



AUSTRALIAN
**CRIMINAL
INTELLIGENCE
COMMISSION**

Terms of Service

for controlled access
by duly Accredited
Organisations to the
National Police
Checking Service

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Australian Criminal Intelligence Commission (ACIC)
GPO Box 1936,
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Content

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Introduction

Australian Criminal Intelligence Commission (ACIC) is the national information sharing service for Australia's police and law enforcement agencies.

In partnership with the Australian police agencies, ACIC delivers the National Police Checking Service to provide access to police history information in accordance with relevant Australian legislation and with the informed consent of the applicant.

The National Police Checking Service provides Australian police and accredited organisations with police history information to support processes assessing the suitability of people applying for employment, Australian citizenship, appointment to positions of trust, volunteer service, or for various licensing or registration schemes.

Organisations accredited by ACIC to access the Service do so pursuant to these Terms of Service.

1 Context and Term

1.1 Context of this Agreement

- 1.1.1 Every Accredited Organisation enters into an Agreement with the Commonwealth, represented by ACIC, for access to the National Police Checking Service. The Agreement consists of these Terms of Service and the Accredited Organisation's Schedule. Provisions regarding the interpretation of this Agreement are contained in clause 9.
- 1.1.2 **An Accredited Organisation must agree to these Terms of Service in order to access the Service, and must not use or access the Service otherwise. By executing the Schedule, an Accredited Organisation confirms its understanding and commitment to comply fully with this Agreement and, in particular, the applicable provisions of the *Privacy Act 1988* (Cth).**
- 1.1.3 These Terms of Service may be amended by ACIC from time to time. ACIC will notify all Accredited Organisations of any changes (whether material or not) with at least three (3) months' notice unless clause 2.3.4 applies.

1.2 Term of this Agreement

- 1.2.1 This Agreement commences on the Commencement Date and, unless terminated earlier, will remain in force for three (3) years.

1.3 Memorandum of Understanding for Commonwealth Government Agencies

- 1.3.1 This clause 1.3 only applies if the Accredited Organisation is a Commonwealth Government Agency.
- 1.3.2 This Agreement is executed as a memorandum of understanding. The Parties acknowledge that each Party is part of the Commonwealth and does not intend to enter into a legally binding agreement with the other. The Parties instead commit to working together in good faith to implement the Provisions of this Agreement.
- 1.3.3 Notwithstanding clause 7, the Parties acknowledge that Confidential Information may be disclosed between the Parties and that the existing scheme of obligations on Commonwealth Government Agency employees is reasonably sufficient to maintain the confidential nature of this information.
- 1.3.4 Any dispute arising under or in connection with this Agreement will be dealt with by negotiation between the Parties.

1.4 Provision of the Service to Customers

- 1.4.1 This clause 1.4 only applies if the Accredited Organisation has been authorised by ACIC to provide the Service to one or more of the Accredited Organisation's clients ("**Customers**"). Each Customer must be a distinct legal entity capable of entering into a contract.
- 1.4.2 The Accredited Organisation must enter into a written agreement with each Customer related to the provision of the Service (each a "**Customer Contract**"). Upon ACIC's request, the Accredited Organisation must produce a copy of any or all of its Customer Contracts. The Accredited Organisation must ensure that each Customer Contract:
- requires the Customer to act as if it were an APP Entity;
 - gives effect to, and is not inconsistent with, the Accredited Organisation's obligations and ACIC's rights under this Agreement, especially in relation to the protection of Personal Information (clause 2.2), the collection of the Applicant's Informed Consent (clause 3.2) and the inclusion of an acknowledgement regarding the limitations of a National Police History Check (clause 3.3.2); and
 - grants ACIC a right of access to the Customer's premises (and to records and accounts in connection with the handling of Police History Information, including the right to copy) which ACIC must exercise reasonably and subject to the Customer's reasonable safety and security requirements.
- 1.4.3 The Accredited Organisation must not request a National Police History Check from ACIC on behalf of a Customer unless the Accredited Organisation or the Customer has collected an Informed Consent from the Applicant.

2 The Accredited Organisation's responsibilities

2.1 Compliance with this Agreement

- 2.1.1 The Accredited Organisation (including its Personnel) must use the Service strictly in accordance with this Agreement.
- 2.1.2 From time to time information in and access to the National Police Checking Service may be subject to technical changes as well as changes in Commonwealth policy or law. To the extent that it is necessary to ensure the Accredited Organisation can receive continued access to the Service, the Accredited Organisation (including its Personnel) must comply with any Commonwealth policy or change in technical requirements of which ACIC provides reasonable notice.

