



Equifax Australasia Workforce Solutions Pty Ltd ABN 86 080 799 720 (trading as Equifax HR Solutions)

Terms of Supply (Australia & New Zealand)

Effective 27 November 2018

1. Introduction

- 1.1 This agreement applies when we, Equifax Australasia Workforce Solutions Pty Limited ABN 86 080 799 720 ("**Equifax**") supply any of our standard information services (our "**information services**") to you, our customer. Additional terms will also apply to the various types of information services we supply – those additional terms are set out in a Statement of Works ("**SOW**") for the relevant information services. Where other specific contractual arrangements have been executed and are in place between you and us, this agreement applies only to the extent not inconsistent with those contractual arrangements.
- 1.2 Our information services include verification, scoring and consulting services (including access through an Affiliate to independent consumer and commercial credit reporting services); our HR platform management systems for workforce management across the employment cycle; and any of our other workforce data management services. Those information services are more particularly described in and governed by one or more of the following SOWs:
 - *fit2work*® (including *Verify* legacy services) at www.equifax.com.au/hrsolutions/pdf/fit2worksow.pdf
 - *Equifax HR Platform* (including former *eRecruit* HR products) at www.equifax.com.au/hrsolutions/pdf/ehrsow.pdf
 - *eCredentialing* at www.equifax.com.au/hrsolutions/pdf/ecredentialsow.pdf
 - *Verification Exchange*™ at www.equifax.com.au/hrsolutions/pdf/vesow.pdf
- 1.3 Each SOW is accessible electronically by clicking on the relevant hyperlink embodied in these terms and conditions. The relevant SOW will apply to any service you use (as may also be identified in your Onboarding Form or by a Fee Schedule agreed with us). This agreement, without any SOW, does not commit any party to any business transaction or to any future SOW.
- 1.4 In this agreement, unless the context otherwise requires:
 - (a) the "**Privacy Law**" is a reference to the *Privacy Act (1988)* (Cth) in Australia and to the *Privacy Act 1993* (NZ) and includes instruments and codes made under that Act, and terms used in this agreement that are defined by a Privacy Law for that jurisdiction have their defined meaning;
 - (b) a reference to a schedule, exhibit or appendix is to a schedule, exhibit or appendix to this agreement; and
 - (c) terms defined by schedule 1 have that meaning where used in this agreement.
- 1.5 No modification, amendment or replacement of these general terms or a SOW, or any other document contemplated by either of them, is effected by or results from the receipt, acceptance, signing or other acknowledgement by us of any purchase order, confirmation, invoice, shipping document or other business form issued by or on behalf of you in response to or in connection with the provision of our information services (irrespective of what may be stated in such document). If any terms are proposed by you, those terms are deemed void and of no effect and we are deemed, by delivering our information services, to have made a counter-offer to provide those to you subject only to this agreement. By accepting delivery of our information services, you accept that counter-offer.
- 1.6 If there is any inconsistency between these general terms and a SOW (including any Work Order created for purposes of a SOW, or a schedule, or any attachment, to either of those), the following shall prevail (in descending order) to the extent of that inconsistency and unless stated in the SOW or a Work Order to the contrary:
 - (a) our Privacy Statement, accessible electronically at www.equifax.com.au/hrsolutions/pdf/privacy.pdf;
 - (b) the Work Order;
 - (c) the SOW and its schedules or attachments, such as a Fee Schedule (if any) or Collection Statement;
 - (d) these general terms; and
 - (e) any Onboarding Form or other document or attachment relating to these general terms.
- 1.7 Our information services are always evolving. We may amend a SOW from time to time to reflect a variation in or clarification of an information service. If the change is likely to have a material detrimental impact on you, the change takes effect 10 business days after we give you notice of the variation; in any other case, the variation has immediate effect. The variation will not affect any order for information accepted from you prior to the variation. Notice may be given to you by update to the relevant SOW as identified in clause 1.2.

