

AGREEMENT RELATING TO THE
HOSTING OF THE

**NATIONAL DRIVER LICENCE
FACIAL RECOGNITION SOLUTION**

The Commonwealth of Australia as represented by the Department of Home
Affairs

and

each NDLFRS Contributor

AGREEMENT RELATING TO THE HOSTING OF THE NATIONAL DRIVER LICENCE FACIAL RECOGNITION SOLUTION

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AGREEMENT

RELATING TO THE NATIONAL DRIVER LICENCE FACIAL RECOGNITION SOLUTION

Date

This Agreement is made on

2019

Parties

This Agreement is made between and binds the following Participants:

1. **The Commonwealth of Australia as represented by the Department of Home Affairs** (ABN 33 380 054 835) of 6 Chan Street, Belconnen ACT 2617 Australia
(the **Commonwealth**)

and
2. The [State / Territory legal name] as represented by [Participant name] (ABN [insert]) of [address] (the **NSW Road Agency**)
3. The [State / Territory legal name] as represented by [Participant name] (ABN [insert]) of [address] (the **VIC Road Agency**)
4. The [State / Territory legal name] as represented by [Participant name] (ABN [insert]) of [address] (the **QLD Road Agency**)
5. The [State / Territory legal name] as represented by [Participant name] (ABN [insert]) of [address] (the **WA Road Agency**)
6. The [State / Territory legal name] as represented by [Participant name] (ABN [insert]) of [address] (the **SA Road Agency**)
7. The Crown in Right of the State of Tasmania as represented by the Department of State Growth (ABN 36 388 980 563) of 4 Salamanca Place Hobart, TAS 7000 Australia (the **TAS Road Agency**)
8. The [State / Territory legal name] as represented by [Participant name] (ABN [insert]) of [address] (the **ACT Road Agency**)
9. The [State / Territory legal name] as represented by [Participant name] (ABN [insert]) of [address] (the **NT Road Agency**)

(each, an **NDLFRS Contributor** and collectively the **NDLFRS Contributors**)

[Drafting note: the individual State and Territory Road Agency details are needed here for the purposes of Schedule 2. If one or more of the Road Agencies above is not an initial Participant (but instead signs up later through a deed of accession) and so has its name omitted from this list, a separate definition will need to be included in clause 1.1 for the purposes of Schedule 2.]

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Background

- A. On 5 October 2017, the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia entered into the Intergovernmental Agreement on Identity Matching Services.
- B. The Intergovernmental Agreement established the framework enabling state and territory participation in the Face Matching Services, including the establishment of the National Driver Licence Facial Recognition Solution.
- C. The NDLFERS Contributors have agreed to participate in:
 - (1) the Face Matching Services as Data Holding Agencies making available relevant driver licence and any other agreed information in accordance with the FMS Participation Agreement,
 - (2) the National Driver Licence Facial Recognition Solution as the technical system to enable driver licence facial images and related information to be made available via the Face Matching Services.
- D. The Commonwealth and the NDLFERS Contributors have agreed to enter into this Agreement in relation to the implementation and operation of the National Driver Licence Facial Recognition Solution for the benefit of all Participants.

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Operative Provisions

PART 1. THE NDLFRS FRAMEWORK

1. Definitions and interpretation

1.1. Definitions

1.1.1. In this Agreement, unless the context otherwise requires:

Additional NDLFRS Products means any NDLFRS Products that are not Baseline NDLFRS Products.

Agency means any agency, government sector agency, public sector agency or public sector body as defined in the *Public Service Act 1999* (Cth) or equivalent state or territory public service legislation, including any NDLFRS Contributor, law enforcement agency or relevant Commonwealth agency that is participating in or may wish to participate in the NDLFRS.

Agreement means this document, including any schedules, annexures, attachments and documents incorporated by reference, as amended from time to time.

Annual Audit has the meaning given in the FMS Participation Agreement.

Baseline NDLFRS Products means the NDLFRS Products (and Service Levels) set out in Schedule 2 including, in respect of each NDLFRS Contributor named in the table in Part 2 of Schedule 2, the NDLFRS Products specified alongside that NDLFRS Contributor's name in that table.

Baseline Security Clearance means a "Baseline" security clearance as referred to in the Australian Government personnel security protocol which, as at the date of this Agreement, is available at <https://www.protectivesecurity.gov.au/personnelsecurity/Pages/Australian-Government-personnel-security-management-protocol.aspx>.

Biographic Information means biographic Identity Information pertaining to an individual, such as their name and date of birth.

Biometric Templates means the biometric templates, as defined by the International Standard – ISO/IEC 2382-37 Information technology – Vocabulary – Part 37: Biometrics (as updated, amended or replaced from time to time), which are generated by the NDLFRS from Replicated Data and, when used in respect of a specific NDLFRS Contributor, means those Biometric Templates generated from that NDLFRS Contributor's Replicated Data.

Business Day means a calendar day other than a Saturday, Sunday or public holiday on which banks are open for business in Canberra, Australia.

Commonwealth means the Commonwealth of Australia.

Compliance Statement:

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- a. in respect of the Data Hosting Agency, means a written statement, complying with all requirements for a “Compliance Statement” as specified in clause 14.1; and
- b. in respect of an NDLFRS Contributor, has the meaning given in the FMS Participation Agreement.

Confidential Information means information (other than Personal Information) which by its nature is confidential and includes:

- a. in respect of the Data Hosting Agency:
 - (i) the costs and charges relating to Biometric Templates; and
 - (ii) all proprietary products and information relating to the NDLFRS; and
- b. in respect of each Participant, their internal business processes and know-how.

Data Holding Agency has the meaning given in the FMS Participation Agreement.

Data Hosting Agency means the Agency of the Commonwealth of Australia responsible for managing and operating the NDLFRS where it holds a replicated copy of Identity Information contributed by NDLFRS Contributors which, as at the date of this Agreement, is the Commonwealth.

Data Source has the meaning given in the FMS Participation Agreement.

De-Duplicate means the process of establishing that multiple records exist for the same individual and then either consolidating or deleting matching records.

Deed of Accession means the deed of accession in the form set out in Schedule 1 or as otherwise determined by the Governing Body.

Dispute means any dispute arising under or in connection with this Agreement.

Document Repository has the meaning given in the FMS Participation Agreement.

Executive Management has the meaning given in the FMS Participation Agreement.

Face Matching Services has the meaning given to the expression “Services” in the FMS Participation Agreement.

Facial Image includes digital photographs, still images captured from video, scanned photographs and other technical information related to those images (such as the time and date of capture and data capture standards used).

FIS has the meaning given in the FMS Participation Agreement.

FMS Participation Agreement means the Face Matching Services Participation Agreement made pursuant to the Intergovernmental Agreement, entered or to be entered into between the Commonwealth in its capacity as,

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inter alia, Framework Administrator and Hub Controller, each State and Territory of Australia, and others, as amended from time to time.

FRAUS means the Facial Recognition Analysis Utility Service and as at the date of this Agreement is an NDLFRS Product which enables NDLFRS Contributors to conduct biometric matching using their own Replicated Data hosted by the Data Hosting Agency.

Full Operational Production Date means the earlier of:

- a. the date on which the last Road Agency has contributed its Data Source to the NDLFRS and has notified the Data Hosting Agency that its Data Source as replicated in the NDLFRS can be used to provide Face Matching Services in accordance with this Agreement and the FMS Participation Agreement; or
- b. 1 June 2021.

FVS has the meaning given in the FMS Participation Agreement.

Governing Body has the meaning given in the FMS Participation Agreement.

Government Identification Documentation means any document or record, whether in physical or electronic form, containing Identity Information issued by a government body or entity.

Hosting Services means, with respect to each NDLFRS Contributor, all hosting and ancillary services provided by the Data Hosting Agency to enable an NDLFRS Contributor to use NDLFRS Products and participate in the Face Matching Services in respect of the Replicated Data, as contemplated by this Agreement and the FMS Participation Agreement.

Hub Controller has the meaning given in the FMS Participation Agreement.

Identity Information means information, or a document, relating to an individual (whether living, dead, real or fictitious) that is capable of being used (whether alone or in conjunction with other information or documents) to identify or purportedly identify the individual.

Incident has the meaning given in the Information Technology Infrastructure Library (ITIL).

Information Breach has the meaning given in clause 13.3.1.

Information Security Manual means, in relation to a Participant, either:

- a. the Australian Government Information Security Manual which governs the security of government ICT systems, as produced and updated from time to time by the Australian Signals Directorate); or
- b. an alternate information security controls and guidance approved by the Data Hosting Agency.

Initial Term has the meaning given in clause 9.1.1.

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Intellectual Property Rights means all intellectual property rights, whether or not such rights are registered or capable of being registered, including but not limited to, the following:

- a. patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks), and domain names;
- b. any application or right to apply for registration of any of the rights referred to in paragraph a.; and
- c. all rights of a similar nature to any of the rights in paragraphs a. and b. which may subsist in Australia or elsewhere.

Intergovernmental Agreement means the Intergovernmental Agreement on Identity Matching Services dated 5 October 2017 between the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia.

Interoperability Hub has the meaning given in the FMS Participation Agreement.

Intervening Event means an event that is, or a series of events that are, outside of a Participant's reasonable control and includes:

- a. force majeure, a national security event, terrorist activity, natural disasters, acts of war, riots and strikes outside that Participant's control;
- b. a Government policy decision; and
- c. a default of a Participant's external service providers, provided that the Participant exercises all reasonable measures to mitigate the effect of that default,

to the extent that relevant Participant is prevented from performing its responsibilities under this Agreement or any part of it.

Licensed Software means any of the software licensed by the Data Hosting Agency from one or more third parties for the purposes of the NDLFRS and/or any NDLFRS Products.

Match means that the NDLFRS identifies a Facial Image (or as relevant Biographic Information) in a relevant Data Source as matching relevant Identity Information in a Query.

Match Candidate means a potential Match which has a Match Score above the Matching Threshold.

Match Score means a score determined by an algorithm within the NDLFRS that quantifies the assessed probability that a Facial Image (or as relevant Biographic Information) in a relevant Data Source matches relevant Identity Information in a Query.

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Matching Threshold means the Match Score that must be achieved or exceeded for the NDLFRS to consider a Facial Image (or, as relevant, Biographic Information) in a relevant Data Source as being a Match Candidate for relevant Identity Information in the Query.

Metadata means data that describes other data. For the purposes of clarity:

- a. NDLFRS Audit Data is Metadata; but
- b. neither Replicated Data nor Biometric Templates are Metadata under or in relation to this Agreement.

National Driver Licence Facial Recognition Solution means the NDLFRS.

NDLFRS means the National Driver Licence Facial Recognition Solution, being the information technology system by which details used on driver licences and other State and Territory government issued documents can be accessed via the Face Matching Services.

[Redacted text block]

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[REDACTED]		

[REDACTED]	[REDACTED]	
[REDACTED]		

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NDLFRS Hosting Arrangement means an arrangement in the form of the NDLFRS Hosting Arrangement Template, formed between the Data Hosting Agency and an NDLFRS Contributor, in relation to that NDLFRS Contributor's use of the NDLFRS.

NDLFRS Hosting Arrangement Template means the template for NDLFRS Hosting Arrangements in the form maintained by the Data Hosting Agency from time to time.

NDLFRS Product means, as relevant, either:

- a. the Hosting Services; or
- b. a service defined in the NDLFRS Products Catalogue, and includes FRAUS.

NDLFRS Products Catalogue means, at any point in time, the current version of the "NDLFRS Products Catalogue" published by the Data Hosting Agency on the Document Repository detailing each Additional NDLFRS Product that is available at any point in time.

Notice has the meaning given in clause 19.1.1.

OPOLS (or One Person One Licence Service) has the meaning given in the FMS Participation Agreement.

Participant means a Party to this Agreement and any person who has become a Party to this Agreement by executing the Deed of Accession in accordance with clause 4.2 and which, for the avoidance of doubt, must not be an individual.

Participant Access Arrangement has the meaning given in the FMS Participation Agreement.

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Personal Information has the meaning given to “personal information” in the Privacy Act. .

Personnel means, in respect of a Participant, any person who is an officer, employee, agent or professional advisor of that Participant.

Post-Incident Report means a report by a Participant that:

- a. contains details of an Incident that affected, affects, or could affect, the NDLFRS or the NDLFRS Products (whether identified as a result of a Security Breach or otherwise);
- a. contains details of what caused, or could cause, the Incident; and
- b. includes recommendations to mitigate relevant risks and minimise vulnerabilities.

Privacy Act means the *Privacy Act 1988* (Cth).

Production Environment means a database that allows interrogation by the Interoperability Hub and FRAUS.

PSPF means the Protective Security Policy Framework maintained by the Attorney-General’s Department, which sets out policy, guidance and better practice advice for governance, personnel, physical and information security, and which includes mandatory requirements to assist Agency heads to identify their responsibilities to manage security risks to their people, information and assets, as amended or replaced from time to time, and which as at the date of this Agreement is available at <https://www.protectivesecurity.gov.au>.

Query has the meaning given in the FMS Participation Agreement.

Replicated Data means, in respect of each NDLFRS Contributor, all Facial Images, Biographic Information, biometric information and any other Identity Information the NDLFRS Contributor and Data Hosting Agency have agreed will be hosted in the NDLFRS.

Representative has the meaning given in the FMS Participation Agreement.

Requesting Agency has the meaning given in the FMS Participation Agreement.

Road Agency means an Agency with responsibility for driver licencing, and includes an Agency that carries out those functions as a delegate or agent of the Road Agency, or an Agency that supports the functions of an individual with statutory responsibility for driver licensing.

Security Accreditation Certificate means a document, in relation to a Participant, that:

- a. certifies that the Participant’s relevant system has risk-based security controls that are appropriate for its specified security classification level, and

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b. is in accordance with the Information Security Manual.