2.2 Protection of Personal Information

- 2.2.1 This clause 2.2 is a material clause of the Agreement and the obligations outlined in this clause 2.2 survive the expiration of this Agreement. The Accredited Organisation must take reasonable and practical steps to ensure compliance by its Personnel with this clause 2.2 and must provide evidence of that compliance to ACIC upon ACIC's request at any time. For the avoidance of doubt, this includes the Accredited Organisation's Subcontractor(s). Moreover, the Accredited Organisation must notify ACIC immediately if it becomes aware of a breach or possible breach by any person of any of the Accredited Organisation's obligations under this clause 2.2.

- 2.2.2 The *Privacy Act 1988* (Cth) protects every individual's Personal Information (information that identifies or could reasonably identify that individual). The Australian Privacy Principles regulate the handling of Personal Information by both Australian Government Agencies and businesses. **Irrespective of whether or not the Accredited Organisation would otherwise be bound, by entering into this Agreement the Accredited Organisation agrees to be bound by the *Privacy Act 1988* (Cth) as an APP Entity.**
- 2.2.3 The Accredited Organisation must, in conducting National Police History Checks and using the Service generally:
- use or disclose Personal Information obtained during the course of this Agreement only for the purposes of this Agreement;
 - comply with any directions, guidelines, determinations or recommendations of ACIC, to the extent that they are consistent with the Australian Privacy Principles;
 - not do any act or engage in any practice which, if done or engaged in by ACIC, would be a breach of the *Privacy Act 1988* (Cth), in particular, the Australian Privacy Principles;
 - implement safeguards to keep Police History Information secure;
 - not summarise, précis or otherwise alter Police History Information provided by ACIC to the Accredited Organisation; and
 - not retain a National Police History Check result or an Applicant's Informed Consent for longer than twelve (12) months following release of the result, unless legislation applying to the Accredited Organisation mandates a longer document retention period.
- 2.2.4 The Accredited Organisation must, on request by ACIC at any time, promptly provide ACIC with the Accredited Organisation's privacy policy.

2.3 Claims for payment

- 2.3.1 ACIC is entitled to charge the Accredited Organisation the following Fees for its use of the Service:
- \$23.00 (GST exclusive) for each National Police History Check (Standard); and
 - \$7.00 (GST exclusive) for each National Police History Check (Volunteer).
- 2.3.2 ACIC is entitled to submit claims for payment to the Accredited Organisation and each claim will be in the form of a valid tax invoice, contain the number of National Police History Checks requested by the Accredited Organisation during the previous month and include the amount payable calculated in accordance with the applicable Fees.
- 2.3.3 The Accredited Organisation must pay claims for payment made in accordance with clause 2.3.2 within thirty (30) days of the date of the claim.
- 2.3.4 ACIC may, at its absolute discretion, adjust the Fees by giving the Accredited Organisation six (6) months' written notice.

2.4 Taxes, duties and government charges

- 2.4.1 In this clause 2.4 the terms 'supply', 'taxable supply', 'tax invoice', 'GST', 'input tax credit' and 'decreasing adjustment' have the same meaning as given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 2.4.2 The Accredited Organisation must pay all taxes, duties and government charges imposed or levied in connection with the performance of this Agreement.

- 2.4.3 Unless otherwise indicated, all consideration for any supply made under this Agreement is exclusive of GST imposed on the supply. If ACIC makes a taxable supply to the Accredited Organisation under this Agreement, on receipt of a tax invoice from ACIC, the Accredited Organisation must pay, without setoff, an additional amount to ACIC equal to the GST imposed on the supply in question.
- 2.4.4 No Party may claim from the other Party under this Agreement any amount which the first Party may claim as an input tax credit or decreasing adjustment.

2.5 Indemnity

- 2.5.1 Unless clause 1.3 applies, the Accredited Organisation indemnifies the Commonwealth and the Commonwealth's Personnel from and against any:
- a. loss or liability incurred by the Commonwealth or its Personnel;
 - b. loss of or damage to property of the Commonwealth or its Personnel; or
 - c. loss or expense incurred by the Commonwealth 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 Commonwealth,
- arising from:
- d. any breach of the Accredited Organisation's obligations or warranties in this Agreement; or any act or omission by the Accredited Organisation or the Accredited Organisation's Personnel 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; and
 - e. if clause 1.4 applies, any act or omission on the part of a Customer that, were that act or omission performed by the Accredited Organisation, would constitute a breach of this Agreement, or any breach by a Customer of a Customer Contract or any act or omission involving fault on the part of a Customer, or its equivalent to Personnel, in connection with a Customer Contract.
- 2.5.2 The Accredited Organisation's liability to indemnify the Commonwealth and the Commonwealth'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 Commonwealth or its Personnel contributed to the relevant liability, loss, damage or expense.
- 2.5.3 The right of the Commonwealth 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 Commonwealth or its Personnel to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.

