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AUSTRALIAN  
**CRIMINAL  
INTELLIGENCE  
COMMISSION**

# **Agreement for controlled access by duly Accredited Bodies to Nationally Coordinated Criminal History Checks**

**COMMONWEALTH OF AUSTRALIA  
REPRESENTED BY THE AUSTRALIAN CRIMINAL  
INTELLIGENCE COMMISSION**

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# Agreement for controlled access by duly Accredited Bodies to Nationally Coordinated Criminal History Checks

## Parties

Name **Commonwealth of Australia** represented by the **Australian Criminal Intelligence Commission** ABN 11 259 448 410 of 4 National Circuit Barton, Canberra 2600.

Short form name **ACIC**

Name **<Insert entity name>** ABN **<Insert ABN>** of **<Insert address of entity>**.

Short form name **Accredited Body**

## Introduction

- A. As part of its core statutory functions set out in section 7A of the ACC Act, the ACIC administers the Service which facilitates access to Police Information (as provided and maintained by Australian police agencies) in accordance with relevant Australian legislation.
- B. The Service provides Australian police, and bodies accredited in accordance with the ACC Act, with Police Information to support the assessment of the suitability of people in positions of trust, specified fields of endeavour and as required to meet legislative requirements.
- C. In order to access or use the Service, bodies must:
- (i) be approved in writing by the Chief Executive Officer of the ACIC under section 46A(5) of the ACC Act;
  - (ii) be approved in writing as an Accredited Body in order to receive information from a nationally coordinated criminal history check by the Chief Executive Officer of the ACIC under section 59AAA of the ACC Act;
  - (iii) enter into this Agreement; and
  - (iv) as part of entry into this Agreement, acknowledge and agree that the licence to use and communicate Police Information in accordance with this Agreement is non-transferrable and non-assignable without prior written approval of the ACIC.

## Agreement Terms and Conditions

### Part A AGREEMENT AND TERM OF AGREEMENT

#### 1. Context of this Agreement

The Accredited Body acknowledges and agrees that the ACIC:

- (a) makes no representation that the Service will be provided beyond the Standard Term (or any extension of that Standard Term) of this Agreement;
- (b) makes no representation that the Service will continue to be provided in the manner currently contemplated in this Agreement beyond the Standard Term; and
- (c) is not obliged to exercise any option to extend the term of the Agreement as set out in **clause 3.1(b)**.

## 2. Objectives of this Agreement

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- (a) The objectives of this Agreement are to:
  - (i) ensure the efficient and effective provision of a community service to the Australian public by supporting the assessment of the suitability of people in positions of trust, specified fields of endeavour and as required to meet legislative requirements;
  - (ii) provide for the use of and access to Police Information via the Service as an input to this assessment process;
  - (iii) contribute to the ongoing safety of the Australian public by providing accurate and timely Police Information to inform decision making; and
  - (iv) maintain the ACIC's ongoing accountability to its board and to police partner agencies regarding use of and access to the Service.
- (b) The Accredited Body agrees to perform its obligations and exercise its rights under this Agreement in a manner that is consistent with the objectives of this Agreement as set out in this **clause 2**.

## 3. Term of this Agreement

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### 3.1 Standard Term and extensions

- (a) This Agreement commences on the Commencement Date and, unless lawfully terminated earlier, will remain in force for 3 years (the **Standard Term**).
- (b) The ACIC may, in its sole discretion, extend the term of this Agreement beyond the Standard Term for a further period or periods of 1 year each, up to a maximum of 2 years, on the terms and conditions of the Agreement then in effect, by giving notice to the Accredited Body at least 14 days prior to end of the current term of this Agreement.

### 3.2 Termination of Prior Agreement and transition period for selected provisions

- (a) Where, as at the Commencement Date, an Accredited Body has an existing current agreement with the ACIC under which it accesses or uses the Service (or a substantially equivalent service) (a **Prior Agreement**):
  - (i) the Accredited Body and the ACIC agree that the Prior Agreement terminates with effect on the Commencement Date;
  - (ii) during the period commencing on the Commencement Date and ending 31 December 2024 (inclusive) (**Transition Period**), and notwithstanding termination of the Prior Agreement under **clause 3.2(a)(i)**, the Accredited Body may elect that:
    - (A) the provisions in the Prior Agreement setting out the Accredited Body's ability to access or use the Service for Entities and (if applicable) the Accredited Body's ability to access or use the Service for a Related Government Entity apply, in place of **clause 7** of this Agreement;
    - (B) the provision in the Prior Agreement requiring an application to include details of the Applicant's driver's licence (if available), firearms licence (if available) and Australian passport (if available), in place of **clause 9.3(a)(xi)** of this Agreement; and

- (C) the provision in the Prior Agreement requiring an Accredited Body to not collect, transfer, store or otherwise use Personal Information or Police Information outside Australia, or allow parties outside Australia to have access to Personal Information or Police Information, unless a Permitted Offshore Transfer circumstance applies, and the associated definition of 'Permitted Offshore Transfer' in the Prior Agreement applies, in place of **clause 21** of this Agreement; and
- (iii) all other provisions of this Agreement apply from the Commencement Date.
- (b) During the Transition Period, the Accredited Body may comply with either the identified provisions of the Prior Agreement, or the identified provisions of this Agreement, as identified in **clause 3.2(a)(ii)**.
- (c) Termination of the Prior Agreement pursuant to **clause 3.2(a)(ii)** of this Agreement does not affect any accrued rights or remedies of either party under or in connection with that Prior Agreement arising before the Commencement Date.
- (d) If the Accredited Body does not submit a request for any nationally coordinated criminal history checks within 6 months of the Commencement Date, the ACIC may terminate this Agreement under **clause 29.1**. This **clause 3.2(d)** does not limit the circumstances in which the ACIC may terminate the Agreement under **clause 29.1**.

#### 4. This Agreement

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##### 4.1 Documents forming part of this Agreement

This Agreement between the ACIC and the Accredited Body comprises the following documents:

- (a) the Agreement Terms and Conditions;
- (b) the **Agreement Schedule (Schedule 1)**;
- (c) **Schedule 2 (Form of variation)**;
- (d) **Schedule 3 (Required content for Informed Consent)**;
- (e) **Schedule 4 (Media Guidelines)**;
- (f) **Annexure A (Identity Proofing Documents and Processes)**;
- (g) **Annexure B (Protection of Personal Information and Police Information Safeguards)**; and
- (h) **Annexure C (Disclaimer for Limitations of Service)**; and
- (i) **Annexure D (Terms of Use for Controlled Access to Nationally Coordinated Criminal History Checks by Accredited Body's Customer)**,

("Agreement").

##### 4.2 Order of precedence

If there is any conflict or inconsistency in the provisions of the documents listed in **clause 4.1**, the documents will take priority as follows (in descending order of priority):

- (a) the **Agreement Schedule (Schedule 1)**;

- (b) the Agreement Terms and Conditions;
- (c) the Schedules;
- (d) the Annexures; and
- (e) any documents incorporated by reference into the above documents.

#### **4.3 Where the Accredited Body is a Commonwealth Entity**

Where the Accredited Body is a Commonwealth Entity:

- (a) this document is deemed to be a memorandum of understanding between the ACIC and the Accredited Body and not an agreement;
- (b) each reference to “Agreement” is to be read as a reference to “Memorandum of Understanding” (except for in this **clause 4.3**); and
- (c) this document is modified as set out in the **Agreement Schedule (Schedule 1) Item 15**.

## **Part B ROLE AND RESPONSIBILITIES OF THE ACIC**

### **5. The role and responsibilities of the ACIC**

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#### **5.1 General role of the ACIC**

- (a) The ACIC facilitates access to Police Information via the Service. Without limiting any other clause in this Agreement, **clauses 5.2 and 5.3** set out further details of the ACIC’s role in aspects of the Service.
- (b) The ACIC is responsible for the provision of the Service in accordance with the terms of the Agreement, but does not determine, and is not responsible for, the content of the Police Information, which is provided by various Australian police agencies or any resulting Check Results Report.

#### **5.2 ACIC’s role in the vetting process**

The Accredited Body acknowledges and agrees that, in relation to the vetting process:

- (a) the ACIC may provide support to relevant Australian police agencies, but has no responsibility for vetting results that have been identified in the relevant database, or determining whether to remove spent convictions information from nationally coordinated criminal history checks. These decisions are made by the relevant Australian police agencies in accordance with applicable State and Territory Law and information release policies; and
- (b) the vetting process is a manual analysis of police records and applicable Law. This activity is performed by relevant Australian police agencies on a ‘best efforts basis’. While the ACIC may provide support for this activity, no warranty or representation is given as to its accuracy.

#### **5.3 ACIC’s role in the release of the information**

The Accredited Body acknowledges and agrees that, following the vetting process that is undertaken by the relevant Australian policing agency as described in **clause 5.2** (which may or may not involve vetting support from the ACIC), the result of the nationally coordinated

criminal history check and Check Results Report are then system generated and automatically released without review or amendment from the ACIC.

## Part C ACCESS BY ACCREDITED BODIES

### 6. Use of the Service

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#### 6.1 Material provision

This **clause 6** is a material provision of this Agreement.

#### 6.2 Requirements for Accredited Body use of the Service

- (a) The Accredited Body must use the Service only:
  - (i) through the data provisioning services established by the ACIC for the Service;
  - (ii) in accordance with the Accreditation Type for the Accredited Body as set out in **Item 4** of the **Agreement Schedule (Schedule 1)** or as varied in accordance with **clause 6.3**;
  - (iii) to request nationally coordinated criminal history checks only for its Approved Categories set out in **Item 8** of the **Agreement Schedule (Schedule 1)** or as varied in accordance with **clause 6.3**;
  - (iv) after the Accredited Body's technical connectivity to the Service has been tested by the ACIC and the ACIC has confirmed to the Accredited Body that it meets the ACIC's data provisioning requirements; and
  - (v) in accordance with this Agreement.
- (b) If the Accredited Body makes changes to its technical connectivity, the Accredited Body must not use the Service until the Accredited Body's technical connectivity has been re-tested and confirmed by the ACIC in accordance with **clause 6.2(a)(iv)**.

#### 6.3 Changing Accreditation Type and adding Approved Categories

- (a) An Accredited Body may by notice to the ACIC, request to:
  - (i) change its Accreditation Type; and / or
  - (ii) gain access to additional Approved Categories.
- (b) Any decision to grant a request received under **clause 6.3(a)**, or the extent to which such a request will be granted, may be subject to conditions and will be at the ACIC's sole discretion.
- (c) In determining whether to grant a request received under **clause 6.3(a)**, the ACIC may have regard to any factors it considers relevant, including the Accredited Body's compliance with this Agreement and any prior or repeated breaches of this Agreement.
- (d) If the ACIC grants a request received under **clause 6.3(a)**, the Parties will enter into a variation of this Agreement in the form of **Schedule 2 (Form of variation)** pursuant to **clause 33.3** to document the change.



**6.4 Access or use of the Service**

- (a) Subject to this Agreement, and only as approved by the ACIC in the **Agreement Schedule (Schedule 1)**, an Accredited Body may access the Service to submit requests for, and obtain results of nationally coordinated criminal history checks either as a **Commercial Accredited Body** or as a **Non-Commercial Accredited Body**.
- (b) Commercial Accredited Bodies must offer both Standard Checks and Volunteer Checks.
- (c) Commercial Accredited Bodies may only service:
  - (i) Customers approved by the ACIC in writing under **clause 7.4**, where the Applicant:
    - (A) is the potential or existing Personnel of the Customer; and
    - (B) has provided the Customer or the Accredited Body with Informed Consent which the Accredited Body has verified meets the requirements in **clause 9.8**;
  - (ii) Applicants who:
    - (A) are the Accredited Body's potential or existing Personnel; and
    - (B) have provided the Accredited Body with Informed Consent which the Accredited Body has verified meets the requirements in **clause 9.8**; and
  - (iii) any other Applicant who has directly provided the Accredited Body with Informed Consent which the Accredited Body has verified meets the requirements in **clause 9.8**.
- (d) Non-Commercial Accredited Bodies may offer:
  - (i) Standard Checks; and
  - (ii) Volunteer Checks, if the check is being sought for a Volunteer Purpose specified in the **Agreement Schedule (Schedule 1)**.
- (e) Non-Commercial Accredited Bodies may only service:
  - (i) Applicants who:
    - (A) are the Accredited Body's potential or existing Personnel; and
    - (B) have provided the Accredited Body with Informed Consent which the Accredited Body has verified meets the requirements at **clause 9.8**; and
  - (ii) where the Non-Commercial Accredited Body is a Commonwealth Government Agency, State or Territory Government Agency, any Applicant who is the potential or existing Personnel of a Related Government Entity who has provided the Accredited Body with Informed Consent which the Accredited Body has verified meets the requirements at **clause 9.8**; and
  - (iii) where the Non-Commercial Accredited Body is an entity required by Law to obtain a nationally coordinated criminal history check, any Applicant who has

directly provided the Accredited Body with Informed Consent which the Accredited Body has verified meets the requirements at **clause 9.8**.

## 6.5 Exemptions

The provisions of this Agreement are subject to exemptions (if any) set out in **Item 16** of the **Agreement Schedule (Schedule 1)**. Any exemptions set out in **Item 16** of the **Agreement Schedule (Schedule 1)** are in addition to any exemptions or exceptions that apply to the Accredited Body under other provisions of this Agreement.

## 6.6 Accredited Body remains responsible

Without limiting **clause 15.1(b)**, the Accredited Body is responsible for the conduct of its Customers and Subcontractors in connection with the provision of the Service.

## 7. Commercial Accredited Body's ability to access or use the Service for a Customer

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### 7.1 Material provision

This **clause 7** is a material provision of this Agreement.

### 7.2 Provision of commercial arrangements for Customers

This **clause 7** facilitates third party commercial arrangements if the Accredited Body is a Commercial Accredited Body and seeks to service approved Customers outside its own organisation.

### 7.3 Restriction on providing nationally coordinated criminal history check to a Customer

The Commercial Accredited Body must not offer a nationally coordinated criminal history check, or provide Check Results Reports, to a Customer unless:

- (a) approval has been provided in writing by the ACIC in respect of that Customer under **clause 7.4**; and
- (b) the Accredited Body complies with the terms and conditions set out in **clause 7.5** and if applicable, **clause 7.6**.

### 7.4 ACIC approval for Customers

- (a) The Commercial Accredited Body is only authorised to offer a nationally coordinated criminal history check, or provide Check Results Reports, to a Customer where the ACIC has provided prior written approval to the Commercial Accredited Body in respect of that Customer.
- (b) The ACIC may notify the Commercial Accredited Body of an identifying code for an approved Customer that must be included by the Accredited Body on any request for a nationally coordinated criminal history check for that Customer.
- (c) The Accredited Body must ensure that each Customer executes a copy of the Terms of Service at **Annexure D (Terms of Use for Controlled Access to Nationally Coordinated Criminal History Checks by Accredited Body's Customer)**, and the Accredited Body must provide a copy of the executed Terms of Service to the ACIC.
- (d) Where an Accredited Body wishes to add or remove a Customer, it must issue a notice to the ACIC setting out the details of its request. Any decision to grant such a request, or the extent to which such a request will be granted, may be subject to conditions and will be at the ACIC's sole discretion. The Accredited Body must assist the ACIC by

providing any information requested by the ACIC as part of its consideration of a request under this clause.

#### 7.5 Requirements for Customers

- (a) Without limiting any obligation in this Agreement, the Accredited Body must ensure that each Customer:
  - (i) complies with the Privacy Act when dealing with any Personal Information or Police Information provided as part of the nationally coordinated criminal history check, including any Check Results Report, as if it were an Agency;
  - (ii) does not on-sell or otherwise make available to an Applicant or any other third party not subject to this Agreement for any fee, Check Results Reports or other aspects of nationally coordinated criminal history checks;
  - (iii) is not offered access to, and otherwise does not access or attempt to access, the NSS;
  - (iv) subject to **clause 26.5**, grants the ACIC or its authorised Personnel (and other persons in accordance with **clause 26.7**) a right:
    - (A) of access to the Customer's data, records and other material relevant to receipt of the nationally coordinated criminal history checks, including any Check Results Report, and handling of any Police Information which the ACIC must exercise reasonably and subject to the Customer's reasonable security requirements; and
    - (B) to inspect and copy data, records and other material relevant to the receipt of the nationally coordinated criminal history checks, including any Check Results Report;
  - (v) grants the ACIC and Accredited Body rights to access certain documents to enable the Accredited Body to comply with its obligations in **clause 27**; and
  - (vi) agrees to and complies with the Terms of Service at **Annexure D (Terms of Use for Controlled Access to Nationally Coordinated Criminal History Checks by Accredited Body's Customer)**.

#### 7.6 Additional requirements for approval of Offshore Customers

- (a) The Accredited Body must provide the ACIC with the following details for each Offshore Customer as part of obtaining approval for that Customer under **clause 7.4**:
  - (i) the processes the Accredited Body will use to notify, inform and gain the consent of Applicants whose information is to be transferred, accessed or held offshore;
  - (ii) how the Accredited Body will detail its offshore arrangement in its Information Security Policy;
  - (iii) any risks or implications associated with transferring, accessing and holding the proposed information offshore. This includes any possibility that the data is, or at any point becomes, subject to a foreign government's jurisdiction; and
  - (iv) any other information reasonably requested by the ACIC.
- (b) If a Customer which is not approved as an Offshore Customer at the time the ACIC grants written approval under **clause 7.4** seeks to subsequently become an Offshore

Customer, the Accredited Body must seek approval in writing for this change from the ACIC and provide all the details in **clause 7.6(a)**. Any decision to grant such a request, or the extent to which such a request will be granted, may be subject to conditions and will be at the ACIC's sole discretion. The Accredited Body must assist the ACIC by providing any information requested by the ACIC as part of its consideration of a request under this clause.