2. Supply of our information services

- 2.1 We will supply our information services to you after we accept your request for that service under a SOW. We may sub-contract all or part of the information services on terms consistent with all material terms of this agreement or the applicable SOW.
- 2.2 In providing our information services to you, we act as your agent under a limited agency solely for purposes of providing the services in accordance with this agreement. In doing so, our arrangements are of an arm's-length,



commercial nature and we assume no fiduciary obligations to you other than to discharge our obligations in accordance with this agreement and for the proper purpose for which that agency is conferred. In all other respects:

- (a) we are entitled to act in our own several interests including, without limitation, to supply information services to third parties whose interests may conflict with yours and to retain any commission received from third parties arising from a secondary use of information obtained in the course of providing a service to you; and
- (b) the parties are independent contractors and nothing in this agreement creates a joint venture, partnership, employment or other fiduciary relationship between the parties.

Unless otherwise provided by a SOW, you will retain effective control in accordance with this agreement over any personal information, including prospective and actual employee record information, that you contribute for purposes of the information services.

- 2.3 Where we supply our information services to you online, the services are supplied over communication links and other networks, and the availability of the services rely on the availability of those links and networks. While we will do our best to make sure the online information services are available, we are not responsible if the links or networks are unavailable at any time and we do not guarantee that services supplied online will be continuously available.
- 2.4 We expect to provide you with standard levels of support as summarised in schedule 2. If we have also given you a timetable or time estimate for providing any other information service, we will use reasonable endeavours to meet that timetable or time estimate. We will let you know if we require you to take any action to assist us to meet that timetable or time estimate and may seek further agreement from you before any action is undertaken.
- 2.5 We will provide the information services where we are reasonably able to do so. You acknowledge and agree that we may, at our option and by notice to you, suspend provision of all or part of the information services or terminate (in whole or in part) this agreement or a relevant SOW if:
 - (a) the requirements of any law render (or are likely to render) the provision of the information services contrary to that or any other law;
 - (b) any change in data access terms, regulatory policy or the expressed view of a regulator renders (or is likely to render) the provision of the information services contrary to a previously established regulatory position or the terms of this agreement;
 - (c) a third party enjoins (or threatens to enjoin) our use of any relevant Intellectual Property Rights; or
 - (d) a third-party supplier ceases to supply, or changes the terms on which it supplies, the necessary component services or data such that it is impracticable, or unreasonably onerous, for us to continue supplying the relevant information service.
- 2.6 Where we determine, acting reasonably, that we cannot continue to provide one or more of the information services under this agreement or the relevant SOW, we may cease to provide that information service without any further obligation or liability accruing to us.
- 2.7 Where you are resident in New Zealand, we have appointed Equifax New Zealand Information Services and Solutions Limited (company number 371729) as our agent to provide the relevant information services to you that may be made available in that jurisdiction. Not all information services are available in both Australia and New Zealand.

3. Term, termination and suspension

- 3.1 This agreement begins when we accept your request for an information service and ends when the parties have fulfilled their obligations under it, if not terminated earlier in accordance with clause 3.3. Each SOW will normally provide for the duration of your obligation to purchase and our obligation to provide a relevant information service to be stated or otherwise specified by a Work Order, Fee Schedule or other document.
- 3.2 Where a duration is not identified and any of the information services can continue or repeat indefinitely, then either party may end those obligations on 30 days' notice to the other, unless the SOW states to the contrary. Where the information service is provided under a period subscription, that subscription automatically renews annually each year for another year (or for that longer or shorter period as expressly agreed, as the case may be), unless and until either of us terminates it at any time on 30 days' written notice to the other.
- 3.3 In addition to our rights of suspension, cessation and termination under clause 2, we may withhold, suspend or terminate any of our information services to you immediately:
 - (a) if you do not pay our fees and charges for any information service when due, or breach clause 4;
 - (b) if we reasonably believe you are not complying with any of your other obligations under this agreement or any other agreement you have with an Affiliate of ours, and this non-compliance is not capable of remedy or, if it is capable of remedy, it is not rectified within 14 days after we have notified you of the non-compliance; or
 - (c) if we reasonably believe that you are not complying with your legal obligations in respect of the information that we supply you.
- 3.4 If you are a Small Business, you may terminate this agreement without penalty immediately by notice to us if we vary:
 - (a) a SOW as provided by clause 1.7; or
 - (b) our fees and charges (other than by an amount equal to the increase in any tax, fee, levy, government charge or regulatory or legislative cost or statutory fee, or a third party's data supplier fee comprised in the price for the relevant information service) as provided by clause 7.5,and you do not wish to accept that variation.
- 3.5 If this agreement is terminated or expires, that will not affect:
 - (a) the rights of the parties which may have accrued before the termination or expiry date; or
 - (b) the terms of this agreement or any SOW which by their nature survive termination or expiry, which includes clauses 3, 4.3, 4.5, 4.11, 8, 9, 10 and 11.