2.6 Corporate trustees

- 2.6.1 If any trust of which the Accredited Organisation is a trustee has any relevance to matters within the scope of this Agreement, without limiting in any way the Accredited Organisation's obligations under this Agreement, the Accredited Organisation 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.

3 The National Police Checking Service

3.1 Provision and use of the Service

- 3.1.1 The Accredited Organisation must use the Service only:
- a. through the secure network established by ACIC for the Service; and
 - b. to request National Police History Checks for the Authorised Check Purposes set out in the Schedule;
- and otherwise in accordance with this Agreement.
- 3.1.2 Subject to the Accredited Organisation's compliance with this Agreement, ACIC will process a request for a National Police History Check relating to an Applicant upon receipt from the Accredited Organisation of the following information:
- a. the Applicant's Informed Consent for ACIC to undertake a National Police History Check on the Applicant;
 - b. the Applicant's surname and given name(s), and all names under which the Applicant is or has been known;
 - c. the Applicant's date and place of birth;
 - d. the Applicant's sex;
 - e. the Applicant's residential address(es) for the past five (5) years;
 - f. if available, the Applicant's driver's licence details and/or firearms licence details;
 - g. the position title, occupation or entitlement being sought by the Applicant; and
 - h. the proposed place of work and whether contact with children or vulnerable groups such as the elderly is likely.
- 3.1.3 The Accredited Organisation must ensure that the Applicant is notified of the Applicant's National Police History Check result as soon as practicable after the Accredited Organisation (or Customer, if clause 1.4 applies) receives that result.

3.2 Informed Consent

- 3.2.1 The Accredited Organisation must not request a National Police History Check from ACIC under clause 3.1.2 unless the Accredited Organisation (or Customer, if clause 1.4 applies) has collected an Informed Consent from the Applicant.
- 3.2.2 For the purposes of this Agreement, an Informed Consent is a consent form completed and signed by an Applicant that sets out or contains at a minimum:
- a. the information listed in clause 3.1.2 as well as the Applicant's signature;
 - b. a statement or endorsement confirming that the Accredited Organisation (or Customer, if clause 1.4 applies) is satisfied as to the correctness of the Applicant's identity and has sighted original or certified copies of the Applicant's identity documents in accordance with clause 3.2.3;
 - c. the meaning or nature of a National Police History Check;
 - d. the purpose(s) for which the Applicant's Personal Information is being collected and the purpose(s) for which the National Police History Check is being undertaken;
 - e. any person to whom, or organisation (including its Australian Business Number) to which, Personal Information (including Police History Information) may be disclosed and in what circumstances (including ACIC, Australian police agencies, third parties);

- f. any law which requires that the Applicant's Personal Information be collected and the consequences of non-compliance;
- g. the likelihood of the Applicant's Personal Information being disclosed to overseas recipients and, if so, to whom and in which country or countries;
- h. an acknowledgement that the Applicant understands that their Personal Information may be used for general law enforcement purposes;
- i. advice to the Applicant that the Applicant may dispute the Police History Information contained in their National Police History Check by contacting the Accredited Organisation in the first instance;
- j. the Accredited Organisation's full name and contact details, including the name and contact details of its privacy officer; and
- k. advice that the ACIC privacy officer can be contacted on (02) 6268 7000 or privacy@ACIC.gov.au or GPO Box 1573 Canberra City ACT 2601.

ACIC provides a model Informed Consent form to assist Accredited Organisations comply with this clause 3.2.2.

