representatives must attempt to resolve the dispute referred to in the notice **within 10 Business Days** of the giving of the notice.
- 11.3 Where a dispute cannot be resolved under clause 11.2, the dispute must be referred to a senior officer of each party who must use reasonable endeavours to resolve the dispute **within 5 Business Days** (or such other time period as the parties agree).

- 11.4 Where a dispute cannot be resolved under clause 11.3, either party may refer the dispute to mediation to be conducted by a mutually agreed mediator, or failing agreement a mediator appointed by the President of the Australian Capital Territory Law Society. If the mediation does not resolve the dispute **within 30 Business Days** (or such other time period as the parties agree) then the parties may treat the mediation as terminated and may elect to commence legal proceedings.

- 11.5 The parties must continue to perform their obligations under this Licence despite the existence of a dispute or an alleged dispute.

- 11.6 Each party will bear its own costs in respect of any mediation under clause 11.4 and the costs of any mediator and any other venue costs for the mediation will be equally shared by the parties.

12 Notices and address

- 12.1 Unless otherwise specified in this Licence, any notice given under this Licence by a party must be in writing, addressed to the other party at the relevant address specified or referred to below, being the address for all matters arising from this Licence unless there is written notification to the contrary.

Department of Human Services address:

**Department of Human Services
Online Technical Support Liaison
PO Box 1001
TUGGERANONG ACT 2901**

Telephone: **1300 550 115**

Fax: **02 6143 7084**

Email: **otsliaison@humanservices.gov.au**

Your address: As provided by You to the Department of Human Services in this form.

- 12.2 Any notice must be:

- delivered by hand to that address, **or**
- sent by pre-paid post or registered mail to that address, **or**
- transmitted by facsimile to the facsimile number, **or**
- by electronic communication where this means of communication is provided to You by the Department of Human Services.

- 12.3 Any notice is taken to be received:

- if delivered by hand, on the day of delivery if that is a Business Day, otherwise on the next Business Day,
- if sent by post, on the third Business Day after posting,
- if sent by registered mail, 2 Business Days after the registration of the notice of posting,
- if sent by facsimile, and an 'ok' transmission report is received by the sender, on the day of transmission if that is a Business Day, otherwise on the next Business Day,
- if sent electronically, when received by Your email address notified to the Department of Human Services.

13 General

- 13.1 In this Licence, the following terms have the corresponding meaning:

Business Day means any day other than a Saturday, Sunday or public holiday (including public service holidays) throughout Australia, promulgated in the Commonwealth of Australia Gazette

Digital health record means a record which is part of the My Health Record system within the meaning of the *My Health Records Act 2012*

Intellectual Property means all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields

NASH PKI certificates means a PKI certificate issued by the Department of Human Services under its Health Sector PKI for accessing the My Health Record system and for secure messaging between Healthcare Provider Organisations

NASH PKI certificate Software and Materials means any and all software and other document, CD, smart card, card reader or information supplied by the Department of Human Services for use in connection with the Designated Purpose

Representative, in relation to a party, includes an employee, agent, officer, director, auditor, adviser, partner, consultant, joint venturer or sub-contractor or related body corporate (as that term is defined in the *Corporations Act 2001*, as amended) of that party, **and**

Software Product means any software and other product(s) developed by You and supplied to third parties by You, or in respect of which Intellectual Property in it is transferred or licensed to third parties by You.

13.2 In this Licence:

- a) words in the singular include the plural and words in the plural include the singular
- b) words importing persons include a partnership and a body whether corporate or otherwise
- c) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning
- d) an uncertainty or ambiguity in the meaning of a provision of this Licence will not be interpreted against the Department of Human Services just because the Department of Human Services prepared this Licence, **and**
- e) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation.

13.3 Any reading down or severance of a particular provision does not affect the other provisions of this Licence.

13.4 A waiver of any provision of this Licence must be in writing. No waiver of a term or condition will operate as a waiver of another breach of the same or of any other term or condition.

13.5 If a party does not exercise, or delays in exercising, any of its rights under this Licence or at law, that failure or delay does not operate as a waiver of those rights.

13.6 A single or partial exercise by a party of any of its rights under this Licence or at law does not prevent the further exercise of any right.