

## CONFIDENTIAL

### CONTRACT TO PROVIDE CHECKING SERVICES

The Client wishes to engage NCC to provide the Services subject to the terms and conditions outlined in this Contract.

#### **1. Services**

- 1.1.** Subject to the Client complying with the terms and conditions of this Contract, NCC:
  - 1.1.1.** agrees to provide the Services during the Term; and
  - 1.1.2.** grants to the Client a non-exclusive, non-assignable and non-sublicensable licence during the Term to use the NCC Platform solely for the purposes of enabling the Client and Applicants to request Checks and otherwise enjoying the benefits of the NCC Platform and the Services as intended under this Contract.
- 1.2.** All Services will be provided in a professional manner in accordance with reasonable and recognised industry standards.
- 1.3.** The Client must:
  - 1.3.1.** on request by NCC from time to time, provide NCC with volume forecasts for the use of the Services and such other information that NCC may reasonably request concerning the Client's anticipated use of the Services; and
  - 1.3.2.** provide NCC with revised volume forecasts for its use of the Services if the Client anticipates, from time to time, that there is likely to be a significant increase or decrease in its use of the Services.
- 1.4.** Subject to the terms and conditions of this Contract, NCC will use its best efforts to provide the Checks requested by the Client and/or Applicant within seven days of the Applicant completing their application and providing all required information and consents. However, External Factors may prevent a Check from being completed or carried out, including (without limitation) where the Applicant has not correctly completed their application or has not provided required information or consents. In these cases, NCC shall be obliged only to use reasonable efforts to provide the requested Check and will not be liable for any delay or failure to provide the Check.
- 1.5.** In the event of failure of the Services, NCC will use reasonable commercial endeavours to restore the Services to an operational state with the minimum practicable delay.

## **2. Access to and use of the NCC Platform**

### **2.1. The Client must:**

- 2.1.1.** at its cost, provide appropriate access devices, software, operating conditions, cabling, telephone lines, modems and internet connections required for it to access the NCC Platform and otherwise receive the benefit of the Services; and
- 2.1.2.** comply with all NCC operating and security requirements and procedures relating to access to and use of the NCC Platform (including in respect of passwords and other security information) as displayed on the NCC website or otherwise notified to the Client from time to time.

### **2.2. The Client must not, and must not allow any Applicant or other person to:**

- 2.2.1.** use the NCC Platform for any unlawful purpose;
- 2.2.2.** introduce any Harmful Code into the NCC Platform;
- 2.2.3.** reverse-engineer, decompile, disassemble or otherwise attempt to derive the source code, techniques, methods, processes, algorithms, know-how or other information in the NCC Platform;
- 2.2.4.** change, modify, adapt, improve, or otherwise interfere with, the NCC Platform; or
- 2.2.5.** use the NCC Platform for or in connection with the creation of any software or checking process (either in-house or outsourced to external developers) that operates in a similar or identical manner with the NCC Platform or otherwise create derivative works of the NCC Platform.

### **2.3. If the Client becomes aware of or suspects that a breach of any of the obligations set out in clause 2.1 or 2.2 has occurred, the Client must promptly notify NCC, in which case NCC may take such action as it considers appropriate (which may include changing the Client's passwords and other security information).**

### **2.4. The Client is solely responsible for all actions taken under their unique username and password (whether on its own behalf or on behalf of a third party). Notwithstanding the foregoing, NCC may, in their absolute discretion, monitor activity on the Client's account.**

### **2.5. The Client acknowledges and agrees that, where NCC provides the Client or an Applicant with an Access Link:**

- 2.5.1.** the Access Link may be provided on the basis that it is only accessible for a period of three months from the date NCC sends the Access Link (or such other period notified by NCC), after which period the Access Link will expire and the Client will no longer be able to use the Access Link to obtain the relevant Check;

- 2.5.2. the Client is solely responsible for making all arrangements necessary for the Client to obtain the relevant Check using the Access Link before the Access Link expires;
- 2.5.3. NCC is not obliged to:
  - 2.5.3.1. provide the Check to the Client by any other means; or
  - 2.5.3.2. provide any refund or replacement Check to the Client, including without limitation if the Access Link expires before the Client has obtained the relevant Check; and
- 2.5.4. the Client is responsible for protecting the Access Link from unauthorised use.

2.6. If user 'acceptance' of any shrink-wrap, click-wrap, and standard end user licence agreement or similar terms is necessary in order to install or use the NCC Platform, such acceptance is deemed to be acceptance of the terms of this Contract, to the exclusion of all others.

