

## ***My eHealth Record* PARTICIPATING HEALTHCARE PROVIDERS (ORGANISATIONS) – TERMS AND CONDITIONS**

The obligations and responsibilities of Healthcare Providers (Organisations) who are registered to participate in *My eHealth Record* are set out below. Complying with these obligations will assist your organisation to ensure that the privacy of Consumers is appropriately protected in the handling of their health information.

### **1. AGREEMENT**

- 1.1 This Agreement is made between the Northern Territory of Australia, care of the Department of Health ABN 84 085 734 992 (**eHealthNT**) and the healthcare provider organisation which is identified in the application form (**your organisation**).
- 1.2 Participation in *My eHealth Record* is subject to your organisation's agreement to these terms and conditions and to the written approval of eHealthNT (which may be withheld in its absolute discretion, for example, if your computer system does not comply with security requirements or your organisation business is outside eHealthNT funding arrangements).
- 1.3 *My eHealth Record* involves an electronic health record created and held by eHealthNT. Your organisation's use of *My eHealth Record* is subject to these terms and conditions.
- 1.4 Your organisation must collect, use, disclose or otherwise handle all information sent to or accessed from a Consumer's record in *My eHealth Record* in accordance with the:
  - (a) Participating Healthcare Providers (Organisations) – Terms and Conditions;
  - (b) Privacy Laws;
  - (c) *My eHealth Record* Privacy Policy for Consumers;
  - (d) *My eHealth Record* Privacy Policy for Health Professionals;
  - (e) *My eHealth Record* Privacy Manual; and
  - (f) consent of a Consumer when they register to participate.

### **2. CONSUMER COMMUNICATIONS, ENROLMENT AND CONSENT**

Your organisation agrees to:

- (a) display the *My eHealth Record* sign (provided by eHealthNT) in your reception or in your consulting rooms so that Consumers know that your organisation is a Participating Healthcare Provider;
- (b) make available and display *My eHealth Record* information leaflets and application forms within your organisation for Consumer consumption;

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- (c) send to eHealthNT any completed Consumer Registration Forms you receive – please note that your organisation can assist Consumers with completing the form by confirming their identity;
  - (d) assist Consumers, where reasonably practicable, with information about enrolment, access or consent – key messages are in the Better Health Care with *My eHealth Record* information leaflet, including information about the *My eHealth Record* website and 1800 number;
  - (e) comply with the security protocols in the *My eHealth Record* Privacy Manual; and
  - (f) comply with your obligations under the Participating Healthcare Providers (Organisations) – Terms and Conditions.
- 2.2 In dealing with Consumers in relation to the *My eHealth Record* (including enrolment and consent), your organisation may talk to a Consumer about the benefits, enrolment process, consent and answer any questions they may have to the best of your knowledge. If a Consumer requires more information, your organisation may direct the Consumer to the *My eHealth Record* Website at [www.myhealthrecord.com.au](http://www.myhealthrecord.com.au) or provide to them the Better Health Care with *My eHealth Record* information leaflet.
- 2.3 If a Consumer wishes to withdraw from *My eHealth Record* and tells your organisation, your organisation agrees to notify eHealthNT within two working days and the withdrawal will be dealt with in accordance with the *My eHealth Record* Privacy Manual.
- 2.4 Your organisation agrees not to discriminate in the way it treats patients on the basis of whether or not they have a record in *My eHealth Record*, their consent options or if they choose to withdraw from *My eHealth Record*.

### **3. COLLECTION, STORAGE AND TRANSMISSION OF PERSONAL INFORMATION**

- 3.1 Your organisation agrees that they will only access records in *My eHealth Record* of patients that your organisation is treating who have not withdrawn their consent for their record to be accessed in *My eHealth Record*.
- 3.2 Your organisation agrees to only access a Consumer's record in *My eHealth Record* for the purpose of:
- (a) providing care and treatment to a Consumer in your organisation's care;
  - (b) ensuring information in a Consumer's record in the *My eHealth Record* is accurate, complete and up-to-date; or
  - (c) facilitating access by a Consumer to their record in the *My eHealth Record*.