Security Breach means, in relation to a Participant, any breach of security relating to that Participant that is relevant to this Agreement, including where:

- a. an NDLFRS Contributor reasonably suspects or has evidence that a User has disclosed any or all of his or her specific identification number assigned to a User to access NDLFRS, password, or credentials, to any other person without authorisation;
- b. an NDLFRS Contributor loses, or loses control over, Identity Information; or
- c. Identity Information is not disclosed consistently with the terms of the Participant Access Arrangement or NDLFRS Hosting Arrangement under which it was provided.

Security Classification means, in relation to a piece of information, the security classification designated by the Commonwealth and/or a State or Territory of Australia, as applicable.

Security Risk Management Plan means a document, in relation to an NDLFRS Contributor, that:

- a. identifies security risks and appropriate mitigation measures for relevant information technology systems of the NDLFRS Contributor, in accordance with the Information Security Manual;
- b. documents the relevant risk tolerance threshold(s) of the NDLFRS Contributor; and
- c. documents relevant processes, procedures and other measures put in place by the NDLFRS Contributor to ensure consistent and coordinated management of relevant risks across the NDLFRS Contributor's organisation.

Senior Representative has the meaning given in the FMS Participation Agreement.

Service Levels means the service levels for the NDLFRS set out in Part 3 of Schedule 2.

Standard Usage Hours means between 8:30am and 5:30pm on Business Days.

Statement of Legislative Authority means, in the case of:

- a. the Data Hosting Agency, a detailed explanation of the legislative provisions and other relevant information that the Data Hosting agency believes establishes that its use, operation and maintenance of the NDLFRS, and its provision of the NDLFRS Products (including the Hosting Services), will be lawful; and
- b. an NDLFRS Contributor, a detailed explanation of the legislative provisions and other relevant information that the NDLFRS Contributor believes

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establishes that its access to and use of the NDLFRS and the NDLFRS Products (including the Hosting Services) will be lawful.

System Security Plan means a document, in relation to an NDLFRS Contributor, that is in accordance with the Information Security Manual.

Uptime Percentage Target means 99.5%, excluding scheduled maintenance and outages.

User has the meaning given in the FMS Participation Agreement.

Variation Request Form has the meaning given in clause 34.1.3.

1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires:

- a. a reference to a Participant is to a Party to this Agreement, including any entity that has acceded to this Agreement in accordance with clause 4.2;
- b. a reference to this Agreement is a reference to this document, including any schedules, annexures, attachments and documents incorporated by reference, as amended from time to time;
- c. a reference to time is to the local time Canberra, Australia;
- d. headings and bold type are for convenience only and do not affect the interpretation of this Agreement;
- e. words importing the singular include the plural and vice versa;
- f. words importing a gender include any gender;
- g. other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- h. an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- i. a reference to any thing (including, but not limited to, any right) includes a part of that thing (but nothing in this paragraph implies that performance of part of an obligation constitutes performance of the obligation);
- j. a reference to a part, clause, item, paragraph, schedule or annexure is a reference to a part, clause, item or paragraph of, or a schedule or annexure to, this Agreement;
- k. a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- l. a reference to a Participant includes that Participant's successors and permitted assigns;
- m. no provision of this Agreement will be construed adversely to a Participant solely on the ground that the Participant was responsible for the preparation of this Agreement or that provision;

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- n. a reference to a body, other than a Participant to this Agreement (including, without limitation, an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or function; and
- o. a reference to a statute, ordinance, code or other law or rule includes regulations and other instruments under it and consolidation, amendments, re-enactments or replacement.

1.3. Agreement takes effect as a deed

- 1.3.1. This Agreement is executed by the Participants, and takes effect, as a deed on the date specified at the front of this Agreement.
- 1.3.2. References in this Agreement to “this Agreement” are to be read as references to “this deed”.

1.4. Machinery of government changes

- 1.4.1. To the extent a Participant or another entity referred to in this Agreement is an Agency, a reference to such Participant or entity also includes, as relevant, any Agency that is (or Agencies that are), as a result of a machinery of government change, performing any relevant function or responsibility that is or was formerly performed at any relevant time by the relevant Participant or entity referred to in this Agreement.

1.5. Several liability

- 1.5.1. Liability of each Participant under this Agreement is several, not joint or joint and several.

2. Purpose of this Agreement

2.1. Intergovernmental Agreement

- 2.1.1. Each Participant acknowledges that the purpose of this Agreement is to implement and provide for the operation of the NDLFRS to further the objectives of the Intergovernmental Agreement to share and match identity information, with robust privacy safeguards, to prevent identity crime and promote law enforcement, national security, road safety, community safety and service delivery outcomes.
- 2.1.2. This Agreement is to be construed in a manner that is consistent with the Intergovernmental Agreement.

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2.1.3. Where there is an inconsistency between this Agreement and the Intergovernmental Agreement, the Intergovernmental Agreement prevails to the extent of that inconsistency.

2.2. Implementation of the NDLFRS

2.2.1. This Agreement:

- a. implements and sets out the operation of the NDLFRS; and
- b. enables the NDLFRS Products to be provided by the Data Hosting Agency to each NDLFRS Contributor in order to:
 - (i) enable the NDLFRS Contributor to use the NDLFRS Products in relation to its own Replicated Data; and
 - (ii) support the NDLFRS Contributor to provide Face Matching Services to other Agencies, in accordance with the FMS Participation Agreement.

3. Relationship with the FMS Participation Agreement

3.1.1. Each Participant acknowledges that:

- a. Replicated Data may be used in connection with Face Matching Services in accordance with the FMS Participation Agreement;
- b. Facial Images contained in Replicated Data will be used to generate Biometric Templates which may be used in connection with Face Matching Services in accordance with the FMS Participation Agreement; and
- c. any Face Matching Services will be provided pursuant to the FMS Participation Agreement.

3.1.2. Unless otherwise agreed with the Data Hosting Agency in writing, this Agreement will not take effect with respect to a Participant, and a Participant will have no rights or liabilities under this Agreement, unless that Participant has first become party to the FMS Participation Agreement.

3.1.3. Notwithstanding any other provision of this Agreement, unless otherwise agreed with the Data Hosting Agency in writing, an NDLFRS Contributor is not entitled to access the NDLFRS unless it is party to a Participant Access Arrangement under the FMS Participation Agreement.

3.1.4. Each Participant to this Agreement which is a party to the FMS Participation Agreement must comply with its obligations under the FMS Participation Agreement.

4. Participants

4.1. Roles of the Participants

4.1.1. The Commonwealth enters into this Agreement in its capacity as the Data Hosting Agency.

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4.1.2. Each NDLFRS Contributor enters into this Agreement in its capacity as a utiliser of the NDLFRS Products and as a supplier of Replicated Data to be used to support the provision of the Face Matching Services in accordance with the FMS Participation Agreement.

4.1.3. Regardless of the capacity in which a Participant has entered into this Agreement, nothing in this Agreement limits a Participant's obligation to comply with any provisions of this Agreement expressed to apply to the Participants generally.

4.2. Accession of new Participants

4.2.1. An entity that is not a Participant as at the date of this Agreement, will become a Participant to this Agreement when each of the following conditions is satisfied (to the extent not already satisfied):

- a. unless otherwise agreed with the Data Hosting Agency in writing, it is party to the FMS Participation Agreement;
- b. it has executed a Deed of Accession; and
- c. the Data Hosting Agency has notified the entity that it has accepted the executed Deed of Accession and that the entity has become a Participant to this Agreement.

4.3. Binding effect on new and existing Participants

4.3.1. Each Participant acknowledges that an entity that has become a Participant to this Agreement in accordance with clause 4.2 will be bound by, and subject to the rights and obligations conferred by, this Agreement as a Participant from the date all requirements of clause 4.2 have been satisfied.

4.4. General obligations

4.4.1. Each Participant will, at all times:

- a. fully cooperate with each other to ensure timely progress and fulfilment of this Agreement;
- b. act reasonably and in good faith with respect to matters that relate to this Agreement;
- c. perform its obligations and responsibilities by the dates specified in this Agreement;
- d. work with each other Participant in a collaborative manner; and
- e. comply with all laws applicable to it.

5. Agreement framework

5.1. Compliance with this Agreement

5.1.1. Each Participant must comply with this Agreement as may be amended from time to time in accordance with clause 5.2.

5.2. Modifications to this Agreement

5.2.1. The Participants acknowledge and agree that:

- a. the provisions of this Agreement are designed to be consistent with policies determined by, and any requirements of, the Governing Body;
- b. this Agreement may need to be amended to reflect any changes to policies determined by, and any requirements of, the Governing Body; and
- c. this Agreement will be reviewed by the Governing Body:
 - (i) within a reasonable time of passing of any Commonwealth legislation which enables or is otherwise relevant to the Commonwealth's participation in the NDLFRS or any matter under this Agreement; or
 - (ii) if no such legislation referred to in clause 5.2.1c(i) has passed, within twelve months of the date of this Agreement taking effect.

5.2.2. The Data Hosting Agency must not notify an amendment to this Agreement pursuant to clause 5.2.3 unless the amendment has the unanimous support of the members of the Governing Body.

5.2.3. Where an amendment proposed by the Data Hosting Agency receives the unanimous support of the Governing Body in accordance with clause 5.2.2 the Data Hosting Agency must notify each other Participant giving details of the proposed amendment.

5.2.4. A proposed amendment notified by the Data Hosting Agency will take effect on the day that is three months after the amendment has been notified to all Participants (other than the Data Hosting Agency) in accordance with clause 5.2.3, unless the Data Hosting Agency subsequently notifies each Participant before expiry of the three month period that, with the unanimous support of the members of the Governing Body, the amendments will not take effect.

5.2.5. Each Participant must either:

- a. comply with any amendments that take effect in accordance with clause 5.2.4; or
- b. withdraw from this Agreement in accordance with clause 9.5.

5.2.6. A Participant that does not withdraw from this Agreement in accordance with clause 9.5 will be deemed to have accepted any amendments that take effect in accordance with clause 5.2.4.

5.2.7. Each Participant will at all times act reasonably and in good faith in relation to any negotiations concerning amendments proposed to this Agreement.

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6. Document Repository

- 6.1.1. Each Participant acknowledges that the Document Repository will be provided and maintained in accordance with the provisions of the FMS Participation Agreement.

7. Costs and charges

7.1. Fixed charges for use of the NDLFRS

- 7.1.1. The Participants acknowledge and agree that:
- a. the estimated cost of establishing and operating the central technical infrastructure of the NDLFRS is \$21 million over four years from 2016-17 to 2019-20, including \$14 million in initial establishment costs;
 - b. the Commonwealth will meet the establishment costs for central technical infrastructure of the NDLFRS;
 - c. annual operating and maintenance costs, initially of approximately \$2.3 million per year, will be shared by the Participants in accordance with the apportionment of costs provided for in the Intergovernmental Agreement, including the Schedules to the Intergovernmental Agreement;
 - d. payment of the amounts referred to in clause 7.1.2 will entitle an NDLFRS Contributor to the Baseline NDLFRS Products (with the Data Hosting Agency contributing the balance of the annual operating and maintenance costs referred to in clause 7.1.1.c);
 - e. each NDLFRS Contributor's use of any Additional NDLFRS Products will be subject to any additional fees and charges agreed in its NDLFRS Hosting Arrangement; and
 - f. fees and charges for use of the NDLFRS Products (including the Baseline NDLFRS Products) are in addition to any amounts payable under the FMS Participation Agreement.
- 7.1.2. Subject to clause 7.2, each NDLFRS Contributor listed in the table in Part 1 of Schedule 2 agrees to pay to the Commonwealth the amount set out alongside the NDLFRS Contributor's name in that table, in return for the Baseline NDLFRS Products set alongside its name in the table in Part 2 of the table in Schedule 2.
- 7.1.3. If an NDLFRS Contributor withdraws from this Agreement, or a State or Territory NDLFRS Contributor that the Intergovernmental Agreement contemplated would become Party to this Agreement fails to do so or delays in becoming a Party, the amounts payable by each NDLFRS Contributor under Schedule 2 will not be increased as a result.

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7.2. Annual fee review

- 7.2.1. The amounts set out in Schedule 2, and any amounts chargeable for Additional NDLFRS Products, will be reassessed annually, and may be amended, by the Data Hosting Agency.
- 7.2.2. The Data Hosting Agency must consult with the NDLFRS Contributors before implementing any amendment to amounts payable under this Agreement in accordance with clause 7.2.1.
- 7.2.3. Unless otherwise agreed between the Data Hosting Agency and an NDLFRS Contributor, increases in amounts payable for the NDLFRS Products, including any Additional NDLFRS Products, will be limited to the increase in the Australian Consumer Price Index in the preceding twelve months as published by the Australian Bureau of Statistics.
- 7.2.4. If the Data Hosting Agency amends the amount payable by an NDLFRS Contributor in Schedule 2 or for Additional NDLFRS Products, the NDLFRS Contributor must pay such amount in accordance with this clause 7 or withdraw from this Agreement in accordance with clause 9.
- 7.2.5. Where fees are amended in accordance with this clause 7.2, those amended fees are deemed to replace the fees agreed in each NDLFRS Hosting Arrangement to the extent of any inconsistency.
- 7.2.6. Each Participant acknowledges that the Governing Body will conduct a review of financial arrangements in accordance with the provisions of clause 10.12 of the Intergovernmental Agreement. Each Participant acknowledges that the fee arrangements in this Agreement may be amended to reflect the outcome of that review.