### 3. Verification functionality

- 3.1. NCC may embed, incorporate or use verification functionality or features with respect to Checks, which may include providing access to an online verification of the Agency Information contained in the relevant Check, or such other security or integrity measures as determined by NCC.
- 3.2. Client acknowledges and agrees that by forwarding or making available, or by permitting NCC or another party to forward or make available, a Check to a third party, the Client consents and agrees that such third party may also access the relevant Agency Information of the relevant individual (being the subject of the Check), and use such verification functionality or features with respect to the Check.
- 3.3. Client acknowledges and agrees that providing such third parties with access to the relevant Agency Information in accordance with such verification functionality or features is appropriate and reasonable, and required to maintain security and integrity of the relevant Check.

### 4. Fees and Payment

- 4.1. The Client acknowledges and agrees that the provision of the Services, and access to and use of the NCC Platform (if applicable), is subject to payment of the fees as outlined in, and in accordance with, Item 3 of the Schedule ("Fees"). NCC may modify the Fees at any time, by notice in writing to the Client.
- 4.2. Unless otherwise specified, the amount payable for any taxable supply in connection with this Contract excludes GST and will be increased by the rate of GST imposed by law.
- 4.3. The Client must pay such Fees and expenses that are payable by the Client, without set-off or deduction, within the timeframes specified in Item 3 of the Schedule and in any case, within 14 days from the date of an invoice. Where an

invoice is generated in connection with a purchase order provided by the Client, that invoice must clearly note the relevant purchase order. All Fees not paid within 30 days from the invoice date are subject to interest of 2% flat per month.

## **5. Compliance**

- 5.1.** NCC and the Client represent and warrant that they will comply with all relevant laws, regulations and industry codes of practice in connection with this Contract, including but not limited to all relevant data privacy laws (including the Privacy Act).
- 5.2.** By signing the Contract and again with the submission of each request for the Services, the Client certifies and warrants to NCC that, to the extent the Client provides NCC with any personal data relating to any individual that is the subject of the Services ("**Data Subject**"), prior to requesting NCC to provide such Services, the Client has provided the Data Subject with a clear disclosure statement advising the Data Subject that their personal data will be released to NCC to enable NCC to perform the relevant Services and that it has obtained the explicit consent (which is given voluntarily and has not been withdrawn) from the Data Subject.
- 5.3.** The Client is solely responsible and liable for ensuring that all information provided to NCC by the Client (including any Personal Information) is accurate, complete and up to date, is not misleading, does not infringe any other person's rights and is not provided in breach of any applicable law.

## **6. Confidentiality**

- 6.1.** Except insofar as may be necessary for NCC to perform the Services and undertake and provide Checks in accordance with this Contract, each party shall not at any time use any confidential or proprietary information relating or belonging to the other party or disclose or divulge any such confidential or proprietary information to any other person, and each party shall use its best endeavors to prevent such use, publication or disclosure of any such confidential or proprietary information.
- 6.2.** For the purposes of this clause 6, NCC's confidential information includes, but is not limited to:
  - 6.2.1.** the processes, workflows and systems with respect to the NCC Platform, and any other API software and any computer program or materials provided by NCC pursuant to this Contract;
  - 6.2.2.** the internal business plans, processes and strategies of NCC;
  - 6.2.3.** the terms of this Contract, including specifically any financial terms; and
  - 6.2.4.** any information that under the circumstances surrounding disclosure, a reasonable person would regard as confidential, or which is by its nature confidential.

- 6.3.** The Client certifies that it shall hold the Checks in strict confidence and will not disclose any Check or any information in the Check to any party not involved in the current employment or appointment decision. Furthermore, the Client shall not use the information from the Check to create, compile, or maintain a database.
- 6.4.** The Client must not copy or remove any Personal Information on or from the NCC Platform which is uploaded to the NCC Platform by any Applicant or which may otherwise be made available or accessible to the Client via the NCC Platform. This clause 6.4 does not apply to any Checks (or the Personal Information contained in such Checks) provided by NCC pursuant to this Contract.
- 6.5.** This clause 6 shall not prohibit disclosure of any information if and to the extent:
- 6.5.1.** the disclosure is required by the law, any competent court, any competent Government Agency;
  - 6.5.2.** the disclosure is required for the purpose of any judicial proceedings arising out of this Contract or any other contract entered into under or pursuant to this Contract or the disclosure is reasonably required to be made to a tax authority in connection with the tax affairs or the disclosing party;
  - 6.5.3.** the disclosure is made to professional advisors of a party on a confidential basis;
  - 6.5.4.** the information becomes publicly available (other than by a breach of confidentiality or of this Contract);
  - 6.5.5.** the disclosure is by NCC to its third party service providers for the purposes of verifying an Applicant's identity in connection with providing the Services under this Contract; or
  - 6.5.6.** the other party has given prior written approval to the disclosure.

