

Precise Background Services Pty Ltd Terms and Conditions of Service

1. Application

1.1 These terms and conditions of service (**Terms**) apply to any Services provided by PBS to the Customer pursuant to a Service Order submitted by the Customer.

1.2 These Terms form a binding legal agreement between PBS, its successors and assignees, and you. These Terms explain PBS's obligations as a supplier of the Services and your obligations as a consumer of the Services (whether for yourself or on behalf of an Applicant). By placing a Service Order to acquire Services from PBS, it means you have read these Terms and you agree to comply with and be legally bound by these Terms. Please read these Terms carefully before placing a Service Order with PBS.

1.3 These Terms may be amended from time to time, without prior notice. Notice of any such changes to these Terms will be provided by PBS by posting a notification on our website or PBS Online Platform, attaching the Terms to an invoice, uploading the Terms to the PBS Online Platform or updating the date referenced in the revised Terms, or as otherwise deemed appropriate by PBS. Any such changes will apply only to Service Orders placed after the time such changes become effective. PBS's right to require strict observance and performance of each of these Terms shall not be reduced, vitiated, or otherwise affected by any current or past waiver of any of these Terms (or by any previous course of dealing).

1.4 The Customer Primary Contact is the first point of contact between the Parties and is authorised to enter into these Terms (including variations and extensions) on behalf of the Customer.

2. Precedence

2.1 These Terms comprises the following parts:

- (a) the ACIC Mandatory Terms of Use;
- (b) clauses 1 to 19 of these Terms;
- (c) PBS Online Platform Terms of Use;
- (d) the Service Level Agreement;
- (e) each Service Order; and
- (f) any other schedules or documents incorporated by reference into these Terms.

2.2 Other than the ACIC Mandatory Terms of Use (which takes precedence over any of the other documents listed in clause 2.1), to the extent that there is any inconsistency of the terms in those remaining documents, the terms set out in clauses 1 to 19 of these Terms will have priority to the extent of the inconsistency.

3. Services

3.1 PBS is not obliged to provide any Services unless and until a Service Order has been created.

3.2 PBS agrees to provide all Services:

- (a) in accordance with the Service Level Agreement; and
- (b) in a professional manner in accordance with Good Industry Practice.

3.3 The Customer agrees that PBS relies on third-party service providers to provide its Services, and therefore from time to time PBS may experience delays in providing the Services to the Customer. Notwithstanding the Service Level Agreement, the Customer agrees that it will not hold PBS responsible for:

- (a) any reasonable delays caused by PBS; and
- (b) any delays caused by a third-party service provider of PBS.

3.4 The Customer agrees to comply with all terms of PBS Online Platform Terms of Use which are available at:
<https://www.precisebackground.com/app/uploads/2022/05/PBS-Terms-of-Use-2022-1.pdf>.

4. Customer Cancellation of Services

4.1 If the Customer cancels a Service Order prior to receiving a Report from PBS, PBS will only charge the corresponding percentage of the fees as listed in the following table:

PBS Platform Order Status when cancellation request is received	Percentage of fees charged
'Ordered' or 'Assessment' – applicant has not submitted online form OR has submitted form but Assessment not complete.	0%
'In Progress' – Assessment complete and check enquiries commenced	50%

5. Fees and Payment

- 5.1** PBS will charge the Fees (excluding GST) by way of tax invoice upon the Reports being delivered to the Customer. Each invoice will be calculated in accordance with these Terms and the Service Level Agreement.
- 5.2** The Customer agrees to pay PBS the full amount displayed on the invoice (without set-off or deduction) within 30 days of receipt by electronic funds transfer to PBS's bank account as notified from time to time.
- 5.3** The Customer agrees that the Fees may be varied annually by PBS providing 30 days' prior written notice.
- 5.4** If the Customer does not make a payment by the date stated in an invoice or as otherwise provided for in these Terms, PBS is entitled to charge interest on the outstanding amount at the rate of 2% per year above the rate set by the *Penalty Interest Rates Act 1983 (Vic)* from time to time, accruing daily during the period commencing on the day after the due date for payment and ending on the date on which payment is made.