7.3. Invoicing and payment

- 7.3.1. Invoices for any fees payable by a Participant must be issued in accordance with:
- a. the relevant NDLFRS Hosting Arrangement;
 - b. as otherwise agreed between the relevant Participant and the Data Hosting Agency in writing; or
 - c. in the absence of invoicing details being included in the NDLFRS Hosting Arrangement or being otherwise agreed, in accordance with any requirements determined by the Data Hosting Agency.
- 7.3.2. Each Participant must pay the amounts required of them in accordance with the payment terms set out in any invoice issued to them in accordance with this Agreement.
- 7.3.3. Unless otherwise agreed with between the relevant Participants, all invoices must be paid within thirty calendar days. If a Participant disputes some or all of an invoice, the Participant must still pay the amount of the invoice not in dispute.

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7.4. Responsibility for own costs

7.4.1. Unless otherwise agreed with the Data Hosting Agency, each Participant will be responsible for any other costs associated with its participation in the NDLFRS, including without limitation:

- a. the costs of their internal systems;
- b. upgrading their systems to enable connection with the NDLFRS to provide and receive information through the Face Matching Services; and
- c. upgrading processes and procedures for maintaining high quality data, including the capture of facial images suitable for facial biometric matching.

8. Liability of the Participants

8.1. Representations and warranties

8.1.1. Each Participant acknowledges and agrees that to the extent permitted by law, each Participant makes no representations or warranties to another Participant except as are expressly set out in this Agreement.

8.2. Acknowledgements

8.2.1. Except as expressly provided for in this Agreement, each Participant acknowledges and agrees that:

- a. all NDLFRS Products; and
- b. all such data, information and/or systems referred to in clause **Error! Reference source not found.**,

are provided and used on an 'as is' and 'as available' basis only.

8.2.2. Each Participant acknowledges and agrees that:

- a. in entering into this Agreement, it has:
 - (i) not relied on any representation or warranty made by the Data Hosting Agency other than as set out in this Agreement;
- b. its use of any information, results or responses obtained through NDLFRS is at its sole and exclusive risk and that it is solely responsible for any decision or disclosure it makes in relation to, or in any way wholly or partially based on, such information, results or responses; and
- c. it must ensure that its functions, accountabilities, operations and process can be satisfactorily conducted and discharged at all times regardless of the availability of any NDLFRS Product or any information or data expected to be provided via it.

8.3. Exclusion of certain losses

8.3.1. To the extent permitted by law, no Participant shall have any liability to any other Participant for or in relation to:

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- a. loss of profit or revenue;
- b. loss of anticipated savings of any kind;
- c. loss of bargain;
- d. pure economic loss;
- e. loss or corruption of data;
- f. loss of opportunity;
- g. loss of production;
- h. loss of goodwill; or
- i. overhead or administrative expenses.

8.4. Limitation of liability

8.4.1. Subject to clause 8.4.2, the liability of a Participant under or in connection with this Agreement, including for breach of contract, or in tort (including negligence), or for any other common law or statutory cause of action arising out of the operation of this Agreement, is limited to \$100,000 in aggregate.

8.4.2. The limitation in clause 8.4.1 does not apply in relation to any liability arising under or in connection with this Agreement for:

- a. reckless or dishonest acts or conduct or acts or conduct done in bad faith;
- b. fees or charges payable under this Agreement;
- c. personal injury, including sickness or death;
- d. loss of, or damage to, tangible property;
- e. infringement of Intellectual Property Rights;
- f. a breach of any obligation relating to confidentiality, security, protection of Identity Information, Personal Information or privacy; or
- g. fraudulent, unlawful or illegal acts or conduct.

8.5. No liability when acting at direction of Governing Body or Participant

8.5.1. Notwithstanding any other provision of this Agreement, no Participant:

- a. will have any liability under or in connection with this Agreement, including for breach of contract, or in tort (including negligence), or for any other common law or statutory cause of action, where the Participant is performing an obligation under this Agreement at the direction or instruction, or pursuant to a requirement, of the Governing Body or another Participant; and
- b. is obliged to act in accordance with the directions or instructions, or pursuant to a requirement, of the Governing Body or another Participant (even where a provision of this Agreement requires the Participant to do so)

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if the Participant, acting in good faith, reasonably considers that such direction, instruction or requirement is inconsistent with this Agreement or the Participant's obligations at law (including if applicable under the PGPA Act).

8.6. Cooperation

- 8.6.1. The NDLFRS and the NDLFRS Products provided through it are the result of co-operative endeavour between many entities, including the Data Hosting Agency and NDLFRS Contributors. Accordingly, each Participant acknowledges that its access to, and use of, the NDLFRS is provided on an as-is basis.
- 8.6.2. The NDLFRS relies on the cooperation and best efforts of all Participants. Each Participant must utilise its best efforts towards the co-operative endeavour.
- 8.6.3. Each Participant must, acting in good faith, use their best endeavours to assist each other Participant to the extent required for the other Participant(s) to comply with their compliance and reporting obligations under this Agreement or the FMS Participation Agreement.

9. Term and termination of this Agreement

9.1. Initial term

- 9.1.1. This Agreement commences on the Commencement Date and terminates on the date that is five years after the Commencement Date (**Initial Term**) unless terminated earlier in accordance with this Agreement.

9.2. Subsequent terms

- 9.2.1. The Data Hosting Agency may, following consultation with the NDLFRS Contributors, extend the Initial Term for up to two additional periods by giving at least six months' notice in writing to each other Participant.
- 9.2.2. Each period of extension may be between six months and two years, as determined by the Data Hosting Agency.

9.3. Termination for cause

- 9.3.1. The Data Hosting Agency must terminate this Agreement in respect of an NDLFRS Contributor by giving written notice to that NDLFRS Contributor:
 - a. where it has been directed to do so by the Governing Body; and
 - b. if the NDLFRS Contributor has had, or is eligible to have, its access to the NDLFRS Products, or its NDLFRS Hosting Arrangement, suspended or terminated under clause 11.
- 9.3.2. Any termination under clause 9.3.1 will have effect six months after the date the notice is given, or from such earlier date determined by the Governing Body.

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9.4. Termination by Data Hosting Agency

9.4.1. The Data Hosting Agency may terminate this Agreement at any time by giving not less than 12 months' written notice to each other Participant. The notice given the Data Hosting Agency must set out the Data Hosting Agency's reasons for doing so.

9.5. Withdrawal from this Agreement

9.5.1. Subject to clause 9.5.3, an NDLFRS Contributor may by notice in writing to the Data Hosting Agency withdraw from this Agreement:

- a. if clause 5.2.5.b applies, with effect from the date the amendments proposed under clause 5.2.4 are to take effect, provided the Participant gives such notice within six weeks of the date of the notice of the amendments proposed under clause 5.2.4; or
- b. for any reason, with effect from the date that is 12 months after it gives notice in writing to the Data Hosting Agency that it wishes to withdraw from this Agreement.

9.5.2. Where a Participant withdraws from this Agreement pursuant to clause 9.5.1, this Agreement and the Participant's rights and obligations will terminate with effect from the date specified in accordance with clause 9.5.1.

9.5.3. A Participant may not withdraw from this Agreement unless it has no outstanding financial obligations to another Participant under this Agreement (unless otherwise agreed by the affected Participants in writing).

9.6. Concurrency with third party licensing arrangements

9.6.1. Each Participant acknowledges that this Agreement is intended to run concurrently with the term of the Data Hosting Agency's third party licensing arrangements for the Licensed Software.

9.7. FMS Participation Agreement termination

9.7.1. This Agreement will terminate automatically on termination of the FMS Participation Agreement for any reason, unless otherwise agreed by the Data Hosting Agency and one or more other Participants in writing (in respect of those Participants).

9.7.2. If an NDLFRS Contributor is party to the FMS Participation Agreement, this Agreement will terminate immediately with respect to that NDLFRS Contributor if, for any reason, the NDLFRS Contributor ceases to be a Party to the FMS Participation Agreement, unless otherwise agreed in advance with the Data Hosting Agency.

9.7.3. Clauses 9.7.1 and 9.7.2 will take effect automatically without further action being required of any Participant and without any notice being given to the relevant NDLFRS Contributor.

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- 9.7.4. If this Agreement terminates with respect to an NDLFRS Contributor pursuant to clause 9.7.1 or clause 9.7.2, this Agreement will continue in force with respect to the other Participants.

10. Effect of withdrawal or termination with respect to a Participant

10.1. Agreement to continue

- 10.1.1. If this Agreement is terminated in respect of an NDLFRS Contributor pursuant to clause 9.3 or clause 9.7, or a Participant withdraws from this Agreement pursuant to clause 9.5, this Agreement continues in force for each other Participant whose participation has not been terminated or that has not withdrawn.

10.2. Effect on hosting arrangements

- 10.2.1. Upon an NDLFRS Contributor ceasing to be a Participant to this Agreement for any reason or ceasing to be a Party to an NDLFRS Hosting Arrangement, and subject to any transitional arrangements agreed between an NDLFRS Contributor and the Data Hosting Agency:
- a. the Data Hosting Agency must, as soon as reasonably practicable, delete the Replicated Data related to that NDLFRS Contributor; and
 - b. the Data Hosting Agency must, as soon as reasonably practicable, delete all of the Biometric Templates generated from the NDLFRS Contributor's Replicated Data (unless doing so would be contrary to any legislative or regulatory requirement).

10.3. Certification of destruction of information

- 10.3.1. An NDLFRS Contributor may request that the Data Hosting Agency provide written certification of the deletion of that NDLFRS Contributor's Replicated Data pursuant to clause 10.2.1, which the Data Hosting Agency must provide within a reasonable period of time.

10.4. No claims for compensation

- 10.4.1. A Participant that has withdrawn from this Agreement has no right to claim compensation or payment in respect of any assets, including Intellectual Property Rights or money, it has contributed in connection with this Agreement or the NDLFRS.

10.5. Adjustment of fees following termination or withdrawal

- 10.5.1. Where an NDLFRS Contributor ceases to be a Participant to this Agreement, whether due to termination or withdrawal, the Data Hosting Agency and the relevant NDLFRS Contributor will negotiate to agree payment of a financial settlement between the NDLFRS Contributor and the Data Hosting Agency in respect of fees payable under this Agreement.

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- 10.5.2. The Data Hosting Agency and the relevant NDLFRS Contributor will endeavour to agree the quantum of the financial settlement for fees payable under this Agreement on the basis that no remaining Participant to this Agreement should be subject to additional financial liabilities as a result of the relevant NDLFRS Contributor ceasing to be a Participant to this Agreement.
- 10.5.3. The relevant NDLFRS Contributor or the Data Hosting Agency, as the case may be, must pay any amount agreed under this clause 10.5.
- 10.5.4. The Data Hosting Agency and the relevant NDLFRS Contributor must conduct the negotiations referred to in this clause 10.5 reasonably and in good faith without undue delay.
- 10.5.5. Where the Data Hosting Agency and the relevant NDLFRS Contributor cannot agree to the quantum and payment terms of a financial settlement for fees payable under this Agreement under this clause 10.5, the disagreement will constitute a Dispute and clause 20 will apply.

10.6. Preservation of accrued rights

- 10.6.1. Termination of this Agreement or withdrawal of a Participant from this Agreement shall not prejudice any right or liability that accrued to any Participant prior to the date of such termination or withdrawal (without limitation including liability to pay charges arising prior to or as a result of the termination or withdrawal).

10.7. Survival

- 10.7.1. Unless the contrary intention appears, the expiry or earlier termination of this Agreement with respect to any Participant will not affect the continued operation of any provision relating to:
- a. licensing of Intellectual Property;
 - b. confidentiality;
 - c. security;
 - d. privacy;
 - e. books and records;
 - f. liability; and
 - g. audit and access to information for audit purposes,
- or any other provision which expressly or by implication from its nature is intended to continue.

11. Suspension and termination of NDLFRS Hosting Arrangements

11.1. Suspension of NDLFRS Products

11.1.1. Subject to clause 11.1.2, the Data Hosting Agency may suspend the access of any NDLFRS Contributor or any of its Users, to the NDLFRS Products, or the NDLFRS generally, in the event that any of the following occurs:

- a. the NDLFRS Contributor ceases to be a Party to the FMS Participation Agreement (if applicable);
- b. the NDLFRS Contributor ceases to be a Party to a Participant Access Arrangement granting it access to the Interoperability Hub (if applicable);
- c. the Hub Controller terminates or suspends the NDLFRS Contributor's access to Face Matching Services and/or the Interoperability Hub under the FMS Participation Agreement (if applicable);
- d. the NDLFRS Contributor has failed to comply with one or more of its material obligations under this Agreement or its NDLFRS Hosting Arrangement (including, without limitation, complying with time frames and service levels) on more than one occasion; or
- e. the Data Hosting Agency considers on reasonable grounds that the NDLFRS Contributor's access to the NDLFRS, or the NDLFRS Products provided through it, has the potential to cause an adverse effect on the security, privacy, reputation, stability or integrity of the NDLFRS, NDLFRS Products or the Face Matching Services.

11.1.2. In respect of any suspension under clause 11.1.1, the Data Hosting Agency:

- a. must inform the relevant NDLFRS Contributor of the period for which the NDLFRS Contributor and/or its User(s) will be suspended within five Business Days (subject to clause 11.1.3); and
- b. must refer the suspension to the Governing Body for its consideration within five Business Days.

11.1.3. Upon a suspension under clause 11.1.1 being referred to the Governing Body, the Governing Body may (subject to clause 8.5.1.b):

- a. determine to terminate the suspension, in which case the Data Hosting Agency will reinstate the rights that have been suspended;
- b. nominate a different period of suspension and/or vary the rights that have been suspended, in which case the Data Hosting Agency will enforce the suspension for those rights and for that period; or
- c. uphold the Data Hosting Agency's original decision, in which case the Data Hosting Agency will continue to enforce its original decision.