4. Your use of our information services

- 4.1 You may purchase our information services for the benefit of yourself and any of your Affiliates and an Affiliate may pay us directly for its use of those information services. If you do make our information services available to an Affiliate, you:
 - (a) will cause that Affiliate to comply with all terms that apply to you as though it were the party to this agreement; and
 - (b) remain liable to us for any breach of this agreement by that Affiliate (irrespective of whether the relevant act or omission was within your authority, knowledge or control).
- 4.2 You can only use the reports and information we supply for your own internal business use and for the purpose that we supply them for. You must not re-sell, re-package or otherwise re-use our information in any other way.
- 4.3 If we deliver reports electronically, you can save them onto your system, into another of our information service products (where enabled) or print them for your file. If you access our services by direct link and we deliver information to you by a stream of data you can copy the information onto your system and reprocess it, for example as part of your record retention obligations. You agree that you will not reproduce, modify or adapt our reports and information in any other way.
- 4.4 We have copyright in the manner of compilation and presentation of the information we use to supply our information services to you and in the reports that we supply to you when you use our information services.
- 4.5 We have developed information technology, software and documentation that we may use to provide the information services to you, and we have copyright and other rights in those items. You agree that you will not copy them, modify them, adapt them, reverse engineer them or infect them with viruses.
- 4.6 You agree to comply with this agreement and follow any procedures and other instructions we provide when you use our information services, for example our Default Information Guide and instructions in documentation as to how to treat certain information. If we change any of our procedures or instructions, or if we introduce new ones and we think those changes will affect you, we will let you know in reasonable time allowing for the nature of those changes.
- 4.7 To access our services by direct link you will need to ensure that your system complies with our most up to date version of our system specifications to allow direct linking. You are responsible for any system changes you need to make and agree to make those changes within 6 months of us notifying you of a new version.
- 4.8 You agree to make available to us one contact person within your organisation or one contact for each branch of your organisation (and to notify us if they leave). That person will be responsible for liaising with us about the requirements of this agreement. You will provide such information, assistance and directions as may be reasonably required to assist us in providing the information services in accordance with the terms of an applicable SOW or Work Order.
- 4.9 You will provide us and our Personnel with such access to your premises and facilities as may be reasonably required to allow us to provide the information services in accordance with the terms of an applicable SOW or Work Order. You will also ensure that all necessary workplace health, safety and environment and other precautionary measures are taken to protect those Personnel in the discharge of those services.
- 4.10 You agree to keep any username, password or other identifiers we give you to use our information services confidential and secure and to manage your users' access to our services. You agree that any identifiers we give you will not be transferred between users or disclosed to any third party and you will tell us if they are no longer required. You are responsible for all use of those identifiers. If we ask you to, you agree to stop using those identifiers or use any replacement identifiers we give you.
- 4.11 Consistent with our role as your agent under a limited agency solely for purposes of providing our information services, you remain responsible for complying with all record retention obligations in respect information used in or arising from those services. For example, where you are an entity (including an individual) that provides a health service and holds health information which you provide to or hold through one or more of our information services, you must ensure compliance with both the Privacy Law and your local State or Territory Law.