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- 3.3 If your organisation collects health information and submits that information for inclusion into a Consumer's record in *My eHealth Record* your organisation must:
- (a) ensure that the health information sent to a Consumer's record in *My eHealth Record* is authored by an appropriately qualified clinician; and
  - (b) comply with the Data Quality Standards set out in the *My eHealth Record* Privacy Manual to ensure consistency of terminology and data quality.
- 3.4 Where it is reasonably practicable, your organisation should let a Consumer know when their record in *My eHealth Record* is about to be accessed or has been accessed.
- 3.5 Your organisation should seek clarification from a Consumer about sending health information about an episode of care where it is thought that a Consumer may be concerned about another healthcare provider accessing that information. For example, where the health information relates to a mental health condition, STI, termination of pregnancy or terminal illness.
- 3.6 Health information accessed from a Consumer's record in *My eHealth Record* and used in providing healthcare to a Consumer may be incorporated in a Consumer's medical record kept by your organisation at your organisation's facility. Once the health information is incorporated into a Consumer's medical record, your organisation must handle, use, correct and disclose it in a manner which is consistent with the *Privacy Act 1988 (Cth)*, the National Privacy Principles (NPPs) specified in that Act, applicable codes of conduct approved under that Act and any other relevant privacy legislation.

#### **4. WARRANTY ON DATA QUALITY OF INFORMATION PROVIDED BY YOUR ORGANISATION**

- 4.1 Subject to clause 4.2, your organisation must ensure that the information your organisation provides to *My eHealth Record* is true and correct and complies with the Data Quality Standards of the *My eHealth Record* Privacy Manual, and agrees to notify eHealthNT as soon as possible if your organisation becomes aware that information is incorrect.
- 4.2 Where a Consumer asks for information about an episode of care not to be sent to their record in *My eHealth Record*, your organisation must not include that information. However, where appropriate, your organisation should provide advice to a Consumer about the consequences of not sending or accessing information. Your organisation should note the Consumer's decision and the explanation in the Consumer's medical record kept by your organisation at your organisation's facility.

#### **5. USE OF YOUR ORGANISATIONS INFORMATION**

Your organisation agrees to eHealthNT providing the business name, address and telephone number of your organisation as a Participating Healthcare Provider in the *My eHealth Record* to Consumers, the National eHealth Transition Authority or

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Commonwealth Department of Health and Ageing. This information may be used to contact your organisation regarding an evaluation of *My eHealth Record*.

## **6. USE OF CONSUMERS' RECORDS IN MY EHEALTH RECORD**

6.1 Your organisation must take reasonable steps to ensure that Authorised Users do not access or collect health information from Consumers' records in *My eHealth Record* unless such access or collection is for the purpose of providing health care to the Consumer, checking that health information sent to *My eHealth Record* by your organisation is accurate, complete and up-to-date or to facilitate access by a Consumer to their record in *My eHealth Record*.

## **7. CONSUMER ACCESS**

7.1 A Consumer may ask to view the clinical information, or to correct information, held in their record in *My eHealth Record*. Your organisation may assist a Consumer with this request at the point of care or contact eHealthNT to assist with the request.

7.2 If a Consumer requests access to, or to correct information held in, their record in *My eHealth Record*, your organisation may deal with that application for access pursuant to the *My eHealth Record Privacy Manual* or contact eHealthNT to assist with the request.

7.3 If a Consumer's request for correction relates to information contributed to their record in *My eHealth Record* by another health care provider, your organisation should contact eHealthNT or the other healthcare provider.