#### 7.7 Requirements for Offshore Customers

- (a) In addition to the requirements in **clause 7.5(a)**, the Accredited Body must ensure that each Customer that is an Offshore Customer:
  - (i) is legally registered as a company;
  - (ii) complies with the applicable requirements of the Protective Security Policy Framework; and
  - (iii) only submits Applications or otherwise makes requests for nationally coordinated criminal history checks via the Accredited Body in relation to the Customer's own potential or existing Personnel.
- (b) The Accredited Body acknowledges and agrees that the circumstances in which Personal Information or Police Information relating to an Applicant may be transferred, accessed or held outside Australia, including in connection with Offshore Customers, are limited as provided in **clause 21**.

#### 7.8 Breach of obligations

The Accredited Body must notify the ACIC immediately if the Accredited Body becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in **clause 7.5** by a Customer or **clause 7.7** by an Offshore Customer.

### Part D ROLES AND RESPONSIBILITIES OF ACCREDITED BODIES

#### 8. Compliance with Agreement and Directions

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##### 8.1 Changes in Law or other requirements

Access to, or use of, the Service may be subject to technical changes and changes in Law or Commonwealth policy. To the extent that it is necessary to ensure the Accredited Body can continue to access or use the Service, the Accredited Body must comply, and must ensure its Customers and Subcontractors comply, with any changes in:

- (a) Law; or
- (b) Commonwealth policy or technical requirements of which the ACIC provides reasonable notice.

##### 8.2 Compliance with Directions from the ACIC

- (a) This **clause 8.2** and each other provision of this Agreement requiring the Accredited Body to comply with Directions issued by the ACIC is a material provision of this Agreement.
- (b) During the term of this Agreement, the ACIC may on notice issue Directions to the Accredited Body from time to time relating to the Accredited Body's performance of this Agreement that the ACIC considers are necessary or desirable to contribute towards the objectives of this Agreement as set out in **clause 2**.

- (c) Any Directions issued under **clause 8.2(b)** are in addition to the Accredited Body's obligations under other Directions issued under other provisions of this Agreement.
- (d) If the Accredited Body disagrees with a Direction issued by the ACIC under any provision of this Agreement, the Accredited Body must comply with the procedure for resolving disputes set out in **clause 30**, but must comply with the Direction unless and until resolution of the dispute in favour of the Accredited Body.

### 8.3 Costs of compliance

Subject to **clause 30(c)**, the Accredited Body's costs of complying with this Agreement and any Directions will be borne by the Accredited Body.

## 9. Identity verification process and application process

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### 9.1 Material clause

This **clause 9** is a material clause of this Agreement.

### 9.2 Process for requesting a nationally coordinated criminal history check

When submitting a request for a nationally coordinated criminal history check by providing an Application to the ACIC, the Accredited Body must:

- (a) verify each Application complies with and is accurate and complete in accordance with the requirements of **clause 9.3**;
- (b) ensure the ACIC is provided with the relevant Applicant's Personal Information as collected by the Accredited Body to the extent required under **clauses 9.3** and **9.4**. Unless otherwise specified, this should include any corresponding personally identifying information made available by the Applicant to the Accredited Body for the purposes of the Accredited Body verifying the Applicant's identity, including all names under which the Applicant, is or has been known; and
- (c) not request the ACIC conduct a nationally coordinated criminal history check unless the Accredited Body has:
  - (i) confirmed the Applicant's identity in accordance with **clause 9.4** or where applicable **clause 9.6**;
  - (ii) confirmed the linkage between the Applicant and the claimed identity in accordance with **clause 9.5**; and
  - (iii) obtained the Informed Consent from the Applicant for the purpose of the nationally coordinated criminal history check and verified that it meets the requirements in **clause 9.8**.

### 9.3 Nationally coordinated criminal history check Application requirements

- (a) Each Application must include the following information:
  - (i) the Applicant's surname and given name(s), and all names under which the Applicant, is or has been known;
  - (ii) the Applicant's date and place of birth;
  - (iii) the Applicant's gender;

## DRAFT TEMPLATE ONLY – NOT FOR EXECUTION

- (iv) the Applicant's residential address(es) for the past 5 years, including corresponding dates the Applicant resided at each address;
  - (v) the position title, occupation, entitlement or volunteer role being sought by the Applicant;
  - (vi) the details of the entitlement provider requesting the nationally coordinated criminal history check or details of the employer that proposes to engage the Applicant as an employee or volunteer;
  - (vii) the relevant location of work or the jurisdiction in which the entitlement being sought will be awarded or granted;
  - (viii) the applicable Approved Categories as set out in **Item 8 of the Agreement Schedule (Schedule 1)** to which the Application relates;
  - (ix) if the nationally coordinated criminal history check Application is for a Customer, all relevant Customer details required to identify the Customer including the Customer's identifying code;
  - (x) a statement or endorsement by the Accredited Body confirming that the Accredited Body is satisfied as to the correctness of the Applicant's identity and has verified the Applicant's identity documents in accordance with this **clause 9**; and
  - (xi) details of the required Document Identifiers (as specified in a list provided by the ACIC to the Accredited Body from time to time) collected by the Accredited Body as part of confirming the Applicant's identity documents.
- (b) Each Application must:
- (i) where none of the circumstances described in **clauses 9.3(b)(ii), 9.3(b)(iii) and 9.3(b)(iv)** apply, include the Applicant's signature (in physical or electronic format) and date of signature;
  - (ii) subject to **clause 9.3(b)(iii)**, where the Applicant is less than 18 years of age, be consented to by a parent or legal guardian of the Applicant and include the consent and signature (in physical or electronic format) of the parent or legal guardian and date of signature.
  - (iii) where the Applicant is over 15 years of age, and:
    - (A) it is impractical or unreasonable to make an assessment of their capacity to consent to the release of their sensitive information, as defined by the Privacy Act; or
    - (B) the Accredited Body has made a case-by-case assessment that the Applicant has the capacity to consent,

include the Applicant's signature (in physical or electronic format) and date of signature. The Accredited Body warrants to the ACIC that it has taken all reasonable steps for assessments it makes under **clause 9.3(b)(iii)(B)**, and will provide further information about the relevant assessment if requested by the ACIC; or
  - (iv) where the Applicant is at least 18 years of age but does not otherwise have legal capacity to complete the Application, be consented to by a legal guardian of the Applicant and include the consent and signature (in physical or electronic format) of the legal guardian and date of signature.

- (c) Where parent or guardian consent is required under **clause 9.3(b)(ii)** or **9.3(b)(iv)**, the Application must, in addition to meeting the requirements in **clause 9.3(a)** in respect of the Applicant, include a statement or endorsement from the Accredited Body confirming that the Accredited Body has verified the identity of the Applicant's parent or legal guardian (using the same verification process as set out for Applicants in **clause 9.4**) and established a documentary link between the Applicant and their parent or legal guardian, such as through provision of a birth certificate or court order.

*Note: The ACIC may make available on request a model Application form to assist Accredited Bodies to comply with this **clause 9.3** which may be amended on 1 months' notice.*

*Note: The ACIC model Application form is a combined model form to assist Accredited Bodies to comply with this **clause 9.3** and with **clause 9.8** (Applicant's Informed Consent).*

#### 9.4 Requirements to confirm Applicant's identity in documents

- (a) Subject to **clause 9.6**, in confirming the Applicant's identity for each Application, the Accredited Body must verify at least 3 documents consisting of:
- (i) at least one of the documents listed as a 'Commencement of Identity Document' in **Annexure A (Identity Proofing Documents and Processes)**;
  - (ii) at least one of the documents listed as a 'Primary Use in Community Document' in **Annexure A (Identity Proofing Documents and Processes)**; and
  - (iii) at least one of the documents listed as a 'Secondary Use in the Community Document' in **Annexure A (Identity Proofing Documents and Processes)**.
- (b) The Accredited Body must, for the purposes of **clause 9.4(a)** verify each document either:
- (i) locally, by sighting an original of the document presented by the Applicant in person; or
  - (ii) remotely by verifying a copy of each document that has been submitted by the Applicant by post, email or electronically.

For the purposes of this Agreement, the Accredited Body may verify the identity documents with an Authoritative Source.

- (c) Whether the Accredited Body verifies the documents locally or remotely, the Accredited Body must make a complete record or obtain a complete copy of a record of each document presented.
- (d) The combination of the Applicant's identity documents must include the Applicant's full name, date of birth and a photograph of the Applicant. If the Applicant does not have an identity document containing a photograph from one of the documents listed in **Annexure A**, the Applicant must submit a passport style photograph that has been certified by a person listed in Schedule 2 of the *Statutory Declarations Regulations 2023* (Cth) to be a true likeness of the Applicant.
- (e) The ACIC may amend the requirements for confirming an Applicant's identity from time to time as a consequence of changes to applicable Commonwealth requirements or policy. Where this occurs, the ACIC will notify the Accredited Body in accordance with **clause 8.1(b)**.



## 9.5 Linkage obligations of Accredited Body

The Accredited Body must not use the Service in respect of an Applicant unless the Accredited Body has verified that the claimed identity in the Application matches the Applicant by use of one of the following methods for each Application:

- (a) by undertaking a visual check of photographic identity documentation against the Applicant either remotely or in person; or
- (b) by using Biometric Matching Software.

Where the Accredited Body has verified that the Applicant and the claimed identity match by using Biometric Matching Software in accordance with **clause 9.5(b)**, the Accredited Body must maintain relevant records and details of that process. The Accredited Body must provide a copy of those records and details to the ACIC within 5 Business Days of the ACIC's request, which may include a request as part of an audit or review undertaken pursuant to **clause 26** (in which case the relevant timeframe notified by the ACIC under **clause 26** will apply).

## 9.6 Special provisions for Applicants unable to meet clause 9.4 requirements

Where an Applicant:

- (a) is unable to meet the identity requirements in **clause 9.4**; and
- (b) falls within one or more of the following categories:
  - (i) persons whose birth was not registered;
  - (ii) persons who are homeless;
  - (iii) persons who are undocumented arrivals to Australia;
  - (iv) persons living in remote areas;
  - (v) persons who are transgender or intersex;
  - (vi) persons affected by natural disasters;
  - (vii) persons with limited access to identity documents for reasons associated with how they were raised, such as institutional or foster care;
  - (viii) persons with limited participation in society; and
  - (ix) young persons who are yet to establish a social footprint or evidence of community participation,

the Accredited Body may use special provisions to confirm the Applicant's identity, as notified by the ACIC to the Accredited Body from time to time.

## 9.7 Identity Enrolment

- (a) The Accredited Body must only implement Identity Enrolment for Known Applicants if **Item 10** of the **Agreement Schedule (Schedule 1)** specifies they are approved to do so.
- (b) If an Accredited Body is permitted to implement Identity Enrolment for Known Applicants, then Identity Enrolment may be used by the Accredited Body to confirm the identity of a Known Applicant and allow the Accredited Body to rely on that confirmed identity provided one of the following conditions are satisfied:



- (i) the documents presented to meet the requirements at **clause 9.4** have not expired at the time the Accredited Body seeks to rely on the confirmed identity of the Known Applicant; or
- (ii) where one or more of the documents presented to meet the requirements at **clause 9.4** has expired at the time the Accredited Body seeks to rely on the confirmed identity of the Known Applicant, the Accredited Body has verified updated document(s) in accordance with **clause 9.4** and **9.5**.
- (c) The use of Identity Enrolment for an Applicant must not exceed a period of 5 years unless their status as a Known Applicant is renewed under **clause 9.7(b)**. This requirement also applies to any renewed period.
- (d) The Accredited Body must, if it uses Identity Enrolment in respect of an Applicant, provide unique authentication credentials to that Applicant to enable access to the Identity Enrolment consistent with the ACIC's Identity Enrolment guidance material.
- (e) For Identity Enrolment of Known Applicants undertaken in accordance with this **clause 9.7**, all documents used to confirm a Known Applicant's identity must be retained for the duration of that Known Applicant's Identity Enrolment. The obligation in this sub-clause is in addition to the retention obligation set out in **clause 11.6**.

#### 9.8 Collection of Applicant's Informed Consent

- (a) The Accredited Body must ensure that each Informed Consent meets the requirements set out in **Schedule 3 (Required content for Informed Consent)**, subject to any exemption specified at **Item 6 of the Agreement Schedule (Schedule 1)**.
- (b) Within 5 Business Days of a request by the ACIC, the Accredited Body must provide to the ACIC a copy of its Informed Consent form provided to Applicants for completion, including Informed Consent forms that may have been used within the period commencing 12 months prior to the date of the ACIC's request.

*Note: As at the Commencement Date, the ACIC provides a model Informed Consent (contained within the model Application form) upon request to assist Accredited Bodies comply with this **clause 9.8**. However, this model form is not, at the Commencement Date, mandated for use by the ACIC.*

*Note: The ACIC model Informed Consent (contained within the model Application form) is a combined model form to assist Accredited Bodies to comply with this **clause 9.8** and with **clause 9.3**.*

#### 9.9 Disputes about nationally coordinated criminal history checks and Disclosable Court Outcome

- (a) Subject to **clause 9.9(b)**, the Accredited Body must promptly provide the Applicant or Customer as relevant, access to the result of the nationally coordinated criminal history check (including the Check Results Report) in relation to the Applicant upon their request.
- (b) If the result of the nationally coordinated criminal history check contains a Disclosable Court Outcome, the Accredited Body must, before the result is either shared with any other individual or entity (including any Customer approved in writing by the ACIC under **clause 7.4**) or finalised and relied upon as part of any decision-making process, ensure:
  - (i) the Applicant is notified of the result as soon as practicable after the Accredited Body receives that result;

- (ii) the Applicant has had sufficient time to review the result and raise a dispute or any concerns with the result; and
- (iii) any dispute raised by the Applicant is resolved prior to any sharing with another individual or entity (including any Customer approved in writing by the ACIC under **clause 7.4**).
- (c) The Accredited Body must provide to Applicants prior to an Application being made, and to the ACIC on request, details of the Accredited Body's dispute resolution processes about nationally coordinated criminal history checks.
- (d) The Accredited Body must accept and escalate any dispute about the result of the nationally coordinated criminal history check which it receives from the Applicant, using a dispute form provided by the ACIC.

*Note: The ACIC provides a Dispute Form that must be used when an Applicant disputes a nationally coordinated criminal history check.*

## **10. Fees for use of Nationally Coordinated Criminal History Check Service**

### **10.1 Fees for nationally coordinated criminal history checks**

- (a) The Fees for accessing and using the Service are those set out in the determination made pursuant to section 7(1) of the *Australian Crime Commission (National Policing Information Charges) Act 2016* (Cth)). The Fees current at the Commencement Date of this Agreement are set out in the **Agreement Schedule (Schedule 1)**.
- (b) The ACIC will provide notice to the Accredited Body when there is a change to Fees resulting from the Minister exercising the power to issue a new determination under section 7(1) of the *Australian Crime Commission (National Policing Information Charges) Act 2016*.
- (c) The ACIC will submit claims for payment by the Accredited Body and each claim will be in the form of a valid tax invoice that:
  - (i) contains the number of nationally coordinated criminal history checks submitted by the Accredited Body to the ACIC during the previous month(s); and
  - (ii) the amount payable calculated in accordance with the applicable Fees.
- (d) The Accredited Body must pay claims for payment made in accordance with **clause 10.1(c)** and within 30 days of the date of the claim.
- (e) Any claim that is not paid in accordance with **clause 10.1(d)**:
  - (i) is a debt due to the Commonwealth; and
  - (ii) in addition to its rights under **clauses 28.1(b)(v)** and **29.2(a)(xiii)**, is recoverable by the ACIC, on behalf of the Commonwealth, in a court of competent jurisdiction.

### **10.2 Specified or Maximum charges**

- (a) The Accredited Body acknowledges that the Fee for Volunteer Checks is lower than the Fee for Standard Checks for the purpose of facilitating volunteer work in the broader Australian community.

- (b) To achieve the purpose set out in clause 10.2(a), the ACIC may, by 1 month notice to the Accredited Body, vary this Agreement to introduce a specified fee or maximum fee chargeable by the Accredited Body and Customers for the provision of access to and use of the Service for Volunteer Checks. A specified fee or maximum fee introduced under this **clause 10.2(b)** will be set out in **Item 7** of the **Agreement Schedule (Schedule 1)**
- (c) The ACIC may by 1 month notice to the Accredited Body vary the specified fee or maximum fee (if any) set out in **Item 7** of the **Agreement Schedule (Schedule 1)**.

### 10.3 Volunteer Checks and breach of maximum charges provision

- (a) The Accredited Body must:
  - (i) take reasonable steps to ascertain whether an Applicant is accessing Volunteer Checks for Volunteer Purposes; and
  - (ii) only offer a Volunteer Check where the Accredited Body is reasonably satisfied that the Applicant is requesting the check for Volunteer Purposes for which the Accredited Body is approved under this Agreement.
- (b) The Accredited Body must take all reasonable steps to ensure that its Customers do not request Volunteer Checks where the relevant Applicant is not requesting the check for Volunteer Purposes.
- (c) If the Accredited Body is found to have inappropriately accessed Volunteer Checks in breach of its obligations under this **clause 10.3**, then without limitation to any other right the ACIC may have, the ACIC may require the Accredited Body to rectify any such breach by:
  - (i) paying to the ACIC the 'shortfall' in the charged Fees for the relevant Applications;
  - (ii) implementing measures to prevent future breaches and ensure ongoing compliance with this **clause 10.3**; and
  - (iii) complying with any Directions issued by the ACIC acting reasonably.

