

# Centrelink Business

## Terms and Conditions



Australian Government



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# Centrelink Business Terms and Conditions

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## RECITALS

- A. Centrelink and the Participant have mutual customers.
- B. Centrelink provides products and services to its customers to assist them to become self-sufficient and improve their chances of finding work, while supporting those in need.
- C. The Participant provides goods and/or services to its customers and has requested Centrelink to provide the Services to it, in order to assist or facilitate the delivery of those goods and/or services to those of its customers who are also customers of Centrelink.
- D. If the Participant has lodged a Business Application with Centrelink requesting that Centrelink provide the Services to the Participant, and Centrelink has sent the Participant an Approval Letter in relation to that Business Application, Centrelink will provide the Services to the Participant in accordance with:
  - (i) these Centrelink Business Terms and Conditions ('**T&Cs**');
  - (ii) the relevant Schedule or Schedules referred to in the Approval Letter;
  - (iii) any agreed Special Conditions;
  - (iv) any further terms set out in the Approval Letter; and
  - (v) any representations, warranties and other information contained in a Business Application (together '**the Contract**').
- E. The Contract is given effect by the Approval Letter.
- F. The Parties intend that Schedules can be added to, or removed from, the Contract during its Term in accordance with the processes set out in these T&Cs.

## TERMS AND CONDITIONS

### 1. DEFINITIONS

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In these T&Cs and the relevant Schedule or Schedules:

**'Agency'** means a Commonwealth department or agency, which is responsible for administering a Payment;

**'Approval Letter'** means a letter from Centrelink to the Participant, notifying the Participant that Centrelink accepts a Business Application made by the Participant;

**'Auditor-General'** means the Auditor-General of the Commonwealth of Australia, as appointed under the Auditor-General Act 1997 (Cth);

**'Business Application'** means a request by the Participant for Centrelink to provide particular Services to the Participant, made in accordance with the form and procedure for completing that Business Application, published by Centrelink at [www.centrelink.gov.au](http://www.centrelink.gov.au) from time to time;

**'Business Day'** means a day that is not a Saturday, Sunday or any other day that is a public holiday or bank holiday, in the place where an act is to be performed or a payment is to be made under the Contract;

**'Business Hours'** means the hours between 8.30am and 5.00pm on a Business Day;

**'Centrelink Material'** means any material that:

- (a) is owned by Centrelink or an Agency; or
- (b) Centrelink or an Agency has or acquires a licence to use; and
- (c) which is provided by Centrelink to the Participant for the purposes of the Contract and includes, but is not limited to, Confidential Information, technical specification documents, including private algorithms, access credentials or secret keys, equipment, software, goods, information or data stored by any means;

**'Commonwealth'** or **'Cth'** means the Commonwealth of Australia;

**'Compliance Plan'** means a plan developed by the Participant in accordance with clause 17 that specifies (amongst other things) the processes and procedures the Participant will adopt to ensure its compliance with the Contract;

**'Confidential Information'** in relation to a Party or a Customer, means information that:

- (a) is by its nature confidential;
- (b) is designated by a Party or a Customer as confidential; or
- (c) the Parties ought to know is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by a breach of the Contract or by any other unlawful means;
- (e) is in the possession of the Participant without restriction in relation to disclosure before the date of receipt from Centrelink or the Customer; or
- (f) has been independently developed or acquired by the Participant;

**'Contract'** means the relationship between the Parties as constituted by the documents specified in Recital D of these T&Cs, as varied from time to time in accordance with these T&Cs and the relevant Schedules;

**'Contract Material'** means any material or records brought into existence in relation to the Contract and includes, but is not limited to, records or databases of Personal Information, documents, information or Data stored by any means;

**'Customer'** means, for each Service, a person within the definition of Customer in the Schedule for that Service;

**'Customer Reference Number (CRN)'** means the unique customer reference number assigned by Centrelink to each Customer;

**'Data'** means, in relation to a Customer, any data, information and associated details, including Personal Information and Protected Information;

**'E-mail'** means electronic mail and includes any other electronic document sent as an attachment to the electronic mail;

**'Fees'** means the amount or amounts, if any, to be paid by the Participant to Centrelink as consideration for the provision of the Services, as set out in the relevant Schedule;

**'GST'** means goods and services tax payable under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**'Information Privacy Principles'** means the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* (Cth);