7.4 Please note that Consumers may apply to eHealthNT or to another Participating Healthcare Provider for access to the information held in their record in *My eHealth Record* and your organisation may not be consulted in relation to that application. ***Therefore, it is important that information is not included in a summary that is sent to My eHealth Record that could pose a serious threat to the life or health of any individual.***

## **8. COMPLAINTS AND CLAIMS**

8.1 If your organisation receives a complaint in relation to your organisation's involvement with *My eHealth Record*, your organisation should seek to resolve that complaint at the point of care and must notify eHealthNT within two working days that a complaint has been received and the action being taken.

8.2 If your organisation receives any other complaint in relation to *My eHealth Record*, please direct the complainant to *eHealthNT* as soon as possible.

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8.3 If your organisation is of the belief that it has breached obligations under this Agreement or a breach of privacy has occurred in relation to *My eHealth Record* or personal information contained in *My eHealth Record* is inaccurate, incomplete or corrupted, your organisation must:

- (a) promptly (and without delay) notify eHealthNT in writing, providing such details as reasonably requested by eHealthNT; and
- (b) promptly (and without delay) take such steps (including as reasonably requested by eHealthNT) to secure, recover, update or correct the personal information (as applicable).

## **9. REPORTING**

From time to time, eHealthNT may need to collect information to evaluate *My eHealth Record*. Your organisation agrees to consider requests from eHealthNT relating to participation in such evaluation activities.

## **10. AUDIT AND GOVERNANCE**

10.1 Your organisation understands that eHealthNT may implement quality control, audit and governance measures as set out in the *My eHealth Record Privacy Manual*.

## **11. TRAINING**

11.1 Training will be provided to Authorised Users in relation to the use of *My eHealth Record*. Information about training will be provided to your organisation.

## **12. FEES AND CHARGES**

*My eHealth Record* is funded by eHealthNT and by the Commonwealth Department of Health and Ageing. There is no fee or charge payable by your organisation to eHealthNT for participating in *My eHealth Record*, other than fees payable by your organisation to third party vendors for hardware or software or internet usage.

## **13. INTELLECTUAL PROPERTY AND MEDICAL RECORDS**

Your organisation hereby grants to eHealthNT a perpetual, irrevocable, royalty-free and licence-fee free, worldwide, non-exclusive licence (including a right to sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate and exploit all Intellectual Property Rights in works created by your organisation pursuant to the provision of information to *My eHealth Record* under this Agreement.

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## 14. MY EHEALTH RECORD DISCLAIMER AND LIMITATION OF LIABILITY

- 14.1 Whilst eHealthNT will use its reasonable endeavours to ensure that *My eHealth Record* is accurate, ***eHealthNT is not able to guarantee the accuracy, completeness or timeliness of the content in My eHealth Record*** because, for example:
- (a) the content is provided by Participating Healthcare Providers, not eHealthNT;
  - (b) Consumers may choose to not to provide information during consultations;
  - (c) the clinical presentation of Consumers change; and
  - (d) Consumers may choose to exclude information from their record in *My eHealth Record*.
- 14.2 *My eHealth Record* does not contain a complete medical history and your organisation should independently question Consumers when providing health care, in addition to the use of their record in *My eHealth Record*.
- 14.3 eHealthNT has no responsibility or liability in relation to any direct or indirect loss or damage that may incur, including damage to software or hardware arising from the use of or access to *My eHealth Record*.
- 14.4 eHealthNT does not warrant that any software procured from third party vendors to access *My eHealth Record* will be uninterrupted or error free, that defects will be corrected or that the server that makes it available are free of viruses or defects.
- 14.5 To the extent permitted by law, all representations, conditions or warranties, whether based in statute, common law or otherwise, are excluded. In the case of an implied warranty that cannot be excluded, the liability of eHealthNT is limited to the maximum extent permitted by law.
- 14.6 Your organisation will be responsible to eHealthNT and its officers, employees and agents for all liability, claims and loss which those indemnified suffer arising from any one or more of the following:
- (a) a breach of this agreement;
  - (b) a breach of any relevant law;
  - (c) eHealthNT's use of information provided by your organisation which is misleading or deceptive or is likely to mislead or deceive; and
  - (d) any negligent act or omission by your organisation, Authorised Users, employees, agents or subcontractors in relation to this Agreement.
- 14.7 The above indemnity excludes any liability, claim or loss arising from the default or negligence of eHealthNT, its officers, employees or agents (to the extent of the contribution).