- 3.2.3 When reviewing an Applicant's Informed Consent form, the Accredited Organisation (or Customer, if clause 1.4 applies) must be satisfied as to the Applicant's identity and sight original or certified copies of the following identity documents relating to the Applicant and totalling at least 100 points:

CATEGORY A—Each document is worth 70 points

- Birth Certificate
- Australian Passport (current, or expired within the previous two years, but not cancelled)
- Australian Citizenship Certificate
- International Passport (current, or expired within the previous two years, but not cancelled)
- Other document of identity having same characteristics as a passport e.g. diplomatic/ refugee (Photo or Signature)

CATEGORY B—The first document is worth 40 points and each additional document is worth 25 points

- Current Licence or Permit (Government Issued)
- Working With Children/Teachers Registration Card
- Aviation Security Identification Card/Maritime Security Identification Card
- Public Employee Photo ID Card (Government Issued)
- Department of Veterans' Affairs Card
- Centrelink Pensioner Concession Card or Health Care Card
- Current Tertiary Education Institution Photo ID
- Reference from a medical practitioner (must have known the applicant for a period of at least 12 months)

CATEGORY C—Each document is worth 25 points

- Birth Extract
- Foreign/International Driver's Licence
- Proof of Age Card (Government Issued)
- Medicare Card/Private Health Care Card
- Council Rates Notice
- Property Lease/Rental Agreement
- Property Insurance Papers
- Australian Tax Office Assessment
- Superannuation Statement
- Seniors Card
- Electoral Roll Registration
- Motor Vehicle Registration or Insurance Documents
- Professional or Trade Association Card

If relied upon, the following documents must be from different organisations:

- Utility Bills (e.g. Telephone, Gas, Electricity, Water)
- Credit/Debit Card
- Bank Statement/Passbook

In addition to the requirement that the documents supplied equal or exceed 100 points, the combination of the Applicant's identity documents must include the Applicant's full name, date of birth, at least one document from either Category A or Category B, and a photograph of the Applicant. If the Applicant does not have an identity document containing a photograph, the Applicant must submit a passport style photograph that has been certified by a person listed in Schedule 2 of the *Statutory Declarations Regulations 1993* (Cth).

There are special provisions that apply to the following categories of Applicants who may be unable to meet the identity requirements in this clause 3.2.3: recent arrivals (persons that have been in Australia for 6 weeks or less), Aboriginal and Torres Strait Islander residents in remote areas and communities, and persons under 18 years of age. Accredited Organisations must meet the minimum requirements for these categories contained in the most recent version of ACIC's model Informed Consent form.

3.3 Limitations of the Service

- 3.3.1 The Accredited Organisation acknowledges and agrees that ACIC makes the information contained in a National Police History Check available for use on the following conditions:
 - a. ACIC makes no representation or warranty of any kind without limitation in respect to accuracy; and
 - b. ACIC does not accept responsibility or liability for any error or omission in the information.
- 3.3.2 The Accredited Organisation must ensure that any record of Police History Information provided to any person under this Agreement includes the following disclaimer:

LIMITATIONS ON ACCURACY AND USE OF THIS INFORMATION

1. *The accuracy and quality of this National Police History Check depends on accurate identification of the Applicant (including aliases) and information provided in the application form and the comprehensiveness of police records.*
2. *While every care has been taken by CrimTrac to conduct a search of Police History Information held by it and Australian police agencies that relate to the Applicant, this report may not include all Police History Information relating to the Applicant. Reasons for Police History Information being excluded from the report include the operation of laws that prevent disclosure of certain Police History Information, or that the Applicant's record is not identified by the search process across the Police History Information holdings.*
3. *The National Police History Check is a point in time check and should not be relied upon for an unreasonable amount of time.*
4. *The Applicant must be notified of their National Police History Check result and provided with a reasonable opportunity to respond to or validate the information in this report.*
5. *To the extent permitted by law, neither CrimTrac nor Australian police agencies accept responsibility or liability for any error or omission in the information.*

THE NATIONAL POLICE HISTORY CHECK PROCESS

The information in this report has been obtained according to the following process:

- a) CrimTrac searching a central index for potential matches with the name(s) of the Applicant;*
- b) CrimTrac and the relevant Australian police agencies comparing name matches with Police History Information held in Australian police records;*
- c) The relevant Australian Police Agency identifying any Police History Information held in their police records and releasing the information subject to relevant spent convictions, non-disclosure legislation or information release policies;*
- d) CrimTrac providing a result of the National Police History Check to [the Accredited Organisation] indicating that a record of Police History Information relating to the Applicant is held or not; and*
- e) CrimTrac providing that Police History Information to [the Accredited Organisation].*

3.4 ACIC's rights to suspend the Service

- 3.4.1 ACIC may, at its discretion and in addition to any other rights it has under this Agreement, suspend or reduce the Accredited Organisation's level of access to the Service where:
 - a. the Accredited Organisation has breached a Provision of this Agreement; or
 - b. ACIC reasonably suspects that the Accredited Organisation has committed or may commit a breach of a Provision of this Agreement,until such time as the breach by the Accredited Organisation has been remedied to ACIC's satisfaction.
- 3.4.2 The Accredited Organisation must continue to perform its obligations under this Agreement notwithstanding any suspension or reduction of the Service.

