

SYSTEM GOVERNANCE INTERIM MEMORANDUM OF UNDERSTANDING

BETWEEN

Commonwealth of Australia represented by the DIGITAL
TRANSFORMATION AGENCY (**DTA**)

and

Commonwealth of Australia represented by the AUSTRALIAN
TAXATION OFFICE (**ATO**)

and

Commonwealth of Australia represented by the DEPARTMENT OF
HUMAN SERVICES (**DHS**)

FOR INTERIM PARTICIPATION IN THE TRUSTED DIGITAL IDENTITY
FRAMEWORK SYSTEM

Version 2.0 (27 July 2018)

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Parties

This MEMORANDUM OF UNDERSTANDING (**MOU**) is made between:

Party	Details	
Oversight Authority	Name	Commonwealth of Australia represented by the DIGITAL TRANSFORMATION AGENCY
	Address	
	Email	
	Attention (including name and position)	
ATO	Name	Commonwealth of Australia represented by the AUSTRALIAN TAXATION OFFICE
	Address	
	Email	
	Attention (including name and position)	
DHS	Name	Commonwealth of Australia represented by the DEPARTMENT OF HUMAN SERVICES
	Address	
	Email	
	Attention (including name and position)	

Recitals

- A. The parties acknowledge that the Digital Transformation Agency has policy responsibility for the development and implementation of a federated digital identity system to support the collection and validation of one or more attributes of end users (the Trusted Digital Identity Framework System).
- B. The purpose of this MOU is for the parties to record their agreement in relation to the governance and administration of the Trusted Digital Identity Framework System and certain associated matters.

Part A – Definitions and Interpretation

1 Definitions

- 1.1 Unless the contrary intention appears, these meanings apply:

Accreditation Criteria means the criteria and requirements that a person applying to become accredited as Identity Exchange, a Credential Service Provider, an Identity Service Provider, or

an Attribute Service Provider must meet (unless the Oversight Authority chooses to waive any such criteria or requirement).

Applicable Authentication Credential Level means, in respect of Authentication for an Identity Service Provider, the Authentication Credential Level notified by that Identity Service Provider in accordance with the TDIF.

Applicable Proofing Level means the Proofing Level nominated by a Relying Party that applies to any Verification Request for the Verification of Attributes to a Relying Party for a Specified Purpose.

Applicant means a Government Agency or any other person that applies to be:

- (a) accredited in accordance with this MOU as either an Identity Exchange, Verification Provider, Credential Service Provider; or
- (b) approved in accordance with this MOU as a Relying Party.

Application Form means a form substantially in the form set out in Annexure A. An Application Form in respect of a Participant means an Application Form signed by the Participant and the Oversight Authority (for itself and as agent for each other Participant).

Attributes means:

- (a) where used in the definition of Identifying Attributes or Specific Attributes, a piece of information that determines the properties of someone or something; and
- (b) where used elsewhere in this MOU, either the Identifying Attributes or Specific Attributes, as the case may be.

Attribute Service Provider means a person accredited as such by the Oversight Authority.

Authenticated means, in respect of an End User, that a Credential Service Provider has validated one or more Authentication Credentials of the End User for an Identity Service Provider at the Applicable Authentication Credential Level in accordance with this MOU and the TDIF.

Authentication and to **Authenticate** mean the process by which a Credential Service Provider validates one or more Authentication Credentials of an End User for an Identity Service Provider in accordance with this MOU and the TDIF.

Authentication Confirmation means the confirmation from a Credential Service Provider to the relevant Identity Service Provider in accordance with clause 36 confirming whether or not the Authentication Credentials of the End User have been Authenticated by it.

Authentication Credential has the meaning given in the TDIF.

Authentication Credential Level means the level of Authentication performed or required to be performed (as the context requires) by a Credential Service Provider, as set out in the TDIF.

Authorised Officer has the meaning given in the TDIF.

Commencement Date means the date when the last party named in the Details signs this MOU.

Committee means each committee established by the Oversight Authority in accordance with Part Q.

Confirmation means an Authentication Confirmation, an Identity Exchange Confirmation or a Verification Provider Confirmation.

Credential Service Provider means a person accredited as such by the Oversight Authority.

End User means an individual that submits a Verification Request to the System.

Government Agency means Commonwealth entity as defined in *the Public Governance, Performance and Accountability Act 2013* (Cth), excluding any Commonwealth entity that is a body corporate.

Identifying Attribute means the Attributes collected and validated by an Identity Service Provider in accordance with this MOU and the TDIF.

Identity Exchange means:

- (a) where used in this MOU to denote an obligation imposed on a person, a person accredited by the Oversight Authority as an Identity Exchange; and
- (b) in all other circumstances, an exchange accredited as such by the Oversight Authority and operated by the person referred to in (a),

as described in the TDIF.

Identity Exchange Confirmation means the confirmation from an Identity Exchange to the relevant Relying Party in accordance with clause 44 confirming whether or not the Verification Provider Confirmation confirmed that the Attributes specified in the related Verification Request were Verified by the Verification Provider.

Identity Service Provider means a person accredited as such by the Oversight Authority.

Interim Period means the period commencing on the Commencement Date and ending on the date that the “Operating Rules” approved by the Oversight Authority come into effect.

Law means any law (including common law, principles of equity and legislation), regulation, standard, code or regulatory guidance.

Operating Rules means rules for operation of the Trusted Digital Identity Framework System for the Verification of Attributes of End Users for Permitted Purposes approved by the Oversight Authority from time to time.

Oversight Authority means the Digital Transformation Agency, who is responsible for the administration and oversight of the System in accordance with this MOU.