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14.8 Notwithstanding any other clause of this Agreement, a party shall not be liable to the other party in relation to this Agreement for any consequential or indirect loss, including but not limited to loss of profits.

14.9 The indemnities in this Agreement shall survive the termination of this Agreement.

## 15. INSURANCE

15.1 Your organisation's registered medical practitioner/s must maintain during the term of this Agreement, and for three years thereafter, professional indemnity/medical malpractice insurance as is required for their national registration.

15.2 Your organisation's unregistered practitioners must maintain during the term of this Agreement, and for three years thereafter professional indemnity/medical malpractice insurance at least for \$10 million per occurrence and in the aggregate per annum.

## 16. TERMINATION

16.1 Your organisation may choose to terminate involvement in the *My eHealth Record* and terminate this Agreement at any time by contacting eHealthNT in writing, however, some obligations are stated to continue beyond the termination of this Agreement.

16.2 eHealthNT may terminate this Agreement or terminate or change *My eHealth Record* with reasonable notice (for example, if Government policy changes or funding arrangements change) and remove access to *My eHealth Record* with no recourse to your organisation. eHealthNT will use its best endeavours to manage changes in consultation with its stakeholders and in the event of termination of the service will continue to communicate with your organisation and provide access to health information for patient care as permitted by the Privacy Laws and the consent of Consumers.

16.3 Upon the termination of this Agreement, your organisation retains any information copied from a Consumer's record in *My eHealth Record* into your organisation's medical records but must deal with such information in accordance with all relevant privacy laws.

## 17. DEFINITIONS AND INTERPRETATION

### 17.1 Definitions

In this Agreement the following definitions apply:

**Authorised User** means persons:

(a) Who:

(i) are employed or otherwise contracted by a Participating Healthcare Provider for the purpose of providing healthcare to Consumers; or

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- (ii) have entered into any other arrangement with a Participating Healthcare Provider for the purpose of providing healthcare to Consumers that enables the person to use the Participating Provider's clinical information system to access and/or send Health Information to the *My eHealth Record*; and

- (b) Who are authorised to use the *My eHealth Record*.

**Business Day** means a day other than a Saturday or Sunday or a public holiday in Northern Territory, Western Australia or South Australia.

**Claim** means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Commencement Date** means the later of:

- (a) The date that eHealthNT accepts an organisation as a Participating Healthcare Provider in the *My eHealth Record*; and
- (b) The date that eHealthNT notifies the organisation in writing that the organisation may access *My eHealth Record*.

**DOHA** means the Commonwealth Department of Health and Ageing.

**eHealthNT** means the Northern Territory of Australia care of the Department of Health of 87 Mitchell Street, Darwin NT 0800.

**Health Information** has the same meaning as in the Privacy Act 1988 (Commonwealth).

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in relation to copyright, trade marks, designs, patents, business and domain names, inventions and trade secrets and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether registrable, registered or patentable.

These rights include:

- (a) all rights in all applications to register those rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, including moral rights.

**NEHTA** means the National E-Health Transition Authority.

**PCEHR** means the National Personally Controlled Electronic Health Record.



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**PKI** means a Medicare certificate that is linked to a Healthcare Provider identifier such that combination ensures that the end point is a known clinic and a secure communications process.

**Personal information** has the same meaning as in the Privacy Act 1988 (Commonwealth).

**Privacy Laws** means:

- (a) Privacy Act 1988 (Commonwealth); and
- (b) Healthcare Identifiers Act 2010 (Commonwealth); and
- (c) all relevant laws, regulations, standards, applicable NT Health policies, manuals and guidelines relating to personal information, medical records, confidentiality and privacy in Australia.