6. Privacy Laws

- 6.1** PBS and the Customer represent and warrant that they will comply with all Laws and regulations when providing Services under these Terms, including but not limited to all relevant Privacy Laws. Without limiting the foregoing, the parties agree to:
- (a) only use or disclose that Personal Information for the purposes of these Terms;
 - (b) ensure that the Personal Information is protected against misuse, interference or loss and from unauthorised access, modification, disclosure or use;
 - (c) ensure that access to Personal Information is restricted to those Personnel who require access in connection with these Terms and that such Personnel are made aware of the obligations of the Party as set out in this clause; and
 - (d) comply with such other privacy and security measures as the Company reasonably advises PBS in writing from time to time.

- 6.2** The Customer acknowledges and agrees that it will be solely responsible for:

- (a) the collection, use, disclosure, storage, transfer and otherwise handling of Personal Information in respect of its use of the Services;
- (b) ensuring that any such collection, use, disclosure, storage, transfer and otherwise handling of Personal Information in respect of the Services complies with the Privacy Laws applicable to both PBS and the Customer and the Customer's privacy policy;
- (c) establishing and maintaining all necessary security controls and protocols that will apply to the Services for the purpose of:
 - (i) complying with the Privacy Laws;
 - (ii) protecting and securing Personal Information;
 - (iii) preventing unauthorised access, use, destruction, loss or alteration of Personal Information;
 - (iv) ensuring the Services remain secure at all times and preventing the hacking of or any unauthorised access to the Services and any Personal Information that is recorded and stored by PBS;
 - (v) preventing the introduction of viruses and other similar harmful or malicious software in respect of the Services; and
 - (vi) where required, cooperating and providing such reasonable assistance to PBS for any complaint, investigation or other enquiry by a Government Authority or other regulatory body.
- (d) The Customer must at all times:
 - (i) have a privacy policy in place that complies with the Privacy Laws (and is amended from time to time to accommodate for any changes to the Privacy Laws); and
 - (ii) collect, store and handle all Personal Information and information disclosed through the

use of the Services in accordance with the Customer's privacy policy.

- (e) Without limiting clause 6.2, the Customer must take such steps as are reasonable in the circumstances to protect any Personal Information from:
 - (i) misuse, interference or loss; and
 - (ii) unauthorised access, modification or disclosure; and
 - (iii) not do anything that adversely affects the accuracy, currency or completeness,

of any Personal Information.

7. Data Breach

7.1 Each Party must notify the other Party immediately if a Party becomes aware of a Data Breach.

7.2 Without limiting the Customer's obligations at Law, the Customer will be solely responsible for ensuring it has up to date security systems, processes, procedures and protocols in place at all times to adequately prevent against any Data Breach or unauthorised access to or hacking of its systems and the Services.

7.3 If a Party becomes aware that there are reasonable grounds to suspect that there may have been a Data Breach in relation to any Personal Information as a result of these Terms or the Services, that Party agrees to:

- (a) notify the other Party in writing as soon as possible, which must be no later than within 3 days; and
- (b) carry out an assessment in accordance with the requirements of the Privacy Act.

7.4 Where a Party becomes aware that there are reasonable grounds to believe there has been, or where a Party notifies the other Party that there has been, a Data Breach in relation to any Personal Information as a result of these Terms or the Services, that Party must:

- (a) take all reasonable action to mitigate the risk of the Data Breach causing serious harm to any of the individuals to whom it relates;
- (b) take all other action necessary to comply with the requirements of the Privacy Act;

and

- (c) take any other action as reasonably directed by the other Party.

8. Subcontracting

PBS will be entitled in its absolute discretion to enter into one or more subcontracts for the supply of all or any of the Services without obtaining the prior consent of the Customer.

9. Warranty

9.1 PBS warrants that during the term of these Terms:

- (a) it has the requisite power and authority to enter into these Terms and to carry out the obligations contemplated by these Terms; and
- (b) it has, and will at all times have, use and apply the skills, qualifications, expertise, experience, capacity, resources and knowledge necessary to carry out its obligations under these Terms including performing the Services.