**'Intellectual Property'** means all know-how, copyright and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered designs and circuit layouts, Confidential Information, trade secrets and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**'Month'** means a calendar month;

**'Notice'** means a notice (including a Remedy Notice) given under or in relation to the Contract in accordance with clause 22, and **'Notify'** has a corresponding meaning;

**'Participant'** means the applicant described in a Business Application that has been accepted by Centrelink through the issue of an Approval Letter;

**'Participant Contact Officer'** in respect of particular Services means the person nominated as the contact for the Participant in the Business Application for those Services (or where more than one such person is nominated, each of those persons);

**'Party'** means Centrelink or the Participant;

**'Payment'** means a payment or other benefit payable to a Customer under the *Social Security (Administration) Act 1999* (Cth), *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth), the *Student Assistance Act 1973* (Cth) or any other legislation that confers benefits or other payments on Customers, where that benefit or payment is administered by Centrelink;

**'Personal Information'** means information or an opinion provided by Centrelink or the Customer for the purpose of the Contract (including information or an opinion included in a database), whether true or not, and whether recorded in material form or not, about a natural person whose identity is apparent, or may reasonably be ascertained, from the information or opinion;

**'Privacy Commissioner'** means the Privacy Commissioner for the Commonwealth, as appointed under the *Privacy Act 1988* (Cth) or equivalent office holder (if any) with jurisdiction over the Commonwealth;

**'Protected Information'** means information as defined by:

- (a) section 3 of the *Student Assistance Act 1973* (Cth);
  - (b) section 23 of the *Social Security Act 1991* (Cth); or
  - (c) section 3 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth),
- as the case requires;

**'Remedy Notice'** means a Notice provided to the Participant detailing the nature of a breach of the Contract and requiring the Participant to remedy the breach within 30 days of receipt of the Notice;

**'Schedule'** means a Schedule to these T&Cs and published as such on Centrelink's website at [www.centrelink.gov.au](http://www.centrelink.gov.au) ;

**'Services'** means the services as described in each Schedule that forms part of the Contract;

**'Special Condition'** means any additional terms, conditions or requirements agreed by Centrelink and a Participant, other than those in these T&Cs and/or a particular Schedule or Schedules, which will (to the extent of any inconsistency) override any other provision of the Contract ;

**'Staff'** means the officers, employees, agents and contractors of a Party;

**'State'** includes a Territory;

**'T&Cs'** means these Centrelink Business Terms and Conditions;

**'Tax Invoice'** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and

**'Term'** means the term of the Contract as specified in clause 3.1.

## 2. INTERPRETATION

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- 2.1 In these T&Cs, unless the contrary intention appears:
- (a) 'Centrelink' refers to the Commonwealth represented by the Chief Executive Officer of the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* (Cth), which uses 'Centrelink' as its operating name;
  - (b) headings are for ease of reference only and do not affect the meaning of these T&Cs;
  - (c) the singular includes the plural and vice versa and words importing a gender include other genders;
  - (d) other grammatical forms of defined words or expressions have corresponding meanings;
  - (e) a reference to a clause, paragraph, Schedule, Annexure or Attachment is a reference to a clause, paragraph, Schedule, Annexure or Attachment to these T&Cs;
  - (f) a reference to a document or agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
  - (g) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
  - (h) a reference to a specific time for the performance of an obligation is a reference to that time in the State or other place where that obligation is to be performed;
  - (i) a reference to a Party includes its executors, administrators, successors and permitted assignees;
  - (j) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
  - (k) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation; and
  - (l) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form.
- 2.2 To the extent that there is any inconsistency between a provision in any of the documents comprising the Contract and another provision in any of them or between a provision in any of those documents and a provision in any document referred to in any of them:
- (a) a specific provision takes precedence over a general provision; and
  - (b) otherwise, to the extent necessary to resolve the inconsistency, the following order of precedence applies:
    - (i) any Special Condition;
    - (ii) the Approval Letter (with any later Approval Letter having higher precedence than an earlier letter);
    - (iii) clauses 1 to 34 of these T&Cs;
    - (iv) any Schedule;
    - (v) any Annexure to a Schedule;
    - (vi) any Attachment to a Schedule; and
    - (vii) any representations, warranties or other information contained in a Business Application.