## **7. Intellectual Property Rights**

- 7.1.** The parties acknowledge and agree that:
- 7.1.1.** other than the licence in clause 1.1.2, the Client does not have or acquire any rights in or to the NCC Platform;
  - 7.1.2.** NCC (or its third party licensors, as the case may be) is and remains the sole owner of the NCC IP;
  - 7.1.3.** all Intellectual Property Rights in and to any modifications, developments, enhancements or improvements to the NCC IP will vest immediately in NCC; and
  - 7.1.4.** nothing in this Contract assigns, transfers or otherwise affects ownership of, or grants any exclusive licence to, any Intellectual Property Rights existing prior to the date of this Contract or which are developed or acquired by a party independently of this Contract.

- 7.2. The Client grants to NCC a non-exclusive, non-transferable, royalty-free licence to use and reproduce the Client Data solely for the purpose of enabling NCC to discharge its obligations under this Contract.

## 8. Indemnity

- 8.1. The Client agrees to indemnify and keep indemnified, NCC, each of its employees, agents and representatives ("**those indemnified**") from and against all Loss suffered or incurred by any or all of those indemnified arising, directly or indirectly, out of or in connection with:

- 8.1.1. a breach of this Contract by the Client;
- 8.1.2. any negligent or fraudulent act, error or omission on the part of the Client or any of the Client's employees, agents or representatives;
- 8.1.3. loss of or damage to property or injury to or death of any person by any act or omission of the Client or any of the Client's employees, agents or representatives; or
- 8.1.4. any claim or complaint by a third party (including a Government Agency) against NCC relating to the Services,

provided that, in each case, the indemnity shall not apply to any Loss resulting directly from the gross negligence or wilful default of any of those indemnified.

- 8.2. NCC agrees to indemnify and keep indemnified, the Client, each of its employees, agents and representatives from and against all Loss arising directly from the gross negligence or willful default of NCC.

## 9. Warranties and exclusions

- 9.1. Each party warrants to the other party that:

- 9.1.1. it has the requisite power and authority to enter into this Contract and to carry out the obligations contemplated by this Contract;
- 9.1.2. it holds (and will at all times continue to hold) all rights permits, licences, authorisations and accreditations required for it to perform its obligations under this Contract; and
- 9.1.3. the performance of its obligations under this Contract will comply with all such rights, permits, licences, authorisations and accreditations and not contravene any applicable Laws.

- 9.2. The Client acknowledges that NCC merely passes on the Check to the Client and/or Applicant, and NCC is not responsible for, and is not the author or the creator of, the information in that Check. NCC is not responsible for, and disclaims all liability with respect to, any information contained in a Check (including any incorrect or false information). NCC is not liable for, and the Client releases NCC from all claims in connection with, the consequences if the Client should rely on any information contained in a Check. NCC cannot change, modify or adapt any Agency Information on any Check

- 9.3.** Any decision or action taken by the Client, based on any information and/or Check provided by NCC will be the sole responsibility of the Client, and NCC will in no way be liable for any disputes, claims or damages arising out of such decisions or actions taken by the Client.
- 9.4.** Despite anything else in this Contract, NCC does not undertake, warrant or guarantee that the Services (including access to the NCC Platform) will be uninterrupted, continuous or error or defect free. From time to time NCC will conduct routine and other maintenance on the NCC Platform.
- 9.5.** The NCC Platform may contain links to other websites (“**linked websites**”). Those links are provided for convenience only and may not remain current or be maintained. NCC is not responsible for the content or privacy practices associated with linked websites. The links with linked websites should not be construed as an endorsement, approval or recommendation by NCC of the owners or operators of those linked websites, or of any information, graphics, materials, products or services referred to or contained on those linked websites, unless and to the extent stipulated to the contrary.
- 9.6.** Except as expressly provided, to the maximum extent permitted by law, NCC and its affiliates disclaim and make no warranties or representations with respect to the Services provided herein, whether such warranties and representations are express or implied in fact or by operation of law or otherwise, including without limitation implied warranties of merchantability and fitness for a particular purpose and implied warranties arising from the course of dealing or a course of performance with respect to the accuracy, validity, or completeness of any Services or Checks.