9.2 The Customer agrees that:

- (a) the Services and Reports are provided 'as is' without warranties or representations of any kind given that PBS:
 - (i) is not the author or the creator of the information sourced from any third party database to provide the Services or to produce the Reports; and
 - (ii) does not have retain control or influence over such information or data; and
 - (iii) is not responsible for any error or misinformation contained in a Report as a result of information sourced from any database operated and/or owned by a third-party,
- (b) PBS does not warrant or guarantee:
 - (i) the accuracy, reliability, of the searches, underlying information or data in respect the Services;
 - (ii) that PBS Platform will operate

uninterrupted or error-free, will always be available, contains and/or displays information that is current or up-to-date, and will be free from bugs or viruses, or never be faulty; and

- (iii) that it will not have to occasionally interrupt the Customer's use of PBS Platform for operational, security or other reasonable reasons. In such a case, PBS will restore access as quickly as practicable.

10. Indemnity

10.1 The Customer must indemnify and keep indemnified PBS and each of PBS Personnel in relation to any Loss or Claim relating to:

- (a) any acts or omissions of an Applicant including the provision of false, misleading or incorrect information used to verify the identity of the Applicant;
- (b) any injury or death of any person or loss of or damage to any tangible property caused by a deliberate, reckless or negligent act or omission of the Customer or any of PBS's Personnel; or
- (c) any fraudulent act or omission, or any fraudulent misrepresentation or deceit by the Customer or any of the Customer's Personnel in connection with these Terms.

10.2 The Customer is not liable under the indemnity referred to in clause 10.1 to the extent that Loss is caused by the default, negligence or fraud of PBS.

11. Limitations on Liability

11.1 To the maximum extent permitted by Law, PBS will incur no Liability to the Customer, nor can the Customer make a Claim for any breach under these Terms or for any loss or damage suffered by the Customer, its agents, officers, employees or any third parties including any of the Customer's customers or the Applicant, arising as a result of:

- (a) any act or omission of the Customer, its Personnel or the Applicant including the provision of any false, misleading, inaccurate or incorrect information provided by a Customer or Applicant to verify the identity of the Customer or Applicant;

(b) a third-party's failure to comply with the Privacy Laws and any obligations under these Terms in respect of the collection, disclosure, storage and handling of Personal Information disclosure through the use of the Services; and

(c) the destruction of or any damage or interference to the Services, or Loss incurred as a result of any Data Breach.

11.2 Nothing in this clause 11 will limit PBS's Liability in respect of a Claim, loss or damage suffered by the Customer, its officers, agents or employees or any third-party to the extent PBS contributed to the Claim, Liability, loss or damage from its own negligent or fraudulent acts or omissions.

11.3 PBS shall not be liable to the Customer for any loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatsoever even if PBS shall have been advised of the possibility of such loss.

11.4 To the maximum extent permitted by Law, PBS limits its liability for Losses under or in connection with these Terms to the aggregate of the fees actually paid by the Customer to PBS in the 12 months immediately preceding any claim.

11.5 The Liability of PBS under these Terms will be reduced to the extent any acts or omission of the Customer or any of its representatives caused or contributed to the loss, costs or damages suffered by the Customer.

11.6 The Party suffering loss must take all reasonable steps to mitigate the effect on that Party of any Claim or Liability for which another Party may be liable under these Terms.

12. Intellectual Property

12.1 Except as expressly set out in these Terms, nothing in these Terms transfers any interest or otherwise affects the ownership of any IP Rights of either Party (or third-party) in any material relevant to or associated with the Service or these Terms, including branding, platforms, graphic design, policies, guidance materials, certificates and forms.

12.2 The Customer grants to PBS a revocable, non-exclusive, non-transferable, royalty-free licence to use any IP Rights in the Customer's material data, work, item, process or things for the sole purpose of, and only to the extent required and

provided for, PBS to perform its obligations under these Terms and provide the Services to the Customer.

13. Confidentiality

13.1 Each Party (**Recipient**) must:

- (a) keep confidential, and not use or disclose, any Confidential Information of the other Party (**Disclosing Party**), except as permitted by these Terms; and
- (b) immediately notify the Disclosing Party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any Confidential Information of the Disclosing Party.