4 Parties' relationship and Personnel

4.1 Provision of information and liaison

- 4.1.1 The Accredited Organisation must at no cost to ACIC:
- a. liaise with and provide ACIC with any information that it reasonably requires, including information regarding the Accredited Organisation's Personnel, financial viability and compliance with the terms of this Agreement; and
 - b. comply with all of ACIC's reasonable requests, directions and monitoring requirements, in relation to this Agreement or any review or audit of the Accredited Organisation's compliance with this Agreement that is conducted by or for the Commonwealth.

4.2 Relationship of the Parties

- 4.2.1 Nothing in this Agreement makes the Accredited Organisation an employee, partner or agent of ACIC, or gives the Accredited Organisation any power or authority to bind or represent ACIC in any way or for any purpose. The Accredited Organisation must not, and must ensure that its Personnel do not:
- a. misrepresent themselves as being ACIC's officer, employee, partner or agent, or as otherwise able to bind or represent 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.

4.3 Notices

- 4.3.1 A Party ('First Party') giving notice to the other Party under this Agreement must do so in writing and that notice must be signed by the First Party's Authorised Officer, 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.
- 4.3.2 A notice given in accordance with clause 4.3.1 is received:
- a. if hand delivered or if sent by pre-paid post, on delivery to the relevant address; or
 - b. 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.

4.4 Use of ACIC or police agency logos

- 4.4.1 The Accredited Organisation must not create Material which uses a ACIC logo or any branding or logo associated with an Australian police agency for the purposes of marketing or promotion of the Accredited Organisation.

4.5 Commonwealth collection of Personal Information

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

4.6 The Accredited Organisation's Personnel

- 4.6.1 The Accredited Organisation must always have an Authorised Officer whose contact details are registered with ACIC.
- 4.6.2 The Accredited Organisation must ensure that its Personnel are of good fame and character and will act in all circumstances in a fit and proper manner in relation to any Personal Information or Police History Information to which they have access under this Agreement.
- 4.6.3 The Accredited Organisation must, at all times, restrict its Personnel's access to Police History Information to a strictly 'need to know' basis.

4.7 Legal process consultation

- 4.7.1 Where Police History Information is subject to any legal processes including a subpoena or a freedom of information request, the Accredited Organisation will consult to the extent allowable under law with ACIC upon receipt of such action or application and again prior to its finalisation.

5 Access to premises and information

5.1 Access to premises and Material

- 5.1.1 Subject to clause 5.1.4, the Accredited Organisation must allow access to sites or premises at which records and Materials associated with this Agreement are stored for the following officers:
 - a. the ACIC Authorised Officer;
 - b. the Auditor-General (established under the *Auditor-General Act 1997* (Cth));
 - c. the Privacy Commissioner or statutory appointee administering the *Privacy Act 1988* (Cth);
 - d. the Commonwealth Ombudsman (established under the *Ombudsman Act 1976* (Cth)); and
 - e. any person authorised by a person described in clause 5.1.1.a to 5.1.1.d.
- 5.1.2 Subject to clause 5.1.4, the Accredited Organisation must arrange for the persons listed in clause 5.1.1 to inspect and copy Materials in the Accredited Organisation's possession or control for purposes associated with this Agreement or any review of the Accredited Organisation's performance of this Agreement.
- 5.1.3 The Accredited Organisation must ensure that Subcontracts require Subcontractors to give the persons listed in clause 5.1.1 access to the Subcontractor's premises, and to records and Materials in connection with the performance of work under the Subcontract, including rights to inspect and copy Materials equivalent to those in clause 5.1.2.
- 5.1.4 The rights referred to in clauses 5.1.1 and 5.1.2 are, wherever practicable, subject to:
 - a. ACIC providing the Accredited Organisation (or, where applicable, a Subcontractor) with at least three (3) business days' prior notice; and
 - b. the Accredited Organisation's (or, where applicable, a Subcontractor's) reasonable security requirements or codes of behaviour,except where a person listed in clause 5.1.1 or their delegate believes that there is a suspected or actual breach of law.
- 5.1.5 Nothing in this Agreement limits or restricts in any way any duly authorised function, power, right or entitlement of the persons listed in clause 5.1.1 or their respective delegates.