5. Information we collect from and provide to you

- 5.1 We collect information from you when you request our information services, such as the information you enter in a search enquiry. Notwithstanding that we may provide a Collection Statement for purposes of information services under any SOW, you agree to provide any notifications to individuals or obtain any consents that are required under the Privacy Law before you request our information services.
- 5.2 We may collect information from you and hold information on your behalf when you request our information services. You acknowledge that:
 - (a) the quality and accuracy of the information services and any data returned to you or to third parties relies on the information you supply to us; and
 - (b) we do not independently verify the information; and
 - (c) we do not provide any guarantee or warranty as to the accuracy or completeness of any data returned to you or to third parties.
- 5.3 Once you give information to us, we can use that information to supply our information services to you and others as permitted by a Collection Statement, and as otherwise permitted by the Privacy Law. You grant to us a non-exclusive, perpetual, irrevocable, transferable, royalty-free licence to use and sublicense the whole or any part of that information for those purposes. You warrant that your provision of information and the use by us of that information in accordance with this agreement will not infringe the intellectual property rights or other rights of any person. Because our information services rely on the information we collect, we do not usually remove any information from our systems, subject to our obligations under the Privacy Law or as otherwise imposed by third-party suppliers or disclosed in a SOW or Collection Statement. Information is updated where it is proven (to our satisfaction) not to be accurate, up to date or complete.
- 5.4 You agree to make sure that all the information you give us is accurate, up to date, complete and not misleading.



6. Relationship with consumer credit reporting services

- 6.1 This section 5 only applies where an Applicant, at your request, makes use of the consumer credit reporting services provided by our Affiliate and that Applicant (as access seeker) has directed, in accordance with your request, that the results of the Applicant's credit report are included in a report provided under our information services.
- 6.2 The Applicant will be the customer of our Affiliate for purposes of obtaining the consumer credit report as access seeker in accordance with our Affiliate's terms and conditions for such services. If, after receiving that consumer credit report, the Applicant gives a direction to make the information available to you as a third party, our Affiliate will give us access to that data solely for purposes of incorporating that into a report to you as part of our information services. If the Applicant does not give that third-party consent, our information service is complete upon reporting to you that the consent was not given.

7. Our charges

- 7.1 Unless otherwise covered by a Fee Schedule, you must pay us the fees applicable to the information services under a SOW, plus any other amounts this clause 7 requires, including:
- (a) any annual or other periodic fee we charge for any of our information services that you use (which may be charged in advance);
 - (b) our current charges for any information services you use, on the basis we set out in our invoice; and
 - (c) GST on our fees and charges.
- 7.2 We will tell you our current fees and charges before you use an information service, by identifying that in our price list accessible through the relevant SOW or in a proposal as part of a Fee Schedule. We will send you invoices for all our fees and charges.
- 7.3 Except to the extent governed by a Fee Schedule, you must pay the fees and charges to us:
- (a) in the manner we direct in the invoice from time to time; and
 - (b) no later than 14 days after receipt of the relevant invoice.

Payment must be made without set-off or deduction of any kind. You may, in good faith, dispute any charge on an invoice. To do so you must, by the date for payment, notify us of the dispute (including the invoice number, each item disputed, and the basis for each dispute) and pay all amounts not so disputed, in which case we will not charge any late fees or collection costs on the disputed amounts. If you require the Applicant to meet any fees or charges in connection with our information services, a credit card payment may be required from the Applicant and, if so, the Merchant Fee may be charged to the Applicant.

- 7.4 Subject only to a good faith dispute under clause 7.3, if you do not pay us by the due date for payment, we may:
- (a) require you to pay the whole of the amounts outstanding by you to us, which immediately become due and payable;
 - (b) require you to pay a late payment fee of 1.5% of the amount outstanding at the due date;
 - (c) charge interest on the amount overdue at 2% per month from the due date for payment until the date on which the debt is paid;
 - (d) require you to pay us any costs for agents incurred in recovering money you owe us, including commissions and legal costs on a solicitor-client basis; and/or
 - (e) list information about the default with any credit reporting body.
- 7.5 Except to the extent governed by a Fee Schedule, we may change our fees and charges from time to time upon 30 days' prior notice to you. Our fees and charges may be automatically increased from time to time on shorter notice by an amount equal to the increase in any tax, fee, levy, government charge or regulatory or legislative cost or statutory fee, or a third party's data supplier fee, comprised in the price for the relevant information service. Notice may be given by update to our price list accessible in accordance with clause 7.2.
- 7.6 Any outstanding charges for an information service, up to and including the date of termination, will be payable by you upon cancellation of that service. Any subscription fees will be payable (in the case of annual subscription fees, on a *pro rata* basis) up to and including for the full month in which the date of termination occurs.
- 7.7 You agree to keep confidential the terms and conditions of supply of our services to you, including our fees, charges and pricing arrangements under any Fee Schedule or any other agreement between us, except to the extent that such terms are generally known to the public (other than resulting from your failure to comply with the obligations of confidentiality in this agreement).