## 11. Conditions for nationally coordinated criminal history checks

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### 11.1 Material provision

This **clause 11** is a material provision of this Agreement and the obligations outlined in this **clause 11** survive the expiry or termination of this Agreement.

### 11.2 Restriction on altering Check Results Reports

- (a) The Accredited Body must not alter the content of a Check Results Report, including any:
  - (i) Police Information;
  - (ii) Personal Information; and
  - (iii) disclaimer for limitations of the Service included by the ACIC.
- (b) The parties agree that the format of a Check Results Report (but not its content) may be altered where approved in accordance with **clause 11.3**.

- (c) Without limiting **clause 11.2(a)(iii)**, the Accredited Body must ensure that any Police Information provided to an Applicant under this Agreement contains the exact disclaimer set out in **Annexure C (Disclaimer for Limitations of Service)**, as amended from time to time.

### 11.3 Issuing results of nationally coordinated criminal history checks to Applicants

- (a) A Non-Commercial Accredited Body:
  - (i) may only obtain results of nationally coordinated criminal history checks directly from NSS;
  - (ii) is not permitted to transfer the content of Check Results Report to a template document unless with ACIC's prior written approval; and
  - (iii) must not on-sell or otherwise make available to a third party for any fee, Check Results Reports or other aspects of nationally coordinated criminal history checks.
- (b) Where a Commercial Accredited Body proposes to transfer information, including Police Information, from a Check Results Report to another form of document (including a template document containing the Commercial Accredited Body's branding), the Commercial Accredited Body must:
  - (i) only do so where it has obtained prior written approval of the form of document from the ACIC; and
  - (ii) transfer to that template the entire Check Results Report with no alteration or amendment.

### 11.4 Limits on the provision of nationally coordinated criminal history checks

The nationally coordinated criminal history check is a point in time record. The Accredited Body must not provide to the Applicant or any third party, a nationally coordinated criminal history check after 3 months have passed since it was issued by the ACIC, except where required by Law or with the prior written consent of the ACIC. If the Accredited Body is requested to provide a nationally coordinated criminal history check for an Applicant after 3 months have passed since a prior nationally coordinated criminal history check was issued in respect of that Applicant, a new nationally coordinated criminal history check Application is required (except where the request arises from a requirement of Law or the ACIC gives its prior written consent).

### 11.5 Spent convictions and Disclosable Court Outcome

- (a) The Accredited Body acknowledges and agrees that, while the ACIC may provide assistance, the responsibility for assessing or determining what information is released as part of the Service in accordance with the applicable spent convictions scheme rests solely with the relevant Australian police agency (or agencies) tasked with this assessment by the ACIC.
- (b) If information relating to a Disclosable Court Outcome is released to the Accredited Body via the Service, that information must first be provided to the Applicant pursuant to **clause 9.9(b)**.
- (c) The Accredited Body must not make its own assessment as to whether information relating to a Disclosable Court Outcome should be released (under the applicable spent convictions scheme or otherwise). For example, the Accredited Body must not exclude from any Check Results Report it generates using this information, Disclosable Court Outcome that were included in the information released as part of the Service.

**11.6 Retention of nationally coordinated criminal history check Applications and related material**

- (a) The Accredited Body must securely retain for a minimum period of 12 months after receipt of a nationally coordinated criminal history check the:
  - (i) nationally coordinated criminal history check Application and a record or copy of a record of any identity documents presented by the Applicant for the purposes of **clause 9.4** or **clause 9.6** to which the nationally coordinated criminal history check relates;
  - (ii) nationally coordinated criminal history check as provided to the Applicant; and
  - (iii) Applicant's Informed Consent for that nationally coordinated criminal history check.
- (b) Nothing in this **clause 11.6(a)**, affects limits on the use of a nationally coordinated criminal history check as set out in **clause 11.4**.
- (c) The obligations prescribed in this **clause 11.6** also apply to checks submitted for **Known Applicants** whose identities have been enrolled under **clause 9.7**.

**11.7 Disposal of nationally coordinated criminal history check and related material**

Within 3 months after the required document retention period under **clause 11.6(a)**, the Accredited Body must destroy or securely dispose of all hard and electronic copies (including backed up versions held on servers or other media) of each:

- (a) nationally coordinated criminal history check;
  - (b) nationally coordinated criminal history check Application and any identity documents provided by the Applicant for the purposes of **clause 9.4** or **9.6**; and
  - (c) Applicant's Informed Consent for a nationally coordinated criminal history check,
- unless a longer document retention period is:
- (d) required by Law, in which case the Accredited Body must dispose of the material within 1 month following the end of the document retention period required by Law; or
  - (e) approved in writing by the ACIC under **clause 9.7(a)** as required for Identity Enrolment for Known Applicants under **clause 9.7** in which case the Accredited Body must dispose of the material within 1 month following the end of the document retention period approved by the ACIC.

**12. Notification of Significant Events**

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**12.1 Material provision**

This **clause 12** is a material provision of this Agreement.

**12.2 Clause not applicable to Government Agencies**

This clause does not apply to Government Agencies.

**12.3 Notification of Significant Events**

- (a) For the purposes of this **clause 12**, 'Significant Event' means:

- (i) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Accredited Body or its Personnel or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
  - (ii) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Accredited Body, its Personnel or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- (b) The Accredited Body must immediately issue the ACIC a notice on becoming aware of a Significant Event.
- (c) The notice issued under **clause 12.3(b)** must provide a summary of the Significant Event, including the date that it occurred and whether any Accredited Body Personnel or Subcontractors engaged in connection with accessing the Service or performing the Accredited Body's obligations under this Agreement were involved.
- (d) The ACIC may notify the Accredited Body that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Accredited Body must issue a notice under **clause 12.3(b)** in relation to the event within 5 Business Days of being notified by the ACIC.
- (e) Where reasonably requested by the ACIC, the Accredited Body must provide the ACIC with any additional information regarding the Significant Event within 3 Business Days of the request.
- (f) If requested by the ACIC, the Accredited Body must prepare a draft remediation plan and submit that draft plan to the ACIC's Authorised Officer for written approval within 5 Business Days of the request.
- (g) A draft remediation plan prepared by the Accredited Body under **clause 12.3(f)** must include the following information:
  - (i) how the Accredited Body will address the Significant Event in the context of access to the Service under this Agreement, including confirmation that the implementation of the remediation plan will not in any way impact on the compliance by the Accredited Body with its other obligations under this Agreement; and
  - (ii) how the Accredited Body will ensure events similar to the Significant Event do not occur again; and
  - (iii) any other matter reasonably requested by the ACIC.
- (h) The ACIC will review the draft remediation plan and either approve the draft remediation plan or provide the Accredited Body with the details of any changes that are required. The Accredited Body must make any changes to the draft remediation plan reasonably requested by the ACIC and resubmit the draft remediation plan to the ACIC for approval within 5 Business Days of the request unless a different timeframe is agreed in writing by the ACIC. This **clause 12.3(h)** will apply to any resubmitted draft remediation plan.
- (i) Without limiting its other obligations under this Agreement, the Accredited Body must comply with the remediation plan as approved in writing by the ACIC. The Accredited Body agrees to provide reports and other information about the Accredited Body's progress in implementing the remediation plan as reasonably requested by the ACIC.

- (j) The ACIC's rights under this clause are in addition to and do not otherwise limit any other rights the ACIC may have under this Agreement. The performance by the Accredited Body of its obligations under this clause will be at no additional cost to the ACIC.

## Part E PERSONNEL

### 13. Provision of information and parties' relationship

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#### 13.1 Provision of information and liaison

In addition to ACIC's rights under **clause 26**, the Accredited Body must at no cost to the ACIC liaise with and provide the ACIC with any information that it reasonably requires in relation to this Agreement, including information regarding the Accredited Body's Personnel, Subcontractors, company and/or reporting structure, financial viability and compliance with the terms of this Agreement or any review or audit of the Accredited Body's compliance with this Agreement that is conducted by or for the ACIC.

#### 13.2 Relationship of the Parties

Nothing in this Agreement makes the Accredited Body an employee, partner or agent of the ACIC, or gives the Accredited Body any power or authority to bind or represent the ACIC in any way or for any purpose. The Accredited Body must not, and must ensure that its Personnel, Subcontractors, or Customers do not:

- (a) represent themselves as being the ACIC's officer, employee, partner or agent, or as otherwise able to bind or represent the ACIC; or
- (b) engage in any misleading or deceptive conduct in relation to the Service including conduct that is likely to mislead or deceive any person in relation to the Service.

### 14. The Accredited Body's Personnel

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#### 14.1 Restriction of access and Authorised Officer

- (a) The Accredited Body must, at all times, restrict its Personnel's and Subcontractors' access to Personal Information or Police Information to a strictly 'need to know' basis.
- (b) The Accredited Body must ensure that its Personnel and Subcontractors are of good fame and character and will act at all times in a fit and proper manner in relation to any Personal Information or Police Information to which they have access under this Agreement.
- (c) The Accredited Body must ensure its Personnel and Subcontractors do not access the Service or related information offshore, unless as permitted in **clause 21**.
- (d) The Accredited Body must always have an Authorised Officer whose contact details are registered with and can be contacted by the ACIC.
- (e) If there is a change to the Authorised Officer's contact details, or the Authorised Officer is or will become unable or unwilling to continue performing the duties of Authorised Officer, the Accredited Body must notify the ACIC immediately. The Accredited Body must immediately provide a replacement Authorised Officer and notify the ACIC of the details of the replacement Authorised Officer as required by the **Agreement Schedule (Schedule 1)**.



- (f) The ACIC may at any time request the Accredited Body to remove the Authorised Officer or any other Personnel or Subcontractors from work in respect to this Agreement.

*Note: The ACIC provides an Authorised Officer Change Form to assist Accredited Bodies comply with this **clause 14**.*

## **15. Subcontractors**

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### **15.1 ACIC approval**

- (a) The Accredited Body must not subcontract any of its obligations under this Agreement or any of its functions relating to the Service without the prior written approval of the ACIC (and such approval may be subject to conditions).
- (b) The Accredited Body remains responsible for ensuring that it and its Subcontractors comply with all relevant obligations set out in this Agreement.
- (c) Without limiting any other obligation in this Agreement, the Accredited Body must:
- (i) not subcontract on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the Accredited Body, constitute a breach of this Agreement; and
  - (ii) ensure that any Subcontractor is bound by, and complies with, provisions to the effect of the following clauses of this Agreement, to the extent relevant to the activities undertaken by the Subcontractor:
    - (A) **clause 16 (Confidentiality);**
    - (B) **clause 17 (Security of ACIC Confidential Information);**
    - (C) **clause 18 (Privacy);**
    - (D) **clause 29.1 (Termination or reduction in scope for convenience);**
    - (E) **clause 26 (Audits and access to premises and information);** and
    - (F) **clause 27 (Access to documents).**
- (d) If that Subcontractor:
- (i) does something that would, if done or omitted to be done by the Accredited Body, constitute a breach of this Agreement; or
  - (ii) fails to comply with the provisions referred to in **clause 15.1(c)(ii)**,
- the ACIC may, by notice to Accredited Body, revoke its approval of that Subcontractor. If the ACIC revokes its approval of a Subcontractor, the Accredited Body must immediately cease subcontracting any of its obligations under this Agreement or any of its functions relating to the Service, to that Subcontractor.
- (e) Where a Subcontractor undergoes a Change in Control, the Accredited Body must:
- (i) notify the ACIC of that Change in Control; and
  - (ii) if directed in writing by the ACIC, immediately cease subcontracting any of its obligations under this Agreement or any of its functions relating to the Service, to that Subcontractor.



## Part F INFORMATION AND SECURITY

### 16. Confidentiality

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#### 16.1 Confidential Information not to be disclosed

Subject to **clause 16.2**, a Party must not disclose Confidential Information of the other Party without the prior written consent of that other Party who may give that consent subject to conditions.

#### 16.2 Exceptions to non-disclosure

- (a) A Party can disclose Confidential Information of the other Party to the extent that it:
- (i) is shared by the ACIC within the Commonwealth (including with the Auditor-General, Privacy Commissioner or Commonwealth Ombudsman);
  - (ii) is shared by the ACIC with another Government Agency, where this serves the ACIC's or the Government Agency's legitimate interests;
  - (iii) is required by Law or statutory or portfolio duties to be disclosed;
  - (iv) is disclosed by the ACIC in order to protect the health or safety of any person;
  - (v) is disclosed by the Party to its Personnel or Subcontractors solely in order to comply with obligations, or to exercise rights, under this Agreement;
  - (vi) is disclosed by the Party to its internal management (including advisers) solely to enable effective management or auditing of Agreement-related activities;
  - (vii) is disclosed by the Party to its responsible Minister or the Minister's advisers;
  - (viii) is disclosed by the Party, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or State and Territory Parliament;
  - (ix) is disclosed by the Party to the Auditor-General, Privacy Commissioner or Commonwealth Ombudsman in accordance with **clause 26.7**; or
  - (x) is in the public domain otherwise than due to a breach of this **clause 16**.
- (b) Where a Party discloses Confidential Information to another person under **subclauses 16.2(a)(ii) to 16.2(a)(vii)**, the disclosing Party must notify the receiving person that the information is confidential.
- (c) In the circumstances referred to in **subclauses 16.2(a)(ii), 16.2(a)(iv), 16.2(a)(v) and 16.2(a)(vi)** the disclosing Party agrees not to provide the information unless the receiving person agrees to comply with this **clause 16** as though, for that purpose, a reference to 'Party' is a reference to the person receiving Confidential Information.

#### 16.3 Period of Confidentiality

- (a) The obligations under this **clause 16** survive the expiry or termination of this Agreement.
- (b) The obligations contained in this **clause 16** are in addition to those specified in **clauses 19, 21 and 27**.

## **17. Security of ACIC Confidential Information**

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### **17.1 Accredited Body to secure ACIC Confidential Information**

The Accredited Body agrees to comply, and must ensure that its Subcontractors comply, with **Annexure B (Protection of Personal Information and Police Information Safeguards)** and secure all of the ACIC Confidential Information (including for the purposes of this Agreement, Police Information and any information relating to the system or processes used by the ACIC or Police in connection with the Service) against loss and unauthorised access, use, modification or disclosure.

### **17.2 Written undertakings**

The Accredited Body must, on request by the ACIC at any time, promptly arrange for the Accredited Body's Personnel and Subcontractors to give a written undertaking in a form acceptable to the ACIC relating to the use and non-disclosure of the ACIC's Confidential Information (including Police Information).

## **18. Privacy**

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### **18.1 Development of a privacy policy**

The Accredited Body must develop, document and maintain a policy that complies with the requirements set out in **Annexure B (Protection of Personal Information and Police Information Safeguards)** and clearly describes how it protects information and complies with its obligations under **clause 19.2(b) (Privacy Policy)**.

### **18.2 Breach**

If, in relation to the Service or Police Information, the Accredited Body becomes aware of a breach or possible breach:

- (a) by the Accredited Body or its Personnel or Subcontractors, of any of the obligations contained in, or referred to in **clause 19.2(b)**; or
- (b) by a Customer of the Privacy Act,

the Accredited Body must:

- (i) provide the ACIC with all information requested by the ACIC about the event; and
- (ii) take all reasonable action to mitigate the risk of the breach or possible breach causing serious harm to any of the individuals to whom it relates.

## **19. Protection of Police Information and other Personal Information**

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### **19.1 Material provision**

This **clause 19** is a material provision of this Agreement and the obligations outlined in this **clause 19** survive the expiry or termination of this Agreement.

### **19.2 Obligations of Accredited Body and its Personnel and Subcontractors in relation to Personal Information**

- (a) The Accredited Body acknowledges that its use of the Service involves:

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- (i) the collection, storage, use and disclosure by the Accredited Body of Personal Information that is required to complete and submit an application to use the Service; and
  - (ii) the collection, storage, use and possible disclosure by the Accredited Body of Police Information.
- (b) Without limiting **clause 19**, irrespective of whether or not the Accredited Body would otherwise be bound, by entering into this Agreement, the Accredited Body agrees:
- (i) to be bound by the Privacy Act as if it were an Agency; and
  - (ii) comply with the requirements of the Protective Security Policy Framework as applicable.
- (c) In addition to its obligations set out in **clause 20** and **clause 21**, the Accredited Body must in its use of the Service and in accessing nationally coordinated criminal history checks:
- (i) collect, store, use or disclose Personal Information and Police Information only for the Approved Categories and related administration;
  - (ii) not disclose Personal Information or Police Information other than for the purpose for which the Applicant gave Informed Consent unless otherwise authorised or required by Law;
  - (iii) implement Safeguards to keep Personal Information and Police Information secure;
  - (iv) comply with any Directions or guidelines in relation to the treatment of Personal Information and Police Information, notified to the Accredited Body by the ACIC;
  - (v) ensure that all Personnel and Subcontractors who are required to deal with Personal Information and Police Information are made aware of the obligations of the Accredited Body set out in this **clause 19**; and
  - (vi) comply with the requirements in **Annexure B (Protection of Personal Information and Police Information Safeguards)**.
- (d) The Accredited Body must, on request by the ACIC, promptly provide to the ACIC a copy of its Privacy Policy (and pursuant to **clause 7.5**, any privacy policy developed by its Customers).
- (e) The Accredited Body must secure Personal Information belonging to Applicants against loss and unauthorised access, use, modification or disclosure, and notify the Applicant of these risks in accordance with **Annexure B (Protection of Personal Information and Police Information Safeguards)**.

