Duties Online Terms and Conditions of Use

As at January 2019

Replaces *Notice of Approval of a Special Tax Return Arrangement*

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# Compliance with these terms

## Terms are contractually binding

1.1.1 By registering an account to use the Duties Online system on the State Revenue Office (**SRO**) website (**DOL**), you agree that, on acceptance of your registration, you enter into a legally binding contract with the Commissioner under which you are entitled to access and use DOL, including using DOL to complete and submit Digital Duties Forms, in accordance with these terms and conditions of use (**Terms**).

## Terms binding under *Taxation Administration Act 1997*

1.2.1 In addition, a notification that your registration to use DOL has been accepted is a notice that you have been granted an approval to use DOL as a Taxpayer, or as an agent of behalf of one or more Taxpayers, under section 39 of the *Taxation Administration Act 1997* (TAA), on the conditions of these Terms.

1.2.2 This means that the conditions set out in these Terms are binding on you by virtue of section 43 of the TAA, to the extent that they are conditions on the approval for a special tax return arrangement. All clauses of these Terms are conditions for the purposes of sections 41 and 43 of the TAA. Breach of such a condition is an offence under that section.

## Other legal obligations unaffected

1.3.1 The requirements of these Terms are in addition to other requirements that apply to the assessment and payment of Duty, including the TAA and the *Duties Act 2000* (Duties Act). This means that nothing in these Terms affects any liability to pay Duty, or any other any obligations or requirements, imposed by the TAA, the Duties Act or any other law, on you, a Taxpayer or any other party to a Dutiable Transaction on whose behalf you act.

## Responsibility for Users

1.4.1 Although we grant access to DOL, and enter into these Terms with companies, firms and other organisations, you are responsible for ensuring that DOL is only accessed and used on your behalf by properly authorised individual Users. Under these Terms, any conduct of Users who use DOL under your registration is considered to be your conduct.

1.4.2 If you use DOL to fraudulently seek to reduce a Duty assessment or otherwise contravene these Terms, or if any of your Users do so, you may be liable to us for breach of this contract. We may also exercise our rights under these Terms, including suspending or cancelling your access to DOL. In addition, you, the User or both may be guilty of a criminal offence and liable to penalty under the TAA.

# Definitions

2.1 In these Terms, the following definitions apply:

**Certified** has the meaning given to it in clause 7.1.3.

**Certifier** means a person who is identified as a 'certifier' in your application to register an account to use DOL or, once you have an account, in your DOL account, in accordance with clauses 3.1.1 and 3.1.2.

**Commissioner** means the person employed as the Commissioner of State Revenue pursuant to section 62 of the TAA or any person employed as a Deputy or Assistant Commissioner of State Revenue who has the same functions as the Commissioner of State Revenue under section 66 of the TAA.

**Control** means, in relation to you:

1. the legal, financial or equitable ownership, directly or indirectly, of 50% or more of your share capital (or other ownership interest, if you are not a company limited by shares);
2. control or influence of, or having the capacity to control or influence, the composition of your board or other decision-making body, or of decision making (directly or indirectly) in relation to your financial and operating policies, whether or not the control or influence is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in you (including an interest in your shares or stock or otherwise); or
3. effective control of you.

**Data** means any data captured and generated by DOL, which includes full details of each DOL Transaction, including personal details of the transacting parties.

**Digital Duties Form** means the electronic form required to be completed in respect of a Dutiable Transaction, as made available for completion through DOL.

**DOL Transaction** means a transaction that is lodged by you or via an ELN for the assessment and payment of Duty using DOL.

**Dutiable Transaction** means any transaction on which Duty is payable under Chapter 2 of the Duties Act where:

1. the contract or arrangement giving effect to the transaction was entered into on or after 1 July 2017; or
2. if there was no such contract or arrangement, the transaction occurred on or after 1 July 2017.

**Duties Act** means the *Duties Act 2000* (Vic).

**Duty** means duty payable under the Duties Act and any applicable interest or penalty tax payable under the TAA.

**ELN** means an 'Electronic Lodgement Network' within the meaning of the Electronic Conveyancing National Law set out in the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW), as it applies in Victoria pursuant to the *Electronic Conveyancing (Adoption of National Law) Act 2013* (Vic), that is operated or approved by the Registrar of Land Titles for the purpose of enabling the lodging of documents in electronic form for the purposes of the land titles legislation.