8. Intellectual Property

- 8.1 Nothing in this agreement or any SOW transfers ownership of any Intellectual Property Rights. Each party owns, and will continue to own, all Intellectual Property Rights subsisting in any material it provides or makes available to the other party under or in connection with this agreement or any SOW.
- 8.2 By giving you access to our Technology, we are granting you a royalty-free, non-exclusive license to use our Technology during the term that the information service is made available to you under a SOW, but only for the ordering, receiving and use of those information services under that SOW. Technology also comprises our Confidential Information.
- 8.3 Subject to the terms and conditions of this agreement, we also grant you a sub-licensable, non-exclusive, royalty-free licence to use the data product of our information services according to the terms of this agreement (including the related

SOW and the Privacy Law) and this clause survives the end of this agreement for any reason.

- 8.4 You warrant that your provision of data and the use by us of that data in accordance with this agreement will not infringe the Intellectual Property Rights or other rights of any person.

9. Confidential information

- 9.1 You must not use Confidential Information for any purpose not contemplated by this agreement.
- 9.2 You must not disclose any Confidential Information except:
- (a) to Personnel within your organisation or other third parties, such as consultants, who need that access in order to perform their duties and who receive it under obligations of confidentiality;
 - (b) if you are required to do so by Law or by a stock exchange; or
 - (c) if you are required to do so in connection with legal proceedings relating to the information services, or any related contractual arrangements with us or an Affiliate.
- 9.3 You will be responsible for any breach of these confidentiality obligations by your Personnel or any third parties to which you make disclosure under clause 9.2(a), as if any such breach was a breach by you.
- 9.3 Unless otherwise agreed by us in writing, any information disclosed to us during discussions regarding our information services or otherwise is disclosed by you on a non-confidential basis and we do not accept on a confidential basis any information (other than personal information), suggestion or idea belonging to you. We will have no liability to you should we disclose any such information, suggestion or idea, except liability for infringement of any valid patent that may be issued in respect of that material.
- 9.4 You acknowledge that unauthorised disclosure or use of Confidential Information may irreparably damage our business in such a way that adequate compensation could not be obtained from damages in an action at Law. Accordingly, an actual or threatened unauthorised disclosure or use of any Confidential Information gives us the right to seek injunctive relief restraining that disclosure or use, in addition to any other remedy otherwise available (including reasonable legal fees).

10. Compensation and liability

- 10.1 When we provide the information services to you, we rely on information provided to us by others. While we always aim to provide quality information to you, you understand that we do not independently check all information supplied to us, or the compilation of information by our systems, and that information may be:
- (a) inaccurate, incomplete or otherwise of deficient quality; or
 - (b) out of date (or may become out of date before you rely on it).
- 10.2 You understand that you are responsible for assessing the value of the information we provide you, and for the business decisions that you make, regardless of whether you base them on the information we supply.
- 10.3 To the extent we can at Law, we exclude all statutory or implied representations, conditions, warranties and terms relating to the information services or this agreement. We do not exclude any such representations, conditions, warranties or terms to the extent we are prohibited by Law from doing so (including under the Consumer Law).
- 10.4 We are not liable to you or to anyone else for:
- (a) any loss or damage arising out of, or in connection with, the information we provide to you (including loss of profit, revenue or business or indirect, consequential, special or incidental loss or damage); or
 - (b) any indirect or consequential loss or damage arising out of or in connection with this agreement or our information services (including loss of profit, revenue or business or special or incidental loss or damage),
- however such loss, damage or liability arises or might arise (including in contract, tort (including negligence), under statute or in equity) and even if that loss, damage or liability may be supposed to have been in the contemplation of the parties as a probable result were it not for this clause 10. This exclusion does not apply to the extent the Law prohibits us excluding our liability (including under any statutory or implied representation, condition, warranty, term or guarantee that we are unable to exclude by Law).
- 10.5 Our total aggregate liability for any loss or damage not excluded under clause 10.4 is limited to the amount of fees and charges paid by you for the information services under this agreement (less any statutory, third party and/or government charges) in the 12 months immediately prior to the event giving rise to the liability. This limitation does not apply to the extent the Law prohibits us limiting our liability (including under any statutory or implied representation, condition, warranty, term or guarantee that we are unable to exclude by Law).
- 10.6 Our total liability for any loss or damage under any statutory or implied representation, condition, warranty, term or guarantee that we are unable to exclude by Law (including under the Consumer Law), is limited to the extent permitted by Law, to us re-supplying the services to you, or, at our option, us refunding to you the amount you have paid us for the information service to which your claim relates.
- 10.7 You indemnify us for any loss we suffer or liability we incur because:
- (a) any information you give us is not accurate, up to date or complete or is otherwise misleading;
 - (b) of any misuse of the information services or the information we supply you, including an intentional wrongful act or omission;
 - (c) any breach of the Intellectual Property Rights or other rights of any person arising from your provision of data and the use by us of that data in accordance with this agreement; or