Participant means each of the Oversight Authority, and each Identity Exchange, Provider and Relying Party.

Participation Document in relation to a Participant means:

- (a) the Application Form in respect of that Participant; and
- (b) this MOU and the TDIF.

Participants Register means the register referred to in clause 78.

Permitted Purpose means an online service or product offered by the Relying Party and approved by the Oversight Authority from time to time. As at the Commencement Date, the

ATO's Tax File Number service is taken to be an approved service for the purposes of this MOU.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Personnel means, in relation to a Participant, any natural person who is an employee, contracted staff, director, officer or agent of that Participant.

Privacy Law means the *Privacy Act 1988* (Cth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of Personal Information.

Proofing Level means the level of Verification that is performed or required to be performed (as the context requires) by a Verification Provider, including the period ending on the date of the related Verification Provider Confirmation within which the Verification must have been performed, as set out in the TDIF.

Provider means an Attribute Service Provider, a Credential Service Provider or an Identity Service Provider.

Relying Party means a person approved as such by the Oversight Authority.

Service Levels means the service levels (if any) applicable to different types of Participants as set out in the TDIF.

Specific Attributes means the Attributes collected and validated by an Attribute Service Provider in accordance with the TDIF.

Specified Purpose means, in respect of a Verification Request, the Permitted Purpose to which the Verification Request relates.

Suspension Event has the meaning given in clause 63.

System means the Trusted Digital Identity Framework System for the Verification of Attributes of End Users for Permitted Purposes in accordance with this MOU.

Trusted Digital Identity Framework or **TDIF** mean the trusted digital identity framework documents published by the DTA from time to time. As at the Commencement Date, the TDIF refers to [Release 2], except that this MOU is not part of the TDIF.

[Note to reviewing agencies: the TDIF is an evolving document suite – where this MOU refers to a requirement of the TDIF that is not currently reflected in the TDIF (e.g. service levels), the DTA is working to reflect these requirements and it is expected that they will be in place prior to launch of the first service.]

Verification and to **Verify** mean the process by which a Verification Provider collects and validates one or more Attributes of an End User in accordance with this MOU and TDIF.

Verification Provider means an Attribute Service Provider or an Identity Service Provider.

Verification Provider Confirmation means the confirmation from the Verification Provider to the relevant Identity Exchange in accordance with clause 44 confirming whether or not Attributes of an End User were Verified by it.

Verification Request means a request submitted in accordance with this MOU by an End User to an Identity Exchange for the Verification of one or more of their Attributes to a Relying Party for a Specified Purpose.

Verified means, in respect of a Verification Request by an End User, that a Verification Provider has collected and validated the Attributes of the End User specified in the Verification Request in accordance with this MOU and the TDIF, and, in the case of an Identity Service Provider, at the Applicable Proofing Level.

Working Day means a day other than a Saturday, Sunday or public holiday in Canberra.

2 Interpretation

2.1 Unless the contrary intention appears, in this MOU:

- (a) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (b) a reference to a document (including this MOU) includes any variation or replacement of it;
- (c) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (d) a reference to Australian dollars, dollars, AUD, \$ or A\$ is a reference to the lawful currency of Australia, unless otherwise specified in this MOU;
- (e) a reference to a time of day is a reference to Canberra time;
- (f) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (g) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (i) a reference to the Privacy Act is a reference to the *Privacy Act 1988* (Cth); and
- (j) in the interpretation of a clause, a construction that would promote the purpose or object underlying this MOU (whether that purpose or object is expressly stated in this MOU or not) is to be preferred to a construction which would not promote that purpose or object.

3 Number

In this MOU, the singular includes the plural and the plural includes the singular.

4 Headings

Headings (including those in brackets at the beginning of paragraphs) in this MOU are for convenience only and do not affect the interpretation of this MOU.

Part B – Scope and Participants

5 Scope of this MOU

This MOU:

- (a) sets out the rules for operation of the System for the Verification of Attributes of End Users for Permitted Purposes during the Interim Period;
- (b) is only intended to apply to the activities described in it during the Interim Period, and is not to be extended by implication or otherwise; and
- (c) is administered by the Oversight Authority on its own behalf as well as on behalf of, and for the benefit of each other Participant.

6 Term and termination of this MOU

- (a) This MOU will be effective from the Commencement Date and will continue until the earlier of expiration of the Interim Period or the MOU being terminated in accordance with clause 6(b).
- (b) The Oversight Authority may terminate this MOU by giving not less than 30 Working Days' written notice to each Participant.

7 No Obligation

Nothing in this MOU operates to restrict or otherwise affect a Participant's discretion in exercising its powers as a public authority. If there is any such conflict between the unfettered discretion of a Participant in the exercise of such powers, and the performance of that Participant's obligations in this MOU, the former prevails.

A Participant is not obliged to do or omit to do anything if it would or might constitute a breach of any Law or any of the confidentiality obligations to which that Participant is subject.

8 Application of general law

Nothing in this MOU is intended to affect the operation of the general law or written laws in relation to the MOU, except to the extent expressly excluded or modified in this MOU.

9 Conflicts

If there is a conflict between:

- (a) the provisions of this MOU and an Application Form of a Participant, then this MOU prevails;
- (b) the provision of this MOU and TDIF, then this MOU prevails;
- (c) the provisions of this MOU and any other agreement between the Oversight Authority and a Participant, then this MOU prevails.

10 Entire agreement

This MOU, the TDIF and the Application Forms of Participants constitute the entire agreement of the parties about their subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

11 Costs

Any costs of a Participant arising out of execution of, and compliance with, this MOU will be borne by the Participant.