**Finalised** has the meaning given to it in clause 7.1.4.

**Personal Information** has the meaning given to it in the *Privacy and Data Protection Act 2014* (Vic).

**SRO** means the State Revenue Office.

**TAA** means the *Taxation Administration Act 1997* (Vic).

**Taxpayer** means a person who has been assessed as liable to pay an amount of Duty, who has paid an amount as Duty or who is liable or may be liable to pay Duty.

**User** means a natural person who accesses or uses DOL under your registration.

**We, us** or **our** means the Commissioner and/or the SRO, as appropriate in the context.

**You** means the company, partnership or other person who has registered an account on DOL.

# Certifiers and Authorised Users

## Certifiers

3.1.1 By using DOL, you represent and warrant that, in your application to use DOL, you specified as 'certifiers' one or more appropriate persons to oversee your Users' use of DOL, who must be:

1. (where you are a company) one of your directors;
2. (where you are a partnership) one of your partners; or
3. (where you are a sole proprietor) you as the sole proprietor.

3.1.2 You must ensure that at least one person who satisfies the requirements set out in clause 3.1.1 is specified as a 'certifier' in your DOL account at all times while you have an account.

## Authorisation of Users

3.2.1 You must only allow an individual to access and use DOL under your registration if that individual:

1. falls into one of the following categories:
2. (where you are a body corporate) one of your employees or officers;
3. (where you are a partnership) one of your partners or employees; and
4. another individual who requires access to DOL for the purpose of you undertaking DOL Transactions; and
5. is a fit and proper person to access and use DOL, including that no charges of an offence involving fraud or dishonesty have been laid against them (and you must make all proper inquiries to satisfy yourself of this fact prior to granting access to any individual).

3.2.2 You must allocate appropriate levels of access (including administrator access) to Users, including ensuring that a Certifier oversees the granting of access (including the level of access granted) to each User.

## Responsibility for Users

3.3.1 You must ensure that all of your Users access and use DOL in accordance with these Terms.

3.3.2 You are liable for all acts and omissions of your Users in connection with DOL as if those acts and omissions were your acts or omissions (whether or not you knew about or authorised those acts and omissions).

## Revocation of Users' access

3.4.1 You must ensure that authority to access DOL is revoked for any User who:

1. takes leave for an extended period;
2. no longer falls into one of the categories in clause 3.2.1.a); or
3. no longer satisfies the fit and proper person requirement in clause 3.2.1.b) (including if any charges of an offence involving fraud or dishonesty are laid against them).

# Additional fit and proper person requirements

4.1 By using DOL, you represent and warrant that, in your application to use DOL, you provided all information about any charges of an offence involving fraud or dishonesty that have been laid against you, any person who Controls you, any Certifier, or any proposed User specified in your application.

4.2 You must give us notice within 30 days if:

1. any charges of an offence involving fraud or dishonesty are laid against you, any Certifier, any User or any person or company who has Control of you; or
2. any person who is not a fit and proper person to access and use DOL (including a person who has had charges of an offence involving fraud or dishonesty laid against them) takes Control of you (for example, through a sale of shares, change in partnership or change in trustee, depending on your entity structure).

# Usernames and passwords

5.1 Each User will be issued with a username and password for DOL (**login credentials**).

5.2 You must ensure that each User keeps their login credentials confidential, and does not share their login credentials with, or otherwise disclose them to, any other person (including any of your other employees, partners or contractors).

5.3 Each User is responsible for all use of DOL that occurs using their login credentials, whether or not the User knows about or has authorised those acts that occur using their DOL login credentials.

5.4 You must immediately notify us if you become aware of any unauthorised use of a User's login credentials, or any other breach of security relating to DOL.

# Using DOL for transactions

## Transaction types and information

6.1.1 You must only process transactions through DOL that:

1. are of a type that can be processed by DOL and that satisfy the relevant criteria, as specified on the SRO website; and
2. are not of a type that we have notified you cannot be processed by you through DOL.

6.1.2 You must only use DOL, including for the processing of transactions, in accordance with these Terms, information contained on the SRO website and any other instructions we provided to you in DOL, or via DOL subscriber emails. If you have insufficient information to process a DOL Transaction in accordance with these requirements, then you must not complete the relevant step in the transaction until you obtain that information.