13.2 Each Recipient may, to the extent necessary:

- (a) use Confidential Information of the Disclosing Party for the purposes of performing the relevant obligations or exercising the relevant rights arising under or pursuant to these Terms;
- (b) subject to clause 13.3, disclose Confidential Information to its Personnel who have a specific need to access that Confidential Information for the purpose of performing the relevant obligations or exercising the relevant rights arising under or pursuant to these Terms.

13.3 The Customer must ensure that the Customer's Personnel comply with equivalent obligations of confidence, as apply to the Customer. Prior to the Customer disclosing any Confidential Information of PBS to any of PBS's Personnel, who is not an employee of the Customer, PBS may require the Customer to provide to PBS the written undertaking of the relevant person to comply with the Customer's obligations under these Terms in relation to that information.

13.4 The obligations in clause 13.1 to 13.3 do not apply to:

- (a) any disclosure of information to the legal or other professional advisers who are under a duty of confidence;
- (b) any disclosure made with the Disclosing Party's prior written consent, which can be withheld in its discretion and may be given subject to conditions;

- (c) any disclosure required by Law (including any order of a court of competent jurisdiction); and
- (d) information which is, at the relevant time, in the public domain other than as a result of a breach of this clause.

13.5 If requested by the Disclosing Party or upon termination of these Terms, the Recipient must immediately, and must procure that its Personnel immediately, return to the Disclosing Party, or destroy or delete as the Disclosing Party directs, all original documents and copies (including those in electronic form) in the Recipient's possession, custody or control that comprise, contain, reproduce, are based on, utilise or relate to the Disclosing Party's Confidential Information, except to the extent the Confidential Information is required by the Recipient for the purposes of clause 13.4 or to comply with any Law.

13.6 Despite anything else in this clause 13, the Customer agrees that PBS is not obliged to retain copies of any information or documentation (whether confidential or not) provided by a Customer or Applicant in the course of the provision of the Services, including but not limited to information contained in the application and the informed consent forms, those forms themselves and any identity documentation relating to the Applicant (including passports, driver licences, birth certificates and any other similar documents), for any period that is longer than three (3) months from the date of receipt by PBS after which such information may be deleted or destroyed by PBS. This clause 13.6 will not apply in respect of any information which PBS is required to retain for longer than three (3) months under agreement with the Australian Criminal Intelligence Commission or any separate agreement between PBS and its Customer (which PBS may agree to in its absolute discretion).

14. Insurance

14.1 The Customer must affect and maintain with insurers of good standing to cover the risks and events arising out of these Terms, including those insurances listed in, and for the Prescribed Minimum Policies, providing cover for any Claims made at any time in respect of events, acts or omissions that occurred during that period.

14.2 The Customer must provide to PBS copies of evidence from the Customer's broker endorsed by the insurer of the insurance policies set out

in clause 14.1 within 14 days after a request by the Company.

15. Force Majeure

Neither Party shall be liable for any delay in performing any of its obligations under these Terms if such delay is caused by circumstances beyond reasonable control of the Party so delaying and such Party shall be entitled (subject to giving the other Party full particulars of the circumstances in question and to using all reasonable endeavours to resume full performance without avoidable delay) to a reasonable extension of time for the performance of such obligations.

16. Termination

16.1 Either Party may terminate these Terms and all Services and Service Orders, or any or all of the Service Orders, by immediate written notice to the other Party or on such prior written notice specified in the non-defaulting Party's notice:

- (a) if an Insolvency Event occurs in relation to a Party;
- (b) if a Party commits a Material Breach of these Terms, which is not capable of remedy;
- (c) if a Party commits a Material Breach of these Terms, which is capable of remedy and:
 - (i) the defaulting Party fails to remedy that breach; or
 - (ii) the non-defaulting Party considers, acting reasonably, that the Party will not remedy that breach,

within 30 days of receipt of notice from the non-defaulting Party specifying the breach and requiring the breach to be remedied,

provided that the Customer pays PBS for any outstanding Services requested but not paid prior to the date of termination.

16.2 Clauses expressed or implied to survive the termination or expiry of these Terms or a Service Order will survive including 2, 6, 7, 10, 11, 13, 16, 17, 18 and 19.