(d) of any breach by you of clause 9, or any breach by your Personnel or a third party of the relevant obligations referred to in clause 9.

10.8 You agree to provide us with reasonable co-operation (at your own expense) in the handling of disputes, complaints, investigations or litigation involving a third party, that arise out of your use of our information services. Your co-operation includes but is not limited to providing us in a timely manner with relevant documents, access to relevant employees or any other reasonable assistance that may be required in dealing with any such matter and may, in some circumstances, involve you being joined as a party to any litigation as well as or instead of us.

10.9 In this clause 10, references to "we" and "us" include our Personnel.

11. Privacy

11.1 You agree to comply with the Privacy Law (whether it expressly applies to you or not), including in relation to the collection, use, disclosure, quality, storage, security and destruction or de-identification of personal information, and all other Laws that apply to the information that we provide to you, or you provide to us, or to your use of our information services (and to maintain documentation to demonstrate your compliance). This includes compliance with the following matters in Australia and New Zealand (as applicable):

- (a) compliance with the Australian Privacy Principles, including Part IIIC of the *Privacy Act 1998* (Cth);
- (b) compliance with the New Zealand Privacy Principles in the *Privacy Act 1993* (NZ) and requirements of the *Credit Reporting Privacy Code 2004* (NZ); and
- (c) all information provided by you to us has been collected and disclosed to us in accordance with valid consents or notices (including on behalf of us), as required under the Australian Privacy Principles or the New Zealand Privacy Principles.

For the avoidance of doubt, where you are a small business operator under the Australian Privacy Law, you agree to choose to be treated as an organisation bound by that Privacy Law in accordance with section 6EA of the *Privacy Act 1988* (Cth).

11.2 Where we disclose personal information to you (including to any person at your direction) outside Australia, you must:

- (a) comply with clause 11.1 in relation to the personal information as if you were subject to the Privacy Law (excluding compliance with Australian Privacy Principle 1 if you do not have an Australian link);
- (b) notify us immediately if you become aware of, or suspect, any Data Breach, whether in the control or possession of you or any third party, and provide full details of the Data Breach;
- (c) take all reasonable steps to ensure that any third party complies with this clause 11.2 in relation to any personal information, as if references to you were references to the third party, and references to us were references to you;
- (d) fully co-operate with us and promptly provide upon request access to your systems and/or documentation in connection with the conduct by us of any assessment or investigation of a Data Breach;
- (e) co-operate with us in relation to any provision, notification or publication of a statement in respect of the Data Breach including, in Australia, under sections 26WK and 26WL of the *Privacy Act 1988* (Cth); and
- (f) provide on request, evidence of compliance with this clause 11.2.

In this clause 11.2, "third party" means any third party to whom you disclose personal information disclosed to you under this agreement, or to whom we have disclosed such personal information at your direction.

11.3 If we ask you to, you agree to provide us, on not less than 5 business days' notice, with access to your systems and/or documentation so that we can check your compliance with this agreement and in some cases aspects of the Privacy Law. You are not required to provide information to us to the extent that doing so would cause you to breach the confidence of a third party or would cause you to breach the Privacy Law.

12. Dispute resolution

12.1 Unless otherwise provided by a SOW, a party must comply with the following procedure in respect of any dispute arising under this agreement.

12.2 The party claiming that there is a dispute will send the other party a notice setting out the nature of the dispute and all other material information relevant to the dispute ("**Dispute Notice**").