5.2 Access to documents

- 5.2.1 If the Commonwealth receives a request for access to a document created by or in the possession of the Accredited Organisation or a Subcontractor that relates to this Agreement, ACIC may at any time by notice require the Accredited Organisation to provide, or arrange for the provision of, the document to ACIC and the Accredited Organisation must, at no additional cost to the Commonwealth, promptly comply with the notice.
- 5.2.2 If the Accredited Organisation receives a request for access to a document in its possession (including in the possession of its Personnel and/or Subcontractor) that relates to this Agreement, the Accredited Organisation must consult with ACIC upon receipt of the request.
- 5.2.3 The Accredited Organisation must include in any Subcontract relating to the performance of this Agreement provisions that will enable the Accredited Organisation to comply with its obligations under this clause 5.2.

6 Intellectual Property

6.1 Ownership of Police History Information

- 6.1.1 Intellectual Property in Police History Information is owned by the Commonwealth and the Australian police agencies. Nothing in this Agreement affects the ownership of Intellectual Property in Police History Information (including any copy thereof) provided to the Accredited Organisation. ACIC grants to the Accredited Organisation a royalty-free, non-exclusive licence to use and communicate Police History Information in accordance with this Agreement.

6.2 No change to ownership of other relevant documents

- 6.2.1 Nothing in this Agreement affects the Commonwealth'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.

7 Confidentiality

7.1 Confidential Information not to be disclosed

- 7.1.1 Subject to clause 7.2, 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.

7.2 Exceptions to non-disclosure

- 7.2.1 A Party can disclose Confidential Information of the other Party to the extent that it:
 - a. is disclosed by the Party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - b. is disclosed by the Party to its internal management (including advisers) solely to enable effective management or auditing of Agreement-related activities;
 - c. is disclosed by the Party to its responsible Minister;
 - d. 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;

- e. is shared by ACIC within the Commonwealth, or with another Government Agency, where this serves the Commonwealth's or the Government Agency's legitimate interests;
 - f. is required by law or statutory or portfolio duties to be disclosed;
 - g. is disclosed by ACIC in order to protect the health or safety of any person; or
 - h. is in the public domain otherwise than due to a breach of this clause 7.
- 7.2.2 Where a Party discloses Confidential Information to another person under clauses 7.2.1.a to 7.2.1.d and 7.2.1.g, the disclosing Party must notify the receiving person that the information is confidential.
- 7.2.3 In the circumstances referred to in clauses 7.2.1.a and 7.2.1.b, the disclosing Party agrees not to provide the information unless the receiving person agrees to keep the information confidential (subject to the exceptions in this clause 7).

7.3 Security of Commonwealth's Confidential Information

- 7.3.1 The Accredited Organisation agrees to secure all of the Commonwealth's Confidential Information (including Police History Information) against loss and unauthorised access, use, modification or disclosure.
- 7.3.2 The Accredited Organisation may wish to provide Applicants with the opportunity to submit Personal Information electronically. If so, the Accredited Organisation must secure Personal Information belonging to Applicants against loss and unauthorised access, use, modification or disclosure, and notify the Applicant of these risks.

7.4 Written undertakings

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

7.5 Period of Confidentiality

- 7.5.1 The obligations under this clause 7 will continue, notwithstanding the expiry or termination of this Agreement:
- a. in relation to an item of information described in the Schedule—for the period set out in respect of that item or, if no such period is specified, in perpetuity; and
 - b. in relation to any item of information agreed by the Parties to be Confidential Information and not described in the Schedule—for the period agreed by the Parties in writing in respect of that item or, if no such period is agreed by the Parties, in perpetuity.
- 7.5.2 The obligations contained in this clause 7 are in addition to those specified in clauses 2.2 and 5.2.

8 Termination and disputes

8.1 Termination or reduction in scope for convenience

- 8.1.1 ACIC may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement (including by reducing or removing Authorised Check Purposes) immediately.
- 8.1.2 The Accredited Organisation 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 Organisation if the termination or reduction had not occurred. ACIC shall only be liable for repayment of any outstanding National Police History Checks requested by the Accredited Organisation prior to the effective date of termination.
- 8.1.3 This clause 8.1 does not affect the Commonwealth's other rights under this Agreement or otherwise at law.