## 3. TERM OF CONTRACT

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- 3.1 The Term commences on the date of Centrelink's first Approval Letter to the Participant and continues until the Contract is terminated under clause 24 (Termination).

## 4. ADDING SCHEDULES TO THE CONTRACT

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- 4.1 At any time during the Term, the Participant may lodge another Business Application ('**subsequent Business Application**') in respect of Services described in a Schedule that is not currently part of the Contract.
- 4.2 If Centrelink issues an Approval Letter in respect of a subsequent Business Application, the Contract will be deemed to have been varied to include the Schedule specified in that Approval Letter, from the date specified in the Approval Letter.

## 5. ACCEPTANCE OF BUSINESS APPLICATION AND PROVISION OF SERVICES

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- 5.1 Where Centrelink has accepted a Business Application for particular Services through the issue of an Approval Letter in respect of those Services, Centrelink must provide the Services in respect of each Customer in accordance with the Contract.

## 6. FEES

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- 6.1 The Fees for the Services are specified in each Schedule. For each Schedule that forms part of the Contract, the Participant must:
  - (a) pay the amount of the Fees (if any) specified in the Schedule to Centrelink as consideration for the provision of the Services; and
  - (b) pay the Fees at the times and in the manner specified in the Schedule.

## 7. FEES INCLUSIVE OF GST

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- 7.1 The Fees have been calculated having regard to GST and reflect the GST inclusive price. Centrelink is not entitled to recover any additional amount on account of GST from the Participant.
- 7.2 Where any Fees are payable in accordance with a Schedule and clause 6 (Fees), Centrelink must issue a Tax Invoice to the Participant in respect of each payment of the Fees within ten Business Days after the end of each Month, unless the relevant Schedule specifies a different arrangement.

## INTELLECTUAL PROPERTY

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### 8. NEW MATERIAL

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- 8.1 The Intellectual Property in any material created by Centrelink as a result of the Services vests in the Commonwealth on creation.

### 9. EXISTING INTELLECTUAL PROPERTY

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- 9.1 The Contract does not alter or assign the Intellectual Property rights of either Party that exist as at the commencement of the Term.
- 9.2 For the avoidance of doubt, neither Party may assert ownership of any part or all of the other Party's Intellectual Property existing as at the commencement of the Term.

### 10. PARTICIPANT USE OF CENTRELINK MATERIAL

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- 10.1 The Participant must not use any logo, brand or other trademark of Centrelink without obtaining permission from Centrelink in writing.
- 10.2 The Participant must not represent in any way that Centrelink endorses any aspect of the Participant's business, without obtaining permission from Centrelink in writing.
- 10.3 If Centrelink makes any Centrelink Material (including software) available to the Participant for it to use in connection with the Services:
- (a) all Intellectual Property rights in that Centrelink Material remain vested in Centrelink at all times;
  - (b) the Participant must only use that Centrelink Material for the purpose for which it was provided and must not allow any third party to use that Centrelink Material without obtaining Centrelink's prior consent in writing;
  - (c) the Participant must not copy, modify, adapt or exploit that Centrelink Material without obtaining Centrelink's prior consent in writing; and
  - (d) the Participant must comply with any Special Conditions or any condition or restriction set out in the Schedule(s) that relates to the use of Centrelink Material.

# PROTECTION OF INFORMATION

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## 11. PARTICIPANT TO ENSURE SECURITY OF INFORMATION

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- 11.1 In accordance with the confidentiality provisions in the legislation Centrelink administers and Information *Privacy Principle 4 of the Privacy Act 1988* (Cth), the Participant must take reasonable steps to ensure that all Data, Personal Information, Protected Information, Confidential Information and Centrelink Material accessible and held by the Participant for the purposes of the Contract is protected at all times from:
- (a) unauthorised access or use;
  - (b) unauthorised disclosure;
  - (c) use by a third party (other than as expressly permitted by the relevant Customer); and
  - (d) misuse, damage or unauthorised destruction by any person.
- 11.2 The Participant must report all security incidents or breaches to Centrelink that may reasonably be thought to impact on the Services, including but not limited to those indicated under clause 11.1. If a security incident or breach has occurred and the Participant fails to report to Centrelink immediately after the Participant becomes aware of the security incident or breach, Centrelink may immediately terminate the Contract in accordance with clause 24.2.