12.3 The parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have the authority to intervene and direct some form of resolution and to conduct discussions between the parties.

12.4 If the parties are unable to resolve the dispute within 2 weeks of the relevant party receiving the Dispute Notice, either party may refer that dispute for resolution by mediation. In Australia, mediation will be administered by the ADC, conducted in private and in Sydney (unless otherwise agreed between the parties), and held in accordance with the ADC Guidelines for Commercial Mediation. In New Zealand, the mediator shall then be agreed between the parties, or failing agreement as appointed by the President of the New Zealand Law Society. The parties will bear their own costs of the mediation and will each bear half the costs of the mediator.

13. General

13.1 We may add or withdraw any information service and modify or otherwise change any information service:

- (a) without notice to you where:



- (i) this is necessary to comply with Law or because of a change of Law, or any other event outside of our reasonable control; or
 - (ii) to effect administrative or other non-material changes (such as name changes, filepath updates, or other corrections); and
 - (b) for any reason upon provision to you of not less than 30 days' notice.
- 13.2 Other than as provided by clause 1.7 in respect of a SOW or clause 7.5 in respect of fees and charges, we may vary the terms and conditions of this agreement at any time:
- (a) upon provision to you of notice where this is necessary to comply with Law or because of a change of Law; and
 - (b) for any other reason upon provision of not less than 30 days' notice to you.
- 13.3 Neither of us is liable for a failure or delay in performing an obligation under this agreement to the extent the failure or delay is because of an event beyond our reasonable control. If either of us is affected in this way, each of us will use our reasonable endeavours to minimise delays or interruptions.
- 13.4 Where we have used the word "includes" or "including" or "for example", these words do not have a limiting effect.
- 13.5 Where we have referred to any legislation or a provision of any legislation, it includes that legislation or provision as from time to time re-enacted or otherwise amended.
- 13.6 We will send invoices and notices to either the last postal address, fax number or email address you have given to us. You must tell us if you change any contact details.
- 13.7 You agree you will not transfer your rights or obligations under this agreement to any other person without first getting our written consent. We will not unreasonably withhold our consent. We may transfer our rights and obligations under this agreement to an Affiliate without your consent, where that will not give rise to any tax liability or otherwise have a material adverse impact for you.
- 13.8 No delay or failure to exercise a right under this agreement prevents the exercise of that or any other right on that or any other occasion.
- 13.9 All notices to us must be in writing (including electronic form) and sent to the address, email or fax number for notices specified in the relevant SOW (or, if we have separately notified a different address, email or fax number to you, to that other address, email or fax number). If no address, email or fax number is otherwise specified, notices are to be directed to General Manager, Online Services at 119 Cecil Street, South Melbourne, Victoria 3205 or, if the notice relates to a Privacy Law matter, to the Privacy Officer at 119 Cecil Street, South Melbourne, Victoria 3205 or at info-eev@equifax.com.
- 13.10 If any term of this agreement is unlawful and unenforceable, it will be severed from this agreement and the rest of this agreement remains in force.
- 13.11 This agreement supersedes any other agreement you may have with us or an Affiliate for the information services unless we agree otherwise in writing.
- 13.12 In Australia, these terms (including the terms in any SOW) are governed by the law of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts hearing appeals therefrom. In New Zealand, these terms are governed by the law of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.