8.2 Termination for default

- 8.2.1 ACIC may terminate this Agreement immediately by notice to the Accredited Organisation if any of the following termination events occur:
 - a. the Accredited Organisation breaches any Provision of this Agreement and ACIC reasonably considers that the breach cannot be rectified;
 - b. the Accredited Organisation breaches any Provision of this Agreement and does not rectify the breach within 14 days after receipt of ACIC's notice to do so;
 - c. ACIC considers that its decision to accredit and grant the Accredited Organisation access to the Service was affected by a statement in its accreditation application that was incorrect, incomplete, false or misleading;
 - d. ACIC is satisfied on reasonable grounds that the Accredited Organisation is unable or unwilling to satisfy the terms of this Agreement;
 - e. the Accredited Organisation comes under any form of administration or assigns its rights otherwise than in accordance with this Agreement;
 - f. the Accredited Organisation is unable to pay all its debts as and when they become payable or fails to comply with a statutory demand;
 - g. proceedings are initiated with a view to obtaining an order for winding up the Accredited Organisation;
 - h. if the Accredited Organisation is a local government organisation, the relevant State Government takes action to cease the Accredited Organisation's operations and/or to amalgamate them with the operations of another local government organisation;
 - i. the Accredited Organisation becomes bankrupt or enters into a scheme of arrangement with creditors;
 - j. anything analogous to, or of a similar effect to, anything described in clauses 8.2.1.e to 8.2.1.i occurs in respect of the Accredited Organisation; or
 - k. another Provision of this Agreement allows for termination under this clause 8.2.

- 8.2.2 If a purported termination by ACIC under this clause 8.2 is determined by a competent authority not to be properly a termination under this clause 8.2, then that termination by ACIC will be deemed to be a termination for convenience under clause 8.1 with effect from the date of the notice of termination referred to in this clause 8.2.
- 8.2.3 This clause 8.2 does not affect the Commonwealth's other rights under this Agreement or otherwise at law.

8.3 Procedure for dispute resolution

- 8.3.1 Except for the circumstances set out in clause 8.3.2, a Party must not commence any legal proceedings in respect of any dispute arising under this Agreement until the following procedure has been followed:
- a. the Party claiming that there is a dispute will send the other Party a notice setting out the nature of the dispute (**'Dispute Notice'**);
 - b. the Parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have the authority to intervene and direct some form of resolution;
 - c. if:
 - i. there is no resolution of the dispute within 30 days from the date that the Dispute Notice was received;
 - ii. 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
 - iii. 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.
- 8.3.2 Clause 8.3.1 does not apply to the following circumstances:
- a. either Party commences legal proceedings for urgent interlocutory relief;
 - b. action is taken by ACIC under, or purportedly under clause 5, clause 8.1 or clause 8.2; or
 - c. an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the Accredited Organisation.
- 8.3.3 Each Party will bear its own costs of complying with this clause 8.3, and the Parties will bear equally the cost of any person engaged under clause 8.3.1.b.
- 8.3.4 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.

9 Interpretation

9.1 General interpretation of this Agreement

- 9.1.1 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 is to a statute 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; and
 - k. a reference to a 'clause' is to a clause in this document, a reference to 'Item' is to an Item in the Schedule to this Agreement, and a reference to 'Annexures' is a reference to documents attached to the Schedule.
- 9.1.2 If there is any conflict or inconsistency, the provisions in documents forming part of this Agreement take priority in the following (descending) order:
- a. the Schedule;
 - b. these Terms of Service;
 - c. any documents incorporated by reference into the above documents.
- 9.1.3 This Agreement is governed by the law of the Australian Capital Territory and the Parties submit to the jurisdiction of the courts of the Australian Capital Territory.
- 9.1.4 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.
- 9.1.5 A Provision of this Agreement contained in the Accredited Organisation's Schedule may only be varied by the written agreement of both Parties.

- 9.1.6 If part of this Agreement is found to be invalid, the rest of this Agreement continues in effect as if the invalid part were severed. Any reading down or severance of a particular provision does not affect the other Provisions of this Agreement.
- 9.1.7 A waiver of any Provision of this Agreement must be agreed to in writing by the Commonwealth’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.
- 9.1.8 The Accredited Organisation must not assign, novate or transfer its rights or obligations under this Agreement without ACIC’s prior written approval.

9.2 Survival

- 9.2.1 The termination or expiration of this Agreement will not affect the continued operation of any Provision of this Agreement which expressly or by implication from its nature is intended to survive including but not limited to clauses 2.2 (protection of Personal Information), 2.5 (indemnity), 5 (access to premises and information) and 7 (confidentiality).