16.3 On termination of these Terms (unless otherwise required by Law), the Customer agrees to promptly return or securely destroy all copies or other records containing Personal

Information held in connection with these Terms.

17. Dispute Resolution

17.1 If there is a Dispute, either Party may deliver a notice to the other Party that identifies the Dispute (**Notice of Dispute**). A Party delivering a Notice of Dispute must also deliver enough information about the Dispute for the other Party to reasonably understand the alleged facts on which the Claim is based, the legal basis on which the Claim is made and the relief that is Claimed. Within 10 Business Days after a Notice of Dispute has been delivered, the receiving Party must deliver a written response to the other Party stating its position in relation to the Dispute and the basis for its position.

17.2 If a Notice of Dispute is delivered, the parties must meet on a without prejudice basis within 15 Business Days after the Notice of Dispute has been delivered, in good faith, for the purpose of resolving the Dispute, in whole or in part, or for considering whether a process other than that already provided for under these Terms should be used to resolve the Dispute including involving senior management not involved in the day to day running of these Terms in a negotiation process (**Without Prejudice Meeting**). At a Without Prejudice Meeting under clause 17.2 the representatives of the parties must have authority to resolve the Dispute, and unless otherwise agreed in writing, all communications will be deemed to occur on a without prejudice basis and any Agreement must be in writing and signed by both parties.

17.3 If a Dispute has not been resolved within 30 Business Days after the relevant Notice of Dispute was delivered, then either Party may issue proceedings to have the Dispute determined.

17.4 Nothing in clause 17 prevents proceedings being issued for urgent injunctive or declaratory relief.

18. Goods and Services Tax

18.1 In this clause and any other provision of these Terms relating to GST:

- (a) any reference to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Act;

- (b) a reference to GST payable by or input tax credit of a Party includes the corresponding GST payable by or input tax credit of the representative member of the GST group of which that Party is a member; and
 - (c) the term '**Excess GST**' has the meaning given to that term in section 142-10 of the GST Act.
- 18.2** Unless otherwise expressly stated, all amounts referred to in these Terms, including amounts used to determine a payment to be made by one Party to the other (other than an amount referred to in clause 18.7), are exclusive of GST (**GST Exclusive Consideration**).
- 18.3** To the extent that GST is payable in respect of all or any part of a supply made by a Party under or in connection with these Terms, the GST Exclusive Consideration to be provided under these Terms for that supply is increased by an amount equal to the GST payable by the Supplier (excluding any Excess GST).
- 18.4** The recipient must pay the additional amount payable under clause 18.3 to the Supplier at the same time and in the same manner as the GST Exclusive Consideration for the supply is otherwise required to be provided.
- 18.5** The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the additional amount on account of GST under clause 18.3 or at such other time as the parties agree.
- 18.6** Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with these Terms the Supplier must determine the net GST in relation to the supply (taking into account any adjustment and excluding any Excess GST) and if the net GST differs from the amount previously paid under clause 18.4, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 18.7** If one of the parties to these Terms is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with these Terms, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be

increased on account of GST in accordance with clause 18.3.

19. General Terms

- 19.1** If any provision of the Terms shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provision shall not be in any way affected or impaired.
- 19.2** These Terms constitutes the entire Agreement between the Parties upon this subject and supersedes all previous representations, offers, undertakings or agreements. No modifications, amendments or additions to these Terms shall be made except in writing signed by all Parties.
- 19.3** The exercise of any right or remedy by any Party shall be without prejudice to any other right or remedy which any Party may have at law or in equity or from any statute.
- 19.4** Neither the failure of any Party to enforce at any time any of the provisions of these Terms nor the granting of any time or indulgence shall be construed as a waiver of that Party's right to enforce that or any other provision of the terms thereafter.
- 19.5** These Terms is governed by the Law in force in the State of Victoria. Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in the State of Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with these Terms. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- 19.6** Any notice or other correspondence to be served or delivered in accordance with these Terms may be served or delivered personally or by posting it or sending it by electronic mail to the last known address of any Party and shall be deemed to have been served or delivered when received if served or delivered personally or by electronic mail and after 7 days if served or delivered by post.
- 19.7** PBS may assign, transfer or otherwise deal with its interests in these Terms (as permitted by Law), without the Customer's prior approval, to any related body corporate who is able to comply with PBS's other obligations. The Customer may not assign, novate, transfer or otherwise deal with its rights or obligations under these Terms without the consent of PBS

(not to be unreasonably withheld or delayed).