## **10. Limitation of Liability**

- 10.1.** To the maximum extent permitted by law:
- 10.1.1.** NCC shall not be liable to the Client for any loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatsoever even if NCC shall have been advised of the possibility of such loss; and
- 10.1.2.** the aggregate liability of NCC, whether in contract, tort (including negligence), or otherwise, under or in connection with this Contract is limited to, at NCC’s option, to:
- 10.1.2.1. the total Fees paid or payable to NCC, by the Client, in the twelve (12) months preceding the date upon which the related claim arose; or
- 10.1.2.2. the provision of the relevant Services again.
- 10.2.** The exclusions and limitations of liability in clauses Error: Reference source not found and 10:
- 10.2.1.** apply whether the relevant claim is made under statute, in tort (for negligence or otherwise), under an indemnity, in equity or otherwise; and

**10.2.2.** do not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would:

10.2.2.1. contravene that statute; or

10.2.2.2. cause any part of this clause to be void.

## **11. Force Majeure**

Neither party shall be liable for any delay in performing any of its obligations under the Contract (other than obligations to pay fees) 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.

## **12. Termination**

**12.1.** The Client acknowledges and agrees that NCC may suspend the Services (including the Client's and/or an Applicant's access to the NCC Platform) if:

**12.1.1.** NCC is required to do so by law or any Government Agency; or

**12.1.2.** the Client breaches any term of this Contract.

**12.2.** Either party may terminate this Contract at any time by giving at least sixty (60) days' written notice to the other party.

**12.3.** A party (the "**non-defaulting party**") may terminate this Contract for cause in the event that the other party (the "**defaulting party**") commits a breach of this Contract and that breach is not remedied within seven (7) days of the non-defaulting party giving the defaulting party notice requiring remedy of such breach.

**12.4.** On termination of this Contract for any reason:

**12.4.1.** the Customer's access to the NCC Platform will be suspended;

**12.4.2.** the Customer must promptly return or delete all materials, information and documentation provided to it by NCC in connection with this Contract and pay any outstanding Fees; and

**12.4.3.** NCC may keep a reasonable number of copies of Client's Confidential Information for record keeping and quality control purposes, and to allow NCC to comply with all applicable laws.

**12.5.** Termination of this Contract will not prejudice any right of action or remedy which may have accrued to either party prior to such termination.

## **13. Staff and Assistance**

Each party agrees that it shall not for the duration of the Contract and for a period of 12 months after it has terminated seek to employ or offer employment (whether directly or

under a contract of employment or otherwise) to any employee of the other party whom the first party has had contact during the Contract.

#### **14. Special Conditions**

The parties agree to comply with the Special Conditions.

#### **15. Inconsistency and Priority**

If there is any inconsistency between the Special Conditions, these Terms, the Schedule (other than any Special Conditions), and Appendix 1 (Service Level Agreement), then the provisions prevail to the extent of the inconsistency in the following order of priority:

- 15.1.** the Special Conditions;
- 15.2.** these Terms;
- 15.3.** the Schedule (other than any Special Conditions); and
- 15.4.** Appendix 1 (Service Level Agreement).

#### **16. General Terms**

- 16.1.** If any provision of this Contract shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired.
- 16.2.** This Contract constitutes the entire agreement between the parties upon this subject and supersedes all previous representations, offers, undertakings or contracts. No modifications, amendments or additions to this Contract shall be made except in writing signed by all parties.
- 16.3.** The parties agree that NCC is a contractor independent of the Client's control and that the Contract will not give rise to any fiduciary, agency, trust, employment or other relationship recognised at law or in equity as giving rise to forms of specific rights and obligations. NCC is free to work with any other third party for reward during the Term.
- 16.4.** The exercise of any right or remedy obtained within this Contract 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.
- 16.5.** Neither the failure of any Party to enforce at any time any of the provisions of this Contract 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 this Contract thereafter.
- 16.6.** Any waiver of any power or right under this Contract must be in writing signed by the Party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver.
- 16.7.** Any indemnity or any obligation of confidence under these terms and conditions is independent and survives termination of this Contract. Any other term by its nature

intended to survive termination of this Contract survives termination, including clauses 6, 7, 8, 9, 10 and this clause 16.7.