6.1.3 If you are not able to process a transaction through DOL, you must refer the transaction to us for assessing.

## Authorisation by Taxpayer

6.2.1 You must only undertake functions in relation to a DOL Transaction through DOL if you have been authorised by the Taxpayer or the Taxpayer's agent to undertake those functions.

# Duty determination

## How DOL determines duty

7.1.2 DOL assesses Duty, and determines whether a Duty exemption or concession applies, using the Data entered by you and other users of DOL (including Data entered or populated into a Digital Duties Form, and Data entered into the ELN and populated into DOL where the Dutiable Transaction is being undertaken via the ELN).

7.1.3 In order for DOL to assess Duty, a DOL Transaction that is being undertaken via an ELN must be **Certified**. When a DOL Transaction is Certified by you, you represent to us that:

1. the Data that has been entered into DOL (whether the Data was entered by you, or was entered by another person but is viewable by you) correctly reflects the information provided by the Taxpayer, a tax agent of the Taxpayer (other than you or any User) or us;
2. that Data is otherwise complete and correct; and
3. the DOL Transaction is ready for financial settlement to occur via the ELN.

7.1.4 Each DOL Transaction must also be **Finalised**, which means that:

1. (if the DOL Transaction is being undertaken using an ELN) the DOL Transaction has been locked on the ELN for financial settlement and the ELN has triggered DOL to make a final assessment of the Duty payable; or
2. (if the DOL Transaction is not being undertaken using an ELN) you have committed to pay the Duty on that DOL Transaction.

## Requirements for Certification and Finalisation

7.2.1 You must not Certify or Finalise a DOL Transaction unless you are satisfied that all of the information entered into DOL in relation to that DOL Transaction is complete, correct and not misleading. You must take reasonable steps to satisfy yourself of this before you Certify or Finalise the DOL Transaction. This responsibility extends to all of the information in DOL that is viewable by you, regardless of whether it was entered by you or someone else, and regardless of whether it was entered directly into any part of DOL (including the Digital Duties Form) or entered into an ELN and populated into DOL.

7.2.2 You also must not Certify or Finalise a DOL Transaction unless the Digital Duties Form has been completed and submitted to us in accordance with clause 8.

7.2.3 You also must not Finalise a DOL Transaction where any Duty is to be paid via DOL and you do not satisfy the payment requirement in clause 9.2.3 or clause 9.2.6 (as applicable).

# Digital Duties Form requirements

8.1 You must:

1. ensure that a Digital Duties Form has been completed and submitted to us in respect of each Dutiable Transaction processed through DOL;
2. ensure that all of the information entered into the Digital Duties Form that is viewable by you is correct; and
3. if you submit a Digital Duties Form to us via DOL, certify that all of the information in the Digital Duties Form is complete and correct and ensure that each other party to the relevant Dutiable Transaction (or a person entitled to act on their behalf) has agreed that the information is complete and correct prior to submission.

8.2 You must not submit a Digital Duties Form to us (including via DOL) unless you have complied with the applicable verification of identity requirements (as published on the SRO website from time to time).

8.3 You must only access a Digital Duties Form in respect of a Dutiable Transaction for which you have been engaged by the relevant Taxpayer, and only for the purpose of acting on behalf of that Taxpayer.

# Duty Payment

## Payment of Duty via ELN

9.1.1 You are not required to initiate payment of Duty via DOL in accordance with clauses 9.2.1 to 9.2.7 if, as part of financial settlement of a DOL Transaction occurring via an ELN, the amount of Duty is paid to satisfy the relevant Taxpayer’s liability to pay Duty on the same calendar day as financial settlement of the DOL Transaction.

## Payment of Duty via DOL

9.2.1 Subsequent to Duty determination, DOL will facilitate the payment of Duty by you, via an electronic or non-electronic payment method, to satisfy the relevant Taxpayer’s liability to pay Duty.

9.2.2 You must initiate payment to us of Duty in respect of a Dutiable Transaction on the same calendar day as that Dutiable Transaction is Finalised (as described in clause 7.1.4).

*Electronic payment (EFT/BPay)*

9.2.3 You must not Finalise a DOL Transaction where any Duty is to be paid electronically through EFT or BPay unless your account holds a sufficient amount, in cleared funds, received from the Taxpayer or their agent to cover the amount of Duty assessed.