**19.3 ACIC collection of Personal Information**

- (a) Personal Information may be collected from or about the Accredited Body (including its Personnel and Subcontractors) by the ACIC.
- (b) The Accredited Body must notify its Personnel and Subcontractors that the ACIC may collect and use their Personal Information for the purposes of administering, monitoring, reviewing, promoting and evaluating this Agreement.

- (c) The Accredited Body must notify the ACIC immediately if the Accredited Body becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this **clause 19**, whether by the Accredited Body or its Personnel or Subcontractors.

## **20. Notifiable data breach**

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### **20.1 Eligible Data Breach**

If the Accredited Body has reasonable grounds to suspect there may have been an event which amounts to an Eligible Data Breach involving the Accredited Body, it must:

- (a) as soon as possible, but within 5 Business Days, notify the ACIC;
- (b) comply with its obligations under the Privacy Act in relation to that event;
- (c) provide the ACIC with all information requested by the ACIC about the event;
- (d) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates; and
- (e) if requested, allow the ACIC to participate in the Accredited Body's assessment of the event and whether it amounts to an Eligible Data Breach, provided that the ACIC's participation will be in accordance with the Accredited Body's reasonable security and confidentiality requirements.

### **20.2 Notification of Eligible Data Breach**

- (a) If the Accredited Body, after complying with **clause 20.1**, determines that an Eligible Data Breach has occurred and notification of that Eligible Data Breach is required under the Privacy Act:
  - (i) the Parties must meet to discuss and endeavour to agree who will issue the notification (but if the parties are unable to agree, then the ACIC will, acting reasonably, decide which party will issue that notification);
  - (ii) if the Accredited Body is to issue the notification, then the Accredited Body must:
    - (A) as soon as possible provide the ACIC with a draft of the notification;
    - (B) make any changes to the draft notification that are reasonably required by the ACIC; and
    - (C) issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods);
  - (iii) if the ACIC is to issue the notification, then the ACIC must:
    - (A) as soon as possible notify the Accredited Body and provide a draft of the notification;
    - (B) make any changes to the notification that are reasonably required by the Accredited Body for consistency with the Privacy Act; and
    - (C) issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods).

### 20.3 Investigations

The Accredited Body must ensure that:

- (a) the ACIC is promptly notified of any investigation or other action taken by the Privacy Commissioner in connection with any actual or suspected Eligible Data Breach, or notification in relation to that matter; and
- (b) the ACIC is kept informed in relation to that investigation or other action.

### 20.4 Obligations under the Privacy Act

The Parties acknowledge and agree that nothing in this **clause 20** affects their obligations under the Privacy Act.

### 20.5 Obligations under other mandatory data breach notification schemes

To the extent the Accredited Body is required by Law to comply with a data breach notification scheme that imposes different requirements to this **clause 20**, the Accredited Body is not required to comply with the requirements of this **clause 20** to the extent complying with the requirements of this **clause 20** would be inconsistent with the requirements of that scheme, but it must otherwise comply with the requirements of this **clause 20**.

## 21. Data offshoring

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### 21.1 Material provision

This **clause 21** is a material provision of this Agreement.

### 21.2 Offshore Transfer

The Accredited Body must not undertake an Offshore Transfer, unless one of the following circumstances applies:

- (a) where an Offshore Transfer is necessary to provide an Applicant located outside Australia with access to that nationally coordinated criminal history check, and the following conditions are met:
  - (i) the Personal Information or Police Information is transferred directly to the Applicant at their location outside Australia; and
  - (ii) the Applicant has consented to the transfer of Personal Information or Police Information to them directly at their location outside Australia in accordance with the form of consent set out in **Schedule 3 (Required content for Informed Consent)**;
- (b) where the Personnel or Subcontractors of an Accredited Body require access to Personal Information or Police Information while offshore and the following conditions are met:
  - (i) the Personnel and Subcontractors are accessing the Personal Information or Police Information only in relation to an Applicant who is Personnel of the Accredited Body; and
  - (ii) the Applicant has consented to the Offshore Transfer including to whom and in which country the Applicant's Personal Information or Police Information will be transferred in accordance with the form of consent set out in **Schedule 3 (Required content for Informed Consent)**; and

- (iii) the ACIC has provided its prior written approval for the Accredited Body to provide its Personnel and Subcontractors access to Personal Information or Police Information while offshore. The ACIC may provide this approval as a standing approval;
- (c) where an Accredited Body is a foreign government entity and the following conditions are met:
  - (i) the transfer is to a country with which Australia has a whole of government arrangement in place for the security of information; and
  - (ii) the Applicant has consented to the Offshore Transfer including to whom and in which country or countries the Applicant's Personal Information or Police Information will be transferred in accordance with the form of consent set out in **Schedule 3 (Required content for Informed Consent)**; and
  - (iii) the ACIC has provided its prior written approval for the Accredited Body to access Personal Information or Police Information offshore. The ACIC may provide this approval as a standing approval;
- (d) where a Customer is an Offshore Customer and the following conditions are met:
  - (i) the transfer is to a country with which Australia has a whole of government arrangement in place for the security of information; and
  - (ii) the Applicant has consented to the Offshore Transfer including to whom and in which country or countries the Applicant's Personal Information or Police Information will be transferred in accordance with the form of consent set out in **Schedule 3 (Required content for Informed Consent)**; and
  - (iii) the Personal Information or Police Information is only dealt with in accordance with any conditions that apply to the written approval granted under **clause 7.4** for that Customer;
- (e) where an Accredited Body is required by Law to undertake an Offshore Transfer; or
- (f) for any other purpose only if the ACIC has provided its prior written approval.

### 21.3 Approvals

The ACIC may approve subject to any conditions, or subsequently vary, apply additional conditions to, or rescind any approval or permission under **clause 21.2** at any time by notice to the Accredited Body.

### 21.4 No limitation

Nothing in this **clause 21** is intended to limit any other obligation in this Agreement or at Law in connection with Personal Information or Police Information. In particular, the Accredited Body must ensure that any Offshore Transfer is in compliance with the APPs.

## Part G INTELLECTUAL PROPERTY RIGHTS

### 22. Intellectual Property

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#### 22.1 Ownership of Police Information

- (a) Intellectual Property in Police Information is owned as relevant by the ACIC and the Australian police agencies. Nothing in this Agreement affects the ownership of

Intellectual Property in Police Information (including any copy thereof) provided to the Accredited Body.

- (b) The ACIC grants to the Accredited Body a royalty-free, non-exclusive, non-transferable, non-assignable licence (including a right of sub-licence to its Customers and Subcontractors) to use and communicate Police Information in accordance with this Agreement.

## **22.2 No change to ownership of other relevant documents**

Nothing in this Agreement affects the ACIC's ownership of Intellectual Property in any other Material relevant to or associated with the Service or this Agreement, including branding, graphic design, policies, guidance materials, certificates and forms.

## **23. Use of the ACIC or Australian police agency logos or branding**

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### **23.1 Use of ACIC or Australian police agency branding and logos**

The Accredited Body must not, and must ensure that any Subcontractors and Customers do not, use any branding or logo associated with the ACIC or an Australian police agency for any purpose, except where permitted by **Schedule 4 (Media Guidelines)**.

### **23.2 Use of the Accredited Body's own branding and templates**

- (a) The Accredited Body may by notice, request the ACIC to approve its use of branded certificates or templates that use its own logo. These must comply with any guidelines provided to the Accredited Body by the ACIC from time to time. The ACIC may grant this approval in writing at its sole discretion, and this approval and any change to this approval as set out in **Item 5 of the Agreement Schedule (Schedule 1)** will constitute an agreed variation to this Agreement.
- (b) The ACIC may, at its sole discretion, revoke its approval of the Accredited Body's branded certificates or templates by notice to the Accredited Body. This will not constitute a variation to this Agreement, for the purposes of **clause 33** but the Accredited Body must immediately discontinue use of those certificates or templates following the revocation.

### **23.3 Compliance with Media Guidelines**

- (a) The Accredited Body must ensure that its Customers and Subcontractors do not make information available about, or otherwise advertise in relation to, the Service on Public Forums.
- (b) The Accredited Body must comply with the Media Guidelines set out in **Schedule 4 (Media Guidelines)**.
- (c) The ACIC may require the Accredited Body to:
  - (i) immediately remove any advertisements or other publicly available materials that the ACIC, acting reasonably, considers do not comply with the Media Guidelines set out in **Schedule 4 (Media Guidelines)**; and
  - (ii) require its Customers and Subcontractors to immediately remove from Public Forums any information or advertising they have made available about or in relation to the Service in contravention with the requirements of this **clause 23.3**.

**Part H Liability and Indemnity****24. Liability**

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**24.1 Limitations of the Service**

- (a) The Accredited Body acknowledges and agrees that the ACIC makes the information contained in a nationally coordinated criminal history check (including a Check Results Report) available for use on the following conditions:
  - (i) the ACIC makes no representation or warranty of any kind in respect to accuracy; and
  - (ii) the ACIC does not accept responsibility or liability for any omission or error in the information.
- (b) The ACIC is not responsible for, and is not liable for any loss, liability or expense arising from:
  - (i) the checking or vetting of convictions which may be spent prior to their disclosure to the Accredited Body via the Service; or
  - (ii) any information that is released to the Accredited Body contained within a Check Results Report.

**25. Indemnity**

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- (a) The Accredited Body indemnifies the ACIC and ACIC Personnel from and against any:
  - (i) loss, liability or expense incurred by the ACIC or its Personnel;
  - (ii) loss of or damage to property of the ACIC or its Personnel; and
  - (iii) loss, liability or expense incurred by the ACIC or its Personnel in dealing with (including investigation of, responding to and settlement of) any claim against it or them including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the ACIC,arising from:
  - (iv) any breach of the Accredited Body's obligations or warranties in this Agreement;
  - (v) any act or omission by the Accredited Body or the Accredited Body's Personnel or Subcontractors in connection with this Agreement, where there was fault (including any negligent or other tortious or unlawful act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense;
  - (vi) any act or omission on the part of a Customer or the Customer's Personnel or Subcontractors that, were that act or omission performed by the Accredited Body, would constitute a breach of this Agreement or where there was fault (including any negligent or other tortious or unlawful act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or



- (vii) the disclosure to the Accredited Body, or any disclosure by the Accredited Body, of information as a result of a nationally coordinated criminal history check.
- (b) The Accredited Body's liability to indemnify the ACIC and the ACIC's Personnel under this Agreement will be reduced proportionately to the extent that any negligent or other tortious or unlawful act or omission of the ACIC or its Personnel contributed to the relevant liability, loss, damage or expense.
- (c) The right of the ACIC or its Personnel to be indemnified under this Agreement is in addition to, and not exclusive of, any other right, power or remedy provided by Law, and does not entitle the ACIC or its Personnel to be compensated in excess of the amount of the relevant liability, loss, damage or expense.

## Part I ACCESS AND REVIEW

### 26. Audits and access to premises and information

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#### 26.1 Right to conduct audits and compliance activities

The ACIC, including its authorised Personnel, may conduct audits relevant to the Accredited Body's compliance with this Agreement. Audits may be conducted of:

- (a) the Accredited Body's operational practices and procedures as they relate to this Agreement;
- (b) the Accredited Body's compliance with its privacy and confidentiality obligations under this Agreement including:
  - (i) that the nationally coordinated criminal history check has been used only for the applicable Approved Categories;
  - (ii) the Safeguards; and
  - (iii) the Accredited Body's Privacy Policy; and
- (c) any other matters determined by the ACIC to be relevant to the use of the Service or the performance of this Agreement.

#### 26.2 Process of Conducting the Audits

- (a) The Accredited Body must:
  - (i) participate promptly and cooperatively in any audits conducted by the ACIC or its authorised Personnel; and
  - (ii) subject to **clause 26.5**, comply with all timeframes notified by the ACIC acting reasonably for the production of documents or provision of access as part of the ACIC exercising its rights under this **clause 26**.
- (b) Each Party must bear its own costs associated with any audits.

#### 26.3 Access to Accredited Body's sites or premises

For the purposes of the ACIC conducting audits under this **clause 26**, the Accredited Body must, as required by the ACIC or its authorised Personnel:

- (a) grant the ACIC and its authorised Personnel access to the Accredited Body's premises and data, records and other material relevant to the performance of this Agreement; and
- (b) arrange for the ACIC and its authorised Personnel to inspect and copy data, records and other material relevant to the performance of this Agreement.

#### 26.4 Subcontracts

The Accredited Body must ensure that all Subcontracts contain an equivalent clause to **clause 26.3**, and which must include granting the ACIC and its authorised Personnel or other authorised representative and the persons listed in **clause 26.7**:

- (a) access to the Subcontractor's premises, and to data, records and other material relevant to the use of the Service; and
- (b) rights to inspect and copy data, records and other material relevant to the use of the Service.

#### 26.5 ACIC conduct in relation to audit and access

The rights referred to in **clauses 7.5(a)(iv), 26.1 and 26.3** are, wherever practicable, subject to:

- (a) the ACIC providing the Accredited Body (or, where applicable, a Subcontractor or Customer) with at least 5 Business Days' prior notice; and
- (b) the Accredited Body's (or, where applicable, a Subcontractor's or Customer's) reasonable security requirements or codes of behaviour,

except where the ACIC or its authorised Personnel believes that there is a suspected or actual breach of Law.

#### 26.6 Audit outcomes

The ACIC may provide the outcomes of any audits of the Accredited Body (including any recommendation) to the Accredited Body and if the ACIC does so, the Accredited Body must:

- (a) implement any recommendations provided by the ACIC; and
  - (b) comply with any Directions given by the ACIC arising out of the audit,
- within the timeframe notified by the ACIC, acting reasonably.

#### 26.7 Auditor-General and Privacy Commissioner and Ombudsman rights

- (a) The rights of the ACIC under **clause 7.5(a)(iv)** and this **clause 26** apply equally to:
  - (i) the Auditor-General or a delegate of the Auditor-General;
  - (ii) the Privacy Commissioner or a delegate of the Privacy Commissioner; and
  - (iii) the Commonwealth Ombudsman or a delegate of the Commonwealth Ombudsman,

for the purpose of performing the Auditor-General's, Privacy Commissioner's or the Commonwealth Ombudsman's statutory functions or powers.

- (b) Nothing in this Agreement limits or restricts in any way any duly authorised function, power, right or entitlement of the persons listed in **clause 26.7(a)**.

## 27. Access to documents

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### 27.1 Requests to access documents

- (a) If the ACIC receives a request for access to a document created by or in the possession of the Accredited Body (including a request under the *Freedom of Information Act 1982* (Cth)), the Accredited Body's Personnel, a Customer or a Subcontractor that relates to this Agreement, the ACIC may at any time by notice require the Accredited Body to provide the document to the ACIC and the Accredited Body must, at no additional cost to the ACIC, promptly comply with the notice.
- (b) Subject to **clause 27.1(c)** and to the extent allowable under Law, if the Accredited Body receives a request from a third party for access to a document in its possession (including in the possession of its Personnel, Customer or Subcontractor) that relates to this Agreement, the Accredited Body must consult with the ACIC upon receipt of the request and must receive consent from the ACIC prior to releasing the document to the third party.
- (c) Where the Accredited Body receives a request from a third party for access to a document in its possession and the request is subject to any legal process including a court-issued direction, a request under the Privacy Act or a freedom of information request, the Accredited Body must consult to the extent allowable under Law with the ACIC upon receipt of such action or application and again prior to its finalisation.
- (d) The Accredited Body must include in any Subcontract relating to the performance of this Agreement provisions that will enable the Accredited Body to comply with its obligations under this **clause 27**.

## Part J SUSPENSION

### 28. ACIC's rights to suspend the Service

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#### 28.1 ACIC's suspension right

- (a) The parties agree and acknowledge that:
  - (i) any Customer is not a party to this Agreement and does not have access to the Service; and
  - (ii) this does not prevent ACIC from exercising its rights to suspend the Services in accordance with this **clause 28**.
- (b) The ACIC may, at its discretion and in addition to any other rights it has under this Agreement, suspend or reduce the Accredited Body's level of access to or use of the Service where the:
  - (i) Accredited Body has breached a term or condition of this Agreement;
  - (ii) ACIC reasonably suspects that the Accredited Body has committed or may commit a breach of a term or condition of this Agreement;
  - (iii) Accredited Body notifies the ACIC that a Customer has breached the Privacy Act;
  - (iv) ACIC considers that:

- (A) the Accredited Body or the Customer has adversely affected, or may adversely affect, the security, stability, reputation, integrity or operations of the Service;
- (B) the Accredited Body is at risk of no longer being approved under section 46A(5) of the ACC Act; or
- (C) the Accredited Body is at risk of no longer being approved by the ACIC to use the Service for Customers;
- (v) Accredited Body fails to pay any claim for payment in accordance with **clause 10.1(c)**; or
- (vi) ACIC is satisfied that there are sufficiently serious concerns in connection with a Change in Control of the Accredited Body as provided in **clause 31(d)**.
- (c) The suspension or reduction of the Service in:
  - (i) **clauses 28.1(b)(i), 28.1(b)(ii), 28.1(b)(iii) and 28.1(b)(v)** commences immediately until such time as the breach by the Accredited Body or the Customer has been remedied to the ACIC's satisfaction; and
  - (ii) **clauses 28.1(b)(iv) and 28.1(b)(vi)** commences immediately until such time as notified by the ACIC.
- (d) The Accredited Body must continue to perform its obligations under this Agreement notwithstanding any suspension or reduction of the Service.