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- 11.1.4. During the period of any suspension:
- a. the Data Hosting Agency and the relevant NDLFRS Contributor will work cooperatively to cease, remedy or ameliorate any activity or circumstances which lead to the suspension being imposed or continued;
 - b. the relevant NDLFRS Contributor's Replicated Data stored on NDLFRS will not be affected by the suspension; and
 - c. notwithstanding the suspension of some or all of its or its Users' rights pursuant to clause 11.1.1, the relevant NDLFRS Contributor's obligations under this Agreement are not otherwise affected including, without limitation, its obligations regarding its Replicated Data as set out in clause 25.
- 11.1.5. In respect of any period of suspension under clause 11.1.1, the Data Hosting Agency must inform the relevant NDLFRS Contributor upon resolution of the underlying issue(s) that caused the suspension.

11.2. Termination for cause

- 11.2.1. The Data Hosting Agency must (subject to clause 8.5.1.b), where directed to do so by the Governing Body, terminate:
- a. the NDLFRS Hosting Arrangement applying between it and any NDLFRS Contributor; or
 - b. an NDLFRS Contributor's, or any and all of its Users', access to and use of:
 - (i) one or more NDLFRS Products; and/or
 - (ii) the NDLFRS,
- in the event that one or more NDLFRS Access Termination Events occur in relation to the NDLFRS Contributor or its Users. Any such termination will take effect six months from the date such termination is notified to the NDLFRS Contributor, or from such earlier date determined by the Governing Body.
- 11.2.2. Each of the following is an NDLFRS Access Termination Event:
- a. one or more of the NDLFRS Contributor's obligations under this Agreement or an NDLFRS Hosting Arrangement (including, without limitation, failure to comply with time frames and service levels) are not met in any material respect;
 - b. the NDLFRS Contributor has not complied with the necessary service Incident responses;
 - c. the Data Hosting Agency previously suspended the NDLFRS Contributor under clause 11.1; and
 - d. in the Data Hosting Agency's opinion, the NDLFRS Contributor's or any of its Users' use of the NDLFRS or the NDLFRS Products:

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- (i) causes, or may cause, severe and prolonged disruption to other users of the NDLFRS Products, the Face Matching Services, or the Interoperability Hub; or
- (ii) results, or may result, in an unacceptable level of risk to the security, privacy, reputation, stability or integrity of the NDLFRS or the Interoperability Hub.

11.3. Termination of access on determination from Governing Body

- 11.3.1. The Data Hosting Agency must (subject to clause 8.5.1.b) otherwise terminate an NDLFRS Contributor's or any of its Users' access to the NDLFRS or any NDLFRS Products where directed to do so by the Governing Body.
- 11.3.2. Any termination under clause 11.3.1 will take effect six months from the date such termination is notified to the relevant NDLFRS Contributor, or from such other date determined by the Governing Body.

11.4. Opportunity for the NDLFRS Contributor to respond

- 11.4.1. Where practicable, before suspension under clause 11.1 or termination under clauses 11.2 or 11.3, the Data Hosting Agency will:
 - a. provide to the NDLFRS Contributor no less than seven calendar days' notice of the proposed suspension or termination and the reasons for the proposed suspension or termination; and
 - b. offer the NDLFRS Contributor the opportunity to respond with a statement that contains evidence of how the NDLFRS Contributor will cease, remedy or ameliorate any activity or circumstances which enabled the suspension or termination.
- 11.4.2. Where the Data Hosting Agency provides a notice pursuant to clause 11.4.1.a and the offer pursuant to clause 11.4.1.b, the NDLFRS Contributor must ensure any statement it wishes to make is sent to the Data Hosting Agency as soon as practicable and in any event within seven calendar days.
- 11.4.3. If the statement from the NDLFRS Contributor given in accordance with clause 11.4.2 is not received by the Data Hosting Agency within seven calendar days of the date of the notice given pursuant to clause 11.4.1, or the Data Hosting Agency is not satisfied with the response received from the NDLFRS Contributor, the Data Hosting Agency is entitled to proceed with suspension under clause 11.1.1 or termination under clauses 11.2 or 11.3.

11.5. Termination without cause

An NDLFRS Contributor that is Party to an NDLFRS Hosting Arrangement may terminate its NDLFRS Hosting Arrangement without cause and without liability to the other Participants by giving not less than six months' prior written notice to the Data Hosting Agency, provided that to the extent required it also, if not otherwise addressed under the FMS Participation Agreement, terminates (or amends, where appropriate) each Participant Access Arrangement to which it is

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party and under which it offers Data Sources reliant on the NDLFRS to reflect that such Data Sources will no longer be supplied.

11.6. **Preservation of accrued rights**

Termination of an NDLFRS Hosting Arrangement shall not prejudice any right or liability that accrued to the relevant Participants prior to the date of such termination (without limitation including liability to pay charges arising prior to or as a result of the termination of NDLFRS Hosting Arrangement).

12. **Intellectual property**

12.1. **Definitions**

12.1.1. In this clause 12:

a. **Commonwealth Material** means:

- (i) all material in which the Commonwealth owns the Intellectual Property Rights and which it provides or otherwise makes available in connection with the NDLFRS;
- (ii) all information (including technical information) and material generated by the NDLFRS (including Biometric Templates and NDLFRS Audit Data) or by the Data Hosting Agency through its use of the NDLFRS;
- (iii) all reports and other material generated by the Data Hosting Agency in connection with the NDLFRS or this Agreement; and
- (iv) any derivations or modifications of such material; and

b. **NDLFRS Contributor Material** means, in respect of an NDLFRS Contributor:

- (i) all material in which the NDLFRS Contributor owns the Intellectual Property Rights and which it provides or otherwise makes available in connection with the NDLFRS;
- (ii) all material generated by the NDLFRS Contributor through its use of NDLFRS, including any Intellectual Property Rights generated in connection with the NDLFRS Contributor embedding NDLFRS and procedures within its own business practices; and
- (iii) any derivations or modifications of such material.

12.2. **Pre-existing material**

12.2.1. Nothing in this Agreement affects or transfers the ownership of Intellectual Property Rights held by any Participant in material existing as at the date of this Agreement unless expressly provided otherwise.

12.2.2. Nothing in this clause 12 affects ownership of Intellectual Property Rights in any of the Licensed Software or any other third party material.

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12.3. Ownership of Intellectual Property Rights

12.3.1. As between the Participants:

- a. the Data Hosting Agency will own all Intellectual Property Rights in all Commonwealth Material; and
- b. each NDLFRS Contributor will own all Intellectual Property rights in its own NDLFRS Contributor Material.

12.4. Licence of Intellectual Property Rights

12.4.1. Each Participant grants to the other Participants a licence to use any of its Intellectual Property Rights contained in material provided, generated or otherwise made available by the Participant in connection with the NDLFRS to the extent required for the other Participants to exercise their rights and obligations under this Agreement.

12.4.2. Without limiting clause 12.4.1, each NDLFRS Contributor grants to the Data Hosting Agency a licence to use its NDLFRS Contributor Material for the purposes of:

- a. the NDLFRS; and
- b. the Data Hosting Agency undertaking its functions.

12.5. Use of third party software

12.5.1. Each Participant acknowledges that the NDLFRS and NDLFRS Products involve the use of Licensed Software provided by third parties.

12.5.2. The Data Hosting Agency will ensure that each Participant is advised of any terms of Licensed Software that the Participant must comply with, including advising proposed and actual changes of such terms as soon as practical after the Data Hosting Agency becomes aware of them.

12.5.3. Each Participant, including each NDLFRS Contributor:

- a. must either:
 - (i) comply with the third party licence terms upon which such Licensed Software is provided advised to the Participant pursuant to clause 12.5.2 (or which are otherwise specifically known by the Participant), or
 - (ii) refrain from using any NDLFRS Products to the extent that such use would not be in compliance with advised third party licence terms; and
- b. is responsible for any use of any NDLFRS Products by it or its Users that contravenes the Intellectual Property Rights of any third party that it is, or reasonably should be, aware of.

12.5.4. The Participants acknowledge and agree that they must use the NDLFRS facial recognition engine software and NDLFRS facial recognition engine software documentation solely for the purpose of the NDLFRS.

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- 12.5.5. The Data Hosting Agency advises that as at the date of this Agreement it is not aware of any other relevant third party licence terms in respect of Licensed Software that Participants must comply with.
- 12.5.6. The Data Hosting Agency:
- a. will, upon request by an NDLFRS Contributor, make available to the NDLFRS Contributor a copy of the third party licence terms relating to the facial recognition software used in the NDLFRS; and
 - b. gives no representations or warranties in relation to the Licensed Software.
- 12.5.7. The Data Hosting Agency may suspend an NDLFRS Contributor's access to the Licensed Software (and therefore, the NDLFRS) at any time if the Data Hosting Agency becomes aware that the NDLFRS Contributor is not using the Licensed Software consistent with the terms upon which it was provided.
- 12.6. Restrictions on use of third party software**
- 12.6.1. Each NDLFRS Contributor agrees, except to the extent otherwise permitted under this Agreement or as may be otherwise agreed with the Data Hosting Agency in writing:
- a. not to decompile, disassemble, reverse engineer or otherwise attempt to derive Licensed Software source code from object code;
 - b. not to sell, rent, lease, license, sublicense, display, time share or otherwise transfer Licensed Software to, or permit the use of the Licensed Software by, any third party;
 - c. not to remove any copyright or proprietary notice from Licensed Software;
 - d. to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of Licensed Software; and
 - e. to require its subcontractors and personnel to whom Licensed Software is made available to comply with the requirements of this clause.

13. Privacy and freedom of information

13.1. Treatment of Replicated Data and Biometric Templates

- 13.1.1. Each Participant acknowledges and agrees that:
- a. all Replicated Data;
 - b. all Biometric Templates; and
 - c. any other Identity Information hosted in the NDLFRS,
- will be hosted by the Data Hosting Agency subject to the Privacy Act, the *Freedom of Information Act 1982* (Cth) and other applicable Commonwealth laws.

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13.1.2. The Data Hosting Agency will not be obliged to comply with any State or Territory laws or policies as they relate to Identity Information hosted in the NDLFRS, except to the extent otherwise agreed with an NDLFRS Contributor in an NDLFRS Hosting Arrangement.

13.2. Compliance with privacy legislation

13.2.1. In respect of this Agreement, its use of the NDLFRS and any NDLFRS Products:

a. each Participant must; and

b. each Participant must procure that its Users,

comply with the relevant privacy legislation that applies to it by law or under this Agreement as follows:

c. in the case of an Australian State or Territory or an Agency of such State or Territory, Australian State or Territory privacy legislation that applies to them as an Australian State or Territory or an Agency of such State or Territory; or

d. in the case of an Australian State or Territory or an Agency of such State or Territory, where there is no such State or Territory privacy legislation, the Australian Privacy Principles in Schedule 1 of the Privacy Act as if such Participant or User were an APP entity that is an agency within the meaning of the Privacy Act. To the extent that the Australian Privacy Principles refer to the other Commonwealth legislation, any Australian State or Territory legislation or policies that operate to achieve substantively the same effect will apply.

e. in the case of a Participant that is the Commonwealth of Australia or an Agency or instrumentality of the Commonwealth of Australia, the Privacy Act.

13.2.2. In the case of an Agency of such State or Territory referred to in clause 13.2.1(d), APP 12 is taken not to apply in circumstances where an application for access to personal information has been made to the Agency pursuant to the applicable Australian State or Territory Freedom of Information legislation.

13.2.3. Each Participant:

a. must; and

b. must procure that its Users,

comply with any additional privacy obligations notified to them by the Data Hosting Agency, where required by the Governing Body.

13.3. Information Breaches

13.3.1. Where the Data Hosting Agency or one or more other Participants become aware, through any means, that Identity Information or Personal Information hosted in the NDLFRS or otherwise used or disclosed in connection with the

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NDLFRS is subject to misuse, interference or loss, or to unauthorised access, modification or disclosure (an **Information Breach**), the Data Hosting Agency and/or the other Participant(s) must as soon as reasonably possible, notify:

- a. the Data Hosting Agency (if not the Data Hosting Agency); and
 - b. each other relevant Participant (if any),
- 13.3.2. The notice given under clause 13.3.1 must contain all pertinent details of the Information Breach.
- 13.3.3. Where required by applicable law, a Participant must notify relevant law enforcement Agencies of an Information Breach.
- 13.3.4. The Data Hosting Agency must take such steps as it considers are reasonably required within a reasonable time in order to mitigate the risks associated with the Information Breach, or any potential future Information Breach, and to comply with the Privacy Act and all other applicable laws.
- 13.3.5. Each Participant will cooperate in good faith and provide all assistance and information (including the contact details of affected individuals) required by the Data Hosting Agency under this clause 13.3, including to:
- a. contain and assess the Information Breach;
 - b. evaluate the risks associated with the Information Breach;
 - c. give any notifications (including to any affected individuals) or publish any materials required under applicable laws or which the Data Hosting Agency or applicable regulators considers appropriate to make or publish; and
 - d. implement any steps the Data Hosting Agency considers are reasonably required in order to mitigate the risks associated with the Information Breach or potential future Information Breaches.
- 13.3.6. Each Participant acknowledges that:
- a. it is the responsibility of the relevant NDLFRS Contributors, not the Data Hosting Agency, to notify individuals of Information Breaches that affect them; and
 - b. nothing in this clause 13.3 limits any obligation of an NDLFRS Contributor under any applicable law to notify individuals in its jurisdiction that have been affected by an Information Breach.

13.4. Information Breach response plan

- 13.4.1. The Data Hosting Agency and each other Participant will cooperate with each other in good faith to develop a response plan to address potential Information Breaches as soon as reasonably practicable.