9.2.4 You must pay any bank fees or charges incurred due to you having insufficient funds required to pay Duty.

*Payment by cheque*

9.2.5 Cheques made payable to the SRO must not be banked into your own bank account. Such cheques must be given to us by post or courier to us (at the address specified in clause 18 or any replacement address notified by us on the SRO website from time to time).

9.2.6 You must not Finalise a DOL Transaction where any Duty is to be paid by cheque unless you hold the funds or a cheque received from the Taxpayer or their agent sufficient to cover the amount of Duty assessed and will be able to initiate payment of the Duty within the timeframe required under clause 9.2.2.

9.2.7 Cheques must be submitted to us with a cheque remittance slip such that we will receive them within three calendar days after the DOL Transaction has been Finalised (unless we specify a different timeframe by notice to you from time to time). It is your responsibility to ensure payment is received by us within the allowed timeframe.

## Non-payments

9.3.1 If cleared funds are not received within our required timeframes (including as set out above), particularly if such non-payment issues are serious or persistent:

1. we may suspend or cancel your access to DOL under clause 12 of these Terms (without limiting the grounds on which we may exercise these rights); and/or
2. you may be subject to penalties for failure to comply with payment obligations under these Terms pursuant to section 43 of the TAA.

# Your privacy obligations

10.1.1 You must take reasonable steps to ensure that any individual whose Personal Information you submit to us (including any Taxpayer or any other party to a Dutiable Transaction):

1. is or has been made aware of how we may use that Personal Information (including as contemplated by clause 14); and
2. has provided any consents necessary for us to use and disclose that Personal Information as contemplated by clause 14 without infringing any rights of the individual or contravening the TAA or the *Privacy and Data Protection Act 2014* (Vic).

## Centrelink consent

10.1.1 Before conducting a DOL pensioner eligibility query, you are required to obtain the written consent of the Taxpayer in the form of a signed Pensioner Concession Application form.

10.1.2 You must retain the Pensioner Concession Application form in accordance with clause 11.

10.1.3 You must not use the result of any Centrelink query for any purpose other than obtaining a Duty determination in accordance with these Terms.

# Record keeping requirements

## Requirement to keep records

11.1.1 You must keep, or cause to be kept, all records to evidence that all of the information entered or populated into DOL in relation to a Dutiable Transaction was correctly sourced from information provided by the Taxpayer or their agent, which must include copies of:

1. any supporting SRO forms (including the Digital Duties Form) and statutory declarations; and
2. any other documents from which information entered or populated into DOL was sourced (for example, contracts, instructions from the Taxpayer or their agent, valuations, wills and copies of grants of probate, and proof of purchase financial documents) (**Records**).

11.1.2 You must maintain the Records for not less than five years after the DOL Transaction has been Finalised. Records can be kept electronically, provided the Record is able to be readily produced to us if we require its production, and the information in the Record is clear, legible and in English or in a form that can be readily converted or translated into English.

## Provision of and access to records

11.2.1 You must provide to us:

1. copies of all Records in relation to a DOL Transaction with a value over $2.5 million, within 30 days after the DOL Transaction has been Finalised; and
2. copies of any Records within the time specified in any notice we give.

11.2.2 You must permit us to access your premises to view any Records.

## False or misleading information in records

11.3.1 You must not make a Record that comprises or contains, or include in a Record, any information that is false or misleading.

# Suspension, variation or cancellation of access

## Suspension

12.1.1 We may at any time suspend your access to or use of DOL, or any particular functionality of DOL, with immediate effect. We will give you notice if we impose any suspension, and again when the suspension is lifted (once we are satisfied that it is appropriate to do so).

## Variation or cancellation

12.2.1 We may, in our discretion, vary or cancel your access to DOL by providing written notice to you (including pursuant to section 39(4) of the TAA). Such variation or cancellation will take effect on the date in the notice.

12.2.2 You may apply to us in writing seeking a variation of the conditions of your access to DOL. Approval of any such variation is at our discretion.

## Effect of cancellation

12.3.1 Cancellation of your access to DOL does not affect any of the following:

1. any of your obligations or liabilities that arise on or before the date of cancellation;
2. each Taxpayer's obligation to pay all amounts of Duty payable by them;
3. any disclaimers and limitations of liability set out in these Terms; and
4. any obligations or requirements imposed on any Taxpayer (or any other party to a Dutiable Transaction) by the TAA, the Duties Act or any other law.