## 28.2 Suspension for repeated breach of this Agreement

Where the Accredited Body has breached a term or condition of this Agreement on more than 3 separate occasions during the Term of this Agreement, regardless in each case of whether that breach has been remedied:

- (a) the ACIC may, at its sole discretion and in addition to any other rights it has under this Agreement, suspend or reduce the Accredited Body's level of access to or use of the Service (including by suspending or revoking approval for certain Customers of the Accredited Body) by notice to the Accredited Body; and
- (b) the suspension or reduction of the Service imposed under **clause 28.2(a)** will commence immediately and remain in place for the period of time set out in the notice issued under **clause 28.2(a)**.

## 28.3 Interaction with termination rights

The exercise by the ACIC of any suspension right under this **clause 28** is without prejudice to its termination rights set out under **clause 29**.

# Part K DISPUTES AND TERMINATION

## 29. Termination and contract disputes relating to this Agreement

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### 29.1 Termination or reduction in scope for convenience

- (a) The ACIC may terminate this Agreement or reduce the scope of this Agreement (including by reducing or removing any Approved Categories or by changing a Commercial Accredited Body to a Non-Commercial Accredited Body) by notice at any time, effective immediately.

- (b) The Accredited Body will not be entitled to any compensation whatsoever including for loss of prospective profits or loss of any benefits that would have been conferred on the Accredited Body if the termination or reduction had not occurred. The ACIC will only be liable for repayment of Fees for any outstanding nationally coordinated criminal history check requested, and paid for, by the Accredited Body prior to the effective date of termination.
- (c) This **clause 29.1** does not affect the ACIC's other rights under this Agreement or otherwise at Law.

## 29.2 Termination for default

- (a) The ACIC may terminate this Agreement immediately by notice to the Accredited Body if any of the following termination events occur:
  - (i) the Accredited Body breaches a material provision of this Agreement (being **clauses 6, 7, 8.2** and other provisions referred to in **clause 8.2(a), 9, 11, 12, 19 and 21** and any other provision expressly identified as being a material provision of this Agreement) where the breach is not capable of remedy;
  - (ii) the Accredited Body breaches any provision of this Agreement and does not rectify the breach within 14 days after receipt of the ACIC's notice to do so;
  - (iii) the ACIC considers that its decision to accredit and grant the Accredited Body access to or use of the Service was affected by a statement in the Accredited Body's accreditation application that was incorrect, incomplete, false or misleading;
  - (iv) the ACIC is satisfied on reasonable grounds that the Accredited Body is unable or unwilling to satisfy the terms of this Agreement;
  - (v) an event mentioned in **clause 28.1(b)(iv)** arises;
  - (vi) the Accredited Body comes under any form of administration or assigns its rights otherwise than in accordance with this Agreement;
  - (vii) the Accredited Body is unable to pay all its debts as and when they become payable or fails to comply with a statutory demand;
  - (viii) proceedings are initiated with a view to obtaining an order for winding up the Accredited Body;
  - (ix) if the Accredited Body is a local government organisation, the relevant State or Territory Government takes action to cease the Accredited Body's operations and/or to amalgamate them with the operations of another local government organisation;
  - (x) the Accredited Body becomes bankrupt or enters into a scheme of arrangement with creditors;
  - (xi) anything analogous to, or of a similar effect to, anything described in **clauses 29.2(a)(vi) to 29.2(a)(x)** occurs in respect of the Accredited Body;
  - (xii) another provision of this Agreement allows for termination under this **clause 29.2**; or
  - (xiii) the Accredited Body fails to pay any claim for payment in accordance with **clause 10.1(d)**.

- (b) If a purported termination by the ACIC under this **clause 29.2** is determined by a competent authority not to be properly a termination under this **clause 29.2**, then that termination by the ACIC will be deemed to be a termination for convenience under **clause 29.1** with effect from the date of the notice of termination referred to in this **clause 29.2**.
- (c) This **clause 29.2** does not affect the ACIC's other rights under this Agreement or otherwise at Law.

### 29.3 Termination for repeated breaches

- (a) In addition to its rights under **clause 28.2**, the ACIC may terminate this Agreement immediately by notice to the Accredited Body where the Accredited Body has breached a term or condition of this Agreement on more than 3 separate occasions during the term of this Agreement, regardless in each case of whether that breach has been remedied.
- (b) This **clause 29.3** does not affect the ACIC's other rights under this Agreement or otherwise at Law.

### 29.4 Interaction with suspension rights

The ACIC is not required to first exercise its suspension rights under **clause 28** before exercising any of its rights to terminate under **clause 29**.

## 30. Procedure for resolving disputes arising under this Agreement

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- (a) Except for the circumstances set out in **clause 30(b)**, a Party must comply with the following procedure in respect of any dispute arising under this Agreement:
  - (i) the Party claiming that there is a dispute will send the other Party a notice setting out the nature of the dispute (**Dispute Notice**);
  - (ii) the Parties will try to resolve the dispute through direct negotiation;
  - (iii) if:
    - (A) there is no resolution of the dispute within 30 days from the date that the Dispute Notice was received;
    - (B) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure within 30 days from the date that the Dispute Notice was received; or
    - (C) the Parties agree to submit to mediation or some other form of alternative dispute resolution procedure but there is no resolution within 30 days of that submission (or such extended time agreed upon by the Parties),

then either Party may commence legal proceedings.
- (b) **Clause 27.1(a)** does not apply to the following circumstances:
  - (i) either Party commences legal proceedings for urgent interlocutory relief;
  - (ii) action is taken by the ACIC under, or purportedly under **clause 26, 28.1, 28.2, 29.1 or 29.2**; or

- (iii) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by the Accredited Body.
- (c) Each Party will bear its own costs of complying with this **clause 30**, and the Parties will bear equally the cost of any person engaged under **clause 30(a)(iii)(C)**.
- (d) Despite the existence of a dispute, both Parties must (except to the extent notified by the other Party not to do so) continue to perform their respective obligations under this Agreement.

## Part L CHANGE IN CONTROL

### 31. Change in control

- (a) Without limiting **clause 40** or any other provision of this **clause 31**, where an Accredited Body undergoes a Change in Control, the Parties acknowledge and agree that the changed Accredited Body is not permitted to:
  - (i) use the Service; or
  - (ii) offer the Service to Applicants, Personnel or Customers,
 unless the changed Accredited Body's continued use of the Service is approved in writing by the ACIC.
- (b) The Accredited Body must:
  - (i) give notice of a Change in Control to the ACIC as follows:
    - (A) prior notice as soon as possible but in any event no later than 30 days after the Accredited Body first became aware of the impending Change in Control; or
    - (B) if the Accredited Body does not have prior knowledge of any Change in Control, or otherwise acting reasonably and in good faith is unable to comply with the timeframe in **clause 31(b)(i)(A)**, notice to the ACIC as soon as possible but in any event no later than 30 days after the occurrence of the Change in Control; and
  - (ii) on an ongoing basis, give notice to the ACIC as soon as possible but in any event no later than 30 days after the Accredited Body first becomes aware, of any other material changes to the Accredited Body associated with or resulting from any Change in Control; and
  - (iii) as soon as possible upon request by the ACIC, provide to the ACIC such further information, and assurances, as are reasonably required to demonstrate to the ACIC's satisfaction that there will be no adverse consequences which may eventuate as a result of the Change in Control which could affect the performance of the Accredited Body's obligations under this Agreement or on the Accredited Body's accreditation under section 46A(5) of the ACC Act. Without prejudice to the generality thereof, the ACIC may require information, or assurances relating to Accredited Body's ongoing corporate and management culture, capacity capability and financial viability, Personnel and Subcontractors.
- (c) The ACIC's satisfaction as to any circumstances in connection with the Change in Control under **clause 31(b)**:



- (i) must not be taken to be ACIC approval of any changed Accredited Body's continued use of the Service; and
- (ii) may be subject to change at any time following receipt, or further consideration of, information or assurances provided to the ACIC.
- (d) If, after consideration of any information and assurances provided under **clause 31(b)**, the ACIC assesses that there:
  - (i) will be adverse consequences which may eventuate as a result of the Change in Control the ACIC may, in accordance with **clause 29.2(a)(xiii)**, terminate this Agreement; and / or
  - (ii) are sufficiently serious concerns in connection with the Change in Control which warrant further consideration or investigation, the ACIC may, in accordance with **clause 28.1(b)(vi)**, suspend or reduce the Accredited Body's level of access to or use of the Services while it undertakes the further consideration or investigation.
- (e) Any information provided by the Accredited Body for the purposes of **clause 31(b)** will be considered to be Confidential Information of the Accredited Body.
- (f) To avoid doubt, any licence to the Accredited Body to use and communicate Police Information under this Agreement is non-transferrable and non-assignable (including to an entity that acquires an interest in the Accredited Body or its business) unless the ACIC provides its prior written approval.

## Part M GENERAL

### 32. Survival

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The termination or expiration of this Agreement will not affect the continued operation of this **clause 32** and any provision of this Agreement which expressly or by implication from its nature is intended to survive including **clauses 19 (Protection of Police Information and other Personal Information), 16 (Confidentiality), 25 (Indemnity), 26 (Audits and access to premises and information)**.

### 33. Variation

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#### 33.1 Variations to this Agreement

- (a) This Agreement may be amended by the ACIC from time to time. The ACIC will provide the Accredited Body with 1 months' notice of any amendments, unless a shorter notice period is permitted in relation to a change to Fees resulting from the Minister exercising the power to issue a new determination under section 7(1) of the Australian Crime Commission (National Policing Information Charges) Act 2016, a shorter notice period is permitted in relation to a variation under **clause 10.2** in relation to any specified or maximum amount chargeable for a Volunteer Check, or a shorter notice period is permitted under **clause 33.1(b)** in relation to a variation of the Annexures or **Schedule 4 (Media Guidelines)**, or as otherwise permitted under this Agreement.
- (b) The ACIC may amend any of the following from time to time on 5 Business Days' notice to the Accredited Body:
  - (i) **Annexure A (Identity Proofing Documents and Processes);**
  - (ii) **Annexure B (Protection of Personal Information and Police Information Safeguards);**



- (iii) **Annexure C (Disclaimer for Limitations of Service);**
- (iv) **Schedule 4 (Media Guidelines).**

### 33.2 Other changes

- (a) The following variations to the Agreement are effected by notice from one Party to the other:
  - (i) an amendment to a Party's address for notice pursuant to **clause 35(c)**;
  - (ii) an update to the Accredited Body's details that do not constitute a Change in Control;
  - (iii) an update to a Party's Authorised Officer; and
  - (iv) an amendment to the Accredited Body's address for invoices.
- (b) The Parties may update the **Agreement Schedule (Schedule 1)** to reflect any variations arising under **clause 33.2(a)**.

### 33.3 Variations to be in the form of Schedule 2 (Form of variation)

Variations to this Agreement other than those set out in **clause 33.1** or **clause 33.2** may be made by agreement between the Parties in the form of **Schedule 2 (Form of variation)**.

## 34. Corporate trustees

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If any trust of which the Accredited Body is a trustee has any relevance to matters within the scope of this Agreement, without limiting in any way the Accredited Body's obligations under this Agreement, the Accredited Body represents and warrants that it has the power and authority as trustee to perform relevant obligations and has a right of indemnity from the trust assets in relation to all relevant matters.

## 35. Notices

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- (a) A notice given by a Party (**First Party**) to the other Party under this Agreement must be:
  - (i) in writing;
  - (ii) identified as a notice under this Agreement; and
  - (iii) signed by the First Party's Authorised Officer,
  - (iv) and marked for the attention of the other Party's Authorised Officer and hand delivered or sent by prepaid post or email to the other Party's address for notices as set out in the **Agreement Schedule (Schedule 1)**.
- (b) A notice given in accordance with **clause 35(a)** is taken to be received:
  - (i) if hand delivered or if sent by pre-paid post, on delivery to the relevant address or 5 Business Days after posting (if sent by pre-paid post), whichever is earlier; or
  - (ii) if sent by email, when received by the addressee or when the sender's computer generates written notification that the notice has been received by the addressee, whichever is earlier. Despite anything else in this **clause 35**,

if communications are received or taken to be received under **clause 35(b)** after 5.00pm on a Business Day or on a non-Business Day at the address of the recipient, they are taken to be received at 9.00am on the next Business Day at the address of the recipient.

- (c) A Party may amend its address for notice by notice to the other Party, following which that Party's address for notice will be the address set out in that notice.

### **36. Governing law**

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This Agreement is governed by the law of the Australian Capital Territory and the Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

### **37. Counterparts**

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This Agreement may consist of a number of copies, each signed by one or more Parties to it. The signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of this Agreement.

### **38. Entire agreement**

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This Agreement:

- (a) records the entire agreement between the Parties about its subject matter; and
- (b) supersedes all offers, prior representations, communications, statements, understandings, negotiations and agreements, whether oral or written, between the Parties about that subject matter.

### **39. Waiver**

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A waiver of any provision of this Agreement by the ACIC must be agreed to in writing by the ACIC's Authorised Officer to be effective. Failure by either Party to enforce a term or condition of this Agreement shall not be construed as in any way affecting the enforceability of that term or condition or this Agreement as a whole.

### **40. Assignment and novation**

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The Accredited Body must not assign, novate or transfer its rights or obligations under this Agreement without the ACIC's prior written approval.

## **Part N INTERPRETATION AND DEFINITIONS**

### **41. Interpretation**

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#### **41.1 General interpretation of this Agreement**

In this Agreement, unless the contrary intention appears:

- (a) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (b) words in the singular include the plural and vice versa;
- (c) words importing a gender include any other gender;

- (d) the word 'person' includes an individual, partnership, a body (whether corporate or otherwise) and Government Agencies;
- (e) if the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action shall be done no later than the end of the next Business Day;
- (f) a reference to any statute, standard, policy or instrument is to a statute, standard, policy or instrument of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the statute;
- (g) all references to dollars are to Australian dollars;
- (h) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
- (i) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision;
- (j) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation;
- (k) a reference to a 'clause' or a 'Part' is to a clause or Part in this document, a reference to 'Item' is to an Item in the **Agreement Schedule (Schedule 1)**, a reference to 'Schedules' is a reference to documents attached to this document referred to as "Schedules", and a reference to 'Annexures' is a reference to documents attached to this document referred to as "Annexures"; and
- (l) notes and examples are inserted for reference and guidance only and have no effect in limiting or extending the language of the provisions to which they refer.

#### 41.2 Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

<b>ACC Act</b>	means the <i>Australian Crime Commission Act 2002</i> (Cth);
<b>Accreditation Type</b>	means the type of accreditation approved for the Accredited Body by the ACIC relating to the scope of nationally coordinated criminal history checks that may be conducted, and may be either a: <ul style="list-style-type: none"> <li>(a) Non-Commercial Accredited Body; or</li> <li>(b) Commercial Accredited Body,</li> </ul> as set out in <b>Item 4</b> of the <b>Agreement Schedule (Schedule 1)</b> ;
<b>Accredited Body</b>	means the entity specified as such in the <b>Agreement Schedule (Schedule 1)</b> , which has been approved by the ACIC pursuant to section 46A(5) of the ACC Act, and includes, where the context permits, its Personnel, administrators, successors and permitted assigns, including any person to whom the Accredited Body novates this Agreement in accordance with <b>clause 40</b> ;
<b>Agency</b>	has the same meaning as given in the Privacy Act;

<b>Agreement</b>	has the meaning in <b>clause 4.1</b> ;
<b>Agreement Schedule</b>	means <b>Schedule 1</b> to this document, which sets out specific terms that apply to the Accredited Body;
<b>Agreement Terms and Conditions</b>	means this document entitled 'Agreement Terms and Conditions' and consisting of <b>clauses 1 to 41</b> ;
<b>Applicant</b>	means a natural person in relation to whom the Accredited Body seeks a nationally coordinated criminal history check;
<b>Application</b>	means a form (in physical or electronic format) completed by the Applicant, or on behalf of the Applicant, submitted to the Accredited Body and provided to the ACIC, requesting the ACIC to conduct a nationally coordinated criminal history check in relation to an Applicant;
<b>Approved Categories</b>	means those nationally coordinated criminal history check categories as described in <b>Item 8 of the Agreement Schedule (Schedule 1)</b> , and any other categories approved by the ACIC under <b>clause 6.3</b> and documented by variation to this Agreement pursuant to <b>clause 33.3</b> ;
<b>Australian Criminal Intelligence Commission (or ACIC)</b>	has the meaning set out in the Parties section of this Agreement;
<b>Australian Privacy Principle (or APP)</b>	has the same meaning as given in the Privacy Act;
<b>Authorised Officer</b>	means: <ul style="list-style-type: none"> <li>(a) in relation to the Accredited Body, the person listed in the <b>Agreement Schedule (Schedule 1)</b>; and</li> <li>(b) in relation to the ACIC, the Manager at the ACIC responsible for managing the National Police Checking Service;</li> </ul>
<b>Authoritative Source</b>	means any repository which is an accurate and up-to-date source of information using best available information (such as a government agency database or a third party identity service provider accredited to the required level of assurance);
<b>Biometric Matching Software</b>	means systems or technologies that automate the facial identification of individuals using measurable biological characteristics that can be used to identify them or verify their identity;
<b>Business Day</b>	means a day other than a Saturday, Sunday or a public holiday in the Australian Capital Territory;
<b>Change in Control</b>	means, in relation to an entity: <ul style="list-style-type: none"> <li>(a) a person who has Control of the entity ceasing to have Control of the entity, or a person who does not have Control of the entity acquiring Control of the entity; or</li> </ul>