13.5. Disclosure of protected information

- 13.5.1. Each NDLFRS Contributor acknowledges that unless it is necessary to do so for the purposes of giving effect to the *Identity-matching Services Bill 2018* (Cth)

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once enacted (the **IDMS Act**), *Law Enforcement Integrity Commissioner Act 2006* (Cth) or other applicable legislation, or a legislative instrument under that legislation, the Data Hosting Agency is not required to disclose “protected information” (as defined in the IDMS Act), or produce a document containing “protected information”, to:

- a. a court; or
- b. a tribunal, authority or person that has the power to require the answering of questions or the production of documents.

13.6. Correction of and access to Personal Information

13.6.1. Notwithstanding any responsibility at law of the Data Hosting Agency relating to Personal Information, each NDLFRS Contributor acknowledges and agrees:

- a. the Data Hosting Agency does not have access to Personal Information contained in Replicated Data; and
- b. therefore each NDLFRS Contributor must, and will, take responsibility for addressing any requests (for access, modification or otherwise) from an individual made under applicable privacy or freedom of information legislation in respect of any of the individual’s Personal Information held in that NDLFRS Contributor’s Replicated Data in the NDLFRS.

13.6.2. Each NDLFRS Contributor must take reasonable steps to:

- a. correct Personal Information comprised in its Replicated Data to ensure that, having regard to the purpose for which it is held, it is accurate, up-to-date, complete, relevant and not misleading; and
- b. give an individual access to their Personal Information comprised in Replicated Data where required under applicable local privacy or freedom of information legislation or, in the case of an NDLFRS Contributor in a jurisdiction without privacy legislation, the Privacy Act.

13.6.3. Clause 13.6.2 applies where, as appropriate and without limiting that clause:

- a. the individual to whom the Personal Information relates requests access to, or the correction of, the Personal Information whether:
 - (i) the request is made by the individual directly to the NDLFRS Contributor; or
 - (ii) the request is made by the individual to the Data Hosting Agency and the Data Hosting Agency refers the request to the NDLFRS Contributor; and
- b. in the case of clause 13.6.2.a, the NDLFRS Contributor is satisfied that the Personal Information is inaccurate, out-of-date, incomplete, irrelevant or misleading, having regard to a purpose for which it is held.

13.6.4. Where an NDLFRS Contributor becomes aware that Personal Information held by a Participant (other than itself) is inaccurate, out-of-date, incomplete,

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irrelevant or misleading, having regard to a purpose for which it is held, the NDLFRS Contributor must take reasonable steps to notify the relevant Participant and the Data Hosting Agency of the deficiency, to enable the Participant to take reasonable steps to correct that Personal Information.

13.7. Freedom of information

- 13.7.1. In respect of its use of the NDLFRS and any NDLFRS Products, each Participant must comply with any applicable freedom of information legislation in its jurisdiction.
- 13.7.2. In respect of requests for access to Personal Information under applicable freedom of information legislation, each NDLFRS Contributor will, to the extent possible, address any such requests in accordance with clause 13.6.
- 13.7.3. In respect of requests for access to information under applicable freedom of information legislation that is not Personal Information:
- a. an NDLFRS Contributor that receives a request under freedom of information legislation must respond to that request in accordance with the legislation applicable in its jurisdiction;
 - b. each NDLFRS Contributor and the Data Hosting Agency will work together in good faith to identify who is responsible for responding to the request, if not readily apparent; and
 - c. if requested by a Participant, each Participant will provide each other relevant Participant with reasonable assistance and cooperation necessary in respect of any proposed release, or seeking an exemption from release, of information under the applicable freedom of information legislation.

13.8. Complaints handling

- 13.8.1. Each NDLFRS Contributor agrees that the Data Hosting Agency will be the central point of contact for queries or complaints from individuals about the NDLFRS.
- 13.8.2. Each NDLFRS Contributor will, acting promptly, direct queries or complaints from individuals relating to the NDLFRS to the Data Hosting Agency.
- 13.8.3. Each NDLFRS Contributor must ensure that it has sufficient resources, including by providing to individuals a “help desk” function, to govern their handling of complaints and queries from individuals relating to the NDLFRS.
- 13.8.4. The Participants will cooperate in good faith to develop a protocol for addressing queries and complaints from individuals regarding NDLFRS, which the Participants may agree will govern their handling of complaints and queries relating to the NDLFRS from individuals.

14. Compliance Statements

14.1. Data Hosting Agency Compliance Statement

- 14.1.1. The Data Hosting Agency acknowledges the importance of ensuring compliance with requirements to maintain and enhance the integrity of the NDLFRS.
- 14.1.2. The Data Hosting Agency must prepare and submit to the Governing Body, a Compliance Statement that, at a minimum:
- a. is signed off by a senior representative of the Data Hosting Agency;
 - b. documents any breaches by it of this Agreement or any NDLFRS Hosting Arrangement to which it is Party;
 - c. provides evidence that its use, operation, provision and/or maintenance (as applicable) of the NDLFRS and NDLFRS Products being in accordance with:
 - (i) applicable policies determined by the Governing Body; and
 - (ii) the requirements of this Agreement and each NDLFRS Hosting Arrangement;
 - d. provides evidence that its technical, privacy and security safeguards are working effectively to protect the integrity of the NDLFRS and the NDLFRS Products (or any deficiencies in relation to the same); and
 - e. provides to the Governing Body details of recommendations that may be made to the Data Hosting Agency in relation to its use of and/or service provision to the NDLFRS as information becomes available. This information may come from reports to the Data Hosting Agency from areas such as:
 - (i) audits by the Office of the Australian Information Commissioner;
 - (ii) review bodies of states/territories; and
 - (iii) other audits or reviews.
- 14.1.3. The Data Hosting Agency must submit its Compliance Statement by the end of the month of March each calendar year.
- 14.1.4. Each such Compliance Statement must cover:
- a. a twelve month period beginning on 1 February of the previous year and ending one year later; and
 - b. where the Data Hosting Agency has operated NDLFRS for part of a year, the relevant portion of the year.

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14.2. Additional requirements for NDLFRS Contributor Compliance Statements

- 14.2.1. Each NDLFRS Contributor must ensure that, when it prepares a Compliance Statement in accordance with the requirements of the FMS Participation Agreement, the Compliance Statement must also:
- a. document any breaches of its NDLFRS Hosting Arrangement;
 - b. state whether its use of the NDLFRS is in accordance with its NDLFRS Hosting Arrangement;
 - c. state whether its technical, privacy and security safeguards are working effectively to protect the integrity of the NDLFRS; and
 - d. provide to the Governing Body details of recommendations that may be made to the NDLFRS Contributor in relation to its use of the NDLFRS as information becomes available. This information may come from reports to the Participant from areas such as:
 - (i) review bodies of states/territories; and
 - (ii) other audits or reviews.

14.3. Access to information

- 14.3.1. Each Participant must provide:
- a. the Data Hosting Agency with such information relating to its participation in NDLFRS and its use of the NDLFRS Products, as requested by the Data Hosting Agency, to the extent necessary for the Data Hosting Agency to fulfil its functions under this Agreement (including as required for preparation of the Data Hosting Agency's Compliance Statement) or to audit an NDLFRS Contributor's compliance with this Agreement; and
 - b. each other Participant with such information as reasonably requested by that Participant which is necessary for it to complete its Compliance Statement.

15. Transition

- 15.1.1. The Data Hosting Agency may propose that the role of Data Hosting Agency in this Agreement be undertaken by another entity (**Data Hosting Agency Transition**).
- 15.1.2. Where the Data Hosting Agency proposes a Data Hosting Agency Transition, the Data Hosting Agency must consult with each NDLFRS Contributor, providing details of the entity proposed to be the new Data Hosting Agency, along with any other changes required to the NDLFRS or this Agreement.
- 15.1.3. The Data Hosting Agency may implement any Data Hosting Agency Transition as agreed between all of the Participants in writing.

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16. Security Classification

- 16.1.1. Each Participant acknowledges that all Replicated Data will be treated as “Unclassified: Sensitive: Personal”.
- 16.1.2. Each Participant:
- a. must not, and must not permit any of its authorised personnel or subcontractors, to access information subject to a Security Classification unless the individual concerned has a security clearance to the appropriate level (and at least a Baseline Security Clearance) and the need-to-know, and must prevent access by any such individual whose security clearance has lapsed or been revoked or who no longer requires such access;
 - b. must notify the Data Hosting Agency and any other relevant Participants immediately upon becoming aware of any unauthorised access to information subject to a Security Classification and the extent and nature of that access (whether incidental or accidental access, or by any of its personnel or subcontractors), and must comply with any reasonable directions of the Data Hosting Agency in order to rectify a Security Breach; and
 - c. must, and must ensure that its authorised personnel and subcontractors, store and handle security classified information and resources in premises and facilities that meet the minimum standards set by the Commonwealth for storage and handling of such information and/or resources, as applicable, of the relevant Security Classification level.

17. Confidentiality

17.1. Confidential Information not to be disclosed

- 17.1.1. Subject to clause 17.2, each Participant will not disclose any Confidential Information disclosed to them by another Participant, without the prior written authorisation of that Participant.

17.2. Exceptions to obligations

- 17.2.1. The obligations of a Participant under clause 17.1 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by the Participant to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this Agreement;
 - b. is disclosed by the Participant to its internal management Personnel, solely to enable effective management or auditing of contract-related activities;
 - c. is disclosed by the Commonwealth to its responsible Minister;
 - d. is disclosed by the Commonwealth in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

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- e. is disclosed by a Participant which is an Agency or instrumentality of a State or Territory to its responsible Minister;
- f. is disclosed by a Participant which is an Agency or instrumentality of a State or Territory in response to a request by a House or a Committee of the Parliament of that State or Territory;
- g. is authorised or required by law to be disclosed; or
- h. is in the public domain otherwise than due to a breach of this clause 17.

18. Intervening Events

- 18.1.1. If a Participant is unable to perform an obligation under this Agreement because of an Intervening Event, then:
 - a. in the case of a Participant other than the Data Hosting Agency, as soon as reasonably practicable (and in any event no later than five Business Days) after the Intervening Event arises, that Participant must notify the Data Hosting Agency of the extent to which the notifying Participant is unable to perform its obligation;
 - b. in the case of the Data Hosting Agency, as soon as reasonably practicable (and in any event no later than five Business Days) after the Intervening Event arises, Data Hosting Agency must notify each other relevant Participant of the extent to which the notifying Participant is unable to perform its obligation;
 - c. where a Participant complies with clause 18.1.1.a, that Participant's obligation to perform those obligations will be suspended for the duration of the delay arising directly out of the Intervening Event; and
 - d. in all cases, the Participants must use their best endeavours to minimise the impact of any Intervening Event.
- 18.1.2. No Participant is excused from any obligation to pay money because of an Intervening Event, despite any other provision of this Agreement.

19. Notices

- 19.1.1. Any notices, statements, reports or information to be given to a Participant (each, a **Notice**), including any Notice relating to a Dispute, must be given in accordance with this clause.
- 19.1.2. The Participants agree that the notice details for each Participant will be the same as provided for in the FMS Participation Agreement. A Participant may update its notice details in accordance with the provisions of the FMS Participation Agreement.
- 19.1.3. Notices:
 - a. must be in writing and signed by a person duly authorised by the sender;

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- b. must be addressed and delivered to the intended recipient by hand, by prepaid post, by fax or by email at the address, fax number or email address last notified by the intended recipient to the sender. The preferred mode of contact is email; and
- c. are taken to be given and made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
 - (iii) in the case of a fax, on the day and at the time it is sent, provided that the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice; and
 - (iv) in the case of an email, on the day and at the time that the email was sent unless the sender received an automated notice that the email was not delivered or an automated notice that the recipient did not have access to their emails.

19.1.4. Unless otherwise specified, a Participant must give a Notice:

- a. where the notification is to occur after an event, within three Business Days after that event, or
 - b. where the notification is to occur before an event, three Business Days before an event occurring,
- as appropriate.

19.1.5. This clause does not limit the way in which a notice can be deemed to be served under any law.

20. Dispute resolution

20.1. Disputes under the FMS Participation Agreement

20.1.1. Any Dispute that arises in connection with both this Agreement and the FMS Participation Agreement is to be resolved in accordance with the dispute resolution provisions of the FMS Participation Agreement.

20.2. Best efforts to resolve disputes at the Senior Representative level

20.2.1. If any Dispute arises solely in connection with this Agreement, the Participants involved agree to at first instance use their best efforts to resolve the Dispute by discussion and amicable settlement, as facilitated by their respective Senior Representatives.

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20.3. Referral of Disputes to Executive Management

20.3.1. Where a Participant involved in a Dispute is not satisfied that further discussions under clause 20.2 will resolve the Dispute within a time frame acceptable to it, the Participant may, by written notice to the other Participants involved in a the Dispute, refer the Dispute for resolution by the Executive Management of each relevant Participant. The notice given by the Participant must:

- a. nominate a member of its Executive Management with authority to settle the Dispute to represent the Participant in discussions; and
- b. provide a written summary of the facts and issues that the Participant has identified as relevant to the Dispute, and any other information that will assist in discussions to resolve the Dispute.

20.3.2. Within seven calendar days of a Participant receiving a notice pursuant to clause 20.3.1.a, the recipient must, by written notice to the other relevant Participant(s) involved in the Dispute:

- a. nominate a member of its Executive Management with authority to settle the Dispute to represent the Participant in discussions; and
- b. provide a written response to the statement it received under clause 20.3.1.b.

20.4. Reasonable efforts to resolve Disputes at the Executive Management level

20.4.1. Each relevant Participant will ensure that the members of the Executive Management nominated pursuant to clause 20.3 will use all reasonable efforts to engage in and progress discussions and endeavour in good faith to resolve the Dispute.

20.5. Continued compliance

20.5.1. Each Participant must at all times continue to comply with their obligations pursuant to this Agreement despite the existence of any Dispute.