## 17.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to one gender includes the other genders;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to a document or agreement, or a provision of a document or agreement is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (f) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (g) a reference to a subclause in a clause is a reference to a subclause in that clause unless specified otherwise.

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## **18. MISCELLANEOUS**

### **18.1 Independent Contractors**

The parties are independent contractors. This Agreement does not constitute in any form a partnership, joint venture or employment relationship between the parties. Your organisation must not hold themselves out as an agent of eHealthNT, DOHA or NEHTA.

### **18.2 Assignment and subcontracting**

Your organisation must not assign or sub-contract your organisation rights or obligations under this Agreement without the prior written consent of eHealthNT.

### **18.3 Variation and waiver**

eHealthNT may amend these terms and conditions by 30 days prior written notice to your organisation. If your organisation does not agree with the amendments, your organisation may terminate the Agreement. eHealthNT may need to amend this Agreement to comply with new laws which are proposed to be introduced in relation to the PCEHR. A waiver of any breach of this Agreement or of any right arising out of this Agreement must be in writing and signed by the party granting the waiver.

## **19. GOVERNING LAW**

This Agreement is governed by and must be construed in accordance with the laws of the Northern Territory. The parties submit to the non-exclusive jurisdiction of the courts of that Territory and the Commonwealth of Australia in respect of all matters or things arising out of this Agreement.



# MY eHEALTH RECORD

advancing health care delivery

## Application for registration of a Participating Healthcare Provider

Phone: 1800 247 430 Email: [mehr.ths@nt.gov.au](mailto:mehr.ths@nt.gov.au) Fax: (08) 8924 7266 Website: [www.myhealthrecord.com.au](http://www.myhealthrecord.com.au)

### Section 1 Healthcare Provider Organisation's Details

<b>Name of Healthcare Provider:</b>		
<b>Healthcare Provider Description:</b>	<i>eg General Practice, Dental Services, Mental Health Services, Residential Care, Pharmacy, Diagnostic Imaging etc</i>	
<b>ABN or ACN or HPI-O:</b>		
<b>Street Address:</b>		
<b>Mailing Address:</b>		
<b>Contact details</b>	<b>Phone:</b>	<b>Fax:</b>
	<b>Email:</b>	

### Section 2 Healthcare Provider Organisation's Representative

<b>Title</b>	Dr <input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other :
<b>Given Name/s:</b>	
<b>Surname:</b>	
<b>Position Title:</b>	

### Section 3 Declaration and Agreement

- I have been provided with a copy of *My eHealth Record* Participating Healthcare Providers (Organisations) – Terms and Conditions.
- I request for the above Healthcare Provider to be registered as a *My eHealth Record* Participating Healthcare Provider.
- I agree to *My eHealth Record* Participating Healthcare Providers (Organisations) – Terms and Conditions on behalf of the above Healthcare Provider I will ensure that all Authorised Users who have access to *My eHealth Record* will comply with these Terms and Conditions.
- I agree to be contacted by eHealthNT in relation to my participation in *My eHealth Record*.
- I declare that to the best of my knowledge the information provided on this form is true and correct, and that I have the appropriate authority to make this application and agree to *My eHealth Record* Participating Healthcare Providers (Organisations) - Terms and Conditions on behalf of the above Healthcare Provider.

**Representative's Signature:**

**Witness Name:**

**Signature:** \_\_\_\_\_ **Phone:** \_\_\_\_\_ **Date:**   /   /

### OFFICE USE ONLY - eHealthNT Clinical Services Manager to Complete

**Manager's Name:** \_\_\_\_\_ **Registration Approved:**  Yes  No

**Signature:** \_\_\_\_\_ **Date:**   /   /

**Notes:**



A Northern Territory Government initiative, developed with financial assistance from the Australian Government.