Part C – Role of Oversight Authority

12 Responsibilities

The Oversight Authority is responsible for the administration and oversight of the System in accordance with this MOU, but only to the extent expressly provided for in this MOU.

13 Powers

The Oversight Authority has all rights and powers reasonably necessary or desirable to ensure the safe, reliable and efficient operation of the System.

14 Limits on Oversight Authority's obligations

An Oversight Authority is not:

- (a) under any obligation to act unless it is satisfied that this MOU, the TDIF and applicable law has been complied with;
- (b) responsible for the performance of obligations of any other Participant.

15 Failure to notify

Unless otherwise provided in this MOU, failure by the Oversight Authority to give any notice of any thing to any Participant will not affect the obligations of the Participant in any way.

16 Consents and opinions

Except where expressly stated otherwise, the Oversight Authority may give or withhold, or give conditionally, approvals and consents, may be satisfied or unsatisfied, may form opinions, and may exercise its rights, powers and remedies, at its absolute discretion. No liability will accrue to the Oversight Authority in relation to the exercise of any such rights, powers and remedies.

17 Delegation

The Oversight Authority can exercise any rights or powers through agents or attorneys.

18 Investigations and inquiries

Without limitation, the Oversight Authority may, in its absolute discretion, undertake inquiries and investigations in connection with the System.

In connection with any such inquiry or investigation, each Participant:

- (a) agrees to cooperate with the Oversight Authority and act in good faith; and
- (b) permit the Oversight Authority and the Oversight Authority's designated representatives access to the records, premises, facilities and systems of, or used by, the Participant in connection with and as are relevant to the activities undertaken by the Participant in connection with this MOU, to the extent reasonably necessary to:
 - (i) verify that the Participant's performance of its activities is in accordance with its obligations under this MOU and that the Participant has adequate internal controls in connection with the underlying processes and procedures used; or
 - (ii) otherwise verify the Participant's compliance with this MOU or the TDIF.

Part D – Accreditation and approval of Participants

19 Acknowledgement by Participants

- (a) Subject to clause 19(b), the Oversight Authority confirms, and the parties acknowledge, that as at the Commencement Date the ATO and DHS meet the Accreditation Criteria set out in the TDIF and are accredited for the purposes of this Part D as at the Commencement Date of this MOU.
- (b) As at the Commencement Date:
 - (i) the ATO is accredited as an Identity Service Provider and a Credential Service Provider;
 - (ii) DHS is accredited as an Identity Exchange; and
 - (iii) ATO is approved as a Relying Party in respect of the provision of the ATO's Tax File Number service to End Users.

[Note: this MOU will only be signed by ATO and DHS once both parties are accredited]

- (c) The Participants acknowledge that the addition of new Participants to this MOU may support the realisation of the System and agree to facilitate the accession of new Participants where appropriate in accordance with this Part D.

20 Application to be accredited as an Identity Exchange or Provider

An Applicant may apply to the Oversight Authority to be accredited as an Identity Exchange, a Credential Service Provider, an Identity Service Provider or an Attribute Service Provider in the manner set out in the TDIF.

An Applicant making such an application must:

- (a) provide an Application Form signed by it to the Oversight Authority, together with such information that Oversight Authority requests in connection with this MOU, including any relevant information specified in the TDIF; and
- (b) satisfy the reasonable requirements of the Oversight Authority.

21 Application to be approved as a Relying Party

- (a) An Applicant may apply to the Oversight Authority to be approved as a Relying Party in relation to a particular service it provides to End Users.
- (b) An Applicant making such an application must:
 - (i) identify the service it proposes to offer as a Relying Party;
 - (ii) provide an Application Form signed by it to the Oversight Authority, together with such information that Oversight Authority requests in connection with this MOU, including any relevant information specified in the TDIF; and
 - (iii) satisfy the reasonable requirements of the Oversight Authority.
- (c) The parties acknowledge that only Government Agencies may be approved as a Relying Party under this MOU.
- (d) The parties acknowledge that the process in clause 26 must be followed if a Relying Party wishes to offer an additional service to End Users through the System.

22 Accreditation and approval

In its discretion the Oversight Authority may:

- (a) request additional information concerning an application as it may reasonably require in connection with the application;
- (b) by notice to the Applicant, impose such additional conditions as it considers reasonably necessary in connection with the acceptance of the Applicant as a Participant; and
- (c) accredit or approve the Applicant where:
 - (i) it is satisfied that the Applicant meets the conditions in clause 20(b) or 21(b) (as applicable) and any additional conditions under this clause 22; and
 - (ii) it expects that the Applicant will continue to meet all applicable conditions under this MOU or, where relevant, has chosen to waive such of those conditions that the Applicant has not met.

23 Maintaining Accreditation or Approval

- (a) Subject to clause 23(b), each Applicant, once accredited or approved under this MOU, must continue to meet the Accreditation Criteria set out in the TDIF or any other requirement imposed under this MOU including any conditions imposed under clause 22(b). To avoid doubt, this clause applies to any party taken to be accredited for the purposes of this MOU in accordance with clause 19(a).

- (b) If the Accreditation Criteria set out in the TDIF is updated after the Commencement Date of this MOU, each Applicant undertakes to comply with and meet the updated Accreditation Criteria within 3 months after the relevant update, unless otherwise approved by the Oversight Authority.
- (c) Each obligation in this MOU on Participants to comply with the Accreditation Criteria set out in the TDIF is modified to the extent clause 23(b) applies.