	(b) the disposal of the whole or part of any part of the assets, operations or business of the entity other than in the ordinary course of business;
<b>Check Results Report</b>	means a report in a physical or electronic format outlining the results of a nationally coordinated criminal history check provided by the ACIC to the Accredited Body as a result of the Accredited Body accessing and using the Service;
<b>Commencement Date</b>	means the date specified in <b>Item 2</b> of the <b>Agreement Schedule (Schedule 1)</b> ;
<b>Commencement of Identity Document</b>	means the documents identified as 'Commencement of Identity Documents' in <b>clause 2</b> of <b>Annexure A (Identity Proofing Documents and Processes)</b> ;
<b>Commercial Accredited Body</b>	means an Accredited Body whose Accreditation Type is specified to be "Commercial Accredited Body" in <b>Item 4</b> of the <b>Agreement Schedule (Schedule 1)</b> ;
<b>Commonwealth</b>	means the Commonwealth of Australia and includes the ACIC;
<b>Commonwealth Entity</b>	has the meaning given to a Non-Corporate Commonwealth Entity in the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth);
<b>Confidential Information</b>	means information that: <ul style="list-style-type: none"> <li>(a) is Police Information;</li> <li>(b) is by its nature confidential, including the name or contact details of any staff member, or security information, or system information relating to the provision of the Service;</li> <li>(c) the Parties agree in writing after the Commencement Date is confidential information for the purposes of this Agreement;</li> </ul>
<b>Control</b>	has the meaning given to it in the <i>Corporations Act 2001</i> (Cth);
<b>Customer</b>	means any body or entity that engages the Accredited Body to use the Service for the sole purpose of obtaining a nationally coordinated criminal history check for that body or entity's own Personnel (potential or existing), but does not include an individual who is an Applicant who has engaged the Accredited Body directly to access and use the Service;
<b>Direction</b>	means any direction made by the ACIC to an Accredited Body under this Agreement;
<b>Disclosable Court Outcome</b>	may include any (including a combination) of the following Police Information about an Applicant: <ul style="list-style-type: none"> <li>(a) charges;</li> <li>(b) court convictions;</li> <li>(c) findings of guilt with no conviction;</li> </ul>

	<ul style="list-style-type: none"> <li>(d) court appearances;</li> <li>(e) good behaviour bonds or other court orders;</li> <li>(f) pending matters awaiting court hearing; or</li> <li>(g) traffic offence history;</li> </ul>
<b>Document Identifier</b>	means a document identifying number as specified in a list provided by the ACIC to the Accredited Body from time to time;
<b>Document Verification Service or DVS</b>	means the national secure online system of that name, which enables authorised entities to electronically verify certain Evidence of Identity (EOI) documents issued by a range of Australian, State and Territory government agencies;
<b>Eligible Data Breach</b>	has the same meaning as given in the Privacy Act;
<b>Evidence of Identity (EOI)</b>	means information that a person may present to support assertions or claims to a particular identity which, when combined, provide confidence that an individual is who they say they are, and that the identity is valid and not known to be fraudulent. This evidence may be provided in the form of identity documents or other card-based credentials that contain key attributes (such as name, date of birth, unique identifier) or provide information on an individual's 'pattern of life' or 'social footprint';
<b>Fees</b>	means the amount(s) payable by the Accredited Body pursuant to <b>clause 10</b> ;
<b>Government Agency</b>	<p>means any governmental, administrative, fiscal, judicial or quasi-judicial:</p> <ul style="list-style-type: none"> <li>(a) body;</li> <li>(b) department;</li> <li>(c) commission;</li> <li>(d) authority;</li> <li>(e) tribunal;</li> <li>(f) agency; or</li> <li>(g) entity;</li> </ul>
<b>Identity Enrolment</b>	means a process which may be approved by the ACIC under <b>clause 9.7</b> and which, by assigning unique authentication credentials to individuals or entities, allows a relying party (such as the Accredited Body) to assume, with a high degree of assurance, that an electronic communication from a Known Applicant is in fact a communication from that entity;
<b>Informed Consent</b>	has the meaning as given in <b>Schedule 3 (Required content for Informed Consent)</b> ;

<b>Information Security Policy</b>	means the policy of that name as described in <b>Annexure B (Protection of Personal Information and Police Information Safeguards)</b> ;
<b>Intellectual Property</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) all copyright (including rights in relation to phonograms, sound recordings and broadcasts);</li> <li>(b) 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</li> <li>(c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>(d) Moral Rights;</li> <li>(e) the rights of performers (other than a performer's right of co-ownership of copyright in the sound recording of a performance); or</li> <li>(f) rights in relation to Confidential Information;</li> </ul>
<b>Known Applicant</b>	means an Applicant who has satisfied the proof of identity document requirements as set out in <b>clauses 9.4 and 9.5</b> ;
<b>Law</b>	means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by the Commonwealth, a State, Territory or a local government, and includes the common law and rules of equity as applicable from time to time;
<b>Material</b>	means any article or thing in relation to which Intellectual Property rights arise;
<b>Media Guidelines</b>	means the guidelines set out in <b>Schedule 4 (Media Guidelines)</b> , as amended by the ACIC under <b>clause 33.1(b)</b> ;
<b>Moral Rights</b>	means each and every 'moral right' as defined in the <i>Copyright Act 1968</i> (Cth);
<b>nationally coordinated criminal history check</b>	means a criminal history and police information check conducted about an Applicant by the ACIC, as part of the Service in accordance with this Agreement, and the result of that checking process provided by the ACIC to the Accredited Body in the form of a Check Results Report;
<b>National Police Checking Service (or Service)</b>	means the service established by the ACIC to facilitate nationally coordinated criminal history checks to support the assessment of the suitability of people applying for employment (including positions of trust and volunteer service) or entitlements (including Australian citizenship, licensing and registration schemes);
<b>Non-Commercial Accredited Body</b>	means an Accredited Body whose Accreditation Type is specified to be "Non-Commercial Accredited Body" in <b>Item 4 of the Agreement Schedule (Schedule 1)</b> ;



<b>NSS</b>	means the information technology system known as the National Police Checking Service Support System owned by the ACIC;
<b>Offshore Customer</b>	means a Customer that is registered as a company in a country other than Australia, or that intends to undertake an Offshore Transfer in relation to an Applicant;
<b>Offshore Transfer</b>	means the transfer, access, disclosure or holding of Personal Information or Police Information outside of Australia;
<b>Party</b>	means a party to this Agreement, being the ACIC and the Accredited Body as specified in the <b>Agreement Schedule (Schedule 1)</b> ;
<b>Personal Information</b>	has the meaning given in the Privacy Act;
<b>Personnel</b>	means: <ul style="list-style-type: none"> <li>(a) in relation to the Accredited Body, all existing and prospective individuals employed or engaged by the Accredited Body including in a volunteer capacity but not Subcontractors;</li> <li>(b) in relation to the ACIC, all existing individuals employed or engaged by the ACIC with the relevant delegation to administer this Agreement; and</li> <li>(c) in relation to a Customer, all existing and prospective individuals employed or engaged by that Customer, including in a volunteer capacity but not Subcontractors;</li> </ul>
<b>Police Information</b>	means any of the following information: <ul style="list-style-type: none"> <li>(a) information collected for the purposes of providing the Service;</li> <li>(b) information collected for the purposes of a nationally coordinated criminal history check; and</li> <li>(c) information released as part of a nationally coordinated criminal history check including any information accessible for the purposes of the Service, including in a Check Results Report;</li> </ul>
<b>Primary Use in Community Document</b>	means a document named as such in <b>Annexure A (Identity Proofing Documents and Processes)</b> ;
<b>Privacy Act</b>	means the <i>Privacy Act 1988</i> (Cth);
<b>Privacy Policy</b>	has the meaning in <b>clause 18.1</b> ;
<b>Protective Security Policy Framework</b>	means the framework of the same name published by the Commonwealth government;
<b>Public Forum</b>	has the meaning given in paragraph <b>1(c)</b> of <b>Schedule 4 (Media Guidelines)</b> ;
<b>Related Government Entity</b>	means a body politic of the Commonwealth, an Australian state or an Australian territory, which engages the Accredited Body to use the Service on their behalf;

<b>Safeguards</b>	means practices that a professional organisation handling Personal Information would implement to appropriately protect that information and include the Protection of Personal Information and Police Information Safeguards set out at <b>Annexure B (Protection of Personal Information and Police Information Safeguards)</b> ;
<b>Secondary Use in Community Document</b>	means a document named as such in <b>Annexure A (Identity Proofing Documents and Processes)</b> ;
<b>Service</b>	means the National Police Checking Service;
<b>Standard Check</b>	means a nationally coordinated criminal history check performed in relation to an Applicant that is not a Volunteer Check;
<b>Standard Term</b>	has the meaning in <b>clause 3.1(a)</b> ;
<b>Subcontract</b>	means the written agreement between the Accredited Body and a Subcontractor;
<b>Subcontractor</b>	means any person or entity engaged by the Accredited Body (other than its Personnel) to undertake any part of the Accredited Body's obligations under this Agreement in accordance with <b>clause 15</b> ;
<b>Volunteer</b>	<p>means an Applicant who has provided Informed Consent for a nationally coordinated criminal history check for a position, or to perform a role, on the basis that:</p> <p>(a) the Applicant will:</p> <ul style="list-style-type: none"> <li>(i) freely hold the position or perform the role on a voluntary basis for charitable purposes which have a public benefit; and</li> <li>(ii) not be an employee or contractor and will not be entitled to a salary or any other entitlements associated with the position or role, other than payment of out of pocket expenses; or</li> </ul> <p>(b) the Applicant is a student undertaking a compulsory unpaid vocational placement as part of a training course requirement from an Australian-based educational institution;</p>
<b>Volunteer Check</b>	means a nationally coordinated criminal history check performed in relation to an Applicant who is a Volunteer;
<b>Volunteer Purpose</b>	means the purposes set out in <b>Item 9</b> of the <b>Agreement Schedule (Schedule 1)</b> .

## Schedule 1 – Agreement Schedule

Item No.	Description	Particulars
1.	<b>Accredited Body</b>	Entity Name: Entity ABN: Entity's registered business name (if applicable): Registered Address: Principal Place of Business:
2.	<b>Commencement Date</b> Clause 3	1 July 2024.
3.	<b>Term of the Agreement: Extension</b> Clause 3	3 years, expiring on 1 July 2027 unless the ACIC has extended the term beyond the Standard Term for a further period or periods in accordance with <b>clause 3.1(b)</b> .
4.	<b>Accreditation Type</b> Clause 6.4	<b>Commercial Accredited Body</b> The Accredited Body may access the Service to submit requests for, and obtain results of nationally coordinated criminal history checks in accordance with <b>clause 6.4(b) and 6.4(c)</b> . <b>OR</b> <b>Non-Commercial Accredited Body</b> The Accredited Body may access the Service to submit requests for, and obtain results of nationally coordinated criminal history checks in accordance with <b>clause 6.4(d) and 6.4(e)</b> .
5.	<b>Branded templates belonging to the Accredited Body</b> Clause 23.2(a)	The ACIC <b>has not</b> approved the Accredited Body's branded template. <b>OR</b> The ACIC <b>has</b> approved the Accredited Body's branded template. <i>Note: the approved branded template is as attached to this Agreement Schedule</i>
6.	<b>Informed Consent</b> Clause 9.8	The Applicant's Informed Consent must be collected prior to each and every request submitted to ACIC for a nationally coordinated criminal history check, unless an exemption applies under a relevant State/Commonwealth legislation that authorises the Accredited Body to proceed without getting the Applicant's Informed Consent.
7.	<b>Fees for nationally coordinated criminal history checks</b> Volunteer Checks Clauses 10.1 and 10.2	The Fees for nationally coordinated criminal history checks are those set out in the determination made pursuant to section 7(1) of the <i>Australian Crime Commission (National Policing Information Charges) Act 2016</i> (Cth). As at 1 July 2024, these are: <ul style="list-style-type: none"> <li>\$28.00 for each Standard Check; and</li> </ul>

Item No.	Description	Particulars
		<ul style="list-style-type: none"> <li>\$7.00 for each Volunteer Check.</li> </ul> <p>The ACIC may, by 1 month notice to the Accredited Body, introduce a specified fee or maximum fee chargeable by the Accredited Body for each Volunteer Check.</p>
8.	<b>Approved Categories</b> Clause 6.2(a)(iii)	<p>The Accredited Body is only authorised to conduct nationally coordinated criminal history checks of an Applicant for the following categories:</p> <ul style="list-style-type: none"> <li>Employment</li> <li>Probity</li> <li>Licence</li> <li>Commonwealth</li> <li>National Security</li> <li>NDIS</li> <li>Exchange of Criminal History Information for People Working with Children (ECHIPWC)</li> </ul>
9.	<b>Volunteer Purpose</b>	<p><b>For Commercial Accredited Bodies:</b> The Commercial Accredited Body may submit Volunteer Checks for the following Volunteer Purposes:</p> <ul style="list-style-type: none"> <li>registered and/or recognised charitable, community service, not-for-profit or benevolent societies as per the Australian Charities and Not-for-profits Commission, in a role as contemplated in the definition of 'Volunteer';</li> <li>Australian-based academic institutions, Secondary Schools, Higher Education Providers or training providers as registered on the National Register on Vocational Education and Training, the National Register of Higher Education Providers (provided by the Tertiary Education Quality and Standards Agency), or the relevant state or territory school registration authority, for the purposes of a student undertaking a compulsory vocational placement as required by the registered Australian-based institution.</li> </ul> <p><b>For Non-Commercial Accredited Bodies:</b> The Non-Commercial Accredited Body may submit Volunteer Checks for the following Volunteer Purposes:</p> <ul style="list-style-type: none"> <li>registered and/or recognised charitable, community service, not-for-profit or benevolent societies as per the Australian Charities and Not-for-profits Commission, in a role as contemplated in the definition of 'Volunteer';</li> </ul> <p><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>Australian-based academic institutions, Secondary Schools, Higher Education Providers or training providers as registered on the National Register on Vocational Education and Training, the National Register of Higher Education Providers (provided by the Tertiary Education Quality and Standards Agency), or the relevant state or territory school registration authority, for the purposes of a student undertaking a</li> </ul>

Item No.	Description	Particulars
		<p>compulsory vocational placement as required by the registered Australian-based institution.</p> <p><b>OR</b></p> <p>The Non-Commercial Accredited Body <b>is not</b> Authorised to submit Volunteer Checks.</p>
10.	<b>Identity Enrolment</b> Clause 9.7(a)	The Accredited Body <b>[is/is not]</b> approved to implement Identity Enrolment for Known Applicants.
11.	<b>Accredited Body's Authorised Officer</b> Clause 14	<p>The person correctly authorised by the Accredited Body occupying the position of <b>[Authorised Officer's position]</b>, currently:</p> <p>Name:</p> <p>Mobile:</p> <p>Email:</p>
12.	<b>Accredited Body's Address for Notices</b> Clause 35	<p>By post:</p> <p>By hand:</p> <p>By email:</p>
13.	<b>Accredited Body's Address for Invoices</b> Clause 10.1(c)	<p>By post:</p> <p>By hand:</p> <p>By email:</p>
14.	<b>ACIC's Authorised Officer and Address for Notices</b> Clause 35	<p>The person at the ACIC occupying the position of the Director responsible for managing the National Police Checking Service</p> <p>GPO Box 1936, Canberra City ACT 2601</p> <p><a href="mailto:npcs@acic.gov.au">npcs@acic.gov.au</a></p>
15.	<b>Amendments where the Accredited Body is a Commonwealth Entity</b>	<p>The document is taken to be modified as follows where the Accredited Body is a Commonwealth Entity, (being a Non-Commercial Accredited Body):</p> <p>1) <b>Clause 10.1(d)</b> is deleted and replaced with:</p> <p><i>The Accredited Body acknowledges that it is notionally liable to pay a charge issued in accordance with <b>clause 10.1(c)</b>, consistent with section 15A(4) of the ACC Act. The Accredited Body agrees to comply with any Directions given by the ACIC or otherwise in accordance with s 15A(5) of the ACC Act, in order to carry out or give effect to this clause and section 15A(4) of the ACC Act.</i></p> <p>2) <b>Clause 30(a)</b> is deleted and replaced with:</p> <p><i>The Parties agree that any dispute arising during the course of this Agreement is dealt with as follows:</i></p> <p><i>(a) the Party claiming that there is a dispute will send to the Party with whom it claims the dispute a notice</i></p>

Item No.	Description	Particulars
		<p><i>setting out the nature of the dispute (<b>Dispute Parties</b>);</i></p> <p><i>(b) the Dispute Parties will try to resolve the dispute initially through direct negotiation between the respective representatives, who will endeavour to resolve the matter within 5 Business Days of receipt of the notice;</i></p> <p><i>(c) if the dispute is not resolved in that time, then the dispute may be escalated to the relevant Minister or other agency head of the Dispute Parties.</i></p> <p>3) In addition, the following clauses do not apply:</p> <p>(a) <b>Clause 10.1(e)</b>;</p> <p>(b) <b>Clause 34</b> (Corporate trustees); and</p> <p>(c) <b>Clauses 31(b) to 31(e)</b>.</p> <p>4) The following definition applies (and replaces the existing definition):</p> <p><b>Change in Control</b> means where the functions, operations, or accountabilities of the Accredited Body are transferred in whole or in part to another Commonwealth Entity.</p>
16.	<b>Additional exemptions</b> Clause 6.5	None applicable.

