



VerifID Terms and Conditions

These terms and conditions set out the basis on which the Australian Access Federation (AAF) will perform the Verify Services for the Subscriber.

By accepting these terms or accessing the Verify Services, the Subscriber agrees to be bound by and comply with the terms and conditions.

27 August 2024

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1. Verify Services

During the Term, AAF will:

- (a) provide the Subscriber and its End Users with access to and use of VerifID;
- (b) provide Updates and Releases to the Subscriber in accordance with clause 6; and
- (c) provide the Subscriber such other services as agreed between AAF and the Subscriber from time to time,
in accordance with these terms and conditions.

2. Fees

- (a) In return for the provision of the Verify Services by AAF, the Subscriber will pay AAF the Fees in accordance with clause 3.
- (b) Fees are reviewed annually and set for the calendar year. AAF shall give Subscribers not less than 30 days advance notice of any change in Fees.

3. Payment terms

(a) *Payment of Fees*

- (i) The Fees will be invoiced by AAF monthly in arrears or as otherwise notified by AAF from time to time.
- (ii) Each invoice will be due and payable 30 days after the date of the invoice unless otherwise agreed in writing (**Due Date**).
- (iii) Invoices will be delivered by email to the nominated Billing Contact set out in the Subscription Form.

(b) *Late payment*

If the Subscriber fails to make any payment by the Due Date then, without prejudice to any other right or remedy available to AAF, AAF may, in its sole discretion:

- (i) suspend the Subscriber's and its End Users' use of VerifID; and
- (ii) charge the Subscriber interest (both before and after any judgment) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which such amount becomes overdue until AAF receives payment of all such amounts (including all interest) by way of cleared funds; and
- (iii) charge the Subscriber the Administration Fee.

4. Verification Response

The Subscriber acknowledges and agrees that:

- (a) the Verification Response is derived from information retained by a Third Party Association; and
- (b) AAF will not indemnify the Subscriber, or otherwise be responsible to compensate the Subscriber, for any Loss suffered by the Subscriber if the Verification Response is not true, correct or accurate.

5. AAF's general obligations

In providing the Verify Services to the Subscriber, AAF will:

- (a) promptly respond to Operational Issues;
- (b) exercise Good Practice in maintaining the security of VerifID;
- (c) provide support services, including a help desk, to Subscribers;
- (d) act efficiently, honestly and fairly;
- (e) comply with all applicable laws;
- (f) take reasonable steps to ensure that any AAF personnel involved in the provision of the Verify Services are appropriately trained and qualified and comply with AAF's policies and procedures; and
- (g) use reasonable endeavours to ensure VerifID properly engages with the relevant Third Party Application to ensure a Verification Response is generated in a timely manner.

6. Updates and Releases

- (a) AAF will deploy any Updates and Releases for the Verify Services at no additional cost to the Subscriber as soon as reasonably practicable after the Update or Release is available in accordance with AAF's usual change management process. AAF will endeavour (but is not required) to give the Subscriber reasonable advance notice commensurate with the potential impact of the Update or Release.
- (b) The Verify Service may be unavailable while Updates and Releases are applied. AAF will endeavour (but is not required) to give the Subscriber reasonable advance notice commensurate with the anticipated period of unavailability.

7. Subscriber obligations

- (a) The Subscriber may only access and use the Verify Services for the Approved Purpose.
- (b) Without limitation, the Subscriber must not:
 - (i) use or access the Verify Services to provide services to third parties, other than as described in this agreement, without the prior written consent of AAF (which will not be unreasonably withheld by AAF);
 - (ii) reverse-engineer, decompile, disassemble or modify the Verify Services or any part thereof;
 - (iii) circumvent any technology used by AAF, its licensors or any third party to protect the Verify Services;
 - (iv) remove or alter any copyright, trade mark or other intellectual property notices contained on or provided through the Verify Services;
 - (v) create any derivative works based on the Verify Services, other than Subscriber Results, without the prior written consent from AAF;
 - (vi) reuse any particular Verification Response after a period of seven [7] days from the original verification, except for logging and recordkeeping purposes.

- (c) The Subscriber must:
- (i) observe Good Practice in relation to the configuration, operation and security its information technology systems;
 - (ii) observe Good Practice in relation to the exchange and processing of any data and in obtaining and managing the domain name service (DNS) names, digital certificates and private keys used by the Subscriber for the purpose of this agreement;
 - (iii) not act in any manner which damages or is likely to damage or otherwise adversely affect the reputation of the AAF, other subscribers or any Third Party Association;
 - (iv) promptly report any suspected or actual misuse by an End User or unusual behaviour patterns to the AAF for further assessment;
 - (v) give reasonable assistance to any other subscriber (including to the Subscriber's identity provider) investigating misuse by an End User; and
 - (vi) keep contact information required by the AAF up to date, with any changes being updated within five [5] Business Days.