# Manner of Use

13.1 You must not use DOL in any manner or for any purpose that is unlawful or violates any right of the Crown of the State of Victoria.

13.2 Without limiting clause 13.1, you must not:

1. use DOL in any manner that could damage, disable, overburden or impair DOL or interfere with any other person's use and enjoyment of DOL, or disobey any requirements, procedures, policies, or regulations of networks connected to DOL;
2. directly or indirectly introduce or permit the introduction into DOL of any virus, worm, Trojan, corrupt data or other malicious code that may damage the operation of our computers, systems or property (or those of any other person);
3. attempt to gain unauthorised access to any part of DOL, or other accounts, applications, computer systems or networks connected to DOL, through hacking, password mining or any other means;
4. use another person's login credentials to access or use DOL;
5. impersonate any person or entity for the purpose of misleading others when accessing or using DOL;
6. threaten, abuse, disrupt, stalk or otherwise violate the legal rights (including rights of privacy and publicity) of others when accessing or using DOL;
7. use any information or material in any manner that infringes any of our copyright, trade marks, patents or other proprietary rights or those of any other person (including by disassembling, decompiling or reverse engineering DOL, except to the extent permitted by Division 4A of Part III of the *Copyright Act 1968* (Cth));
8. incorporate, or attempt to incorporate, any part of DOL or the services provided through DOL into any product or service to be made available commercially; or
9. otherwise use DOL for any purpose, or in any manner, not permitted by these Terms.

13.3 You must comply with all applicable legislation in accessing and using DOL, including by handling any personal or sensitive information in accordance with the relevant legislation.

# Privacy

14.1 We collect Personal Information submitted into DOL (whether entered directly into DOL, via a Digital Duties Form, or entered into an ELN and populated into DOL) or in connection with these Terms to enable us to administer the assessment and collection of tax in respect of each transaction submitted using DOL and/or to report to the Federal Commissioner of Taxation (as appointed pursuant to the *Taxation Administration Act 1953* (Cth)) on certain Dutiable Transactions. If the required details are not provided, it may not be possible to make an accurate assessment of the Duty payable. We may also use the Personal Information that you submit into DOL or in connection with these Terms for the administration and enforcement of Victoria's taxation laws generally.

14.2 Personal Information that we collect is protected by secrecy provisions in the TAA and by the *Privacy and Data Protection Act 2014* (Vic).

14.3 The SRO's privacy policy at www.sro.vic.gov.au provides further detail on how we use and protect Personal Information obtained in connection with the laws that we administer. That policy also sets out the mechanisms by which an individual may request access to Personal Information relating to them or make a privacy complaint.

14.4 In relation to Personal Information submitted by way of DOL (whether entered directly into DOL or entered into an ELN and populated into DOL), we may use and disclose the Personal Information:

1. in order to assess and collect the Duty payable on DOL Transactions and carry out our various functions and activities associated with administering and enforcing Victoria's taxation legislation;
2. by sharing it with a number of third parties that are specifically listed in legislation that applies to us, as set out in the SRO's privacy policy;
3. in order to monitor your use of DOL as required to ensure you comply with these Terms;
4. by publishing in a publicly available electronic register details of your identity including your:
	1. legal entity name;
	2. trading name; and
	3. ABN; and
5. where we are required to do so by law.

# Exclusion of liability and indemnity

## Limitation of liability

15.1.1 You acknowledge that DOL is made available to you on an 'as is' basis without any representation or endorsement made by us and you access and use DOL at your own risk.

15.1.2 Without limiting the above clause, we do not represent or warrant that:

1. your access to or use of DOL will be secure, uninterrupted, error-free or timely;
2. errors or defects in the operation of DOL will be able to be corrected; or
3. DOL will be free of computer viruses, Trojans, worms or other malicious programs or code.

15.1.3 To the extent permitted by law, we disclaim any conditions and warranties (including any implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy) that would otherwise apply to your access to, or use of, DOL.

15.1.4 To the extent permitted by law, we exclude liability for all direct, indirect or consequential liabilities, losses, damages, costs and expenses (including, without limitation, loss of revenue, loss of goodwill, downtime costs, loss of profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data or loss of anticipated savings or benefits), whether arising in contract, tort (including negligence) or otherwise, suffered or incurred by any person:

1. in connection with or in any way relating to DOL or any services provided through DOL, including as a result of or connection with:
2. any disruption to or unavailability or failure of DOL or interference with or damage to computer systems or other electronic devices;
3. any errors, omissions or inaccuracies contained in any information published on or available via DOL;
4. any fraudulent use, misuse or misappropriation of any user account; or
5. any act committed by another person in connection with your use of DOL or any services provided through DOL;
6. arising from any circumstance beyond our control; and
7. otherwise under or in connection with these Terms.