20.6. No limitations

20.6.1. Nothing in this clause 20 prevents:

- a. where that action is otherwise permitted by this Agreement or the FMS Participation Agreement:
 - (i) suspension of access to the Interoperability Hub or any Data Source;
 - (ii) variation to any provision of the FMS Participation Agreement or this Agreement, in accordance with the provisions of the relevant agreement; or
 - (iii) full or partial termination of a Participant Access Arrangement or other arrangement under this Agreement or the FMS Participation Agreement, as applicable; or

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b. a Participant seeking an injunction or other interlocutory relief at any time.

21. General

21.1. No interference with executive duties or powers

21.1.1. Nothing in this Agreement is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this Agreement that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

21.2. Disclosure

21.2.1. Nothing in this Agreement limits any obligations of the Commonwealth or the Data Hosting Agency to publish information relating to usage of the NDLFRS.

21.2.2. Despite any confidentiality or intellectual property right subsisting in this Agreement, a Party may publish all or any part of this Agreement without reference to another party.

21.2.3. Nothing in this clause derogates from a Party's obligations under the *Personal Information Protection Act 2004* (Tas) or the Privacy Act.

21.3. Costs

21.3.1. Unless expressly provided otherwise, each Participant is responsible for bearing its own costs in connection with the preparation and performance of this Agreement.

21.4. Representatives of the same legal entity

21.4.1. To the extent that a Participant is the same legal entity as one or more other Participants, the provisions of this Agreement, as between those Participants representing the same legal entity, take effect as a memorandum of understanding and are not legally binding.

21.4.2. This clause 21.4 does not affect the binding nature of this Agreement as between Participants that are distinct legal entities.

21.5. Governing law

21.5.1. This Agreement is governed by the laws in force in the Australian Capital Territory.

21.5.2. Each Participant irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

21.6. Prohibition and enforceability

21.6.1. Each provision contained in each clause of this Agreement is enforceable independently of each other provision of this Agreement.

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- 21.6.2. The validity and enforceability of any provision of this Agreement will not be affected by the invalidity or unenforceability of any other provision.
- 21.6.3. Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 21.6.4. If any provision of this Agreement is or becomes void or unenforceable, that part is to be severed from this Agreement with the intention that the balance of this Agreement is to remain in full force and effect.

21.7. Waivers

- 21.7.1. Waiver of any right arising from a breach of this Agreement or arising upon default under this Agreement must be in writing and signed by each Participant granting the waiver.
- 21.7.2. A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.
- 21.7.3. A Participant is not entitled to rely on a delay in the exercise or non-exercise of a right arising from a breach of this Agreement or on a default under this Agreement as constituting a waiver of that right.
- 21.7.4. A Participant may not rely on any conduct of any other Participant as a defence to exercise of a right by that other Participant.
- 21.7.5. This clause 21.7 may not itself be waived except by writing.

21.8. Assignment

- 21.8.1. Rights arising out of or under this Agreement are not assignable by a Participant without the prior written consent of each other Participant.

21.9. Further assurances

- 21.9.1. Each Participant must do all things and execute all further documents necessary to give full effect to this Agreement.

21.10. Entire agreement

- 21.10.1. This Agreement, together with the FMS Participation Agreement and the Intergovernmental Agreement, supersede all previous agreements in respect of their subject matter and embody the entire agreement between the Participants.

21.11. Counterparts

- 21.11.1. This Agreement may be executed in any number of counterparts.
- 21.11.2. All counterparts, taken together, constitute one instrument.

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21.12. Variation

- 21.12.1. Except as otherwise expressly provided for in this Agreement (including clause 5.2), a variation of any term of this Agreement must be in writing and signed by the Participants.

PART 2. HOSTING CONDITIONS AND NDLFRS PRODUCTS

22. Provision of NDLFRS

22.1. Provision of NDLFRS and Service Levels

22.1.1. The Data Hosting Agency will at all times during the term of this Agreement provide the NDLFRS and the NDLFRS Products to each NDLFRS Contributor subject to and in accordance with this Agreement, including Schedule 2 and the Service Levels set out therein.

22.1.2. In providing the NDLFRS Products, the Data Hosting Agency:

- a. will provide the NDLFRS Products in a proper, timely and efficient manner in accordance with the requirements of this Agreement;
- b. will act in good faith; and
- c. unless otherwise agreed between the Participants and subject to any fee reviews referred to in clause 7.2, provide any and all equipment, software, network hardware and other resources necessary for the Data Hosting Agency to perform the Services.

22.2. NDLFRS design

22.2.1. Information regarding the proposed design and operation of the NDLFRS as at the date of this Agreement is set out in Schedule 4.

22.3. Monitoring

22.3.1. The Data Hosting Agency must ensure that the performance of the hosting environment is monitored in accordance with the Uptime Percentage Target and the response and resolution times set out in the Service Levels.

22.4. Availability

22.4.1. The Data Hosting Agency will provide the Hosting Services in accordance with the Uptime Percentage Target during the Standard Usage Hours every month.

22.4.2. If the Uptime Percentage Target is not achieved in any one calendar month period, the Data Hosting Agency will inform each NDLFRS Contributor in writing setting out the reasons the Uptime Percentage Target has not been met and a remediation plan to ensure the target is met in future.

22.5. Connecting systems

22.5.1. Each NDLFRS Contributor acknowledges that:

- a. the connection by it to the NDLFRS of any technical or information technology systems; and
- b. the use by it or its Users of any technical or information technology systems in conjunction with the NDLFRS or the NDLFRS Products (including as used to access the NDLFRS or the NDLFRS Products),

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is the sole responsibility and at the risk of the NDLFRS Contributor.

22.6. Incident analysis and response

22.6.1. Without limiting clause 23.6, each Participant must promptly, following a request from another Participant (acting reasonably):

- a. use its best endeavours to investigate any service Incident for which it is responsible; and
- b. report to the Participant that made the request:
 - (i) what it considers to be the cause of the service Incident (including where relevant, its root cause and all underlying causes); and
 - (ii) initial details of the action, if any, the Participant proposes to ensure that:
 - A. the direct and underlying causes of the Service are remedied; and
 - B. similar Incidents do not occur in future and/or minimise their potential adverse consequences for Participants in the future; and
- c. as soon as reasonably possible after delivering the report referred to in clause 22.6.1.b, provide the Participant with a written plan to remedy the service Incident and its direct underlying causes, which includes:
 - (i) full details of the nature of the cause of the service Incident, where known, or if not known the full details of what the Participant considers to be the cause of the service Incident (including where relevant, its root cause and all underlying causes);
 - (ii) the proposed method by which the service Incident will be cured, including alternate or contingent action that can be taken if necessary;
 - (iii) any temporary measures that can be taken to work around or minimise the impact of the service Incident; and
 - (iv) the time that will be required to fully implement all aspects of the such plan.

22.7. NDLFRS Contributor service levels

22.7.1. Each NDLFRS Contributor must use its best endeavours to comply with the service levels set out in Schedule 3.

23. Provision of NDLFRS Products

23.1. NDLFRS Product obligations

23.1.1. The Data Hosting Agency will operate, maintain and control the NDLFRS and the provision of the NDLFRS Products.

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- 23.1.2. The Data Hosting Agency will provide to each NDLFRS Contributor the NDLFRS Products, including the Baseline NDLFRS Products, subject to, and on, the terms and conditions of this Agreement.
- 23.1.3. Details of the NDLFRS Products offered in addition to the Baseline NDLFRS Products and the Hosting Services from time to time are contained in the NDLFRS Products Catalogue and in respect of each NDLFRS Contributor, the relevant NDLFRS Hosting Arrangement.
- 23.1.4. The Data Hosting Agency will maintain the NDLFRS Products Catalogue.
- 23.1.5. Participants acknowledge that use of certain NDLFRS Products may require access to the Interoperability Hub. Accordingly, the provision of such NDLFRS Products is subject to the operation and availability of the Interoperability Hub.

23.2. FRAUS

- 23.2.1. Each NDLFRS Contributor acknowledges that it may only use FRAUS in respect of its own Replicated Data.

23.3. Requirement for NDLFRS Hosting Arrangements

- 23.3.1. Access to and use of the NDLFRS Products by an NDLFRS Contributor is subject to that NDLFRS Contributor entering into an NDLFRS Hosting Arrangement with the Data Hosting Agency.
- 23.3.2. Each NDLFRS Hosting Arrangement will including (without limitation):
 - a. govern the terms upon which the Data Hosting Agency will provide NDLFRS Products to an NDLFRS Contributor, including any specific terms agreed between the Data Hosting Agency and an NDLFRS Contributor;
 - b. set out the additional service levels (if any) the Data Hosting Agency must use its best endeavours to satisfy in its provision of the NDLFRS Products; and
 - c. set out the additional service levels (if any) the NDLFRS Contributor must use its best efforts to satisfy in relation to its enrolment of Replicated Data in the NDLFRS.
- 23.3.3. The Data Hosting Agency and each NDLFRS Contributor must use their best endeavours to comply with the provisions of each NDLFRS Hosting Arrangement.

23.4. Face Matching Services

- 23.4.1. Each Participant acknowledges that any Face Matching Services that require the NDLFRS to operate will be provided and used subject to, and in accordance with the terms of, the FMS Participation Agreement.

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23.5. Condition precedent to use of the NDLFRS Products

23.5.1. The Data Hosting Agency need not provide NDLFRS Products to an NDLFRS Contributor if the NDLFRS Contributor does not have in place a Participant Access Agreement granting it access to the Interoperability Hub.

23.6. Notifications of outages and delays

23.6.1. The Data Hosting Agency must notify each NDLFRS Contributor of:

- a. any events or circumstances that are likely to or do result in:
 - (i) a disruption to the NDLFRS, the NDLFRS Products; or
 - (ii) a delay in the provision of NDLFRS or NDLFRS Products; and
- b. any scheduled maintenance or outages.

23.6.2. Each NDLFRS Contributor must notify the Data Hosting Agency of any events or circumstances that are likely to or do result in a disruption to the NDLFRS or the NDLFRS Products (including the provision of Replicated Data) or any scheduled maintenance or outages affecting their use of the NDLFRS.

23.6.3. A notice given under this clause must include, as appropriate:

- a. details of the potential or actual disruption and/or delay (including its impact on the NDLFRS or the NDLFRS Products);
- b. the cause of the potential or actual disruption and/or delay;
- c. the steps the relevant Participant intends to take to address the potential or actual disruption and/or delay; and
- d. the estimated length of the potential or actual disruption and/or delay.

23.7. Access to information

23.7.1. The Data Hosting Agency will provide each NDLFRS Contributor with information, specifications, documentation and data necessary for the NDLFRS Contributor to utilise the NDLFRS Products.

23.7.2. The Data Hosting Agency will consult with the NDLFRS Contributors in respect of design documents that affect their interface with the NDLFRS.

23.7.3. The documents referred to in clause 23.7.1 (and any updates to them) will be made available on the Document Repository or such other location notified by the Data Hosting Agency.

23.7.4. All information referred to in clause 23.7.1 will be at an 'Unclassified: For Official Use Only' classification or lower.

24. Provision of Hosting Services

24.1. Hosting Services

- 24.1.1. The Data Hosting Agency will provide to each NDLFRS Contributor the Hosting Services.
- 24.1.2. The Data Hosting Agency will ensure that:
- a. each NDLFRS Contributor's Replicated Data is hosted in a separate partition from:
 - (i) the Replicated Data provided by each other NDLFRS Contributor; and
 - (ii) any other data hosted by the Data Hosting Agency in the NDLFRS;
 - b. each NDLFRS Contributor's Replicated Data is hosted in accordance with the *information security management protocol* of the PSPF; and
 - c. each NDLFRS Contributor's Replicated Data may be used only in accordance with this Agreement and:
 - (i) the NDLFRS Products outlined in its NDLFRS Hosting Arrangement
 - (ii) any applicable Participant Access Arrangement; and
 - (iii) the requirements of law or any court order.
- 24.1.3. To the extent that an NDLFRS Contributor is required to maintain "Required Transaction Records" under the FMS Participation Agreement:
- a. but such records are held by the Data Hosting Agency and not the NDLFRS Contributor, the Data Hosting Agency will maintain such records on behalf of the NDLFRS Contributor; and
 - b. each NDLFRS Contributor authorises the Data Hosting Agency to disclose such records where required under the FMS Participation Agreement.

24.2. Backups

- 24.2.1. The Data Hosting Agency must back-up each NDLFRS Contributor's Replicated Data in the manner and at the frequency set out in section 3.12 of the Service Levels. Such backup must not interfere with the continued operation of NDLFRS or use of NDLFRS Products.

25. Provision of Replicated Data

25.1. Replication of Replicated Data to the NDLFRS

- 25.1.1. Each NDLFRS Contributor must replicate its Replicated Data by uploading it to the NDLFRS in accordance with the requirements specified by the Data Hosting Agency under clause 23.7.
- 25.1.2. Each NDLFRS Contributor must ensure that the Replicated Data is updated promptly (and in any event, no less than once per day) to reflect any changes to

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the Identity Information of individuals in its jurisdiction as held in its own records or of which the NDLFRS Contributor otherwise becomes aware.

- 25.1.3. Nothing in this Agreement:
- a. affects any NDLFRS Contributor's obligation with respect to its Replicated Data in its own jurisdiction; or
 - b. requires the Data Hosting Agency to accept any liability in respect of an NDLFRS Contributor's Replicated Data.