8. Exclusion and limitation of liability

- (a) If the Subscriber is a Consumer and AAF supplies PDH Services to the Subscriber, AAF acknowledges that the Subscriber may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Services supplied by AAF and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of any such rights.
- (b) If the Subscriber is a Consumer and any services supplied by AAF to the Subscriber are non PDH Services, AAF's liability to the Subscriber in connection with any breach of the Consumer Guarantees in respect of those non PDH Services is limited (at AAF's discretion) to:
- (i) supplying the Verify Services again; or
 - (ii) paying the cost of having the Verify Services supplied again.
- (c) If the Subscriber makes a claim against AAF which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, AAF expressly excludes all liability in respect of the Verify Services supplied by AAF to the Subscriber.

9. Term

The agreement between AAF and the Subscriber which incorporates these terms and conditions commences on the Effective Date and will continue until terminated in accordance with clause 10.

10. Termination and suspension

(a) Third Party Associations

AAF may, by written notice to the Subscriber, terminate or suspend this agreement immediately if AAF's relationship with any Third Party Association ends for any reason (including where the Third Party Association ceases to be a member of the Federation).

(b) With cause

Without limiting anything else contained in these terms and conditions either party (**Notifying Party**) may, by written notice to the other party (**Defaulting Party**), terminate or suspend the provision of the Verify Services under these terms and conditions with immediate effect if:

- (a) the Defaulting Party fails to comply with any written notice issued by the Notifying Party requiring the Defaulting Party to remedy a breach, non-observance or non-performance of the Defaulting Party's obligations under this agreement (including any failure by the Subscriber to pay on time) within 14 Business Days of receiving that notice;
- (b) the Defaulting Party commits a breach of this agreement which is incapable of remedy;
- (c) a Force Majeure Event exceeds 20 Business Days; or
- (d) an Insolvency Event occurs in respect of the Defaulting Party.

(c) Without cause

Either party may terminate this agreement for convenience and without the need to provide reasons by providing the other party 90 days' written notice that it is terminating this agreement.

(d) Consequences of termination

Following termination of this agreement:

- (i) each party is released from its obligations to further perform this agreement other than in relation to clause 3 (Payment Terms), 11 (Indemnity), 12 (Confidentiality), 13 (Data Protection and Privacy), 16 (GST) and 17 (Intellectual Property);
- (ii) each party retains its accrued rights and obligations; and
- (iii) the Subscriber must immediately pay to AAF any Fees accrued but unpaid as at the date of termination.

11. Indemnity

The Subscriber indemnifies AAF against any cost, Loss or damage suffered or incurred by AAF in connection with any breach of these terms and conditions by the Subscriber or the Subscriber's negligence. This clause survives termination.

12. Confidentiality

Each party agrees to treat as confidential the Confidential Information of the other party and to treat that Confidential Information with the same care as it treats its own Confidential Information. This clause survives termination.

13. Data Protection and Privacy

- (a) Where the Subscriber has access to Personal Information in order to perform its obligations pursuant to this Agreement:
 - (i) the Subscriber must comply with the Privacy Laws;
 - (ii) the Subscriber must not (and must ensure that its employees and agents do not) do or omit to do anything that results in AAF contravening any Privacy Law;
 - (iii) the Subscriber must comply with any request or direction of AAF arising directly from or in connection with the exercise of any regulatory powers under the Privacy Laws including, without limitation, the issuing of any regulatory guideline concerning the handling of Personal Information) as this relates to the provision of the Verify Services; and
 - (iv) the Subscriber must comply with any direction or instruction provided by AAF to the Subscriber regarding the collection, storage, use, disclosure or management of Personal Information as this relates to the provision of the Verify Services.
- (b) AAF will, when collecting and handling Personal Information, comply with applicable legislation regarding data protection and privacy, including without limitation, the Privacy Laws.
- (c) Each Subscriber acknowledges and agrees that the AAF may use, disclose or otherwise deal with any Personal Information collected or obtained in connection with Verify Services as required or authorised by or under law (including any Privacy Laws) or any court or tribunal order.
- (d) Each Subscriber will take reasonable steps to ensure the security and safety of the Personal Information held by the Subscriber, including by implementing and maintaining reasonable and current data protection and cyber security procedures and technologies.
- (e) The Subscriber hereby consents to the AAF publishing or otherwise making available information in relation to the Subscriber as may be required, in the case of a Notifiable Data Breach or Cyber Security Incident, by the Office of the Australian Information Commissioner and/or the Australian Cyber Security Centre as required to comply with the Privacy Laws and/or the *Security of Critical Infrastructure Act 2018 (Cth)*.