24 New parties - authority of Oversight Authority to sign Application Form

- (a) Each Participant authorises the Oversight Authority to sign any Application Form from an Applicant who it has accredited or approved.
- (b) The parties acknowledge that, with effect from the time that the Oversight Authority countersigns an Applicant's Application Form, the relevant Applicant becomes a party to this MOU and a Participant.

25 Accredited Participants

- (a) Each Participant must:
 - (i) only perform activities in accordance with this MOU and the TDIF if the Participant is accredited or approved (as applicable) in accordance with this Part D; and
 - (ii) only facilitate the activities of other Participants in the System in accordance with this MOU and the TDIF if those Participants are accredited or approved (as applicable) in accordance with this Part D.
- (b) A Participant may request the Oversight Authority to provide to it a copy of the Participants Register maintained under clause 78. The Oversight Authority must, promptly following such request, provide a copy of the Participants Register.

26 Approved Services

- (a) A Relying Party may apply to the Oversight Authority to have additional services approved for the purposes of this MOU.
- (b) The Oversight Authority must, promptly following an application under clause 26(a), consider whether it is appropriate to approve the additional service. The Oversight Authority may, at its discretion, approve the additional service.

27 Dual roles

Where a Participant is accredited or approved (as applicable) for two or more roles within the System, that Participant must maintain systems and processes to ensure it complies with the requirements of this MOU including requirements with respect to information-sharing and ensuring compliance with the double-blind requirements of this MOU.

To avoid doubt, this includes systems or processes used by a Participant with respect to complaints-handling and general inquiries.

Part E – Representations and Warranties by Participants

28 Representations and Warranties

Each Participant makes the following representations and warranties to the Oversight Authority at all times:

- (a) **(no contravention)** the entry by it into the Participation Documents does not and will not conflict with:
 - (i) any law binding on or applicable to it or its assets; or
 - (ii) any other document or agreement which is binding on it or its assets;
- (b) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into the Participation Documents, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (c) **(Compliance with participation conditions)** it does not meet any of the conditions imposed on it in accordance with Part D that are applicable to it, unless such conditions have been waived by the Oversight Authority;
- (d) **(no breach)** no breach of an obligation on it under a Participation Document is continuing or would result from entry into the Participation Documents or any transaction contemplated by them;
- (e) **(information)**
 - (i) all documents and information given to the Oversight Authority by or on behalf of it in connection with the Participation Documents or any transaction in connection with them are complete and not misleading or deceptive, in any material respect (including by omission) as at the date they are given or as at their stated date; and
 - (ii) neither it nor any person acting on its or their behalf in connection with a Participation Document, or any transaction in connection with it, has engaged in conduct that is misleading or deceptive (or likely to mislead or deceive) in any material respect (including by omission); and
- (f) **(no reliance)** it has entered into the Participation Documents without relying on the Oversight Authority or any other Participant or their advisers or on any representation, warranty, statement, undertaking or conduct of any kind made by any of them or on their behalf.

Part F – Undertakings by Participants

29 General undertakings by all Participants

Each Participant agrees:

- (a) **(Compliance with TDIF)** to comply with all requirements and obligations set out in the TDIF, which are expressed in that Participation Document to be binding;

- (b) **(Compliance with participation conditions)** to meet all of the conditions under clause 20(b) or 21(b) (as applicable) and any additional conditions under clause 22 that are applicable to it;
- (c) **(Oversight Authority directions)** to promptly comply with all directions of the Oversight Authority in relation to the administration or oversight of the System;
- (d) **(authorisations)** to obtain, comply with and maintain each authorisation necessary for it to enter into the Participation Documents, to comply with its obligations and exercise its rights under them and to allow them to be enforced;
- (e) **(comply with laws)** to comply with all laws binding on, or applicable to, it or its assets, including the Privacy Act; and
- (f) **(auditing of Providers)** to comply with all applicable auditing requirements specified in this MOU and the TDIF.

30 Information undertakings by all Participants

Each Participant agrees to give the Oversight Authority the following:

- (a) **(Oversight Authority request)** all information requested by the Oversight Authority, where the Oversight Authority has a reasonable need for the information for its operational purposes or to perform its functions or exercise its powers. The Participant will also obtain any required consent to such disclosure;
- (b) **(Notice of breach)** notice immediately if:
 - (i) **(Non-compliance with participation conditions)** it does not meet any of the conditions under clause 20(b) or 21(b) (as applicable) or any additional conditions under clause 22 that are applicable to it, unless such conditions have been waived by the Oversight Authority;
 - (ii) **(no breach)** it has breached or is likely to breach its obligations under a Participation Document;
 - (iii) **(Privacy)** it has breached or is likely to breach the Privacy Law or any privacy requirements in the TDIF; or
 - (iv) **(Fraud)** it becomes aware of, or suspects, fraud in connection with the System; and
- (a) **(Changes to Participation details)** notice of any change to any details set out in its Application Form or other previous communication to the Oversight Authority.

Part G – Attributes

31 Attributes

The System may only be used for the Verification of the Attributes of an End User in accordance with the TDIF.

Part H – Offering the System to End Users

32 Use of System by Relying Party

A Relying Party must only use the System for the Verification of Attributes of End Users for a Permitted Purpose and in accordance with this MOU and the TDIF.

33 Consents Required From End User

A Relying Party must only enable an End User to access the Identity Exchange if that End User has elected, in accordance with TDIF to use the System for the Verification of their Attributes.