## 12. PRIVACY

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- 12.1 The Participant must:
- (a) take all reasonable steps to ensure that Personal Information in its possession or control in connection with the Contract is protected against loss and unauthorised use, access, modification or disclosure;
  - (b) at all times, act in a manner consistent with the Information Privacy Principles including:
    - (i) developing systems and procedures to enable the Participant to comply with the Information Privacy Principles; and
    - (ii) maintaining records of the Personal Information held by the Participant in connection with the Contract;
  - (c) ensure that its Staff and any other person who may have access to Personal Information held by the Participant is aware of and undertakes to act in a manner consistent with the Information Privacy Principles;
  - (d) refrain from any action which would result in Centrelink being in breach of the *Privacy Act 1988* (Cth) or which in Centrelink's sole discretion, would be likely to have been considered a breach of that Act had the action been undertaken by Centrelink;
  - (e) cooperate with demands or enquiries made by the Privacy Commissioner;
  - (f) comply, as far as practical, with any reasonable direction by Centrelink to observe any recommendation of the Privacy Commissioner relating to any behaviour of the Participant that the Privacy Commissioner considers a breach of the *Privacy Act 1988* (Cth) or this clause; and
  - (g) comply with any additional privacy obligations set out in the relevant Schedule or Schedules.
- 12.2 Subject to clause 12.1, the Participant must:
- (a) collect, use and disclose Personal Information only:
    - (i) for relevant purposes; and
    - (ii) to the extent necessary to perform an obligation under the Contract; and
  - (b) take all reasonable steps to ensure that Customers are fully aware of the purpose for which any Personal Information is being collected.

## 13. ALLEGATIONS OF INTERFERENCE WITH PRIVACY

- 13.1 Allegations of interference with the privacy of a person related to the Services will be dealt with as follows:
- (a) where Centrelink receives a complaint or other evidence of interference with the privacy of a person related to the Services, Centrelink will immediately investigate the matter and, if Centrelink considers that the interference constitutes a breach of the Contract:
    - ;
    - (i) Centrelink will Notify the Participant by providing sufficient details of the nature of the breach; and
    - (ii) the Participant must then remedy the breach (if this is possible) and identify the steps it will take to prevent further breaches occurring and:
      - (A) if the Participant has finalised a Compliance Plan in accordance with clause 17, the Participant must provide a revised Compliance Plan identifying the amendments proposed to be made to prevent any further interferences or breaches and that revised plan will be deemed to be a draft Compliance Plan under clause 17; or
      - (B) if the Participant has not finalised a Compliance Plan in accordance with clause 17, Notice under clause 13.1(a)(i) will be deemed to be a direction under clause 17.1(b) and the Participant must provide a draft Compliance Plan addressing any matters required to be addressed in a draft Compliance Plan in addition to identifying the amendments proposed to be made to prevent any further interferences or breaches;
  - (b) where the Participant receives a complaint or other allegation of interference with the privacy of a person related to the Services, it must as soon as reasonably practicable Notify Centrelink of the matter to enable Centrelink to investigate it. The Participant must provide details of the matter and all relevant material. Following investigation by Centrelink, if Centrelink considers that the interference constitutes a breach of the Contract, clauses 13.1(a)(i) and 13.1(a)(ii) will apply as if Centrelink had received the complaint or other evidence in the first instance.
- 13.2 If a breach has occurred and the Participant fails to:
- (a) remedy the breach (where possible);
  - (b) provide the information and materials contemplated by clause 13.1(a); or
  - (c) provide Centrelink with assurance that the agreed steps have been taken to prevent a further breach (including those steps contemplated by a final Compliance Plan), within 30 days of the Participant receiving a Notice from Centrelink under clause 13.1(a)(i), Centrelink may immediately terminate the Contract in accordance with clause 24.2(f).