25.2. Quality of Replicated Data

- 25.2.1. Each NDLFRS Contributor is responsible for the quality of the Replicated Data it replicates to the NDLFRS.
- 25.2.2. Each NDLFRS Contributor must ensure that its Replicated Data replicated to the NDLFRS is in a format and of a standard that is suitable for enrolment in NDLFRS (as notified to it pursuant to clause 23.7).
- 25.2.3. Each NDLFRS Contributor must ensure that over time, its Replicated Data replicated to the NDLFRS is verified to a minimum of Level Assurance 3 in accordance with the National Identity Proofing Guidelines as agreed by the Governing Body from time to time.
- 25.2.4. Each NDLFRS Contributor acknowledges that compliance with clause 25.2.3 may require the NDLFRS Contributor to conduct identity-proofing in respect of Identity Information pertaining to an individual before that Identity Information is replicated to the NDLFRS as Replicated Data.

25.3. Deficiencies in the quality of Replicated Data

- 25.3.1. Where any Replicated Data does not satisfy the data quality standards prescribed in clause 25.2.2 and is unable to be enrolled in the NDLFRS, the Data Hosting Agency will notify the relevant NDLFRS Contributor, providing all pertinent details as to why the relevant Replicated Data failed to enrol.
- 25.3.2. Where the Data Hosting Agency gives an NDLFRS Contributor a notification under clause 25.3.1, the NDLFRS Contributor must use its best endeavours to replace the relevant Identity Information comprised in the Replicated Data with information of sufficient quality to be enrolled in NDLFRS in accordance with clause 25.2.

25.4. Retention of immediately preceding Facial Image in the NDLFRS

- 25.4.1. Each NDLFRS Contributor acknowledges that where it updates or replaces a Facial Image for an individual that is hosted in the NDLFRS, the immediately preceding Facial Image relating to that individual will be retained in the NDLFRS in the NDLFRS Contributor's partitioned data store to account for changes in the individual's facial features and improve the reliability of the NDLFRS Products. Such immediately preceding images will not be used in Face Matching Services.

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25.5. Ownership and control

- 25.5.1. Each Participant acknowledges that each NDLFRS Contributor at all times retains ownership of the Replicated Data supplied by it.
- 25.5.2. Subject to the provisions of this Agreement, each NDLFRS Contributor at all times and, without limitation, may determine in its absolute discretion:
 - a. the use of its Replicated Data; and
 - b. the extent to which any person other than the NDLFRS Contributor may access its Replicated Data.

25.6. Notification to individuals

- 25.6.1. Each NDLFRS Contributor must take reasonable steps to notify individuals that their Identity Information will be or has been uploaded to the NDLFRS at or after the time it is collected by the NDLFRS Contributor.
- 25.6.2. The Hosting Agency must make publicly available information on its hosting of the NDLFRS that provides details of the information that is held in the NDLFRS, how it stored and used and the associated privacy safeguards. This must include information about how individuals may seek help to resolve any identity problems arising from the use of the Face Matching Services in relation to their Personal Information held within NDLFRS.

26. Biometric Templates

26.1. Creation and update of Biometric Templates

- 26.1.1. The Data Hosting Agency may use the NDLFRS to:
 - a. generate Biometric Templates from any or all Replicated Data; and
 - b. update its Biometric Templates to reflect any changes to Replicated Data from time to time.
- 26.1.2. Each NDLFRS Contributor acknowledges and agrees that:
 - a. Biometric Templates, once generated, will be owned and subject to the control of, the Data Hosting Agency; and
 - b. it does not control, have a right to access, or have any proprietary rights in, any Biometric Templates.

27. NDLFRS Audit Data

27.1. Creation of NDLFRS Audit Data

- 27.1.1. The NDLFRS will generate NDLFRS Audit Data in respect of:
 - a. each NDLFRS Contributor's use of the NDLFRS (including any NDLFRS Products); and

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- b. the use of Face Matching Services on Replicated Data and Biometric Templates.

27.1.2. The Data Hosting Agency may retain NDLFRS Audit Data for its internal purposes, including for performing its functions under this Agreement, compliance, administrative processes, privacy assessments and other purposes permitted by legislation.

27.2. NDLFRS Contributor access to NDLFRS Audit Data

27.2.1. An NDLFRS Contributor may request that the Data Hosting Agency provide it with a copy of NDLFRS Audit Data held by the Data Hosting Agency to the extent it relates solely to:

- a. that NDLFRS Contributor's use of the NDLFRS and the NDLFRS Products; and
- b. the access by other Participants to that NDLFRS Contributor's Replicated Data.

27.2.2. Upon receiving a request in accordance with clause 27.2.1, the Data Hosting Agency must provide such NDLFRS Audit Data as soon as reasonably practicable.

27.3. Disclosure of NDLFRS Audit Data by Data Hosting Agency

27.3.1. Each Participant may disclose NDLFRS Audit Data generated in connection with the NDLFRS or the NDLFRS Products that is within its possession or control:

- a. where permitted under this Agreement;
- b. where permitted or required by law; and/or
- c. where required to satisfy its legal obligations; and
- d. with prior written notice to the other affected Participants (unless prior or written notice is not reasonable practicable in the circumstances, in which case notice should be provided as soon as is reasonably practicable and in the most effective form as is reasonably practicable).

27.4. Retention of NDLFRS Audit Data

27.4.1. Subject to:

- a. any agreement with an NDLFRS Contributor in its NDLFRS Hosting Arrangement to the contrary;
- b. any policy determined by the Governing Body from time to time; and
- c. the Data Hosting Agency's right to retain NDLFRS Audit Data for the purposes specified in clause 27.1.2,

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the Data Hosting Agency will retain NDLFRS Audit Data generated in connection with the NDLFRS Contributor's use of the NDLFRS for the minimum period required by law.

28. Facial Recognition System and NDLFRS changes

28.1. Discretion to select NDLFRS components

28.1.1. The Data Hosting Agency has absolute discretion as to the selection of the components that make up the NDLFRS, including any or all of the Licensed Software.

28.2. Discretion to set Matching Thresholds

28.2.1. Subject to clauses 28.2.2 and 28.2.3, NDLFRS Contributors acknowledge and agree that the Data Hosting Agency will, in accordance with this clause 28.2:

- a. on behalf of each NDLFRS Contributor in its capacity as Data Holding Agency under the FMS Participation Agreement, set or change the generic Matching Thresholds to be used in the FVS and FIS
- b. on behalf of each NDLFRS Contributor in its capacity as Data Holding Agency under the FMS Participation Agreement, set the Matching Threshold to be used in OPOLS
- c. in relation to FRAUS:
 - (i) set the Matching Thresholds to be used in the Image Examiner functionality under FRAUS in relation to an NDLFRS Contributor's own dataset;
 - (ii) Within the constraints of the protections for legally assumed identities set the matching threshold to be used in the system to system connection in relation to an NDLFRS Contributor's own dataset
 - (iii) change the Matching Thresholds to be used in the Image Examiner functionality under FRAUS in relation to an NDLFRS Contributor's own dataset; and
 - (iv) within the constraints of the protections for legally assumed identities, change the Matching Thresholds to be used in respect of access via system to system connection under FRAUS to an NDLFRS Contributor's own Data Sources,

(in this clause, each a **Relevant Threshold**).

28.2.2. Before the the Full Operational Production Date, the Data Hosting Agency has discretion to set each Relevant Threshold.

28.2.3. From the Full Operational Production Date of the NDLFRS, the Relevant Thresholds may be varied as follows in accordance with any guiding principles determined by the Governing Body:

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- a. subject to clause 28.2.4, the Matching Thresholds for each of the FVS and FIS will be set by the Data Hosting Agency:
 - (i) in consultation with the NDLFRS Contributors; and
 - (ii) in accordance with any decisions of the Governing Body; and
- b. the Matching Threshold for OPOLS will be set by the Data Hosting Agency in accordance with:
 - (i) the collective decision of the NDLFRS Contributors who are Roads Agencies from time to time (having regard to advice provided by the Data Hosting Agency); and
 - (ii) any decisions of the Governing Body; and
- c. the Matching Thresholds for each NDLFRS Contributor in respect of its use of the FRAUS will be set or changed by the Data Hosting Agency in accordance with:
 - (i) the directions of that NDLFRS Contributor (having had regard to advice provided by the Data Hosting Agency); and
 - (ii) any decisions of the Governing Body.
- d. Within the constraints of the protections for legally assumed identities an NDLFRS Contributor may change the Matching Thresholds to be used in respect of its access via system to system connection under FRAUS to its own Data Sources.

28.2.4. Notwithstanding clause 28.2.3.a, the Data Hosting Agency:

- a. has discretion to make minor variations to the Matching Thresholds used for the FVS or FIS, provided that such variations do not have a significant material impact to the operation of those services; and
- b. will notify each NDLFRS Contributor if the Data Hosting Agency varies the Matching Thresholds for the FVS or FIS pursuant to clause 28.2.4.a, providing its reasons for doing so.

28.2.5. NDLFRS Contributors may at any time provide feedback to the Data Hosting Agency on any change to a Relevant Threshold with a view to optimising the effectiveness of the NDLFRS.

28.2.6. The Data Hosting Agency has no liability to any NDLFRS Contributor or any other person in respect of the Matching Thresholds set by the Data Hosting Agency in respect of any NDLFRS Product or Face Matching Services.

28.3. Making changes to the NDLFRS

28.3.1. Following the NDLFRS entering into production, the Data Hosting Agency will consult NDLFRS Contributors on any proposed material changes to the NDLFRS (or other relevant systems), including to the Licensed Software, which

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might impact on the security of information held within the NDLFRS or the performance or availability of the NDLFRS.

- 28.3.2. Each NDLFRS Contributor must assess what, if any, changes the NDLFRS Contributor should make to its use of the NDLFRS under its NDLFRS Hosting Arrangement, or Face Matching Services under its Participant Access Arrangement, as a result of such changes.

29. Security requirements and Security Breaches

29.1. NDLFRS Contributor Security Accreditation

29.1.1. Each NDLFRS Contributor must before connecting any of its information technology systems to the NDLFRS:

- a. prepare and implement a Security Risk Management Plan; and
- b. either:
 - (i) prepare and implement a System Security Plan; or
 - (ii) receive a Security Accreditation Certificate and provide a copy of it to the Data Hosting Agency.

29.1.2. The Data Hosting Agency will notify the relevant NDLFRS Contributor within a reasonable time whether, acting reasonably, it has any comments on the documents referred to in clauses 29.1.1.a and 29.1.1.b(ii) (the **Security Documentation**), or whether it accepts them as provided.

29.1.3. If the Data Hosting Agency has comments on the Security Documentation, the Data Hosting Agency will request the relevant NDLFRS Contributor to resubmit the Security Documentation having regard to the comments made by the Data Hosting Agency until such time as it is accepted by the Data Hosting Agency, in which case clause 29.1.4 will apply.

29.1.4. If the Data Hosting Agency accepts the Security Documentation, the Data Hosting Agency will notify the relevant NDLFRS Contributor that it may connect its information technology systems to the NDLFRS.

29.2. Data Hosting Agency Security Accreditation

29.2.1. The Data Hosting Agency must obtain a Security Accreditation Certificate in accordance with any requirements of the PSPF.

29.2.2. The Data Hosting Agency must provide a copy of:

- a. its current Security Accreditation Certificate to an NDLFRS Contributor as soon as reasonably practicable upon receiving a written request from the NDLFRS Contributor to do so; and
- b. any new or updated Security Accreditation Certificate to each Participant within 14 days of it being issued or updated.

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29.3. Security Breaches

29.3.1. Where a Participant becomes aware of or has reasonable grounds to suspect:

- a. a Security Breach; or
- b. a security vulnerability of any kind (whether or not a Security Breach has been involved),

in relation to any of its information technology systems that are connected to the NDLFRS that affects, or could affect, the NDLFRS or any of the NDLFRS Products, the Participant must:

- c. take immediate action to rectify the Security Breach or other security vulnerability, and
- d. if the Participant is the Data Hosting Agency, notify each other directly affected Participant as soon as reasonably possible and in any event within 12 hours; and
- e. if the Participant is an NDLFRS Contributor, notify the Data Hosting Agency and any other directly affected Participant as soon as reasonably possible and in any event within 12 hours.

29.3.2. The Participant must complete a Post-Incident Report within two weeks of the relevant Security Breach.

29.3.3. The Participant must send the Post-Incident Report for a Security Breach and any recommendations to:

- a. each other directly affected Participant (if any);
- b. if the Participant is not the Data Hosting Agency, the Data Hosting Agency; and
- c. the Office of the Australian Information Commissioner, where required under the *Privacy Act* (provided no exceptions apply and the Participant has provided notice under clause 29.3.4.b and no exceptions apply), or any other relevant Privacy Commissioner, ombudsman or government oversight body where required under applicable legislation.

29.3.4. Where a Participant seeks to notify affected individuals or publish a statement for affected individuals about a Security Breach, whether bound to do so under the *Privacy Act* or otherwise:

- a. unless agreed otherwise by relevant Participants, the Participant who is most directly related to the affected individuals will undertake such notification or publication;
- b. a Participant providing a notice or publishing a statement under clause 29.3.3.c will provide reasonable notice of its intention to do so to each other affected Participant (if any); and

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- c. each Participant will provide all reasonable assistance to each other Participant to enable compliance with their respective obligations under applicable legislation in relation to notifying Security Breaches or suspected Security Breaches.

29.4. Remediation

- 29.4.1. Within one week after a Participant conducts a Post-Incident Report under clause 29.3.2, the Participant must submit a remediation plan to:
 - a. if the Participant is the Data Hosting Agency, to each affected NDLFRS Contributor; and
 - b. if the Participant is an NDLFRS Contributor, to the Data Hosting Agency, which includes timeframes for implementing recommendations of the Post-Incident Report.
- 29.4.2. The Participant must use its best endeavours to remedy issues in conformity with the Information Technology Infrastructure Library public framework.
- 29.4.3. The Participant is responsible for all costs associated with carrying out their remediation plan.