34 Specification of Proofing Level

The Relying Party will notify each Identity Exchange of the Applicable Proofing Level in relation to the Specified Purposes in respect of which an End User may submit a Verification Request for the Verification of their Attributes to the Relying Party.

Part I – Authenticating Credentials

35 Authentication

If an End User:

- (a) indicates to an Identity Exchange that they wish to submit a Verification Request for the Verification of their Attributes; and
- (b) elects an Identity Service Provider to conduct the Verification of their Identifying Attributes,

then, on request from that Identity Service Provider, a Credential Service Provider must Authenticate the Authentication Credentials of the End User at the Applicable Authentication Credential Level in accordance with the TDIF.

36 Authentication Confirmation

The Credential Service Provider must provide an Authentication Confirmation to the Identity Service Provider confirming whether or not the Authentication Credentials of the End User have been Authenticated by it.

Part J – Requesting Verification

37 Form of Verification Request submitted by an End User

The form of the Verification Request that an End User may submit through an Identity Exchange to an Identity Service Provider if they wish to use the System for the Verification of their Attributes must meet the requirements set out in the TDIF.

38 Verification by Identity Service Provider

If the Identity Service Provider receives an Authentication Confirmation confirming that the Authentication Credentials of the End User have been Authenticated by it, then the Identity Service Provider must enable the End User to submit a Verification Request for the Verification of their Identifying Attributes to a Relying Party for the Permitted Purpose.

39 Election of Identity Service Provider by End User

If an End User indicates to an Identity Exchange that they wish to submit a Verification Request for the Verification of their Identifying Attributes to a Relying Party for a Specified Purpose, then the Identity Exchange will:

- (a) determine which Identity Service Providers have the capability to conduct the Verification at the Applicable Proofing Level; and
- (b) enable the End User to elect which of those Identity Service Providers will conduct the Verification.

40 Provision of information to Verification Providers

Without limiting clause 41, the Identity Exchange must notify the Identity Service Provider elected by the End User and any relevant Attribute Service Provider of the following information in respect of the Verification Request:

- (a) the [transaction identifier] of the End User, where required by the applicable protocol;
- (b) the Applicable Proofing Level; and
- (c) in the case of an Identity Service Provider, the Applicable Authentication Credential Level.

41 Provision of information and double-blind

Subject to clause 55, the Identity Exchange must not identify to any Verification Provider either the Relying Party or Specified Purposes to which the Verification Request relates.

Part K – Verification and Confirmations

42 Verification by Identity Service Provider

If the Identity Service Provider receives an Authentication Confirmation from a Credential Service Provider confirming that the Authentication Credentials of the End User have been Authenticated by it, then the Identity Service Provider must Verify the Identifying Attributes at the Applicable Proofing Level in accordance with the TDIF.

43 Verification by Attribute Service Provider

The relevant Attribute Service Provider must Verify the Specific Attributes of the End User at the Applicable Proofing Level in accordance with the TDIF.

44 Verification Provider Confirmation

On completion of the Verification, each Verification Provider must provide the Identity Exchange with a Verification Provider Confirmation confirming whether or not the Attributes specified in the related Verification Information were Verified by it.

45 Identity Exchange Confirmation and double-blind

On receipt of a Verification Provider Confirmation, the Identity Exchange will provide the related Relying Party with an Identity Exchange Confirmation confirming whether or not the Verification Provider Confirmation confirmed that the relevant Attributes specified in the related Verification Request were Verified by it.

However, despite any other term of a Participation Document, the Identity Exchange must not identify:

- (a) to the Relying Party the Verification Provider; or
- (b) to the Verification Provider, the Relying Party or the Specified Purposes,

in each case, in respect of a Verification Request.

46 Limits on Participants' obligations in connection with Confirmations

The Verification Provider or Identity Exchange that provides a Confirmation is only responsible for the accuracy of the Confirmation that it provides.

Neither the Oversight Authority nor any other Participant is required to check the accuracy of a Confirmation provided by another Participant.

47 Nature of Confirmations

Despite any other term of a Participation Document, each Participant acknowledges and agrees that a Confirmation does not of itself confirm the identity of an End User.

Part L – Technical Requirements

48 Technical Requirements

Each Participant must comply with the requirements applicable to it that are set out in the TDIF, including technical requirements.

Part M – Service Levels

49 Service Levels

Each Participant must from the date of that Participant's accession to this MOU perform its role and responsibilities under this MOU to meet the applicable Service Levels set out in the TDIF.

50 Measurement and monitoring

Each Participant must in respect of the Service Levels:

- (a) maintain and use the Service Level measurement and monitoring tools and procedures set out in the TDIF from time to time;
- (b) develop and implement measurement and monitoring tools and procedures to accurately and promptly measure and report the Participant's performance against the applicable Service Levels in detail; and
- (c) provide Service Level reporting in the manner reasonably requested by the Oversight Authority from time to time.

51 Service Level failure

If a Participant fails to meet any Service Levels, that Participant must promptly:

- (a) if requested by the Oversight Authority, re-perform those activities which gave rise to the failure to meet the Service Level;
- (b) use all reasonable endeavours to correct the fault which caused the failure to meet the Service Level; and
- (c) if additional resources are necessary to enable the Participant to meet the Service Level, promptly commit additional resources to perform the activities required under this MOU.

The above remedies are without prejudice to any other right or remedy available under or in connection with this MOU.

Part N – Dispute Resolution

52 Disputes related to the System

Any disputes between Participants must be dealt with in accordance with the dispute resolution set out in this Part N.