## 14. CONFIDENTIALITY

- 14.1 Subject to clause 14.3, a Party (**Recipient**) must not, without the prior written consent of the other Party (**Discloser**), use or disclose any Confidential Information of the Discloser.
- 14.2 In giving written consent to use or disclose Confidential Information, the Discloser may impose such conditions as it thinks fit and the Recipient agrees to comply with these conditions.
- 14.3 The obligations on the Parties under this clause 14 will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by a Party to its Staff solely in order to comply with obligations, or to exercise rights, under the Contract;
  - (b) is disclosed to a Party's advisers who are advising on issues related to the Contract, or its internal management personnel, on a need to know basis;
  - (c) is disclosed by a Party to any Commonwealth or State Minister, department or government body established for a public purpose;

- (d) without limiting the application of this clause 14.3, is disclosed in order to respond to a request or direction of a House, or a request by a Committee, of the Parliament of the Commonwealth of Australia or such equivalent bodies of the Parliament of the relevant State;
  - (e) is authorised or required by law to be disclosed;
  - (f) is information in a material form in respect of which an interest, in the Intellectual Property rights in relation to that material form, whether by licence or otherwise, has vested in, or is assigned to, Centrelink under the Contract or otherwise, and is disclosed by Centrelink; and
  - (g) is in the public domain otherwise than due to a breach of this clause 14.
- 14.4 Where a Party discloses Confidential Information to a third party pursuant to clauses 14.3(a), 14.3(b), 14.3(c) or 14.3(d), the disclosing Party must Notify the third party receiving the Confidential Information of the existence and content of this clause 14 and the sensitivity of the information being disclosed.
- 14.5 The Participant acknowledges and agrees that Centrelink may disclose to any person the name of the Participant, the Contract, or the fact that the Participant is a party to the Contract with Centrelink.
- 14.6 Nothing in this clause 14 derogates from any obligation which the Participant may have under the Privacy Act 1988 (Cth) or under the Contract in relation to the protection of Personal Information.

## LIABILITY

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### 15. INDEMNITIES

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- 15.1 The Participant indemnifies Centrelink from and against:
- (a) all losses incurred by Centrelink;
  - (b) all liabilities incurred by Centrelink; and
  - (c) all legal costs (on a solicitor and own client or full indemnity basis, whichever is greater) and other expenses incurred by Centrelink in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal), arising directly or indirectly as a result of or in connection with:
    - (d) any negligence, wilful or unlawful act or omission by the Participant or its Staff in connection with the Contract;
    - (e) any breach or non-performance by the Participant of its warranties or obligations under the Contract;
    - (f) any misuse or improper disclosure by the Participant or its Staff of Protected Information, Personal Information or Confidential Information; or
    - (g) any infringement of third party Intellectual Property rights by the Participant or its Staff in connection with, or incidental to, the Services.
- 15.2 The Participant must pay to Centrelink all liabilities, costs and other expenses referred to in clause 15.1, whether or not Centrelink has paid or satisfied them, provided that Centrelink has acted reasonably in incurring such cost and expense.
- 15.3 The Participant's liability to indemnify Centrelink under clause 15.1 will be reduced proportionately to the extent that any act or omission of Centrelink contributed to the loss or liability.

### 16. INSURANCE

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- 16.1 If required by Centrelink, the Participant must take out and maintain such policies of insurance as are reasonably appropriate and adequate to insure against the risks against which the Participant has indemnified Centrelink.
- 16.2 If required by Centrelink the Participant must produce evidence of its insurance on demand.

# COMPLIANCE

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## 17. COMPLIANCE PLAN

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- 17.1 The Participant must:
- (a) take all steps (including implementing systems, procedures and processes) necessary to give effect to its obligations under the Contract;
  - (b) if directed by Centrelink, develop and provide to Centrelink a draft Compliance Plan within the period specified by Centrelink;
  - (c) if directed by Centrelink, develop a final Compliance Plan within the period specified by Centrelink that incorporates any reasonable requirements requested by Centrelink after its review of the draft Compliance Plan; and
  - (d) comply with any final Compliance Plan agreed to in writing by Centrelink.