[Attached approved branded templates if indicated in **Item 5**]

**Execution Blocks****[EXECUTED AS AN AGREEMENT OR MOU]****[Option A: Australian Company with ACN executing via its authorised representative]**

**EXECUTED by [ACCREDITED BODY] ACN XXX  
 XXX XXX in accordance with s 126 of the  
 Corporations Act 2001 (Cth)**

Signature of Authorised Representative \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

AND

Signature of Witness \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

**[Option B: Australian Company with ACN executing in its capacity as a company where the company  
 has at least 2 directors, or 1 director and 1 secretary. Please note there is NO witness requirement.]**

**EXECUTED by [ACCREDITED BODY] ACN XXX  
 XXX XXX in accordance with s 127(1) of the  
 Corporations Act 2001 (Cth)**

Signature of Director / Secretary \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

AND

Signature of Director \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

**[Option C: Australian Company with ACN executing in its capacity as a company, where the company  
 has 1 sole director. Please note there is NO witness requirement.]**

**EXECUTED by [ACCREDITED BODY] ACN XXX  
 XXX XXX in accordance with section 127 of the  
 Corporations Act 2001 (Cth)**

Signature of Sole Director-Secretary \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_



[Option D: State Government Department where there is no corporate entity]

**EXECUTED for and on behalf of THE [choose one of the following: STATE OF QUEENSLAND, STATE OF NEW SOUTH WALES, STATE OF VICTORIA, STATE OF SOUTH AUSTRALIA, STATE OF TASMANIA, STATE OF WESTERN AUSTRALIA, NORTHERN TERRITORY, AUSTRALIAN CAPITAL TERRITORY] represented by [INSERT LEGAL NAME OF ACCREDITED BODY] ABN XX XXX XXX XXX by its authorised delegate**

Signature of Authorised Delegate

Print Name

Print Position Title

Dated

AND

Signature of Witness

Print Name

Dated

[Option E: Commonwealth, State or Territory corporate entities where entities can enter into contracts in their own right.]

**EXECUTED by the [ACCREDITED BODY] ABN XX XXX XXX XXX by its Authorised Delegate**

Signature of Authorised Delegate

Print Name

Print Position Title

Dated

AND

Signature of Witness

Print Name

Dated

**[Option F: For Commonwealth Entities]**

**EXECUTED by the COMMONWEALTH OF AUSTRALIA as represented by the [ACCREDITED BODY] ABN XX XXX XXX XXX by its Authorised Delegate:**

Signature of Authorised Delegate \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

AND

Signature of Witness \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

**[Option G: For all other entities, for example, charity, club, non-profit association, volunteer association, partnerships, the execution clause will depend on their constitution or other governance documents.]**

**EXECUTED by the [ACCREDITED BODY] ABN XX XXX XXX XXX:**

Signature of Authorised Representative \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

AND

Signature of Witness \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

**EXECUTED by the COMMONWEALTH OF AUSTRALIA as represented by the Australian Criminal Intelligence Commission ABN 11 259 448 410**

Signature of Executive Director Business and Partnerships \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

AND

Signature of Witness \_\_\_\_\_

Print Name \_\_\_\_\_

Dated \_\_\_\_\_

**Schedule 2 – Form of variation**

<b>DEED OF VARIATION NO [INSERT] CONTRACT#[INSERT]</b>	
DEED OF VARIATION NO [INSERT] TO VARY THE AGREEMENT IN RELATION TO THE PROVISION OF ACCESS TO NATIONALLY COORDINATED CRIMINAL HISTORY CHECKS	
BETWEEN	
The Commonwealth of Australia as represented by the Australian Criminal Intelligence Commission	
AND	
[INSERT]	

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**DEED OF VARIATION NO [INSERT]****Date**

This Deed of Variation No [insert] (**Deed**) is made on the last day it is signed by a Party.

**Parties**

This Deed is made between the following Parties:

1. **The Commonwealth of Australia** represented by the **Australian Criminal Intelligence Commission**, ABN 11 259 448 410, 4 National Circuit, Barton ACT 2600 (**ACIC**)

And

2. [Insert]

**Context**

This Deed is made in the following context:

- A. The Commonwealth of Australia represented by the ACIC and the Accredited Body entered into an agreement for controlled access by duly Accredited Bodies to Nationally Coordinated Criminal History Checks (**Agreement**) on [insert date].
- B. Pursuant to **clause 33.3** of the Agreement, the Agreement may be varied by written agreement of both Parties.
- C. The Parties now wish to vary the Agreement on the terms contained in this Deed.

**Operative provisions**

In consideration of the mutual promises contained in this Deed, the Parties to this Deed agree as follows:

**1 Interpretation and construction**

- 1.1 This Deed is to be read subject to and interpreted in accordance with the provisions of the Agreement.

**2 Commencement**

- 2.1 The terms of this Deed apply on and from the last date it is executed by a Party.

**3 Variation**

[Details of variation to be inserted here]

**4 Costs**

- 4.1 Each Party will pay its own costs and expenses (including legal costs) arising out of and incidental to the negotiations, preparation, execution and delivery of this Deed.

**5 Entire agreement and variation**

- 5.1 The Parties confirm all other provisions of the Agreement and, subject only to the amendments contained in this Deed, shall remain unaltered, in full force and effect.

**5.2** Each Party will take such steps, execute all such documents and do all such acts and things as may be reasonably required by any other Party to give effect to any of the transactions contemplated by this Deed.

**5.3** The provisions of this Deed will not be varied either in Law or in equity except by agreement in writing signed by the Parties.

**6** **Applicable law**

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**6.1** **Clause 36** of the Agreement applies.

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EXECUTED AS A DEED

EXECUTED by the COMMONWEALTH OF  
AUSTRALIA as represented by the Australian  
Criminal Intelligence Commission  
ABN 11 259 448 410

Signature of Director, National Police Checking  
Service

Print Name

Dated

AND

Signature of Witness

Print Name

Dated

[Insert relevant execution block for Accredited Body]

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### Schedule 3 – Required content for Informed Consent

For the purposes of this Agreement, an **Informed Consent** is a consent form (in physical or electronic format) that:

- (a) is provided as a separate, standalone form of consent and not contained within a broader consent (for example, as part of a broader consent relating to the disclosure of Personal Information);
- (b) captures all of the following information:
  - (i) legal name and contact details of the Accredited Body;
  - (ii) legal name and contact details of the Accredited Body's relevant Customer as approved in writing by the ACIC under **clause 7.4** (if applicable);
  - (iii) if a Law requires Police Information about the Applicant to be disclosed to another person or organisation — the relevant details of that person or organisation and the basis for the disclosure;
  - (iv) any Law which requires that the Applicant's Personal Information be collected and the consequences of non-compliance;
  - (v) where the Applicant's consent is required for an Offshore Transfer as approved by the ACIC, the relevant details of to whom and in which country or countries the Applicant's Personal Information (including Police Information) will be transferred, supplied, accessed, disclosed, retained or stored in accordance with **clause 21.2**;
  - (vi) the Applicant's surname and given name(s);
  - (vii) an acknowledgement that the Applicant consents to a nationally coordinated criminal history check being undertaken on them using all available Personal Information relating to the Applicant, including that provided to the Accredited Body as per **clauses 9.3, 9.4** and if applicable, **9.6**;
  - (viii) consent from the Applicant to Police Information relating to the Applicant being disclosed in accordance with the purpose for which the nationally coordinated criminal history check is being undertaken, and applicable legislation and information release policies (including spent convictions legislation described in Australian Government and state or territory legislation);
  - (ix) the purpose for which the Applicant's Personal Information is being collected and the purpose for which the nationally coordinated criminal history check is being undertaken;
  - (x) an acknowledgement that the Applicant understands that their Personal Information (including Police Information) may be used for general Law enforcement purposes, including those purposes set out in the *Australian Crime Commission Act 2002 (Cth)*;
  - (xi) an acknowledgement that the Applicant has fully and accurately completed the Informed Consent and that the Personal Information they have provided relates to them;
  - (xii) an acknowledgement that the Applicant understands that withholding and/or providing misleading or false information in the Informed Consent or any



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supplied identity documents may be a Commonwealth offence and may lead to prosecution under the *Criminal Code Act 1995* (Cth);

- (xiii) an acknowledgement that the Applicant in sending any information in relation to the Application by mail or electronically, including identity documents, does so at their own risk;
  - (xiv) where the Applicant's documents will be verified by the Accredited Body using an Authoritative Source, an acknowledgement that the Applicant consents to the Accredited Body verifying the Applicant's documents using that Authoritative Source;
  - (xv) a two-step consent from the Applicant, where the DVS is used:
    - (A) for the Accredited Body to provide the Applicant's identity Document Identifiers to the ACIC for the purpose of the ACIC using the DVS to verify the applicant's identity documents; and
    - (B) for the ACIC to use the applicant's identity Document Identifiers to verify the Applicant's identity documents using the DVS;
  - (xvi) the Applicant's consent to the ACIC and police agencies using and disclosing the Applicant's Personal Information contained in the Applicant's supplied identity documents and all other available Personal Information relating to the Applicant, to conduct a nationally coordinated criminal history check;
  - (xvii) the Applicant's consent to the ACIC disclosing the Police Information sourced from the police agencies to other approved bodies named in the Informed Consent and the Accredited Body;
  - (xviii) the Applicant's consent to the Accredited Body disclosing the Applicant's Personal Information (including Police Information) to the Accredited Body's contractors for the purpose of conducting a nationally coordinated criminal history check;
  - (xix) the Applicant's consent to the Accredited Body disclosing to the Customer and third parties (as specified in the Informed Consent), the Applicant's Personal Information (including Police Information) for the purposes of assessing the Applicant's suitability for the purpose identified in the Informed Consent and as required by Australian Law;
  - (xx) the Applicant's consent to the Accredited Body transferring the Applicant's Personal Information (including Police Information) outside Australia to the entity or entities specified in the Informed Consent, and the Applicant's Personal Information (including Police Information) being transferred, supplied, accessed, disclosed, retained or stored in the country or countries named in the Informed Consent;
  - (xxi) an acknowledgement that the Applicant has read and understood the information in the Informed Consent; and
- (c) does not request any information (including Personal Information) other than that listed in paragraph (b) of this **Schedule 3**, unless otherwise approved in writing by the ACIC.

## Schedule 4 – Media Guidelines

### 1. Introduction

---

- (a) Accredited Bodies must comply with these guidelines (**Media Guidelines**) when making information about the Service available on Public Forums.
- (b) Defined terms have the meaning given in the Agreement unless otherwise indicated.
- (c) In these Media Guidelines, “**Public Forums**” mean avenues through which information may be communicated to third parties, including:
  - (i) printed materials;
  - (ii) website content;
  - (iii) social media; and
  - (iv) any other communication with Applicants or third parties.

### 2. Use of Correct Terminology

---

When advertising the Service and any resulting product (including a Check Results Report) from the Service, the Accredited Body must:

- (a) refer to the Service as the “National Police Checking Service”;
- (b) refer to the product in the first reference as the “Nationally Coordinated Criminal History Check (NCCHC)” and for each subsequent reference the “NCCHC” or “Nationally Coordinated Criminal History Check”;
- (c) not use previous product names or other terminology such as the “National Police Check”, “Criminal History Check”, “Australian Police Check” or “Police Check”; and
- (d) only advertise the provision of “National Police Certificates” if the Accredited Body has an agreement with an Australian Police Agency that authorises it to provide those certificates.

### 3. Accredited Body Details/Name

---

Accredited Bodies must only advertise:

- (a) using the name under which it has been accredited with the ACIC; or
- (b) a different trading name, business name or any other name or combination of names, if the Accredited Body also includes the name under which it has been accredited with the ACIC in all advertisements.

### 4. Branding and Co-Branding

---

- (a) Accredited Bodies must not use the Australian Commonwealth Government logo, the ACIC logo, Australian Federal Police logo, any state police logo, the Sillitoe Tartan or the term “Police” in its advertising, unless the relevant agency has provided prior written approval.
- (b) Accredited Bodies must not use the terms “ACIC”, “NPCS” or “Police” in domain names or email addresses.

- (c) Without limiting **paragraphs 4(a) or 4(b)** of this **Schedule 4**, any co-branding by the Accredited Body is not authorised and no aspect of the provision of nationally coordinated criminal history checks is held out or authorised to be undertaken in partnership with another entity, including the Accredited Body.

## 5. Service Offerings

---

- (a) Public Forums or other websites used by commercial Accredited Bodies to offer the Service must clearly identify:
  - (i) that the accredited body offers both standard and volunteer check types;
  - (ii) who can apply for each check type; and
  - (iii) the total applicable costs to individuals,
 on public pages before agreeing to enter the accredited body's site.
- (b) Accredited Body offerings for the Services must clearly identify who will be issuing the Check Results Report between the ACIC or an Australian Police agency.
- (c) State-based checks must not be advertised or promoted by the Accredited Body, and a nationally coordinated criminal history check cannot be advertised, promoted or provided as a substitute.
- (d) Accredited Body websites must provide relevant and current contact details, including a phone number and email address, for Applicants to contact the relevant Accredited Body directly.
- (e) Websites and/or Public Forums managed by Accredited Bodies must not list ACIC or police jurisdiction contact details.

## 6. Check Processing

---

- (a) Accredited Bodies must not advertise misleading turnaround times for nationally coordinated criminal history check processing.
- (b) If an Accredited Body offers an 'express service' (or similar) it must:
  - (i) clearly indicate the processing times as provided by the ACIC, and not offer an express service where the processing times would be less than the ACIC timeframes;
  - (ii) advise Applicants that:
    - (A) all Accredited Bodies have the same access to the nationally coordinated criminal history check;
    - (B) the ACIC does not offer an express service; and
    - (C) any express processing would only relate to the part of the process completed by Accredited Bodies for submission of the Application to ACIC;
  - (iii) clearly outline to Applicants what an express service would provide outside of the ACIC process and what time savings would be made using the express service; and

- (iv) provide documentation to the ACIC about any applicable express process if requested.
- (c) Accredited Bodies must provide advice directly to the Applicants about any delays in nationally coordinated criminal history check processing and not direct Applicants to the ACIC or to police agencies for further advice about nationally coordinated criminal history check status.
- (d) Accredited Bodies must not use terminology that is misleading.

*For example, when a check is referred for manual processing, an Accredited Body cannot say that the check has been 'flagged' by police. An Accredited Body must clearly indicate the reasons why a check may be referred for manual processing.*

- (e) Accredited Bodies must not advertise extensive details about how nationally coordinated criminal history checks or Check Results Reports may be released under spent conviction legislation. The police are responsible for administering relevant state-based legislation or information release policies.
- (f) If an Applicant requests more information about how nationally coordinated criminal history checks or Check Results Reports may be released under spent conviction legislation, an Accredited Body may provide a link to the individual state's spent conviction and/or information release policy.

## **7. Check Results Reports**

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Accredited Bodies must:

- (a) not provide sample certificates or reports on their websites unless features such as a 'sample' watermark are included, and material steps are taken to ensure that a person cannot use the image to fraudulently recreate the certificate or reports;
- (b) not advertise that nationally coordinated criminal history checks or Check Results Reports can be accessed for the full retention period of 12 months. These should not be accessed after 3 months from release; and
- (c) not promote that a nationally coordinated criminal history check has expired and that it requires renewal. Nationally coordinated criminal history checks do not have an expiry date, they are a point in time check and Applicants must not be misled into renewing.

## Annexure A – Identity Proofing Documents and Processes

### 1. Change of Name documents

- (a) The identity documents listed in this **Annexure** must be issued in the name of the person seeking to prove identity or in a former name of that person.
- (b) Where the names that appear on any of the identity documents differ, the following documentation must be provided to demonstrate a link between the differing names on the identity documents:

Change of Name Documents	Notes	Authoritative Source: DVS
Change of name certificate	Issued by an Australian State or Territory Government.	✓
Marriage certificate <i>Note: Church or celebrant-issued certificates must not be accepted</i>	Issued by an Australian State or Territory Government.	✓

### 2. Commencement of Identity Documents

- (a) The following documents are 'Commencement of Identity Documents' for the purposes of **clause 9.4(a)(i)** of the Agreement:

Commencement of Identity Documents	Notes	Authoritative Source: DVS
Birth Certificate or authorised record of birth <i>Note: Extract or birth card must not be accepted</i>	Issued by an Australian State or Territory Government Register of Births, Deaths and Marriages.	✓
Australian Citizenship Certificate	Issued in the Individual's name or former name by the Department of Home Affairs.	✓
Australian visa <i>Note: This must be supported by a foreign passport, which is needed for verification</i>	Issued by the Department of Home Affairs.	✓
ImmiCard	A card issued in the individual's name or former name by the Department of Home Affairs.	✓
A current Australian Passport <i>Note: If DVS is used to verify the passport, it may be up to 3 years expired</i>	Issued by the Department of Foreign Affairs and Trade.	✓

### 3. Primary Use in Community Documents

- (a) The following documents are 'Primary Use in Community Documents' for the purposes of **clause 9.4(a)(ii)** of the Agreement and must not be expired:

Primary Use in Community documents	Notes	Authoritative Source: DVS
A current Australian Passport <i>Note: If DVS is used to verify the passport, it may be up to 3 years expired</i>	Issued by the Department of Foreign Affairs and Trade.	✓
Australian driver licence, learner permit or provisional licence	A licence issued by an Australian State or Territory Government in the Individual's name with their photo. For digital Drivers licence the security features must be tested to ensure authenticity.	✓
ImmiCard	A card issued in the individual's name or former name by the Department of Home Affairs.	✓
Foreign passport issued by a country other than Australia with a valid visa or valid entry stamp or equivalent	Issued by the relevant Foreign Government.	
A proof of age or photo identity card which shows the name, date of birth, photo and signature of the individual	Issued by an Australian State or Territory Government in the Individual's name and includes their photo.	
Student identity document for persons aged under 18 years with no other Primary Use in Community Documents	Australian secondary school, TAFE, University, Registered Training Organisation or State Government Agency.	