- 16.8.** This Contract shall be governed and construed in all respects by the laws of South Australia and the parties agree to submit to the exclusive jurisdiction of South Australian Courts.
- 16.9.** Any notice or other correspondence to be served or delivered in accordance with this Contract may be served or delivered personally or by posting it or sending it by facsimile transmission or email to the last known address of the party or the registered office address of the party and shall be deemed to have been served or delivered when received if served or delivered personally or by facsimile transmission or email (provided that the sender does not receive notification within 48 hours that the email failed to be sent or has been delayed) and after 7 days if served or delivered by post.
- 16.10.** This Contract may be executed in any number of counterparts. A counterpart may be an electronic copy. Together all counterparts make up one document, and this Contract takes effect when all parties have received the counterpart executed by the other parties.
- 16.11.** If reasonably requested, NCC shall send to the Client a summary of the Services provided to the Client pursuant to this Contract.
- 16.12.** A provision of this Contract must not be construed to the disadvantage of a party because that party was responsible for including that provision and/or that provision benefits that party.
- 16.13.** In this Contract, unless the context otherwise requires:
- 16.13.1.** a party means a party to this Contract;
  - 16.13.2.** headings do not affect interpretation;
  - 16.13.3.** a clause, schedule or annexure is a clause or schedule of or an annexure to this Contract;
  - 16.13.4.** singular includes plural and plural includes singular;
  - 16.13.5.** words of one gender include any gender;
  - 16.13.6.** 'including', or similar words, does not limit what else might be included;
  - 16.13.7.** reference to a person includes a corporation, joint venture, association, government body, firm, and any other entity;
  - 16.13.8.** reference to a party includes that party's personal representatives, successors and permitted assigns;
  - 16.13.9.** reference to a thing includes a part of that thing;
  - 16.13.10.** reference to a document is to that document as amended or varied;
  - 16.13.11.** conduct includes any act, omission, representation, statement or undertaking whether or not in writing;

**16.13.12.** 'writing', 'written' and 'in writing' include any mode of representing or reproducing words in a visible form;

**16.13.13.** any legislation includes any subordinate legislation and amendments;

**16.13.14.** another grammatical form of a defined expression has a corresponding meaning; and

**16.13.15.** a promise, representation, warranty or indemnity in this Contract on the part of two or more persons binds them jointly and severally and in favour of two or more persons is for the benefit of them jointly and severally.

## **17. Definitions**

In this Contract, unless the context otherwise requires:

**"Access Link"** means a weblink to download and access a Check online;

**"ACIC"** means the Australian Criminal Intelligence Commission;

**"Agency Information"** includes information about an individual received by NCC from a Government Agency or other authorised third party in conducting the Services;

**"Applicant"** means any of the Client's existing or potential employees, volunteers, consultants and/or contractors in respect of whom the Client wishes to conduct a Check;

**"Bankruptcy Checks"** means National Bankruptcy Checks and, where the context requires, the document or data file that NCC provides to the Client containing personal insolvency information received from the Australian Financial Security Authority about an individual;

**"Checks"** includes NCCHCs, VEVO Checks, Identity Verification Checks, Bankruptcy Checks, International Checks and any other check, verification, document or data file containing Agency Information that NCC provides to the Client in conducting the Services;

**"Client"** means the party specified in Item 1 of the Schedule;

**"Client Data"** means data and information relating to the Client and its operations, facilities, personnel, assets, products, sales and transactions;

**"Contract"** means this contract, including the schedules and appendixes;

**"DIBP"** means the Australian Government Department of Immigration and Border Protection;

**"External Factors"** means environmental and other factors outside of the reasonable control of NCC;

**"Government Agency"** means any governmental, semi-governmental or judicial entity or authority, in Australia or overseas, and including without limitation ACIC and DIBP;

**“Harmful Code”** means any virus, worm, trojan horse, trapdoor, software switch, time bomb, slicing routine, corruptive code, logic bomb, disabling code, disabling routine or expiration dates as these words are generally understood within the technology industry and any equivalent or similar corruptive mechanism;

**“Intellectual Property Rights”** includes any and all registered or unregistered rights in, including rights to apply for registration, renewal or extension in, any copyrights, patents, inventions, discoveries, trade secrets, processes, methodologies, know-how, specifications, computer programs or software, source or object codes, trademarks, logos, designs or confidential information or any rights of a similar nature under the laws of Australia or anywhere else in the world;

**“International Checks”** means any check conducted through a Government Agency or other authorised third party located in a jurisdiction outside of Australia and, where the context requires, the document or data file that NCC provides to the Client containing Agency Information received by NCC from that Government Agency or authorised third party;

**“Loss”** means all liabilities, claims, losses, damages, costs and expenses (including all legal costs determined on a solicitor and own client basis) whether incurred or awarded against a party, disbursements, costs of investigation, litigation, settlement and judgment, and interest, fines and penalties;

**“NCC”** means National Crime Check Pty Limited ABN 60 139 183 145;

**“NCC IP”** means all Intellectual Property Rights associated with the Services and the NCC Platform (including any updates, enhancements and new features NCC may provide);

**“NCC Platform”** means any API or other proprietary software applications, programs and/or platforms that NCC agrees to provide and/or grant the Client access to, to enable the Client to receive the benefit of the Services.