## 18. AUDITS AND COMPLIANCE REVIEWS

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- 18.1 Centrelink, its nominees, the Australian National Audit Office or the Privacy Commissioner, or their respective nominees (the **auditors** or **reviewers**), may conduct audits and reviews (including through a planned schedule or random compliance testing) of the following:
- (a) the Participant's operational processes, practices and procedures as they relate to the Contract;
  - (b) the completeness and/or accuracy of the Participant's records in relation to the performance of the Contract;
  - (c) the Participant's compliance with confidentiality, privacy, Intellectual Property and security obligations in the Contract;
  - (d) the Participant's compliance with any final Compliance Plan;
  - (e) any other matters reasonably determined by Centrelink to be relevant to the performance of, or compliance with, the Contract.
- 18.2 The Participant must participate co-operatively in audits and reviews conducted under clause 18.1.
- 18.3 Each Party must bear its own costs of any audits and reviews, unless the audit or review reveals material non-compliances with the Contract by the Participant, in which case Centrelink may require the Participant to pay Centrelink's reasonable costs of the audit or review.
- 18.4 Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of Centrelink or the Auditor-General or the Privacy Commissioner, or a delegate of Centrelink, the Auditor-General or the Privacy Commissioner. The rights of Centrelink in connection with the Contract are in addition to any other function, power, right or entitlement of Centrelink, the Auditor-General or the Privacy Commissioner or their delegates.

## 19. ACCESS TO PARTICIPANT'S PREMISES

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- 19.1 For the purposes of clause 18.1, the Participant must, during Business Hours and after receiving reasonable Notice from Centrelink, grant the auditors or reviewers access to the Participant's premises to inspect and copy documents relating to the matters specified in clause 18.1, including any:
- (a) Centrelink Material;
  - (b) Data;
  - (c) Protected Information;
  - (d) documentation and records, however stored, in the custody or under control of the Participant directly relating to the Services; or
  - (e) other material relevant to the Services.

## 20. PROVISION OF INFORMATION BY PARTICIPANT

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- 20.1 For the purposes of clause 18.1, Centrelink may give the Participant a Notice requiring the Participant to provide to Centrelink documents in the possession or control of the Participant which relate to the matters specified in clause 18.1, including any:
- (a) Centrelink Material;
  - (b) Data;
  - (c) Protected Information;
  - (d) documentation and records, however stored, in the custody or under control of the Participant directly relating to the Services; or
  - (e) other material relevant to the Services.
- 20.2 The Notice under clause 20.1 may specify the time by which the documents must be produced (which must be a reasonable period after the issue of the Notice given the number and type of documents required), the place to which the documents must be delivered and the format in which the documents must be delivered to Centrelink.

## 21. DISPUTE RESOLUTION

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### **Disputes between the Parties**

- 21.1 This clause 21 will not apply where a dispute arises between the Participant and a Customer except to the extent that the Participant's conduct impacts upon its obligations under the Contract.

### **Notice of Dispute**

- 21.2 Subject to clause 21.1, if there is any difference or dispute between the Parties arising out of or in relation to the Contract, one Party may give the other Party a Notice specifying the dispute (**Notice of Dispute**).
- 21.3 Upon the issuing of a Notice of Dispute under clause 21.2, the Parties must negotiate in good faith:
- (a) to attempt to resolve the dispute; and
  - (b) if the dispute is not resolved within 30 days of the issue of the Notice of Dispute, to agree on a process to resolve all or part of the dispute without arbitration or court proceedings (including through mediation, conciliation, executive appraisal and/or independent expert determination).
- 21.4 If the Parties are unable to resolve the dispute or agree on a process to resolve the dispute in accordance with clause 21.3(b) within 60 days of the issuing of the Notice of Dispute, either Party may commence court proceedings as it sees fit.
- 21.5 Subject to clause 21.6, each Party must bear its own costs of resolving a dispute under this clause.
- 21.6 The costs of any third party jointly engaged to resolve the dispute will be shared equally between the Parties.
- 21.7 If a Schedule contains additional dispute resolution requirements, the Parties must also comply with those requirements.
- 21.8 Nothing in this clause 21 prevents a Party from bringing court proceedings to seek urgent interlocutory relief, or from terminating the Contract in accordance with clause 24.1.