29.5. Compliance with security requirements

- 29.5.1. The Data Hosting Agency must comply with, and ensure that its employees, agents and contractors comply with, each NDLFRS Contributor's data security requirements in respect of access to and use of Replicated Data as agreed with the NDLFRS Contributor in its NDLFRS Hosting Arrangement.

30. Risk management and redundancy

30.1. Requirement for alternative processes

- 30.1.1. Notwithstanding:
 - a. that the Data Hosting Agency will provide the NDLFRS in accordance with this Agreement and the Service Levels; and
 - b. its use of the NDLFRS and any Face Matching Services that require the NDLFRS to operate,each NDLFRS Contributor must ensure that it has suitable measures in place to allow it to meet its overall business objectives in the event that the NDLFRS is temporarily unavailable due to factors beyond the NDLFRS Contributor's control.

31. Business continuity and disaster recovery

31.1. Requirement for business continuity plan

31.1.1. The Data Hosting Agency must develop and maintain a business continuity plan for NDLFRS (in this clause, the **Business Continuity Plan**) to minimise the impact of a failure, disruption or unavailability of NDLFRS.

31.2. Requirement for disaster recovery plan

31.2.1. The Data Hosting Agency must within a reasonable period of time provide to the NDLFRS Contributors a draft disaster recovery plan (in this clause, the **Disaster Recovery Plan**) that specifies:

- a. when the plan is to be activated;
- b. the steps to be taken to recover NDLFRS;
- c. the Data Hosting Agency and NDLFRS Contributor personnel and any other persons to be involved;
- d. the communications to be implemented during a disaster;
- e. the training and testing required for the plan; and
- f. procedures to reduce the impact of a disaster on NDLFRS.

31.3. Updates and implementation

31.3.1. The Data Hosting Agency must:

- a. review and update the Business Continuity Plan and the Disaster Recovery Plan on no less than an annual basis, and as otherwise reasonably required from time to time to address specific issues; and
- b. implement the activities set out in the Business Continuity Plan and/or the Disaster Recovery Plan at the times and in accordance with the procedures set out in those plans (as applicable).

31.4. Testing

31.4.1. The Data Hosting Agency must conduct tests of the Business Continuity Plan and the Disaster Recovery Plan on a periodic basis to assess its suitability for enabling the complete recovery of the provision and supply of the NDLFRS after a disaster or other business continuity event.

31.4.2. If, as a result of testing, the Data Hosting Agency identifies problems with the Business Continuity Plan and/or the Disaster Recovery Plan, the Data Hosting Agency must:

- a. amend the Business Continuity Plan and/or the Disaster Recovery Plan as necessary to rectify the issues identified during the testing; and
- b. where relevant to an NDLFRS Contributor, notify the NDLFRS Contributor of pertinent issues identified by the testing.

**AGREEMENT RELATING TO THE HOSTING OF THE NATIONAL DRIVER
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32. Subcontracting

- 32.1.1. An NDLFRS Contributor may outsource or subcontract any aspect of its connection to the NDLFRS to one or more external service providers, but will remain liable for its compliance with this Agreement.
- 32.1.2. The Data Hosting Agency may outsource or subcontract to one or more external service providers any or all aspects of the NDLFRS or the NDLFRS Products, or other matters to be performed by the Data Hosting Agency under or in connection with any NDLFRS Hosting Arrangement, but will remain liable for its compliance with this Agreement.
- 32.1.3. Where requested, each NDLFRS Contributor and the Data Hosting Agency (as relevant) will:
- a. promptly provide all reasonable assistance to enable the other to comply with its obligations under its contracts with its external service providers; and
 - b. cooperate with the other's external service providers as reasonably required to further the best interests of the NDLFRS Products.
- 32.1.4. A Participant that engages a subcontractor pursuant to this clause 32 must, as soon as reasonably practicable after the engagement, give each other Participant notice of the engagement.
- 32.1.5. Each Participant must ensure that each of its subcontractors, unless exempt by law from compliance with the relevant privacy legislation:
- a. if subject to State or Territory privacy legislation, complies with its obligations under that legislation; or
 - b. otherwise, complies with the Australian Privacy Principles in Schedule 1 of the Privacy Act as if such subcontractor was an APP entity within the meaning of the Privacy Act.
- 32.1.6. A Participant must, on request from another Participant, provide reasonable evidence (such as an extract of relevant provisions from a contract) that its subcontractor(s) are required to comply with the requirements of clause 32.1.5 above as soon as practicable.

PART 3. NDLFRS HOSTING ARRANGEMENTS

33. Priority of arrangements

- 33.1.1. This Agreement takes precedence over the terms of any NDLFRS Hosting Arrangement and prevails to the extent of any inconsistency.
- 33.1.2. Each NDLFRS Hosting Arrangement applies in addition to, and is subject to the terms and conditions of, this Agreement.

34. Entry into NDLFRS Hosting Arrangements

- 34.1.1. Each NDLFRS Hosting Arrangement will be between the Data Hosting Agency and an NDLFRS Contributor.
- 34.1.2. Where an NDLFRS Contributor wishes to access NDLFRS Products, the NDLFRS Contributor must complete and submit to the Data Hosting Agency an NDLFRS Hosting Arrangement Template.
- 34.1.3. Where an NDLFRS Contributor wishes to amend the terms of its existing NDLFRS Hosting Arrangement, the NDLFRS Contributor must complete and submit to the Data Hosting Agency the variation request form contained in its NDLFRS Hosting Arrangement (or in the manner otherwise agreed with the Data Hosting Agency) (**Variation Request Form**) setting out its request.
- 34.1.4. The Data Hosting Agency must promptly notify the NDLFRS Contributor either that:
- a. the Data Hosting Agency (or if applicable, the Hub Controller on their behalf) has approved the completed NDLFRS Hosting Arrangement Template or Variation Request Form submitted by the Requesting Agency; or
 - b. the Data Hosting Agency has declined to approve the completed NDLFRS Hosting Arrangement Template or Variation Request Form, in which case the notice must outline why it was declined.
- 34.1.5. Where a completed NDLFRS Hosting Arrangement Template or Variation Request Form has not been approved by the Data Hosting Agency, the relevant NDLFRS Contributor may revise the NDLFRS Hosting Arrangement Template or Variation Request Form it previously completed and re-submit it for approval in accordance with this clause 34.
- 34.1.6. Once a completed NDLFRS Hosting Arrangement Template or Variation Request Form submitted by an NDLFRS Contributor has been approved in accordance with this clause 34, it must be signed by the NDLFRS Contributor and the Data Hosting Agency, after which it will become an NDLFRS Hosting Arrangement between the Data Hosting Agency and relevant NDLFRS Contributor for the purposes of this Agreement.

35. Registration of NDLFRS Hosting Arrangement

- 35.1.1. Where an NDLFRS Hosting Arrangement has been approved in accordance with this Agreement, the Data Hosting Agency will register the details of the NDLFRS Hosting Arrangement in accordance with its usual procedures.
- 35.1.2. The Data Hosting Agency will maintain a record of each NDLFRS Hosting Arrangement.

36. Commencement of NDLFRS Hosting Arrangement

An NDLFRS Hosting Arrangement commences on the date notified by the Data Hosting Agency to the relevant NDLFRS Contributor that the NDLFRS has been configured to support the NDLFRS Hosting Arrangement.

37. Legislative basis for NDLFRS Hosting Arrangements

37.1. Compliance with legislative requirements

- 37.1.1. Neither the Data Hosting Agency nor any NDLFRS Contributor may enter into an NDLFRS Hosting Arrangement unless it is independently satisfied on its own behalf that all aspects of the NDLFRS Hosting Arrangement will be lawful.
- 37.1.2. Each Participant must ensure that each NDLFRS Hosting Arrangement to which it is party contains a Statement of Legislative Authority detailing the basis on which it believes its provision of, access to, and/or use of, NDLFRS and the NDLFRS Products (as applicable) as proposed under the relevant NDLFRS Hosting Arrangement will be lawful.
- 37.1.3. Where appropriate, the Participant should seek legal advice on relevant matters including on the relevant legislative basis for collecting, using and disclosing the Identity Information prior to providing its Statement of Legislative Authority as required by clause 37.1.2.

38. Variation

38.1. NDLFRS Hosting Arrangement

The Data Hosting Agency and an NDLFRS Contributor may vary the NDLFRS Hosting Arrangement applying between them at any time by using the standard form for variations as provided by the Data Hosting Agency (or as otherwise agreed between them) providing that any such variation that involves a change to the NDLFRS Hosting Arrangement registered with the Data Hosting Agency shall not be effective until the Data Hosting Agency updates the relevant registered details.

PART 4. NDLFRS PRODUCT DETAILS

39. Product details

39.1. Provision of NDLFRS Products

39.1.1. This Part 4 (NDLFRS Product Details) of this Agreement sets out certain terms upon which the FRAUS will be provided as Services as at the date of this Agreement.

39.1.2. Participants must ensure that, subject to anything to the contrary in the NDLFRS Catalogue, they and their Users (as applicable), comply with the requirements of this Part 4 (NDLFRS Product Details) in respect of their use of the FRAUS.

39.1.3. All provisions of this Part 4 (NDLFRS Product Details), including as relate to the Services, are subject to anything to the contrary in the NDLFRS Catalogue.

40. FRAUS

40.1. Overview of FRAUS

40.1.1. The FRAUS enables each state or territory NDLFRS Contributor (and any other licencing authority that contributes facial images to the National Driver Licence Facial Recognition Solution) to conduct biometric matching using its own data.

40.1.2. The FRAUS can be used to analyse, De-Duplicate and investigate records within each jurisdiction's data holding.

40.1.3. The FRAUS will only be made available for Agencies to analyse their own data within the NDLFRS. (Access to the FRAUS is provided directly via the NDLFRS, unlike the other Face Matching Services above which are facilitated via the Interoperability Hub as they involve data matching or sharing between different Agencies.)

AGREEMENT RELATING TO THE HOSTING OF THE NATIONAL DRIVER LICENCE FACIAL RECOGNITION SOLUTION

Signatures

Executed as a deed.

SIGNED, SEALED and DELIVERED for and on behalf of **The Commonwealth of Australia as represented by [Agency name]** by:

Signature of authorised signatory

Name of authorised signatory

In the presence of:

Signature of witness

Name of witness

SIGNED, SEALED and DELIVERED for and on behalf of **[State / Territory legal name] as represented by [Agency name]** by its representative

Signature of authorised signatory

Name of authorised signatory

In the presence of:

Signature of witness

Name of witness

SCHEDULE 1 DEED OF ACCESSION

**NATIONAL DRIVER LICENCE FACIAL
RECOGNITION SOLUTION**

DEED OF ACCESSION

[Insert entity name]

(New Party)

AGREEMENT RELATING TO THE HOSTING OF THE NATIONAL DRIVER LICENCE FACIAL RECOGNITION SOLUTION

Date:

By *[new party's legal name]* (ABN *[insert]*) of *[address]* (**New Party**)

In favour of the parties to the NDLFRS Hosting Agreement from time to time.

RECITALS

- A. The New Party wishes to become a party to the NDLFRS Hosting Agreement.
- B. This deed poll is supplemental to the Agreement relating to the Hosting of the National Driver Licence Facial Recognition Solution dated *[date of agreement]* between *[insert parties]* as amended and acceded to from time to time (**NDLFRS Hosting Agreement**).
- C. The New Party agrees to become a party to the NDLFRS Hosting Agreement and to be bound by the terms and conditions of the NDLFRS Hosting Agreement as a party.

OPERATIVE PART

1. Definitions and interpretation

- 1.1.1. Unless the context otherwise requires:
 - a. terms defined in the NDLFRS Hosting Agreement have the same meaning when used in this deed; and
 - b. the interpretation provisions in the NDLFRS Hosting Agreement apply to the interpretation of this deed.

2. New Party

- 2.1.1. The New Party confirms that:
 - a. it has been given a copy of the NDLFRS Hosting Agreement; and
 - b. it will be party under the NDLFRS Hosting Agreement as [an NDLFRS Contributor] [and as [the [ACT/NT/QLD/NSW/SA/TAS/VIC/WA] Road Agency]].

3. Covenant

- 3.1.1. The New Party covenants and agrees with the parties to the NDLFRS Hosting Agreement (whether or original or by accession) that the New Party will observe, perform and be bound by the provisions of the NDLFRS Hosting Agreement as fully and in the same manner as if it were a party to the NDLFRS Hosting Agreement, with the intent and to the effect that the New Party will be deemed to be a party as from the date of this deed.

**AGREEMENT RELATING TO THE HOSTING OF THE NATIONAL DRIVER
LICENCE FACIAL RECOGNITION SOLUTION**

4. Notices

4.1.1. The notice details of the New Party are as follows:

[Notice details to be supplemented / amended as required.]

[Party name] [Insert addressee full legal name]

[Insert address]

[Insert address]

[Insert email]

[Insert facsimile]

5. Costs

5.1.1. The New Party is responsible for all legal and other costs and expenses of and incidental to the preparation and execution of this deed and any stamp duty payable in connection with this deed.

6. Consideration

6.1.1. This deed is entered into in consideration of the parties to the NDLFRS Hosting Agreement incurring obligations and giving rights and other valuable consideration.

7. Representatives of the same legal entity

7.1.1. To the extent the New Party is the same legal entity as one or more other parties to the NDLFRS Hosting Agreement, the provisions of this deed and the NDLFRS Hosting Agreement, as between those parties representing the same legal entity, take effect as a memorandum of understanding and are not legally binding.

7.1.2. This clause 7 does not affect the binding nature of this deed and the NDLFRS Hosting Agreement as between parties that are distinct legal entities.

8. Governing law

8.1.1. This deed is governed by the laws in force from time to time in the Australian Capital Territory.

EXECUTED as a deed poll.

[Appropriate signature block for acceding party to be inserted.]