14. Third Party Applications

The Subscriber acknowledges that AAF may use certain Third Party Applications to provide the Verify Services to the Subscriber and AAF is not responsible for any failure to provide the Verify Services which is caused or contributed to by any failure of the Third Party Application. If required by AAF, the Subscriber must comply with such terms and conditions notified by AAF from time to time as govern the use of Third Party Applications, in addition to these terms and conditions.

15. Subcontracting

AAF may subcontract any of its obligations under these terms and conditions, including the provision of the Verify Services, without the prior written consent of the Subscriber. AAF will continue to be responsible for providing the Verify Services in accordance with these terms and conditions notwithstanding any such subcontracting.

16. Intellectual Property

Each party acknowledges that nothing in these terms and conditions grants them any ownership of the other party's Intellectual Property.

17. GST

(a) Interpretation

Words and expressions used in this clause 17 which are defined in the GST Act have the same meanings given to them in the GST Act.

(b) Consideration does not include GST

The consideration for any supply made under or in connection with these terms and conditions does not include an amount for GST, unless it is expressly stated in these terms and conditions to be inclusive of GST.

(c) Recovery of GST

If GST is or becomes payable on any supply made under or in connection with these terms and conditions (not being a supply for which the consideration is expressly stated in these terms and conditions to be inclusive of GST), the party required to provide the consideration for the supply must pay, in addition to and at the same time as the consideration is provided, an amount equal to the amount of GST on the supply.

(d) Tax invoice

A party is not obliged under these terms and conditions to pay an amount for GST on a taxable supply until the party making the taxable supply provides a tax invoice for the supply.

18. Dispute resolution

- (a) If any dispute arises between the parties arising from or relating to these Rules (**Dispute**), AAF Ltd or the Subscriber will refer the Dispute to their respective authorised representatives, whereupon the AAF Ltd representative and the Subscriber representative will promptly discuss the dispute with a view to its resolution. Except where the party seeks urgent interim or interlocutory relief, a party may not commence any court, tribunal or other similar proceedings relating to the Dispute unless it has complied with this clause.
- (b) If a party believes that a Dispute has arisen it must provide a written notice to the other party or parties setting out full details of the Dispute (**Dispute Notice**).
- (c) There will be a period of thirty [30] days from the service of a Dispute Notice during which the authorised representatives of the parties must participate in good faith negotiations to attempt to reach a written agreement regarding the Dispute detailed in the Dispute Notice.

- (d) If, following the expiry of the period described in clause 18(c) no written agreement has been reached regarding the matters set out in the Dispute Notice, either party may, by written notice to the other party submit the dispute for mediation pursuant to clause 18(e).
- (e) Any Dispute submitted for mediation under this clause 18 will be conducted in accordance with the mediation rules of the Resolution Institute (ACN 008 651 232).
- (f) The parties may agree on the identity of the mediator appointed to mediate a Dispute, provided that where the parties are unable to agree on the identity of the mediator within fifteen [15] days of the Dispute being submitted for mediation, either party may request that a mediator be appointed by the Resolution Institute (ACN 008 651 232).
- (g) If a Dispute referred to mediation under clauses 18(d) or 18(e) is not resolved within twenty [20] days after the mediator was appointed or any further time period agreed by the parties in writing, the dispute resolution process under this clause 18 will be terminated and either party may commence legal proceedings in respect of the Dispute.
- (h) The cost of any mediator will be shared equally between each party. Each disputing party will bear their own costs of participating in any such mediation.

19. General

(a) Governing law

These terms and conditions will be construed and interpreted in accordance with the laws of the state of Queensland, Australia and each party submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

(b) Entire agreement

These terms and conditions constitute the entire agreement between the parties with respect to their subject matter and supersede all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

(c) Changes to terms and conditions

The parties may, by written agreement, vary the terms of these terms and conditions.

(d) Waiver

No failure to exercise or delay in exercising any right given by or under these terms and conditions constitutes a waiver and the party may still exercise that right in the future.

(e) Severability

If any provision of these terms and conditions is invalid or not enforceable in accordance with its terms in any jurisdiction, it shall be limited only to the extent necessary to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions or affecting the validity or enforceability of that provision in any other jurisdiction.

(f) Promotion

- (i) The Subscriber may use the Federation logo in accordance with the Logo Use Policy as determined and updated from time to time by the AAF.

- (ii) The Subscriber grants AAF the right to publish the Subscriber's name and information about services provided for the purpose of promoting the Australian Access Federation.

20. Definitions

In these terms and conditions, unless the context otherwise requires:

AAF means Australian Access Federation Limited ABN 13 155 355 685, ACN 630 805 319.

AAF Personnel means an employee, officer, agent or contractor of AAF.