Schedule 1 – Dictionary

- (a) “ADC” means the Australian Disputes Centre Limited ABN 87 003 042 840;
- (b) “Affiliate” means, as relevant, a related body corporate as defined by section 50 of the *Corporations Act 2001* (Cth), a related company as defined by section 2(3) of the *Companies Act 1993* (NZ), or, with respect to an unincorporated business, non-profit or governmental entity, means any other business, non-profit or governmental entity that controls, is controlled by, or is under common control with the first entity;
- (c) “Applicant” means an individual consumer the subject of any information service requested by you;
- (d) “Australian Consumer Law” means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (e) “Australian link” has the meaning given to that term in the *Privacy Act 1988* (Cth);
- (f) “CGA (NZ)” means *Consumer Guarantees Act 1993* (NZ);
- (g) “Collection Statement” means a notification of the collection of personal information for purposes of Australian Privacy Principle 5 in accordance with the *Privacy Act 1988* (Cth) and Information Privacy Principle 3 in accordance with the *Privacy Act 1993* (NZ);
- (h) “Confidential Information” means all confidential, non-public or proprietary information, regardless of how that information is stored or delivered, exchanged between the parties and relating to our business, Technology or other affairs and includes any pricing arrangements or discounts discussed or agreed by the parties or information which is otherwise obtained by you and which is by its nature confidential or that you know (or ought to know) is confidential, but does not include information that is:
 - (i) in or enters the public domain through no fault of you or any of your Personnel;
 - (ii) received by you from a third party who had a legal right to provide it; or
 - (iii) was developed by you independently of us or any of our Personnel;
- (i) “Consumer Law” means, as relevant, (i) the Australian Consumer Law, or (ii) the CGA (NZ) and/or the FTA (NZ);
- (j) “Data Breach” means any unauthorised access to, disclosure of, or loss of, any personal information provided or generated in connection with our information services;
- (k) “Default Information Guide” means any standard publication or guidance issued by us, or generated by us in accordance with the requirements of a Work Order, for use of any of our information services;
- (l) “Dispute Notice” has the meaning set out in clause 12.2;
- (m) “Fee Schedule” means a fee proposal by us for specified information services for a set period and as accepted by you, as may be evidenced by an exchange of emails, xls spreadsheet or other documentation;
- (n) “FTA (NZ)” means the *Fair Trading Act 1986* (NZ);
- (o) “GST” means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the Goods and Services Tax under the *Goods and Services Tax Act 1985* (NZ), as applicable to our fees and charges;
- (p) “Intellectual Property Rights” means copyright and neighbouring rights (including moral rights), all rights in relation to inventions (including patents), registered and unregistered trade-marks, business names, domain names, registered and unregistered designs, circuit layouts, confidential information, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (q) “Law” means:
 - (i) any statute, regulation, by-law, ordinance, subordinate legislation or legislative instrument in force from time to time to which a party to this agreement is subject;
 - (ii) the common law and the law of equity as applicable to the parties from time to time;
 - (iii) any binding court or tribunal order, judgement or decree;
 - (iv) any applicable industry code, policy or standard enforceable by law; and
 - (v) any applicable determination, direction, policy, rule or order that is binding on a party and that is made or given by any regulatory or quasi-regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
- (r) “Merchant Fee” means our business' cost of acceptance as advised by the provider of our merchant payment facilities, consistent (in Australia) with the *Competition and Consumer Amendment (Payment Surcharges) Act 2016* (Cth);
- (s) “personal information” has the meaning given to that term in the Privacy Law;
- (t) “Personnel” means an individual in their capacity as the employee, director, officer, agent or contractor to a party or their Affiliate (as relevant);
- (u) “Privacy Law” has the meaning given in clause 1.4(a);
- (v) “Small Business” means that you are a business that employs fewer than twenty (20) persons, including casual employees employed on a regular and systematic basis; and
- (w) “Technology” means any of our software, websites, specifications or other technology developed by or for us at any time.

Schedule 2 – Standard Level of Support

Standard Level of Support				
Severity	Response	Resolution Rate	Definition	Service Goal
1. Critical Incidents	Acknowledge within 60 minutes and notification to Escalation Level 1.	Within 8 hours or agreed plan for resolution. Plan for resolution to be completed within 2 working days.	Site down, unable to perform vital function.	Response – 99.97% acknowledged within response time. Resolution – 95% resolved within resolution time.
2. System Inoperable	Acknowledge within 60 minutes.	Resolution within 24 hours of acknowledgement or agreed plan for resolution.	Site is operational, but regular function is hindered.	Response – 99.97% acknowledged within response time. Resolution – 95% resolved within resolution time.
3. Other Problem	Acknowledge within 4 hours.	Resolve or workaround developed within 5 days of acknowledgement or agreed plan for resolution.	Tasks can be worked around with minimum disruption to work practices.	Response – 99.95% acknowledged within response time. Resolution – 95% resolved within resolution time.
4. Information Requests	Acknowledge within 8 hours.	Request resolved within 30 days of receipt of request.	The failure has a minor impact on work practices.	Response – 99.95% acknowledged within response time. Resolution – 95% resolved within resolution time.