**“NCCHCs”** means Nationally Coordinated Criminal History Checks and, where the context requires, the document or data file that NCC provides to the Client containing the relevant Police History Information;

**“Personal Information”** means any information or opinion about a natural person (whether true or not), including 'personal information' as that term is defined in the Privacy Act, which either party collects or has access to, stores or discloses, or otherwise handles, in the course of performing, or receiving the benefit of, the Services;

**“Police History Information”** means the police history information received from ACIC about an individual;

**“Privacy Act”** means *Privacy Act 1988* (Cth);

**“Service Level Agreement”** means the service level agreement included as Appendix 1 to this Contract;

**“Services”** means the services described in Item 2 of the Schedule;

**“Special Conditions”** means the special conditions set out in Item 4 of the Schedule;

**“Term”** means the date of execution of the Contract by all parties until the Contract is terminated in accordance with clause 12;

**“Terms”** means the terms and conditions set out in the body of this Contract;

**“VEVO Checks”** means Right to Work/Visa Entitlement Verification Online checks and, where the context requires, the document or data file that NCC provides to the Client containing the relevant Visa Entitlement Information; and

**“Visa Entitlement Information”** means the visa status, work entitlement(s) and other information received from DIBP about an individual.

## Schedule – Contract Details

### 1. Client

As per details on file.

### 2. Services

NCCHCs, VEVO Checks, Identity Verification Checks, Bankruptcy Checks, International Checks (including NZ Police Checks) +/- any other checking or verification services to be provided by NCC under this Contract.

### 3. Fees

As per details on file.

### 4. Special Conditions

#### 1. The following Special Conditions apply where the Services include Nationally Coordinated Criminal History Checks (Australian Police Checking Services):

1.1 ACIC administers access to NCCHCs under the *Australian Crime Commission Act 2002* (Cth) ("**ACC Act**"). As an "Accredited Body" under section 46A(5) of the ACC Act, NCC must comply with its agreement with the ACIC with respect to NCC's access to the National Police Checking Service administered and facilitated by the ACIC, as amended from time to time ("**ACIC Agreement**").

1.2 The Client acknowledges and agrees that it has read and understands the terms of the ACIC Agreement, which, as at the date of this Contract, are available on the ACIC's website using the following link:

[https://www.acic.gov.au/sites/default/files/ncchc\\_agreement\\_july\\_2019.docx](https://www.acic.gov.au/sites/default/files/ncchc_agreement_july_2019.docx)

1.3 If:

1.3.1 any inconsistency or conflict between this Contract and the ACIC Agreement arises or will arise as a result of:

1.3.1.1 any variation to the ACIC Agreement required by the ACIC;

1.3.1.2 any reduction by the ACIC of the scope of the ACIC Agreement; and/or

1.3.1.3 any request, direction or monitoring requirement made by the ACIC pursuant to the ACIC Agreement,

and such inconsistency or conflict affects or may affect all or part of the Services to be provided by NCC under this Contract; or

1.3.2 ACIC otherwise determines that the Client is a "Legal Entity Customer" (as defined in the ACIC Agreement) for the purposes of the ACIC Agreement,

("Conflict Event") then:

1.3.3 NCC must notify the Client of such Conflict Event; and

1.3.4 NCC is relieved from liability for non-compliance under this Contract to the extent this Contract conflicts with or is inconsistent with the requirements of the ACIC

Agreement until such time as the parties agree to variations of this Contract to the extent required to remove the inconsistency or conflict.

- 1.4 Where NCC, acting reasonably and in good faith, proposes variations to this Contract to remove the inconsistency and/or conflict with respect to a Conflict Event, and Client does not agree to such variations within three months of the date such variations are proposed by NCC, then either party may in its absolute discretion immediately terminate this Contract by giving written notice to the other party (without cost or liability).
- 1.5 Only NCC may submit requests to the ACIC for NCCHCs with respect to Applicants pursuant to this Contract.
- 1.6 NCC is not obliged to submit to the ACIC any request for a NCCHC unless NCC has:
  - 1.6.1 collected the Applicant's Application and Informed Consent; and
  - 1.6.2 satisfied itself as to:
    - 1.6.2.1 the Applicant's identity; and
    - 1.6.2.2 the linkage between the Applicant and the claimed identity,in accordance with the requirements of the ACIC Agreement.
- 1.7 The parties must not alter the content of any NCCHC provided under this Contract, including:
  - 1.7.1 any Police Information;
  - 1.7.2 any Personal Information; and
  - 1.7.3 the Disclaimer set out in Appendix 2 ("**NCCHC Disclaimer**"),provided that the parties may make minor alterations to the format or presentation of the NCCHC to the extent that any alteration does not change the content of any Police Information or Personal Information.
- 1.8 Subject to Special Condition 1.7, the Client acknowledges and agrees that the provision of a NCCHC is for use on the following basis:
  - 1.8.1 neither the ACIC nor NCC makes any representation or warranty of any kind in respect to accuracy; and
  - 1.8.2 neither the ACIC nor NCC accept responsibility or liability for any omission or error in the NCCHC.
- 1.9 The Client acknowledges that the NCCHC Disclaimer applies to any NCCHC provided by NCC under or in connection with this Contract.
- 1.10 NCC is not obliged to do anything that would be a breach of NCC's information retention and disposal obligations under the ACIC Agreement.
- 1.11 Nothing in the Contract affects ownership of any Intellectual Property Rights in any information or materials belonging to:
  - 1.11.1 the Commonwealth of Australia;
  - 1.11.2 the ACIC; or

