

23 September 2019

Changes to our Referral Agreement

We've updated our 'Verification of Identity (Property Transfers) Referral Agreement', in consultation with ARNECC, to reinforce the fact that Australia Post is appointed as your Representative Agent under a Client Authorisation-Representative for every VOI we complete on your behalf.

The updates are captured in these clauses:

- 1.1 ('Australia Post Identification Services')
- 12.4 ('Relationship')
- 13.1 ('Definitions') – specifically the definitions of 'Client Authorisation-Representative', 'ECNL', 'Identification Services' and 'Participation Rules'.

We've attached a copy of the new Referral Agreement (v4.3) for your reference. No action is required on your part.

Questions?

Email us at LandTitleVOI@auspost.com.au or call us on **1300 364 543**.

Kind regards,

Australia Post Property VOI team

Verification of Identity (Property Transfers) Referral Agreement

Agreed Terms

This agreement is made on the following terms between:

- (1) Australian Postal Corporation (**Australia Post**); and
- (2) You, the party identified in the Details (**you**).

1 **Australia Post's Identification Services**

- 1.1** Australia Post is appointed as your Representative Agent under a Client Authorisation-Representative for the purposes of carrying out the Identification Services on your behalf in accordance with this Agreement, including by providing Identification Services in relation to an Applicant where the applicable Fees have been paid.
- 1.2** Australia Post will perform the Identification Services at a Participating Post Office during the hours that the Participating Post Office is open for business (see the outlet locator at <http://auspost.com.au/pol/app/locate/post-office/land-title-id-check> for more information).
- 1.3** After completing Identification Services in relation to an Applicant, Australia Post will provide you with a Report.
- 1.4** Warranties
 - a) Where Australia Post provides a Report in relation to an Applicant, Australia Post warrants that, subject to any qualifying remarks, statements or comments contained in a Report, it has carried out Identification Services in accordance with this Agreement, and in accordance with the Verification of Identity Standard, in relation to that Applicant.
 - b)
 - c) Australia Post warrants that staff in Participating Post Offices conducting the Identification Services have been provided with information and training materials relevant to performance of the Identification Services in accordance with this Agreement.

2 **Your obligations**

- 2.1** You may refer an Applicant to a Participating Post Office for Australia Post to perform the Identification Services in relation to that Applicant. However, before referring an Applicant to a Participating Post Office, you must:
 - a) provide the Applicant with a current Identity Verification Form;
 - b) notify the Applicant of any other documents or forms of identification

required to be produced by the Applicant in relation to the Identification Services (including, where relevant, any client authorisation, registry instrument or other document that is to be signed by the Applicant); and

- c) notify the Applicant that the Identification Services may only be performed in relation to an Application upon payment by the Applicant to Australia Post of the applicable Fees.

2.2 You must ensure that each Identity Verification Form provided to an Applicant is the current Identity Verification Form provided to you by, or on behalf of, Australia Post for use with the Identification Services. You may not use any other form, or make any amendments to the Identity Verification Form.

2.3 You must review any Report provided by Australia Post relating to a performance of the Identification Services.

2.4 You must comply with all applicable laws, including any law relating to the payment or receipt of a benefit, including the disclosure of any benefit that may be or become payable to you by Australia Post in relation to the Identification Services, to the extent that disclosure is required by law.

2.5 You acknowledge that the purpose of the Identification Services is to enable you to comply with the Verification of Identity Standard, but that the provision of Identification Services in relation to an Applicant (including where Australia Post issues an unqualified Report):

- a) is not provided by Australia Post for any other purpose;
- b) is not intended, or able, to conclusively prove the identity of an Applicant;
- c) may but does not necessarily eliminate the possibility of identity fraud by an Applicant;
- d) will not assist you in any way to confirm, verify or prove other matters relating to an Applicant, such as the capacity in which, or the authority under which, an Applicant purports or proposes to act; and
- e) does not discharge all of your obligations under the Verification of Identity Standard.

2.6 You represent and warrant that, as at the Commencement Date and at all times throughout the Term, you are:

- a) a conveyancer currently licensed or registered under conveyancing legislation in one or more relevant Australian jurisdictions to carry on a business that consists of or involves the preparation of conveyancing instruments for fee or reward; or
- b) a legal practitioner currently entitled to practice the profession of law under legal practitioner legislation in one or more relevant Australian jurisdictions; or

- c) a credit provider that holds all licences and authorisations required to provide credit; or
- d) a public body responsible for the management and administration of the land registry or title office in a relevant Australian jurisdiction.