## 22. NOTICES

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- 22.1 A Party giving Notice must do so in writing.
- 22.2 Notices which relate to a particular Schedule must:
- (a) in the case of Notices to Centrelink, be directed to the relevant address for Notices to Centrelink specified in that Schedule (as varied by any Notice from time to time); and
  - (b) in the case of Notices to the Participant, either:
    - (i) be directed to the contact details for the Participant specified in the Business Application for that Schedule (as varied by any Notice from time to time); or
    - (ii) where Centrelink has made a secure on-line mail facility available for that Schedule through its website (**www.centrelink.gov.au**) and the Participant has registered to use that facility, directed to the Participant through that secure on-line mail facility.
- 22.3 If a Notice relates to more than one Schedule, a copy of the Notice must be given in accordance with clause 22.2 for each Schedule to which the Notice relates, where the contact details for the respective Schedules differ. If a Notice relates to these T&Cs, it will be deemed to relate to each Schedule which is currently part of the Contract.
- 22.4 A Notice must be hand delivered to the recipient or sent by prepaid post, E-mail or facsimile to the address or addresses referred to in clause 22.2 and 22.3 (as applicable) or directed to the recipient using secure on-line mail in accordance with clause 22.2.
- 22.5 A Notice is taken to be received:
- (a) if hand delivered, on delivery;
  - (b) if sent by prepaid post, three Business Days after the date of posting;
  - (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the Notice, unless, within eight Business Hours after that transmission, the recipient informs the sender that it has not received the entire Notice;
  - (d) if sent by E-mail or secure on-line mail before 4 pm on a Business Day at the place of receipt, on the day it is sent or otherwise, on the next Business Day at the place of receipt.
- 22.6 For the avoidance of doubt, if Centrelink sends a Notice by prepaid post to the relevant contact details for the Participant specified in the Business Application for that Schedule (as varied by any Notice from time to time), that Notice will be deemed to have been received by the Participant in accordance with this clause 22, irrespective of the fact that Centrelink may later receive notification that the Participant no longer resides at that address (such as a "return to sender" notification).
- 22.7 Where Centrelink has made a secure on-line mail facility available through Centrelink's website (**www.centrelink.gov.au**) in relation to Services in a Schedule and the Participant has registered to use that facility, the Participant must regularly check for Notices that have been directed to it through that facility.

## 23. FURTHER INVESTIGATIONS

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- 23.1 At any time during the Term, Centrelink may seek information about the Participant and/or its business from relevant regulatory organisations such as the State departments of Fair Trading, the Australian Competition and Consumer Commission ('**ACCC**') and the Australian Securities and Investment Commission ('**ASIC**').
- 23.2 At any time during the Term, Centrelink may require the Participant to provide information about:
- (a) the Participant and/or its business (including any changes to the Participant or its business since the acceptance of any Business Application);
  - (b) any information received from the regulatory organisations referred to in clause 23.1 or any current or past investigations or findings by those organisations; or

- (c) any other matter which Centrelink considers is relevant to:
    - (i) determining whether the Participant is complying with its obligations under the Contract; or
    - (ii) a decision whether or not to exercise its rights of termination or variation under the Contract, pursuant to clauses 24 and 28 respectively.
- 23.3 The Participant must notify Centrelink immediately if any representation or information provided in its Business Application changes and must provide details of the change.

## 24. TERMINATION

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- 24.1 Either Party may terminate the Contract (or part of the Contract in respect of one or more Schedules) by giving 30 days' Notice to the other Party (**Notice of Termination**).
- 24.2 Despite clause 24.1, Centrelink may terminate the Contract (or part of the Contract in respect of one or more Schedules) immediately by giving Notice to the Participant if:
- (a) the Participant breaches any provision of the Contract and, where Centrelink considers that the breach is capable of remedy, the Participant fails to remedy the breach within 30 days after receiving a Remedy Notice from Centrelink requiring it to do so;
  - (b) the Participant breaches a material provision of the Contract where that breach is not capable of remedy;
  - (c) the Participant engages in fraudulent, unlawful or dishonest conduct in connection with the Contract;
  - (d) any event referred to in clause 24.3 happens to the Participant;
  - (e) any representation or information provided by the Participant in the Business Application was, at the time it was submitted by the Participant, or becomes, incorrect or misleading in any respect; or
  - (f) another term of the Contract (including a provision of a Schedule) provides Centrelink with the right to terminate the Contract.
- 24.3 The Participant must Notify Centrelink immediately if:
- (a) where the Participant is not listed on the Australian Securities Exchange, there is any change in the direct or indirect beneficial ownership or control of the Participant or its business;
  - (b) it disposes of the whole or any part of its assets, operations or business, other than in the ordinary course of business;
  - (c) it ceases to carry on business;
  - (d) it ceases to be able to pay its debts as they become due;
  - (e) any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operations or business;
  - (f) any step is taken to enter into any arrangement between the Participant and its creditors;
  - (g) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business; or
  - (h) where the Participant is a partnership, any step is taken to dissolve that partnership.
- 24.4 The Participant must notify Centrelink immediately if any information or representation in the Participant's Business Application becomes incorrect or misleading in any respect.
- 24.5 Termination under this clause does not affect any accrued rights or remedies of a Party.