53 Complaints against a Participant

If a Participant notifies the Oversight Authority in writing of a complaint against another Participant in relation to:

- (a) the use of the System; or
- (b) compliance by the Participant with this MOU,

the Oversight Authority will consider the complaint and take action which it considers appropriate in the circumstances, including, for example:

- (i) inspecting records or requiring information from the Participant;
- (ii) taking action under Part P; and
- (iii) referring the complaint to a Committee for resolution.

54 Complaints from End Users

- (a) Each Participant acknowledges that the Oversight Authority is the central point of contact for any public enquiries or complaints in respect of the System and each Participant will refer any complaints it receives from End Users to the Oversight Authority.
- (b) Without limiting the terms of this MOU, each Participant will cooperate with the Oversight Authority in relation to the disclosure of information to End Users for the purposes of complaints handling or marketing.

55 Disclosure of Relying Parties and Verification Providers

The Oversight Authority may require an Identity Exchange to:

- (a) identify the Verification Service Provider that performed the Verification in respect of a Verification Request to the Relying Party; and
- (b) identify such Relying Party to the Verification Service Provider,

in circumstances where the Oversight Authority has received notice of a complaint or dispute from a Participant or End User in respect of the System.

Part O – Liability

56 Limitation of liability

Without limiting any other provision of this MOU and during the Interim Period, no party will be responsible for any losses incurred by any other party in connection with this MOU.

57 No warranty or indemnity

No party to this MOU provides any warranties or indemnities, except to the extent that these may be implied by law and cannot be excluded.

58 Discretionary activity

This Part O extends to anything arising out of or connected with acts of:

- (a) the Oversight Authority;
- (b) any Participant; and
- (c) any Personnel, contractors and professional service providers of clause 58(a) or 58(b),

including the exercise of any of those parties' discretion, acting in what it or they believe to be the interests of the System or Participants, even if not required under the Participation Documents.

59 No other issues

Each party confirms and acknowledges that no statement made by anyone binds the Oversight Authority or a Participant except as expressly set out in this MOU.

60 No notice outside the System

Each party will not be taken to have notice of anything by reason only:

- (a) that notice of it exists on any publicly available records; or
- (b) of the fact that actual notice of it has been given to or received by that party,

unless details of it have been communicated to the party in accordance with the applicable requirements of this MOU.

61 Assumption of accuracy

The Oversight Authority may assume, without enquiry, that any statement, information, representation or warranty which is or appears to be made by a Participant is correct, and may rely upon that statement, information, representation or warranty.

Part P – Termination, Resignation and Suspension of Participants

62 Resignation of a Participant

A Participant may resign by giving the Oversight Authority not less than 3 month's notice (or any shorter period the Oversight Authority accepts) of its intention to do so.

63 Suspension of Participant

The Oversight Authority may at any time suspend with immediate effect any Participant if it believes:

- (a) the Participant has not complied with any obligations under the Participation Documents or any representation made by the Participant is not true at any time;
- (b) the Participant fails to comply with any reasonable direction, decision or requirement of the Oversight Authority under this MOU; or
- (c) the Participant's conduct or continued participation is contrary to the interests of the other Participants, the Oversight Authority or the System,

(each a "**Suspension Event**").

The Oversight Authority may revoke a suspension in whole or in part at any time.

64 Termination of Participant

The Oversight Authority may, by notice in writing to a Participant, terminate the right of that person to be a Participant with immediate effect if:

- (a) a Participant has resigned from participation in the System; or
- (b) a Suspension Event has occurred in respect of that Participant, the Oversight Authority has provided an opportunity for the Participant to make a submission to the Oversight Authority regarding the Suspension Event and such proposed termination and the

Oversight Authority has formed the view that the Suspension Event is incapable of being rectified.

65 Notice to affected Participant and other Participants

The Oversight Authority will notify all affected Participants of such a resignation, termination or suspension as soon as is reasonably practicable (whether before, after or at the time of the termination or suspension).

66 Further steps

Each Participant will, upon its termination, resignation or suspension as a Participant:

- (a) no longer be accredited for the purposes of this MOU and must not represent that it is accredited;
- (b) except to the extent approved by the Oversight Authority, ensure that no person accesses technology procured, provided or otherwise made available by that Participant in connection with the System;
- (c) if requested by the Oversight Authority, immediately return to the Oversight Authority or destroy any copies of anything requested by the Oversight Authority which the Oversight Authority thinks may compromise the security of the System in the possession of that Participant or its End Users including any information, data, records or documentation relating to, or developed in connection with, the Participant's obligations under this MOU;
- (d) provide any assistance required by the Oversight Authority in relation to its termination, resignation or suspension as a Participant; and
- (e) where required by the Oversight Authority, facilitate the transition of information and other systems in accordance with the Oversight Authority's reasonable security requirement to another Participant to enable the ongoing provision of services provided by the Commonwealth to End Users.

Part Q – Committees

67 Establishment of Committees

The Oversight Authority may from time to time establish committees to advise it in respect of aspects of the administration and oversight of the System. The rules applicable to these Committees may be specified in the TDIF or otherwise approved by the Oversight Authority.

68 Limitations on Committees and members

No Committee or member of it:

- (a) is entitled to participate in the decision making of the Oversight Authority's decision makers or to make policy decisions on behalf of the Oversight Authority; or
- (b) is responsible or liable to any person because the Oversight Authority or any other Participant does not comply with its obligations.