3 Term

This Agreement starts on the Commencement Date unless another date is agreed in writing between the Parties, and continues until terminated in accordance with clause 11.

4 Fees and Charges

Australia Post is under no obligation to perform Identification Services in relation to an Applicant unless the applicable Fees, which are validly due and payable, are paid.

5 Intellectual Property

5.1 The ownership of any Intellectual Property Rights which exists prior to the Commencement Date will not be transferred or assigned, unless otherwise agreed in writing by the parties.

5.2 All Intellectual Property Rights developed or produced by or on behalf of Australia Post in connection with, or as a result of, the provision of the Identification Services will be the sole and unencumbered property of Australia Post.

6 Confidentiality

6.1 Each Party acknowledges that the Confidential Information of the other Party is valuable to that other Party. Each Party undertakes to keep the Confidential Information of the other Party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other Party.

6.2 A Party may use or reproduce the Confidential Information of the other Party only for the purposes of or in connection with this Agreement, including the exercise of rights under this Agreement consequent upon any default (and including to the extent necessary to allow each Party to manage any claims referred to in clause 9).

7 Privacy

7.1 Each Party will comply with the Privacy Act in relation to any Personal Information it deals with in relation to the Identification Services or this Agreement.

- 7.2** Subject to clause 7.3, Australia Post will not, without the consent of the Applicant, use or disclose an Applicant's Personal Information for any purpose other than the purpose of performing the Identification Services on your behalf or otherwise satisfying its obligations under this Agreement (unless such use or disclosure is for the purpose of compliance with, or the enforcement of, any law).
- 7.3** Obligations relating to the non-disclosure of Personal Information by Australia Post are contained in the Act and the Privacy Act. To the extent to which the obligations of Australia Post under this Agreement are inconsistent with those under the Act or the Privacy Act in respect of same subject matter, the obligations under the Act or the Privacy Act (as the case may be) will prevail.

8 Communications and Documents

- 8.1** Any communication given to Australia Post by you must be given in writing and sent to Australia Post using the Postal Address or Email Address set out in the Details.
- 8.2** Australia Post may give any communication or document (including a Report) to you in writing by:
- a) emailing the communication or document to the Email Address set out in the Details, or more recently notified to Australia Post; or
 - b) making the communication or document available through any online portal or system Australia Post makes available to you for the purposes of this Agreement.
- 8.3** You are responsible for ensuring that Australia Post is notified in writing of your accurate and up to date contact details at all times.
- 8.4** Where Australia Post provides you with access to an online portal or system for the purposes of this Agreement, you must:
- a) ensure that you have and maintain the equipment (including any systems and programs) and expertise necessary to properly use the online portal or system;
 - b) comply with the terms of use applicable to any such portal or system from time to time;
 - c) not do, or fail to do, anything which would reasonably be expected to compromise the security or integrity of any such portal or system; and
 - d) use any such portal or system only for the purposes of receiving or accessing communications or documents (including Reports) from Australia Post.
- 8.5** Communications and documents made available to you via an electronic

channel will be taken to have been provided by Australia Post when sent (in the case of email) or when made accessible to you (in the case of any other electronic channel, including an online portal or system).

- 8.6** Document retention or storage services do not form part of the Identification Services.

9 Liability

9.1 Limitation on liability

Except to the extent permitted by law, including the *Competition and Consumer Act 2010* (Cth), Australia Post's liability to you for loss arising out of or in connection with any Default of Australia Post is limited to reimbursement of that loss up to the lesser amount of:

- a) \$1.5 million for each claim made by you, up to a maximum of \$5 million in total for all claims made by you, for such Defaults in each calendar year; and
- b) the Available Industry Aggregate Claim Amount at the time Australia Post agrees, or is required, to reimburse loss relating to each claim by you for any such Default.