19.8 The meanings of the capitalised terms used in these Terms are set out below:

- (a) **ACIC Mandatory Terms of Use** means the 'ACIC Mandatory Terms of Use' as prescribed by ACIC and entered into by a Customer.
- (b) **Agreement** means these Terms, the Service Level Agreement and any Service Orders executed in accordance with these Terms;
- (c) **Applicant** means a natural person in relation to whom the Customer seeks a Report or is the subject of the Services;
- (d) **Australian Privacy Principles** has the same meaning as in section 6 of the Privacy Act;
- (e) **Business Day** means Monday to Friday in Melbourne, Victoria excluding a public holiday in that city;
- (f) **Claim** means any claim, demand, proceeding or complaint of any nature or kind;
- (g) **Confidential Information** means all information regardless of its form:
 - (i) that is disclosed directly or indirectly by the Disclosing Party (or any person on behalf of the Disclosing Party) to the Recipient; and
 - (ii) that is treated or designated as confidential by the Disclosing Party or the Recipient knows, or ought to know, is confidential,

and includes:

- (iii) Police Information;
- (iv) information that relates to the Disclosing Party's past, existing or future business operations or plans; and
- (v) information that was provided or obtained prior to the date of these Terms;
- (h) **Customer** means the person acquiring the Services from PBS which is the

subject to these Terms and the term 'you' has the corresponding meaning;

- (i) **Customer Primary Contact** means the natural person nominated by the Customer to receive notices under these Terms;
- (j) **Data Breach** means the actual or potential misuse, interference, loss or unauthorised access to the Services or any modification or disclosure of Personal Information or Police Information;
- (k) **Disclosing Party** is defined in clause 13.1(a) of these Terms;
- (l) **Dispute** means any dispute, difference or issue between the parties concerning, or arising out of, or in connection with, or relating to, these Terms, or the subject matter of these Terms, or the existence, breach, termination, validity, repudiation, rectification, frustration, operation or interpretation of these Terms including any Claim:
 - (i) in tort or equity;
 - (ii) under any applicable domestic, foreign or international law; or
 - (iii) of any other kind or nature under any applicable Law;
- (m) **Fees** means the fees applicable to each Service as contained in the Service Level Agreement or as otherwise notified to the Customer at least 30 days prior to any increase;
- (n) **Good Industry Practice** means at any time, the exercise of that degree of care, skill, diligence and prudence that would reasonably and ordinarily be expected at that time from a typical provider:
 - (i) to a customer like the Customer; and
 - (ii) of services and deliverables similar to the Services;
- (o) **Government Agency** means any government, or any governmental, administrative, monetary, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