- 1.11.3 the Australian police agencies.
- 1.12 The restrictions on disclosure and use of Confidential Information in clause 6 of the Terms do not apply to information NCC is required to disclose to ACIC under the ACIC Agreement.
- 1.13 Any capitalised terms in this Special Condition not otherwise defined in this Contract have the meanings given in the ACIC Agreement.

**2. The following Special Conditions apply where the Services include Identity Verification Services:**

- 2.1 In order for NCC to provide Identity Verification Services under this Agreement, NCC may be required to access the document verification service (the **Australia DVS**) provided by the Department of Home Affairs acting for and representing the Commonwealth of Australia (the **Department of Home Affairs**).
- 2.2 Access to the Australia DVS is conditional on, among other things, Client meeting the Australia DVS Access Criteria. To that end, Client represents and warrants to NCC that it is, and will be at all times during the term of this Contract:
  - 1.13.1 a legal entity validly existing under the laws of its jurisdiction of incorporation;
  - 1.13.2 carrying on business in Australia and is subject to Australian law;
  - 1.13.3 subject to the Privacy Act;
  - 1.13.4 accessing the Services on its own behalf (and not as an agent for any other person); and
  - 1.13.5 an organisation that is registered or licensed or operates under a regulatory regime operated by the Commonwealth of Australia or State or Territory Governments, and therefore a 'regulated entity' for the purposes of the guidelines advised by the Department of Home Affairs (as set out in the DVS Commercial Service: Access Policy document).
- 2.3 Prior to requesting any Identity Verification Service in relation to a Data Subject, Client must obtain from the Data Subject express written consent (**Consent**) to the provision, access, use and transmission of all personal information relevant to them that is necessary for NCC to provide the Identity Verification Services. The Consent must be in the form approved by NCC.
- 2.4 The Client agrees that any disclaimer, exclusion, limitation of liability or indemnity in this Contract that relates to the provision of Identity Verification Services is also for the benefit of the Department of Home Affairs.
- 2.5 To the maximum extent permitted by law, NCC shall not be liable to the Client for any loss, damages, costs or expenses which the Client suffers or incurs as a result of the Department of Home Affairs refusing NCC access to the Australia DVS or suspending its document verification operations. The Client releases NCC from all claims that arise in connection with NCC complying with the terms of its agreement with Home Affairs for access to the Australia DVS.
- 2.6 In the event that Department of Home Affairs varies the conditions of access to the Australia DVS in a manner that conflicts with this Contract, the Client agrees to negotiate with NCC in good faith to determine changes to this Contract that would resolve that conflict. NCC is relieved from liability for non-compliance under this Contract to the extent this Contract conflicts with or is inconsistent with the conditions of access to the Australia

DVS until such time as the parties agree to variations of this Contract to the extent required to remove the inconsistency or conflict.

- 2.7 The Client acknowledges that NCC is the Client's sole point of contact concerning issues relating to the Identity Verification Services.

## Appendix 1: Service Level Agreement

### Definitions

In this Appendix 1, unless the context requires otherwise:

**"Contract"** means the Contract to which this Appendix 1 is attached, under which National Crime Check Pty Limited agrees to provide certain National Police Checking services;

**"Excluded Event"** means:

- (a) a breach of this Contract by the Client;
- (b) an event that is beyond the reasonable control of NCC and which prevents NCC from performing, or delays the performance of, its obligations under this SLA;
- (c) a negligent or fraudulent act or omission of the Client or its personnel; and
- (d) any other Excluded Events specified in the Special Conditions (if any).

**"Incident"** means an issue that detrimentally affects the normal operation of the NCC Platform;

**"Incident Support Services"** means the support, maintenance and rectification services provided by NCC with respect to an Incident as set out in this SLA;

**"SLA"** means this Service Level Agreement set out in this Appendix 1;

**"Severity Level"** means the level of classification of the Incident allocated to the Client based on Table 1 of this SLA; and

unless otherwise defined, capitalised terms in this SLA have the meanings given to them in the Contract.