## Indemnity

15.2.1 You agree to indemnify us and hold us harmless from and against any damage, loss or liability we reasonably sustain or incur as the result of a claim made or threatened by a third party arising out of or in connection with:

1. a breach by you of your obligations under these Terms;
2. any negligent act or omission by you; or
3. any fraudulent or unlawful act or omission by you.

15.2.2 Nothing in clause 15.2.1:

1. extends any of your duties to any third party beyond exercising the standard of care and skill reasonably to be expected in the circumstances;
2. increases the compensation or damages for which you would otherwise be liable in respect of any breach of duty under clause 15.2.1.b) above the amount payable in tort; or
3. is intended to exclude the operation of any applicable legislation relating to proportionate liability.

# Links to third party websites

16.1 DOL may contain hyperlinks and other pointers to Internet websites operated by third parties. These linked websites are not under our control, and we are therefore not responsible for the contents of any linked website or any hyperlink contained in a linked website. We provide these hyperlinks to you as a convenience only, and the inclusion of any link does not imply any endorsement of the linked website by us. Any reference to or reliance on those links and linked websites, or any information contained on such websites, is made entirely at your own risk.

# Intellectual property

17.1 We own or are the licensee of all intellectual property rights, including copyright, trade marks and any other information, design, text, graphics, materials, images, 'look and feel' and all software and source code (**Intellectual Property Rights**) connected with DOL.

17.2 We grant you a non-exclusive, revocable, non-transferable licence to use the Intellectual Property Rights solely to access and use DOL.

# Notices

## Notices etc. only by authorised signatories

18.1.1 Any notice or communication given or made by you to us in connection with these Terms must be in writing and signed by you or (where you are not a natural person) by your authorised signatory.

## Giving of notices by you

18.2.1 Any notice or communication given by you under these Terms (including, where applicable, for the purposes of section 123 of the TAA) may be given and sent to us in one of the following ways:

1. posting to the address and marked for the attention of the relevant department or officer (if any) set out below;
2. sending by email at the email address set out below; or
3. by any other means specified in section 123 of the TAA (but only to the extent that section applies to the notice or communication given to us under these Terms).

Name: Commissioner of State Revenue

Address: State Revenue Office of Victoria

 GPO Box 1641

 MELBOURNE VIC 3001

DX: DX 260090, Melbourne

Email address: dutiesonline@sro.vic.gov.au

Attention: Duties Online Support

## Giving of notices by us

18.3.1 You agree that we may serve notices and other communications under these Terms to you by:

1. leaving it at, or posting it to, any address you specified in your application for approval to use DOL or any updated address you specify in your DOL account settings;
2. sending it to the email address you specified in your application for approval to use DOL or any updated email address you specify in your DOL account settings; or
3. any other means specified in section 125 of the TAA (to the extent that section applies to notices given by us under these Terms),

and you agree for the purposes of section 125(1)(d) of the TAA (to the extent applicable) you have indicated the means of service set out in clauses 18.2.1.a) and 18.2.1.b) as available means of service.

## Time notice is given

18.4.1 Any notice or communication given under these Terms is to be treated as given at the following time:

1. when service is deemed to be effective for the purposes of section 124 or 125A of the TAA, as the case may be (or would, if the notice or communication had been given under section 123 or section 125 of the TAA, have been effective); or
2. if it is a notice or communication sent to us by email, at the time that the email is received or, if it is received after 4.00pm on any day, on the next business day.

## Consent to electronic communications

18.5.1 Without limiting clause 18.3, you consent to receiving notices under these Terms by email.

18.5.2 We agree to receiving information and documents in electronic form (and, if applicable, signed by a method other than signature by hand) for the purposes of the conduct of DOL Transactions, if you provide (and, if applicable, sign) that information or document in a manner specified as part of any of our guidelines or instructions for using DOL.

# Dispute resolution

19.1 If a dispute arises under these Terms or concerning their subject matter, either we or you may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. Our and your nominated senior representatives must meet within five business days of the notice and try to resolve the dispute in good faith. If such a meeting does not take place, or if five business days after the meeting the dispute remains unresolved, either we or you may pursue their rights at law.