9.3 Definitions

- 9.3.1 In this Agreement, unless the contrary intention appears, a term in bold type in this clause 9.3 has the meaning shown opposite it:

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| Accredited Organisation | means the entity specified as such in the Schedule and includes, where the context permits, its Personnel, administrators, successors and permitted assigns, including any person to whom the Accredited Organisation novates any part of this Agreement; |
| Agreement | means an agreement between ACIC and the Accredited Organisation comprising these Terms of Service and the Schedule, and which is a legally binding contract unless clause 1.3 applies in which case it is a memorandum of understanding; |
| APP Entity | has the same meaning as given in the <i>Privacy Act 1988</i> (Cth); |
| Applicant | means an individual who provides Informed Consent to a National Police History Check of their name being conducted; |
| Australian Criminal Intelligence Commission (ACIC) | means the Australian Government Agency that is responsible for administering this Agreement and includes the agency’s officers, delegates, employees and agents; |
| Australian Privacy Principle (APP) | has the same meaning as given in the <i>Privacy Act 1988</i> (Cth); |
| Authorised Check Purpose | means the types/categories of National Police History Checks exhaustively set out in the Schedule that the Accredited Organisation is authorised to perform subject to its compliance with this Agreement; |

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| Authorised Officer | <ul style="list-style-type: none"> a. in relation to the Accredited Organisation, the person listed in the Schedule; and b. in relation to the Commonwealth, the Director at ACIC responsible for managing the National Police Checking Service; |
| Commencement Date | means the last day on which the Schedule was signed by a Party unless otherwise specified in the Schedule; |
| Commonwealth | means the Commonwealth of Australia and includes ACIC; |
| Confidential Information | <p>means information that:</p> <ul style="list-style-type: none"> a. is Police History Information; b. is by its nature confidential, including the name or contact details of any staff member or security information relating to the provision of the Service; c. is described as such in the Schedule; or d. the Parties agree in writing after the Commencement Date is confidential information for the purposes of this Agreement; |
| CrimTrac | means the Australian Government Agency that is responsible for administering this Agreement and includes the agency's officers, delegates, employees and agents; |
| Customer | has the meaning as given in clause 1.4.1; |
| Fees | means the amount(s) payable by the Accredited Organisation for the Services pursuant to clause 2.3; |
| Government Agency | means any governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity; |
| Informed Consent | has the meaning as given in clause 3.2.2; |
| Intellectual Property | <p>means:</p> <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms, sound recordings and broadcasts); 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 c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields <p>but does not include:</p> <ul style="list-style-type: none"> d. Moral Rights; e. the rights of performers (other than a performer's right of co-ownership of copyright in the sound recording of a Performance); or f. rights in relation to Confidential Information; |

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| Material | means any article or thing in relation to which Intellectual Property rights arise or which incorporates a 'performance' (as defined in the <i>Copyright Act 1968</i> (Cth)) or a recording thereof; |
| Moral Rights | means the following non-proprietary rights of authors of copyright material: <ul style="list-style-type: none"> a. the right of attribution of authorship or performership; b. the right of integrity of authorship or performership; and c. the right not to have authorship or performership falsely attributed. |
| National Police Checking Service | means the service established by ACIC to provide access to Police History Information, to support processes assessing the suitability of people applying for employment (including positions of trust, volunteer service) or entitlements (including Australian citizenship, licensing or registration schemes); |
| National Police History Check | means a police history record check on an Applicant carried out in accordance with this Agreement and attracting the Fees; |
| Party | means a party to this Agreement as specified in the Schedule; |
| Personal Information | has the meaning given in the <i>Privacy Act 1988</i> (Cth); |
| Personnel | <ul style="list-style-type: none"> a. in relation to the Accredited Organisation, means the Accredited Organisation's Authorised Officer, each Subcontractor and any officer, employee, contractor, partner, volunteer or agent of the Accredited Organisation or a Subcontractor who collects, views or handles Police History Information or Personal Information in the course of performing their duties in connection with this Agreement; and b. in relation to the Commonwealth, means officers, employees, volunteers, agents or contractors of ACIC or any entity that is contracted by ACIC other than the persons and entities referred to in paragraph (a) of this definition; |
| Police History Information | means any information or result released as part of a National Police History Check; |
| Provision of this Agreement | means a requirement in this Agreement including a requirement in a clause in the Terms of Service and the Schedule; |
| Schedule | means the document entitled 'Terms of Service Schedule' that must be executed by both Parties and includes any Annexures; |
| Service | means the National Police Checking Service; |
| Subcontractor | means any person engaged by the Accredited Organisation to undertake any part of the Accredited Organisation's obligations under this Agreement, and 'Subcontract' means the written agreement between the Accredited Organisation and the Subcontractor; and |
| Terms of Service | means all of the clauses in this document. |