### 4. Secondary Use in the Community Documents

- (a) The following documents are 'Secondary Use in Community Documents' for the purposes of **clause 9.4(a)(iii)** of the Agreement and must in all cases show the Applicant's name and not be expired:

Secondary Use in Community documents	Notes	Authoritative Source: DVS
Certificate of Identity	Issued in the individual's name or former name by the Department of Foreign Affairs and Trade.	✓
Document of Identity	Issued in the individual's name or former name by the	✓

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Secondary Use in Community documents	Notes	Authoritative Source: DVS
	Department of Foreign Affairs and Trade.	
United Nations Convention Travel Document Secondary	Issued in the individual's name or former name by the Department of Foreign Affairs and Trade.	✓
Foreign identity documents (e.g. driver licences). <i>Note: Documents in languages other than English must be accompanied by a NAATI accredited translation.</i>	Issued by the relevant Foreign Government.	
Medicare card	Issued by Services Australia.	✓
Electoral enrolment	Proof of electoral enrolment in the Individual's name and showing their current address provided by the Australian Electoral Commission.	✓
Security Guard/Crowd Control photo licence	Issued by an Australian State or Territory Government.	
Evidence of right to a government benefit (DVA or Centrelink)	Issued by Services Australia.	✓
Consular photo identity card	A photo ID card issued by the Department of Foreign Affairs and Trade.	
Police Force Officer photo identity card	A photo ID card issued by an Australia Federal, State or Territory Police Agencies.	
Defence Force photo identity card	A photo ID card issued by the Australian Defence Force.	
Photo identity card <i>Note: This may take the form of a working with children or vulnerable people card or a government issued occupational licence</i>	A Photo ID card issued by the Commonwealth, or an Australian State or Territory Government issued in the Individual's name and includes their photo. The card may include a validity period.	
Aviation security identification card	A current card issued in the Individual's name and includes their photo and issued by the Department of Home Affairs.	✓
Maritime security identification card	A current card issued in the Individual's name and includes their photo and issued by the Department of Home Affairs.	✓
Firearms licence	A current card issued in the Individual's name and includes their photo and issued by the	



Secondary Use in Community documents	Notes	Authoritative Source: DVS
	State and Territory Police Agencies.	
Credit reference check	Issued by a credit provider.	
Australian secondary or tertiary student photo identity document	Issued by an Australian secondary school, TAFE, University, Registered Training Organisation or State Government Agency.	
Certified academic transcript	Issued by an Australian secondary school, TAFE, university or Registered Training Organisation which includes the Individual's name or former name.	
Trusted referees report	The referee providing the report must know the applicant.	
Bank card, credit card (without recording the payment card number/s)	Issued by a bank, credit union or building society. The Individual's signature must be on the card documents from foreign banks or institutions are not accepted.	
Tax File Number	Issued by the Australian Taxation Office.	

## Annexure B – Protection of Personal Information and Police Information Safeguards

### 1. Introduction

---

- (a) In accessing the Service, Accredited Bodies must implement the security management measures set out in this Annexure B to ensure against:
  - (i) misuse, interference, loss, unauthorised access, modification or disclosure of Applicant's Personal Information;
  - (ii) unauthorised access to and use of the Service;
  - (iii) unauthorised access to Police Information in the National Police Checking Service Support System (**NSS**); and
  - (iv) loss and unauthorised access, use, modification or disclosure of Police Information stored outside of NSS.
- (b) This information is provided to assist Accredited Bodies understand their obligations and comply with the ACIC's security management standards.

### 2. Information Security Policy

---

- (a) The Accredited Body must develop, document and maintain an Information Security Policy (**Policy**) that clearly describes how it protects information.
- (b) The Policy should be supported by the Accredited Body's senior management and be structured to include any legal framework relevant to the Policy, such as the ACC Act and this Agreement.
- (c) The Policy must include adequate details on how it is enforced through physical, technical and administrative controls, including details on:
  - (i) the type or class of information that the Policy applies to;
  - (ii) information security roles and responsibilities relating to the Service;
  - (iii) security clearance requirements and its Personnel's and Subcontractors' responsibilities;
  - (iv) configuration and change control;
  - (v) technical access controls;
  - (vi) staff training;
  - (vii) networking and connections to other systems;
  - (viii) physical security (including media security); and
  - (ix) incident management.
- (d) The Accredited Body's privacy policy must reference the Policy, in terms of how the Applicant's Personal Information is held (as per APP 1.4(b)).

### 3. Technical Access

---

The Accredited Body's ICT environment must be secured in accordance with the Policy and should:

- (a) be protected by appropriately configured gateway environment (including firewalls);
- (b) include technical access controls protecting any Police Information stored electronically outside of NSS, for example, restricted file system permissions; and
- (c) maintain a static IP address to avail web services (if applicable).

### 4. Technical Infrastructure

---

- (a) Workstations and server infrastructure involved in the storage or processing of Police Information and Personal Information should be secured in accordance with the Policy and should:
  - (i) run current and patched operating systems;
  - (ii) run current and patched software, including browsers (N-1 on browsers is acceptable providing patching is maintained);
  - (iii) have anti-virus software application installed up-to-date virus definition files; and
  - (iv) run application whitelisting software (desirable).
- (b) Administrative or privileged access to infrastructure is to be minimised and only used when an administrative function is required.

### 5. Digital Certificates

---

Digital certificates used in the connection to the Service must be managed securely and ensure:

- (a) certificates are not distributed beyond that required for connection;
- (b) certificates are only installed on the Accredited Body's corporate infrastructure (certificates must not be installed on home or personal computers); and
- (c) passwords relating to certificates are securely stored.

### 6. Password policy

---

System accounts that are involved in the storage or processing of Police Information and/or Personal Information should be subject to a password policy that sets out:

- (a) no less than 14 character passwords including a minimum of one numerical and one upper case character;
- (b) password reset cycle no longer than 90 days;
- (c) users to select strong passwords (avoid dictionary words);
- (d) ensure unused accounts are disabled and removed; and
- (e) computers lock after 15 minutes of inactivity.

## 7. Training

---

All Accredited Body's Personnel and Subcontractors involved in storage or processing of Police Information and Personal Information must be provided with the information security awareness training related to:

- (a) their responsibilities as defined in the Policy;
- (b) what constitutes authorised access to information; and
- (c) their obligations with regard to reporting of information security issues or incidents.

## 8. Incident Management

---

Any information security issues or incidents must be reported immediately to the ACIC where the consequence may impact or has impacted on the ACIC systems or information. This includes loss or compromise of digital certificates or associated passwords.

## 9. Data Storage and Access

---

- (a) The Accredited Body must ensure that **any** data (including backups or redundancies) created or received as part of their use of the NSS system, is stored and accessed within Australia and not overseas.
- (b) The Accredited Body may utilise either on-premises or a third-party service provider (such as cloud services (CS) or support services) in accordance with paragraph (a).
- (c) The Accredited Body must notify the ACIC prior to any changes of data storage providers where it impacts the storage of NSS related information.
- (d) The Accredited Body must ensure the physical security of any hardware that stores or processes NSS related information, including in the instance of third-party data providers.
- (e) The Accredited body must ensure compliance with the Protective Security Policy Framework Policy 16: Entity facilities (Zone Two controls).
- (f) The Accredited Body must, upon request, provide the ACIC with a copy of any agreement related to a third-party provider to ensure compliance with paragraphs (a) and (d).
- (g) The Accredited Body must not use or connect a device used in accessing or processing NSS related information to a public network (e.g. café or airport WI-FI networks).
- (h) The Accredited Body must review and implement controls in alignment with the Information Security Manual (provided by the Australian Cyber Security Centre).
- (i) The Accredited Body must ensure controls remain relevant by conducting independent reviews periodically with no more than 24 months between reviews.
- (j) The Accredited Body must, upon request, provide the ACIC with documents detailing their compliance with paragraph (g).
- (k) The Accredited Body must ensure that all hardware is used exclusively as part of their typical business operations and not permit personal/private usage.

- (l) Where requested by the ACIC, the Accredited Body must provide documentation to the ACIC no later than 20 working days from receipt of written request, detailing their compliance with this **Annexure B**.

## **10. Use of Automation Technologies (scripts and/or software to automate tasks)**

---

- (a) The Accredited Body must not use any form of automation capability including bots, scripts, artificial intelligence, and/or RPA to process NSS related information without prior approval of the ACIC.
- (b) If the Accredited Body wants to use any form of automation capability, it must seek prior written approval from ACIC by providing the following:
  - (i) Full disclosure of the automation products it intends to use;
  - (ii) Full disclosure of its working knowledge with documentation of how the automation is to be use for the NSS process;
  - (iii) Providing evidence that industry/vendor best practice guidelines have been followed while deploying, implementing and maintaining the automation capability;
  - (iv) Full disclosure of how the credentials are used, managed and monitored for the automation capability; and
  - (v) Full disclosure about how the capability is hosted (e.g. on premises or in the cloud).
- (c) The respective Accredited Body user (custodian) must be accountable for the automated/bot activity.
- (d) Attended automation capabilities must use the credentials of the Accredited Body custodian.
- (e) Unattended automation capabilities must use a distinct account, non-personal entity specially created to conduct the automation capability activities. The Accredited Body must be accountable for all automation capability activities.
- (f) Least privilege must be followed when assigning access permission to the automation capability.
- (g) The Accredited Body must have multiple layers of security controls in place throughout the automation capability system to defend the bot from malicious attacks.
- (h) Automation capabilities must not have a hard-coded access rights this must be replaced by an API call implementation.
- (i) Extensive audit logging processes must be in place when an automated process or bot is used to conduct the NSS requests and checks.
  - (i) Automation capability administrators and other users with additional rights must be able to identify, track and record the administrator activity
  - (ii) ACIC holds the authority to request for the copy of such logs on an ad-hoc basis

- (j) The Accredited Body must have mitigation controls in place to detect and stop the throttling of the network by automation capabilities, causing a denial-of-service attack (restricting the automation capabilities to an agreeable volume)
- (k) If a cloud environment (RPA as Service) model is used by the Accredited Body then the Accredited Body must ensure that the data is stored and accessed within Australia as outlined in **clause 9** of this **Annexure B**. This includes any data backups, storage or redundancies.
- (l) The Accredited Body must ensure that automation capabilities are exclusively for NSS processes.

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## Annexure C – Disclaimer for Limitations of Service

### 1. Limitations on accuracy and use of this information

---

- (a) This nationally coordinated criminal history check provides a point in time check about the applicant for an authorised nationally coordinated criminal history check category and purpose. Information obtained through this check should not be used for any other purpose.
- (b) The accuracy and quality of information provided in this nationally coordinated criminal history check depends on accurate identification of the applicant which is based on information, including aliases, about the applicant provided in the application and the comprehensiveness of police records.
- (c) While every care has been taken by the Australian Criminal Intelligence Commission ('ACIC') to conduct a search of police information held by it and Australian police agencies that relates to the applicant, this nationally coordinated criminal history check may not include all police information about the applicant. Reasons for certain information being excluded from the nationally coordinated criminal history check include the operation of laws that prevent disclosure of certain information, or that the applicant's record is not identified by the search process across the agencies' relevant information holdings.
- (d) This nationally coordinated criminal history check may contain any of the following information about an applicant:
  - (i) charges;
  - (ii) court convictions;
  - (iii) findings of guilt with no conviction;
  - (iv) court appearances;
  - (v) good behaviour bonds or other court orders;
  - (vi) pending matters awaiting court hearing;
  - (vii) traffic offence history.

**(‘Disclosable Court Outcome’).**
- (e) If this nationally coordinated criminal history check contains a Disclosable Court Outcome, the entity submitting the application is required to:
  - (i) notify the applicant of the nationally coordinated criminal history check; and
  - (ii) provide the applicant with a reasonable opportunity to respond to, or validate the information, in the nationally coordinated criminal history check.
- (f) To the extent permitted by law, neither the ACIC nor Australian police agencies accept responsibility or liability for any omission or error in the nationally coordinated criminal history check.

### 2. Nationally coordinated criminal history check process

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- (a) The information in this nationally coordinated criminal history check has been obtained according to the following process:

- (i) the ACIC searches its data holdings for potential matches with the name(s) of the applicant;
- (ii) the ACIC and the relevant Australian police agencies compare name matches with police information held in Australian police records;
- (iii) the relevant Australian police agency identifies any police information held in its police records and releases the information subject to relevant spent convictions, non-disclosure legislation or information release policies; and
- (iv) the ACIC provides resulting information to the entity submitting the application.

TEMPLATE EXAMPLE ONLY - NOT FOR EXECUTION



## Annexure D – Terms of Use for Controlled Access to Nationally Coordinated Criminal History Checks by Accredited Body's Customer

Name of Customer:

(Customer, You)

Name and contact details of Customer's authorised representative:

Name:

Phone:

Email:

Name of Accredited Body:

### Terms

#### 1. The Service

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- (a) The Australian Criminal Intelligence Commission (**ACIC**) administers access to nationally coordinated criminal history checks under the *Australian Crime Commission Act 2002* (Cth) (**ACC Act**).
- (b) Entities requesting a nationally coordinated criminal history check can only do so through a body that has been accredited by the ACIC CEO for the purposes of receiving nationally coordinated criminal history checks under s 46A(5) of the ACC Act (the **Accredited Body**).

#### 2. Acceptance of the Terms of Use

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- (a) To use the Service, the Customer confirms its acceptance and commitment to complying with the terms and conditions set out in these Terms of Use for Controlled Access to Nationally Coordinated Criminal History Checks (**Terms of Use**).
- (b) These Terms of Use are entered into by the Customer in favour of the Accredited Body and the ACIC.

#### 3. Your obligations as Customer

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- (a) You acknowledge that you may submit requests for nationally coordinated criminal history checks for your current and prospective Personnel and that you will only be entitled to receive the check results report for applications submitted for these Personnel.
- (b) You understand and acknowledge that you will not be operating in a commercial capacity in relation to nationally coordinated criminal history checks nor will you provide nationally coordinated criminal history checks to third parties, whether in exchange for a fee or for any other purpose, unless authorised or required by law.
- (c) You agree to treat any information provided to you by the Accredited Body confidentially and comply with the provisions of the *Privacy Act 1988* (Cth) when dealing with any Personal Information or Police Information provided to you as part of the Service and undertake to secure all such information against loss and unauthorised access, use, modification or disclosure.

- (d) You can only use Personal Information and Police Information for the purpose as consented to on the application form.
- (e) You must not transfer, access or store any of the Personal Information or Police Information outside Australia, without first consulting with the ACIC.
- (f) ACIC reserves its right to refuse any request to transfer, access or store Personal Information or Police Information offshore if such transfer, access or storage is in contravention to the terms of the agreement for controlled access to nationally coordinated criminal history checks between the ACIC and the Accredited Body.

#### 4. Limitations of the Service

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A nationally coordinated criminal history check is a point in time record. If you need to request a nationally coordinated criminal history check for an Applicant after 3 months have passed since a prior nationally coordinated criminal history check was issued for that Applicant, you will need to submit a new nationally coordinated criminal history check application.

#### 5. No representation or guarantee

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- (a) You acknowledge and agree that the ACIC makes the information contained in a nationally coordinated criminal history check, including a check results report, available for use on the following conditions:
  - (i) the ACIC makes no representation or warranty of any kind in respect to its accuracy; and
  - (ii) the ACIC does not accept responsibility or liability for any omission or error in the information.
- (b) You further acknowledge that the ACIC is not responsible for, and is not liable for any loss, liability or expense arising from:
  - (i) the checking or vetting of convictions which may be spent prior to their disclosure to the Customer via the Service; or
  - (ii) any information that is released to the Customer contained within a check results report.

#### 6. Defined Terms

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In these Terms of Use, the following definitions are used:

- (a) **Applicant** means a natural person in relation to whom a nationally coordinated criminal history check is sought;
- (b) **Application** means a form (in physical or electronic format) completed by the Applicant, or on behalf of the Applicant, submitted to the Accredited Body and provided to the ACIC, requesting the ACIC to conduct a nationally coordinated criminal history check in relation to an Applicant;
- (c) **Check Results Report** means a report in a physical or electronic format outlining the results of a nationally coordinated criminal history check provided by the ACIC to the Accredited Body as a result of the Accredited Body accessing and using the Service;
- (d) **Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by the Commonwealth,

a State, Territory or a local government, and includes the common law and rules of equity as applicable from time to time;

- (e) **Personnel** means all existing and prospective individuals employed or engaged by the Customer, including in a volunteer capacity;
- (f) **Personal Information** has the meaning given in the *Privacy Act 1988* (Cth);
- (g) **Police Information** means any of the following information:
  - (i) information collected for the purposes of providing the Service;
  - (ii) information collected for the purposes of a nationally coordinated criminal history check; and
  - (iii) information released as part of a nationally coordinated criminal history check including any information accessible for the purposes of the Service, including in a Check Results Report;
- (h) **Service** means the National Police Checking Service.

**EXECUTED by the [CUSTOMER] ABN XX XXX XXX  
XXX:**

Signature of Authorised Representative

Print Name

Dated

AND

Signature of Witness

Print Name

Dated

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