Part R – Other matters

69 No subcontracting without approval

- (a) A Participant must not subcontract any of its obligations under this MOU or any other Participation Document without the prior written approval of the Oversight Authority which may not be unreasonably withheld. The Oversight Authority may impose such conditions as it considers reasonable on its approval of subcontractors under this clause 69.
- (b) Each Participant agrees that the Oversight Authority may at any time on reasonable grounds withdraw, limit or suspend its approval of a subcontractor or require a Participant to cease using a previously approved subcontractor by notifying the relevant Participant and giving reasons.
- (c) Each Participant must ensure that each of its subcontractors:
 - (i) has the skills, training, qualifications, resources and experience to carry out the work subcontracted to it;
 - (ii) complies with all relevant terms of this MOU or any other Participation Document.
- (d) Each Participant is responsible for all acts and omissions of its subcontractors as if they were those of that Participant, and as such the subcontractor's acts or omissions shall be considered as if they are acts or omissions of the Participant.

70 Public relations

Each Participant:

- (a) acknowledges that the Oversight Authority will prepare and coordinate all public statements and communications made in respect of the System; and
- (b) must not make any public disclosures in respect of:
 - (i) the activities carried out by any other Participant in the System;
 - (ii) the functionality of the System; or
 - (iii) any complaint or dispute made in respect of the System,

unless otherwise approved by the Oversight Authority, with such approval not to be unreasonably withheld.

71 Trade marks and trade names

A Participant must not use another Participant's (**Party B's**) trade mark, trade name or other designation in any promotion or publication without the prior written consent of Party B (not to be unreasonably withheld).

72 Privacy

If, as a result of activities undertaken in connection with this MOU, any Participant is able to access any Personal Information, then that Participant must comply with all applicable Privacy Law.

73 Retention of Data and service records

Each Participant must comply with the data retention and service record requirements applicable to it that are set out in the TDIF.

74 Fraud

Each Participant must comply with the fraud requirements applicable to it that are set out in the TDIF.

75 Authorised Signatories

Each Participant must provide to the Oversight Authority a list of Authorised Signatories in the format required by the Oversight Authority.

Each Participant must ensure its list of Authorised Signatories is kept current and must immediately advise the Oversight Authority of any changes to that list in the format required by the Oversight Authority.

Part S – Amendments to Participation Documents

76 Variations to this MOU

Subject to Part D and this Part S, the terms of this MOU can only be varied with the written agreement of the parties to this MOU.

77 Variations to the TDIF

- (a) The Oversight Authority may propose amendments to the TDIF by notice to the Participants. A notice to amend the TDIF will include:
 - (i) details of the amendment; and
 - (ii) the date that the amendment will take effect (subject to acceptance in accordance with this clause).
- (b) The Oversight Authority will provide notice of a proposed amendment to the TDIF in a reasonable time in advance of the proposed date of effect, taking into account the time a Participant will reasonably need to accommodate and comply with any new requirements.
- (c) If, following receipt of a notice provided in accordance with clause 22(b), a Participant does not notify the Oversight Authority of any concerns with the proposed amendments within 10 Working Days, the amendment will be deemed to be accepted.

- (d) If a Participant does not agree with any part of the proposed amendment, the Participant may record its concerns with the proposed amendment by giving notice of its concerns to the Oversight Authority within 10 Working Days of receiving the notice from the Oversight Authority (unless otherwise agreed in writing).
- (e) The Oversight Authority will work cooperatively with the Participant to attempt to resolve any concerns raised by the Participant.
- (f) If, having taken reasonable steps to comply with clause 22(b), the Oversight Authority cannot resolve the Participant's concerns, the Oversight Authority may unilaterally accept amendments to the TDIF.
- (g) Any amendment to the TDIF will take effect on the latter of it being accepted or deemed to be accepted by all Participants, or unilaterally accepted by the Oversight Authority.
- (h) Within 30 Working Days of the acceptance of an amendment to the TDIF, the Oversight Authority will:
 - (i) notify each Participant that an amendment has been made to the TDIF; and
 - (ii) publish a revised version of the TDIF.
- (i) The parties acknowledge that, to the extent a proposed amendment to the TDIF relates to a requirement that is designed to protect the privacy of End Users, the Oversight Authority:
 - (i) will provide notice to the Commissioner as defined in the Privacy Act of any proposed amendments to the TDIF; and
 - (ii) such notice may be given prior to the Oversight Authority giving notice under clause 77(a).

Part T – Participants Register and Notices and Communications

78 Participants Register

The Oversight Authority must establish, maintain and conduct a register in respect of the Participants in the System at its principal office from time to time. The Participants Register will include the following information in respect of each Participant:

- (a) the name and registered office of the Participant; and
- (b) the address, email and attention details for the purposes of notices and communications with the Participant in connection with the Participation Documents.

79 Form and publication

- (a) All notices, demands, certificates, consents, approvals, waivers and other communications in connection with the Participation Documents must be in writing and signed by an Authorised Officer of the sender.
- (b) All communications (other than email communications) must also be marked for the attention of the person specified in the Participants Register.

- (c) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.
- (d) Each Participant acknowledges that the Oversight Authority may publish any notices, demands, certificates, consents, approvals, waivers and other communications it issues or receives in connection with this MOU.

80 Delivery

Communications must be:

- (a) left at the address referred to in the Participants Register;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Participants Register; or
- (c) sent by email to the address referred to in the Participants Register.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

81 When effective

Communications take effect from the time they are received or taken to be received under clause 82 (whichever happens first) unless a later time is specified in the communication.