### Operative Provisions

1. If an Incident occurs, NCC will provide the Client with the Incident Support Services in accordance with the relevant service levels specified in this SLA.
2. Before the Client reports an Incident, the Client must take all reasonable steps to ensure the Incident is not a result of an Excluded Event or a problem with the Client's equipment or otherwise within the Client's administrative domain.
3. If an Incident occurs for which the Client requires any Incident Support Services, the Client must report the Incident to NCC by:
  - (e) using the Incident reporting tool made available by NCC via the NCC Platform; or
  - (f) sending an email to support@nationalcrimecheck.com.au
4. In reporting an Incident, the Client must provide NCC with a detailed description of the Incident and any other information NCC reasonably requires. NCC will, acting reasonably, determine the Severity Level of the Incident that the Client has reported.
5. Without limiting anything else in the Contract, the Client agrees to pay NCC the Fees applicable to any Incident Support Services NCC provides, as set out in Item 3 of the Schedule (if any).
6. The Client acknowledge and agree that NCC may vary this SLA from time to time if reasonably required for technical, operational and commercial reasons, provided such variation does not have a material adverse effect on the Client.

**Table 1 – Severity Level:**

Classification of Incident	Characteristics
<b>Critical</b>	Occurs when: <ul style="list-style-type: none"> <li>• The NCC Platform, or any aspect of the NCC Platform, is unavailable or is materially unstable or is producing incorrect results, causing a material impact to the Client, including but not limited to, client servicing, risk management or loss of revenue and there are no reasonable workarounds available; or</li> <li>• All or a material aspect or aspects of the NCC Platform that are required for daily or immediate use cannot be operated.</li> </ul>
<b>Non-Critical</b>	Occurs when: <ul style="list-style-type: none"> <li>• The NCC Platform, or any aspect of the NCC Platform, is unavailable or is materially unstable or is producing incorrect results, causing a material impact to the Client including but not limited to, client servicing, risk management or loss of revenue; and</li> <li>• A reasonable workaround is available and will have a negligible impact on the business of the Client.</li> </ul>

**Table 2 – Response and rectification times:**

Incident Severity Level	Period of time before NCC shall commence work to rectify the Incident	Extent of Incident Support Service	NCC’s notification obligations	Agreed Incident Resolution Period
<b>Critical</b>	Work will commence within forty eight (48) hours from the time the Incident is properly reported to NCC	Including outside of business hours (subject to access)	To brief the Client every eight (8) hours during business hours or as reasonably agreed	Within three (3) days of the Incident being reported, or timeframe as agreed between NCC and the Client
<b>Non-critical</b>	Work will commence within ninety six (96) hours from the time the Incident is properly reported to NCC	Within business hours. Work may be performed outside of business hours at NCC’s absolute discretion.	To brief the Client once daily or as reasonably agreed	Within seven (7) days of the Incident being reported, or timeframe as agreed between NCC and the Client

## Appendix 2 – Disclaimer

### NATIONALLY COORDINATED CRIMINAL HISTORY CHECK

#### LIMITATIONS ON ACCURACY AND USE OF THIS INFORMATION

1. This nationally coordinated criminal history check provides a point in time check about the applicant for an authorised nationally coordinated criminal history check category and purpose. Information obtained through this check should not be used for any other purpose.
2. The accuracy and quality of information provided in this nationally coordinated criminal history check depends on accurate identification of the applicant which is based on information, including aliases, about the applicant provided in the application and the comprehensiveness of police records.
3. While every care has been taken by the Australian Criminal Intelligence Commission ('ACIC') to conduct a search of police information held by it and Australian police agencies that relates to the applicant, this nationally coordinated criminal history check may not include all police information about the applicant. Reasons for certain information being excluded from the nationally coordinated criminal history check include the operation of laws that prevent disclosure of certain information, or that the applicant's record is not identified by the search process across the agencies' relevant information holdings.
4. This nationally coordinated criminal history Check may contain any of the following information about an applicant:
  - a. charges;
  - b. court convictions;
  - c. findings of guilt with no conviction;
  - d. court appearances;
  - e. good behaviour bonds or other court orders;
  - f. pending matters awaiting court hearing;
  - g. traffic offence history.(*'Disclosable Court Outcome'*).
5. If this nationally coordinated criminal history check contains a Disclosable Court Outcome, the entity submitting the application is required to:
  - a. notify the applicant of the nationally coordinated criminal history check; and
  - b. provide the applicant with a reasonable opportunity to respond to, or validate the information, in the nationally coordinated criminal history check.
6. To the extent permitted by law, neither the ACIC nor Australian police agencies accept responsibility or liability for any omission or error in the nationally coordinated criminal history check.

## **NATIONALLY COORDINATED CRIMINAL HISTORY CHECK PROCESS**

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

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