Administration Fee means the amount specified in item 2 of the schedule.

Approved Purpose means the purpose of gaining access to VerifID in order to receive a Verification Response in accordance with these terms or otherwise agreed in writing with the Subscriber, from time to time. Subscribers may disclose the Verification Response in combination with other data (collectively a **Subscriber Result**) to their customers.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland, Australia.

Confidential information means all information, directly or indirectly disclosed by a party (**Disclosing Party**) to the other party (**Receiving Party**) under or in connection with these terms and conditions which:

- (a) is Personal Information;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the Receiving Party knows or ought to know is confidential, including all information about a party, its employees, students, agents and including also engineering, programming and other technical or commercial information and know-how, information concerning Intellectual Property rights of the Disclosing Party, internal management information and financial information but does not include:
 - (i) information which was previously disclosed by the Disclosing Party on a non-confidential basis;
 - (ii) information which is or becomes publicly available other than through a breach by the Receiving Party of its obligations under this agreement or any other agreement;
 - (iii) information which is acquired by the Receiving Party from a third party which is not, to the Receiving Party's knowledge, under an obligation of confidence to the Disclosing Party; and
 - (iv) information which is brought into existence or obtained independently by the Receiving Party without access to the Disclosing Party's confidential information.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Default Rate means 10% per annum.

Effective Date means the earlier of the date:

- (a) the last of the parties signs this agreement; or
- (b) AAF issues credentials to the Subscriber to access VerifID.

End Users means Students and any other person the Subscriber permits with AAF's consent to allow to access and use the Subscriber's services and resources for the purpose of accessing VerifID.

Fees means the amounts set out in the Fee Schedule.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party.

Good Practice means the exercise of skill, diligence, prudence, foresight and judgement which would reasonably be expected by a qualified industry professional.

GST has the meaning given by the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the occurrence of any event that has a substantially similar effect to any of the above events.

Intellectual Property means all present and future copyright, rights to inventions including patents and patent applications, modifications or improvements to the same, registered and unregistered trademarks, registered and unregistered designs, rights to trade secrets and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent.

Operational Issue means any actual or potential issue, concern, problem, compromise, incident, cyber security incident or Notifiable Data Breach in any components used to deliver the Verify Services.

PDH Services means services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Personal Information means all information about a person that is ‘personal information’ as defined in the Privacy Act 1988 (Cth) or under any other applicable Privacy Laws.

Privacy Laws means the law, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information and includes:

- (a) the Privacy Act 1988 (Cth) (and the Australian Privacy Principles established under the Privacy Act 1988 (Cth));
- (b) the SPAM Act 2003 (Cth);
- (c) any other statute, regulation or law in Australia or elsewhere which relates to the protection or confidentiality of Personal Information and which AAF or the Subscriber must observe;
- (d) any guidelines, public interest determinations or other advices relating to Personal Information issued by the Office of the Australian Information Commissioner or the Federal Privacy Commissioner in Australia;
- (e) any other requirement under Australian law, industry code or policy relating to the handling of Personal Information; and
- (f) any other applicable law or binding regulation in relation to data protection, data privacy, personal data or personal information.

Release means any modification, enhancement, or addition to, or new version or replacement of, the AAF Platform which is released by or on behalf of AAF (which may include new features, functions, technology or architecture updates).

Resolution Institute means the Resolution Institute ACN 008 651 232 of Level 1, 13-15 Bridge Street Sydney, NSW 2000 Australia.

Student means a person who a Third Party Association claims to be a student by asserting this through the *eduPersonAffiliation* attribute.

Subscriber means the party set out in item 1 of the Subscription Form.

Subscription Form means the form to be completed by the Subscriber and AAF relating to the Verify Services.

Subscriber Result has the meaning described in the definition of *Approved Purpose*.

Term has the meaning given in clause 9.

Third Party Application means any product, service, system, application, website or material that is owned or operated by a party other than AAF or the Subscriber (including a Third Party Association), and that is used by AAF to provide the Verify Services to the Subscriber or is included in the Verify Services by AAF and includes any open source software or material.

Third Party Association means a research or educational organisation or institution in which an End User is enrolled as a student, or otherwise associated in a manner endorsed by the Subscriber, and which holds information in respect of the End User.

Update means any update, upgrade, patch, bug fix or other development for VerifID.

VerifID means the platform owned and operated by AAF which is used to confirm whether an End User is enrolled as a student, or otherwise associated in a manner endorsed by the Subscriber, with a Third Party Association.

Verification Response means a response to the Subscriber from VerifID confirming whether or not an End User is validly associated with a Third Party Association.

Verify Services means the services provided by AAF to the Subscriber for the use of VerifID to receive Verifications Responses.