19.2 Despite the existence of a dispute, we and you must continue to perform our respective obligations under these Terms.

19.3 Clauses 19.1 and 19.2 do not restrict or limit either our or your right to obtain interlocutory relief, or our right to immediately terminate your access to DOL under these Terms.

19.4 This clause 19 does not apply to any dispute in relation to the assessment of Duty that is governed by the TAA.

# Trustees

## Capacity

20.1.1 You enter these Terms in your personal capacity and, if you are a trustee, in your capacity as trustee of the trust or trusts.

## Representations and warranties as trustee

20.2.1 If you enter these Terms as trustee of a trust, you, as trustee, represent and warrant each of the following on a continuing basis:

1. you are the sole trustee of the trust and are not the trustee of any other trust;
2. you are a validly appointed trustee of the trust;
3. you are not in default under the trust deed;
4. the trust fund will not vest during the term of these Terms;
5. you are authorised by the trust deed to enter into these Terms and to perform your obligations under these Terms;
6. your entry into these Terms and the performance of your obligations under these Terms are for the commercial benefit of the trust and the beneficiaries of the trust;
7. all of your obligations under these Terms bind the assets of the trust; and
8. there are no limitations on your right to be indemnified out of the assets of the trust.

## Undertakings

20.3.1 If you enter these Terms as trustee of a trust, you must not take any of the following actions without our prior written consent:

1. retire as trustee or appoint any new or additional trustee of the trust;
2. exercise any power, or delegate to any person any power, to vary, amend, alter, release or revoke any of the provisions of the trust deed of the trust in any manner which would adversely affect the obligations assumed by you as trustee of the trust under these Terms or which would affect our ability to enforce these Terms, including taking any steps to terminate or resettle the trust;
3. exercise any power or delegate to any person any power to dispose of any assets of the trust other than for the purposes of the trust; or
4. exercise any power or delegate to any person any power to incur any liability on behalf of the trust that is for less than full consideration.

20.3.2 You must deliver to us as soon as reasonably practicable all documents amending, supplementing, releasing or revoking any of the provisions of the trust deed.

# General

## Variation of these Terms

21.1.1 We may change these Terms from time to time. If we reasonably consider that the change is likely to:

1. benefit you or have a neutral or minor detrimental impact on you, we may change these Terms by making such changes immediately without notifying you except by publishing these Terms as amended on DOL; or
2. have a significant detrimental impact on you, we will make such changes to these Terms no sooner than one week after we have notified you of those changes on the home page of DOL.

21.1.2 Clause 21.1.1 does not affect any obligation that we may have under the TAA to give you notice of any change to these Terms.

21.2.3 If you do not accept a change made by us to these Terms, you must immediately cease using DOL and close your user account.

## Severability

21.2.1 If any provision of these Terms is held invalid, unenforceable or illegal for any reason, then the provision will be deemed to be removed from these Terms and the remaining provisions will remain valid and enforceable.

## Waiver

21.3.1 A waiver of any right, power or remedy under these Terms must be in writing signed by you or us (as the case may be). A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.

## Assignment

21.4.1 You must not assign, sublicense or otherwise deal in any other way with any of your rights under these Terms.

## Entire agreement

21.5.1 These Terms are the entire agreement between us on its subject matter and supersede any previous arrangements, agreements, representations, understandings or statements (whether verbal, in writing or in some other format).

## Interpretation

21.6.1 In the interpretation of these Terms, the following provisions apply unless the context otherwise requires:

1. headings are inserted for convenience only and do not affect the interpretation of these Terms;
2. a reference in these Terms to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Melbourne, Victoria;
3. if the day on which any act, matter or thing is to be done under these Terms is not a business day, the act, matter or thing must be done on the next business day;
4. a reference to a time of day means that time of day in the place whose laws govern the construction of these Terms;
5. where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day;
6. a reference in these Terms to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
7. a reference in these Terms to any agreement is to that agreement as amended, novated, supplemented or replaced;
8. a reference to a clause is a reference to a clause of these Terms;
9. an expression importing a person includes any natural person, company, trust, partnership, joint venture, association, body corporate or governmental agency;
10. where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
11. a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders; and
12. a reference to the word 'include' or 'including' is to be interpreted without limitation.