9.2 Liability

Except to the extent permitted by law, including the *Competition and Consumer Act 2010* (Cth):

- a) other than as expressly set out in this Agreement, Australia Post is not liable to you for any loss suffered by you arising out of or in connection with this Agreement; and
- b) the liability of a Party to the other Party for any loss under this Agreement will be reduced proportionately to the extent that:
 - (i) the acts or omissions of the claiming Party or its officers, employees or representatives contributed to that loss; or
 - (ii) the claiming Party did not take all reasonable steps to mitigate that loss.

9.3 Claims

You must:

- a) bring any claims against Australia Post under this Agreement or in relation to or arising out of the Identification Services promptly; and
- b) as soon as practicable, notify Australia Post in writing of all claims (either commenced by you, or commenced by a third party against you) under this Agreement or in relation to or arising out of the Identification Services; and

- c) not bring any claim under this Agreement or in relation to or arising out of the Identification Services against any representative of Australia Post, or any licensee or franchisee of Australia Post, or any representative of any such licensee or franchisee (see, also, clause 12.5).

9.4 Third party proceedings

Nothing in this Agreement limits or restricts:

- a) any rights of a third party to commence proceedings, mediation or arbitration against a Party to this Agreement, or any rights of a Party to this Agreement to commence proceedings, mediation or arbitration against a third party; or
- b) the ability of a Party to this Agreement to be joined in any proceedings, mediation or arbitration involving the other Party, as determined by the rules applicable to the relevant forum.

10 Insurance

During the Term, Australia Post will hold:

- a) professional indemnity insurance for an amount of at least \$1.5 million per claim and \$20 million in the annual aggregate; and
- b) fidelity insurance for an amount of at least \$1.5 million per claim and \$20 million in the annual aggregate.

11 Termination

Either Party may terminate this Agreement immediately by giving notice to the other Party in writing. Clauses 5, 6, 7, 8.6, 9, 12.4 and 0 survive termination of this Agreement.

12 General

12.1 Entire agreement

In respect of its subject matter, this Agreement:

- a) contains all of the express terms of the agreement between the Parties; and
- b) supersedes any previous representations, warranties, arrangements and agreements.

12.2 Variation

Australia Post may vary the terms of this Agreement:

- a) where deemed necessary to ensure the Identification Services are consistent

with the Verification of Identity Standard, with immediate effect by providing written notice to you; and

- b) otherwise, by providing at least 30 days' written notice to you.

12.3 Force Majeure

A Party will not be in default under this Agreement for any failure to observe or perform any provision of this Agreement for any reason or cause that could not reasonably be controlled or prevented by that Party.

12.4 Relationship

Australia Post is appointed as your Representative Agent under a Client Authorisation-Representative under this Agreement only for the purpose of providing Identification Services. This Agreement does not create any form of joint venture, partnership or employment relationship between the Parties, and a Party may not make any representation which implies that such a relationship exists. You acknowledge that Australia Post may provide the same or similar services to others (including your competitors) without reference to you.

12.5 Licensees, franchisees and representatives

- a) Australia Post is responsible for the acts and omissions of:
 - (i) its licensees and franchisees; and
 - (ii) its representatives, and the representatives of its licensees and franchisees,

in performing the Identification Services as though such acts and omissions were performed by Australia Post. This Agreement creates no direct rights or obligations between you and any such licensee, franchisee or representative; and

- b) Australia Post holds the benefit of this Agreement on trust for its licensees and franchisees performing the Identification Services.

12.6 Severability

If part or all of any provision of this Agreement is held by a court to be void, unenforceable or illegal, it will be severed, with the remainder of this Agreement remaining in full force and effect.

12.7 Governing Law

This Agreement is governed by, and shall be construed in accordance with, the laws in force in Victoria, Australia and the courts and registries of courts in that State shall have non-exclusive jurisdiction in the event of any dispute relating to this Agreement.

13 Definitions and Interpretation

13.1 Definitions

For the purposes of this Agreement, unless the context or subject matter requires otherwise:

“**Act**” means Australian Postal Corporation Act 1989 (Cth).

“**Agreement**” means the agreement recorded in this document. This Agreement consists of 2 parts: the Details and the Agreed Terms.

“**Applicant**” means an individual you are dealing with in relation to real property and who you refer to Australia Post for the performance of the Identification Services.