## 25. AFTER TERMINATION

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- 25.1 If the Contract (or part of the Contract) is terminated in accordance with clause 24, the Participant must within 30 days after the effective date of termination:
- (a) pay to Centrelink any money owed to Centrelink under the Contract (or under that part of the Contract which was terminated);
  - (b) upon request by Centrelink, return all Centrelink Material and Centrelink Confidential Information (or all Centrelink Material and Centrelink Confidential Information in relation to that part of the Contract that was terminated); and
  - (c) take any action that a Schedule requires the Participant to take after the Contract (or that part of the Contract in respect of that Schedule) is terminated.

## 26. SURVIVAL OF CERTAIN CLAUSES

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- 26.1 The following clauses survive termination of the Contract:
- (a) Clauses 8 (New Material), 9 (Existing Intellectual Property) and 10 (Participant Use of Centrelink Material);
  - (b) Clause 11 (Participant to Ensure Security of Information);
  - (c) Clause 12 (Privacy);
  - (d) Clause 14 (Confidentiality); and
  - (e) Clause 15 (Indemnities).

## GENERAL

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### 27. ENTIRE AGREEMENT

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- 27.1 The Contract:
- (a) constitutes the entire agreement between the Parties as to its subject matter; and
  - (b) in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

### 28. VARIATION

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- 28.1 Centrelink may amend the Contract by providing the Participant with a Notice setting out the terms of the proposed amendment (**Variation Notice**). If the amendment is an amendment to these T&Cs or a Schedule which will apply to all Participants, Centrelink will also publish the new version of the T&Cs or Schedule on its website ([www.centrelink.gov.au](http://www.centrelink.gov.au)).
- 28.2 If a Participant disagrees with a proposed amendment set out in a Variation Notice, it may terminate the Contract in accordance with clause 24.1. For the avoidance of doubt, the Participant has no ability to reject a proposed amendment.
- 28.3 If no Notice of Termination is received from the Participant within 40 days after Centrelink issues the Variation Notice, the amendment will take effect from the day that is 40 days after the date of the Variation Notice (unless the Parties agree that it will take effect on an earlier date).
- 28.4 Centrelink may withdraw or amend a Variation Notice. When a Variation Notice is amended, the 40 days referred to in clause 28.3 will run from the date of the amended Variation Notice.
- 28.5 If a Participant wishes to amend the Contract (other than by adding a new Schedule in accordance with clause 4 or removing a Schedule in accordance with clause 24.1), it must provide the proposed amendment to Centrelink in writing. Centrelink has no obligation to accept any proposed amendments. Where Centrelink wishes to make an amendment as a result of an amendment proposed by the Participant, Centrelink will issue a Variation Notice under clause 28.1.

### 29. NO ASSIGNMENT BY PARTICIPANT

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- 29.1 The Participant must not assign or otherwise transfer its rights under the Contract without prior written consent from Centrelink.

### 30. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

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- 30.1 Neither Party must represent itself, and must ensure that its Staff do not represent themselves, as being employees, partners or agents of the other Party.
- 30.2 Neither Party is by virtue of the Contract, or for any purpose, deemed to be an employee, partner or agent of the other Party. The Contract does not create a relationship of employment, agency or partnership between the Parties.

### 31. SEVERABILITY

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- 31.1 Part or all of any provision of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining provisions of the Contract continue in force.

## 32. WAIVER

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- 32.1 Waiver of any provision of or right under the Contract:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
  - (b) is effective only to the extent set out in any written and signed waiver.

## 33. GOVERNING LAW AND JURISDICTION

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- 33.1 The law applicable in the Australian Capital Territory governs the Contract. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Australian Capital Territory.

## 34. PARTICIPANT CONTACT OFFICER

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- 34.1 The Participant must comply with any reasonable request made by Centrelink to the Participant Contact Officer in relation to the provision of the Services.

## 35. COMPLIANCE WITH LAWS AND POLICY

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- 35.1 The Participant must comply with all relevant legislation and policy of the Commonwealth or a State or local authority in performing its obligations under the Contract, including any specific legislation or policies identified by Centrelink in the Schedule or otherwise.