- (p) **GST Exclusive Consideration** has the meaning given to it by clause 18.2.
- (q) **Insolvency Event** means a Party resolves to be wound up or dissolved; has a winding up application presented against it; has a controller, receiver, receiver/manager or administrator appointed to it, or over all or part of its business or assets; has a liquidator or a provisional liquidator or bankruptcy trustee appointed to it; is insolvent or unable to pay its debts when they fall due; is bankrupt or commits any act of bankruptcy; enters into any arrangement or assignment for the benefit of its creditors; or anything analogous, or having substantially similar effect, to the occurrence of these events in relation to a Party;
- (r) **IP Rights** means any intellectual and industrial property rights, including trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, confidential information, and other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights;
- (s) **Law** means:
- (i) legislation, including regulations, by laws and other subordinate legislation;
 - (ii) common law and equity; and
 - (iii) rules, requirements, guidelines, standards, policies and codes of any Government Agency,
- with which PBS or the Customer (as applicable), is or are legally required to comply, or with which it is good practice to comply, or it has elected to comply with.
- (t) **Loss** means any loss, liability, damage, expense or cost of any nature or kind, including in relation to any Claim.
- (u) **Material Breach** means any breach or series of breaches:
- (i) which is or are not commercially insignificant;
 - (ii) which has or have an adverse consequence which is not minimal or of no consequence; or
 - (iii) in relation to a Customer, a breach of the Law or any of the ACIC Requirements,
- constitutes a material breach of these Terms.
- (v) **Moral Rights** has the meaning given to the term in Part IX of the Copyright Act 1968 (Cth) or similar legislation in other countries;
- (w) **NCCHC** means a nationally coordinated criminal history check conducted about an Applicant by ACIC on behalf of PBS, as part of the Service in accordance with these Terms, and the result of that checking process provided by ACIC to the PBS in the form of a NCCHC Report;
- (x) **Notice of Dispute** has the meaning given to it by clause 17.2.
- (y) **Party** means a party to these Terms.
- (z) **PBS** means Precise Background Services Pty Ltd (ACN 115 925 641) ATF Precise Background Services Trust;
- (aa) **PBS Platform** means PBS's online software portal accessible as by a Customer and/or Applicant to submit requests for a Report or any other Services.
 - (bb) **PBS Platform Terms of Use** means the terms of use for accessing the PBS Platform, as displayed on the same platform and as notified to the Customer from time to time;
 - (cc) **Personal Information** has the meaning given to it in section 6 of the Privacy Act, and to the extent not otherwise included in the foregoing similar concepts as defined under any Privacy Laws and which the PBS collects, accesses, uses, discloses, handles or processes under or in connection with these Terms;
 - (dd) **Personnel** in the case of a Party means the officers, employees, contractors (including subcontractors) and agents of that Party.

- (ee) **Prescribed Minimum Policies** means:
- (i) Public liability insurance for an amount of not less than \$10,000,000 for any one occurrence and unlimited in the aggregate annually as to the number of occurrences – to be maintained during the term of these Terms.
 - (ii) Professional indemnity insurance (including cyber risk coverage):
 - a. covering liability howsoever arising in connection with this these Terms; and
 - b. for an amount not less than \$5,000,000 per occurrence and in the aggregate annually,
- to be maintained during the term of these Terms and for the period of 7 years following the expiry or termination of this these Terms;
- (ff) **Privacy Act** means the Privacy Act 1988 (Cth);
- (gg) **Privacy Laws** means Privacy Act, the Spam Act 2003 (Cth), the Do Not Call Register Act 2006 (Cth) and any other Laws relating to the processing, collection, disclosure, use or handling of Personal Information and any other Laws relating to privacy, data protection, surveillance, security or direct marketing, in each case as applicable to the PBS and the Services;
- (hh) **Recipient** is defined in clause 13.1;
- (ii) **Report** means a Background Report (including a NCCHC Report) supplied by or to be supplied by, or on behalf of, the PBS in respect of the Services;
- (jj) **Service Level Agreement** means the service level agreement entered into between PBS and the Customer from time to time;
- (kk) **Service Order** means a request for Services that has been submitted in accordance with these Terms and the Service Level Agreement;
- (ll) **Services** means the services listed in the

Service Level Agreement;

- (mm) **Terms** means these terms and conditions; and
- (nn) **Taxes** means taxes (including all sales, GST, excise and storage taxes, licence and permit fees), levies, imposts, charges, withholdings and duties (including stamp and transaction duties, customs import duty and import tariffs) levied or imposed by Law or by any Government Agency together with any related interest, penalties, fines and expenses in connection with them; and
- (oo) **Without Prejudice Meeting** has the meaning given to it by clause 17.2.

19.9 In these Terms:

- (a) headings and bold type are for convenience only and do not affect the interpretation of these Terms;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in these Terms have a corresponding meaning;
- (e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, Party, schedule, attachment or exhibit is a reference to a clause of, and a Party, schedule, attachment or exhibit to, these Terms and a reference to these Terms includes any schedule, attachment and exhibit;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including a policy) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a Party to a document

- includes that Party's successors and permitted assignees;
- (j) a reference to an agreement other than these Terms includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
 - (k) no provision of these Terms will be

construed adversely to a Party because that Party was responsible for the preparation of these Terms or that provision; and

- (l) specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.