“**Available Industry Aggregate Claim Amount**” means, at any time in a calendar year, \$20 million minus the total amount which is paid or payable by Australia Post to any person (including you) on whose behalf Australia Post provides verification of identity services on terms substantially similar to the terms of this Agreement:

- (a) during the period from the start of that calendar year up to that time; and
- (b) for claims arising out of a default of Australia Post.

For the avoidance of doubt, any Available Industry Aggregate Claim Amount which has not been paid or is not payable by the end of any calendar year will not be available in or carried over to the following calendar year.

“**Client Authorisation-Representative**” has the meaning given to that term in the Participation Rules.

“**Commencement Date**” means the commencement date specified in the Details.

“**Communication**” includes a notice given for the purposes of this Agreement.

“**Confidential Information**” of a Party:

- a) includes all information (regardless of the form of disclosure or the medium used to store or represent it) treated by one Party (“**Disclosing Party**”) as confidential and of which the other Party (“**Recipient**”) first becomes aware either:
 - (i) through disclosure by the Disclosing Party to the Recipient; or
 - (ii) otherwise through the Recipient’s involvement with the Disclosing Party and its business operations;

- b) includes information about the Disclosing Party's finances, strategies, management or business operations and any materials provided by the Disclosing Party to the Recipient;
- c) includes the terms of this Agreement, but
- d) excludes information:
 - (i) that the Recipient creates (whether alone or jointly with any person) independently of the Disclosing Party's Confidential Information (if the Recipient has evidence in writing that the information falls within this exception); or
 - (ii) that is public knowledge (and has become so otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom the Recipient has disclosed the information).

“Default” means an act or omission of Australia Post which gives rise to liability to you under or in connection with this Agreement, whether that liability arises in contract, tort (including negligence), at law or otherwise.

“Details” means the section so described in this Agreement.

“ECNL” means the Electronic Conveyancing National Law.

“Fee” means the amounts payable to Australia Post in relation to each performance of the Identification Services.

“Identification Services” means the in-person verification of identity services and, where requested, related document witnessing services including the signing and certifying of a client authorisation as your Representative Agent under a Client-Authorisation Representative, to be provided by Australia Post on your behalf in accordance with the Verification of Identity Standard, as defined in this Agreement.

“Identity Verification Form” means the template verification of identity form provided to you by, or on behalf of, Australia Post from time to time for use in relation to the Identification Services.

“Intellectual Property Rights” means all intellectual property rights in all matters, things or processes (including, but not limited to, hardware and software) including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions, domain names and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

“Participating Post Office” means a Post Office nominated by Australia Post from time to time as able to provide the Identification

Services (see the outlet locator at <http://auspost.com.au/pol/app/locate/post-office/land-title-id-check> for more information).

“**Participation Rules**” as amended from time-to-time, has the meaning given to that term in the ECNL.

“**Party**” means a party to this Agreement.

“**Personal Information**” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

“**Post Office**” means a facility in which postal services are provided to the community directly by Australia Post or via an agent, franchisee or licensee, including post office agencies.

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

“**Report**” means a written report prepared by, or on behalf of Australia Post, consistent with the Verification of Identity Standard and provided to you relating to an Applicant, containing documents and images collected and completed during a performance of the Identification Services (including the completed Identity Verification Form, copies of identity documents, a photograph of the Applicant, a certification signed by, or on behalf of, Australia Post and, where relevant, copies of any client authorisation, registry instrument or other document signed by the Applicant at the same time the verification was performed).

“**Verification of Identity Standard**” means the verification of identity standard prescribed in either the participation rules for electronic conveyancing, or an instrument setting out verification of identity requirements for paper-based conveyancing, determined by the relevant Registrar or Registrar General from time to time in a relevant jurisdiction.

“**you**” means the party stated in the Details (other than Australia Post).

13.2 The following rules apply to this Agreement unless the context requires otherwise:

- a) The singular includes the plural and vice versa.
- b) Headings are for ease of reference only and do not affect interpretation of the Agreement.
- c) A reference to a Party includes its employees, agents, representatives and sub-contractors and any servant or agent of its sub-contractors.
- d) The words “include”, “including”, “for example”, “such as”, or similar expressions, do not limit and will not be interpreted by the Parties as in

any way limiting other inclusions or examples.

- e) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

13.3 If there is an inconsistency between the operative provisions of this Agreement and a document incorporated by reference in this Agreement, the operative provisions of this Agreement will take precedence.