82 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Working Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

83 Receipt outside business hours

Despite anything else in this clause 83, if communications are received or taken to be received under clause 82 after 5.00pm on a Working Day or on a non-Working Day, they are taken to be received at 9.00am on the next Working Day. For the purposes of this clause, the place in the definition of Working Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

Part U – General

84 Acknowledgement

The parties acknowledge that:

- (a) as between Government Agencies, this MOU does not create legally binding obligations on the Participants;
- (b) as between a Government Agency and another party to this MOU (who is not a Government Agency), this MOU is a valid, binding and enforceable contract between each of them; and
- (c) without limiting clause 84(b), this MOU is a good faith expression of mutual interests and the basis upon which the Participants will undertake activities to facilitate the Verification of Attributes of End Users through the System.

85 Further steps

Each Participant agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the Oversight Authority asks and considers necessary to:

- (a) show whether the Participant is complying with any Participation Document; or
- (b) aid the exercise by the Oversight Authority of any right or power in any Participation Document.

86 Discretion in exercising rights

The Identity Exchange may exercise a right or remedy or give or refuse its consent under this MOU in any way it considers appropriate (including by imposing conditions).

Any exercise of discretion by the Identity Exchange under this MOU may be made in the Identity Exchange's sole discretion unless this MOU states otherwise. However, the Identity Exchange will exercise any such rights or remedies in good faith and in a commercially reasonable manner.

87 Consents

Each Participant agrees to comply with all conditions in any consent the Oversight Authority gives in connection with this MOU.

88 Partial exercise of rights

If the Oversight Authority does not exercise a right or remedy under this MOU fully at a given time, it may still exercise it later.

89 Conflict of interest

A Participant may exercise their rights, powers and remedies in connection with the Participation Documents even if this involves a conflict of duty or they have a personal interest in their exercise.

90 No liability for loss

The Oversight Authority is not liable for loss caused by the exercise or attempted exercise, or failure to exercise, or delay in exercising any right or remedy under this MOU.

91 Remedies cumulative

The rights and remedies of the Identity Exchange under this MOU are in addition to any other rights or remedies available to the Oversight Authority [under any other agreements with any other Participant] or available under any applicable law.

92 Reimbursement obligations

Any reimbursement or similar obligation in any Participation Document given by a Participant:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with a Participation Document, any settlement or any other thing;
- (b) is independent of any other obligations under a Participation Document; and
- (c) continues after the Participation Document, or any obligation arising under it, ends.

93 Prompt performance

Each Participant agrees to perform its obligations under a Participation Document promptly, unless a specific time for performance is expressly stated in the Participation Document. Time is of the essence in a Participation Document in respect of an obligation of a Participant (other than the Oversight Authority) to pay money.

94 Assignment or other dealings

A Participant may not assign or otherwise deal with its rights under a Participation Document or allow any interest in them to arise or be varied without the consent of the Oversight Authority.

95 Certificates

The Oversight Authority may give another Participant a certificate about an amount payable or any other matter in connection with a Participation Document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

96 Severability

If the whole or any part of a provision of a Participation Document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of the Participation Document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of the Participation Document or is contrary to public policy.

97 Inconsistent law

To the extent the law permits, each Participation Document prevails to the extent it is inconsistent with any law.

98 Supervening law

Any present or future law which operates to vary the obligations of a Participant in connection with a Participation Document with the result that another Participant's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

99 Governing law

This MOU is governed by the laws in force in the Australian Capital Territory, Australia. Each Participant submits to the courts of that place.

Signing page

This MOU is entered into by the parties indicated below.

Signed for, and on behalf of, the Commonwealth of Australia represented by the Digital Transformation Agency, in the presence of:

.....

witness name

.....

signature of representative

.....

signature of witness

Date

Signed for, and on behalf of, the Commonwealth of Australia represented by the Australian Taxation Office, in the presence of:

.....

witness name

.....

signature of representative

.....

signature of witness

Date

Signed for, and on behalf of, the Commonwealth of Australia represented by the Department of Human Services, in the presence of:

.....

witness name

.....

signature of representative

.....

signature of witness

Date

Annexure A Form of Application Form

Date: [#]

To: [#] (“Oversight Authority”)

From: _____

DEED BETWEEN:

[#] (“Oversight Authority”) at [insert address] (on behalf of itself and each Participant) and

[name and address of Applicant] (“Applicant”).

1 Definitions

In this deed, **MOU** means the System Governance Interim Memorandum of Understanding (version 2.0) for the Trusted Digital Identity Framework System during the Interim Period.

Definitions and interpretations in the MOU apply in this deed.

2 Application

The Applicant applies to be [accredited as [an Identity Exchange / a Credential Service Provider / an Identity Service Provider / an Attribute Service Provider]] [approved as a Relying Party] under the MOU.

3 Deed

This is a deed between the Applicant, each other Participant and the Oversight Authority.

This deed is an Application Form for the purposes of the MOU.

4 Incorporation of terms

The terms of the MOU are incorporated in this deed as if set out in full and bind the Applicant (and the Oversight Authority and each other Participant).

5 All existing Participants bound

The Oversight Authority enters into this deed on behalf of itself and all existing Participants but does not warrant or give any assurance that it has authority to enter into this deed on behalf of the existing Participants.

6 Notices under the Participation Documents

Following are the address and other details for notices to the Applicant under any Participation Document:

Address: _____

Email: _____

Attention: _____

7 Commencement

This deed takes effect on and from *[insert date]*/*[the date on which it has been signed by both parties]*.

8 Nature of this deed

The provisions of this deed do not constitute legally binding covenants between the parties to this document.

9 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

10 Governing law

This deed is governed by the laws in force in Australian Capital Territory, Australia.

Executed as a deed

OVERSIGHT AUTHORITY

[Execution block to be inserted]

PARTICIPANT

[Execution block to be inserted]