



Australian Government

Department of Agriculture, Fisheries and Forestry

Deed of Standing Offer for Provision of Chemical Analytical Testing Services for the National Residue Survey (NRS)

Reference Number: SONXXXXXXX

Commonwealth of Australia as represented by the
Department of Agriculture, Fisheries and Forestry

ABN 34 190 894 983

and

[Insert name of Supplier]

ACN/ABN **[Insert number]**

[Insert date]

DRAFT

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Rules of interpretation	1
1.3 Precedence of documents	2
1.4 Entire agreement.....	2
2. TERM	2
2.1 Commencement	2
2.2 Option to extend.....	2
3. FORMATION, SCOPE AND OPERATION OF THE DEED	3
3.1 Standing Offer.....	3
3.2 Ordering Services	3
3.3 Terms of a Contract	3
3.4 No Assurance of Orders	4
4. PROVISION OF SERVICES	4
4.1 Supplier to provide Services.....	4
4.1A Use of the Information Management System (IMS)	4
4.2 Acceptance and ownership of Deliverables	5
4.3 Unsatisfactory performance.....	5
4.4 Representations and warranties of the Supplier	5
4.5 Conduct at Customer's Premises.....	6
5. FEES AND PAYMENT	6
5.1 Obligation to pay	6
5.2 Recipient Created Tax Invoices.....	7
5.3 Payment.....	7
5.4 Late payment.....	8
5.5 Withholding payment	8
5.6 Invoicing	8
5.7 Right of the Customer to recover money.....	9
5.8 Taxes	9
5.9 Payment Times Procurement Connected Policy Subcontracts	9
6. GST	13
6.1 Interpretation.....	13
6.2 GST gross up	13
6.3 Reimbursements.....	13
6.4 Exclusion of GST from calculations.....	13
6.5 Adjustments.....	13
7. INTELLECTUAL PROPERTY	14
7.1 Foreground IP	14
7.2 Background IP and Third Party IP	14
7.3 Intellectual Property warranty	14
7.4 Moral Rights.....	14
8. INDEMNITIES, RISK AND LIABILITY	14
8.1 Responsibility of Supplier.....	15
8.2 Indemnity.....	15
9. INSURANCE	15

9.1	Insurance policies	15
9.2	Insurance period.....	15
9.3	Evidence of insurance policies	16
10.	DEED MANAGEMENT	16
10.1	Administration of the Deed	16
10.2	Notices	16
10.3	Specified Personnel	16
10.4	Subcontracting	17
10.5	Provision and use of Customer Material	18
10.6	Conflict of interest	19
10.7	Delays.....	19
10.8	Progress meetings	20
10.9	Reporting.....	20
11.	RECORDKEEPING AND AUDIT	20
11.1	Records of work.....	20
11.2	Access, inspection and audit.....	20
11.3	Information Commissioner Investigations	21
11.4	Assistance in conduct of Inquiries	21
11.5	Costs	21
12.	CONFIDENTIALITY	22
12.1	Use and disclosure of Confidential Information	22
12.2	Permitted disclosures	22
12.3	Obligations on disclosure	22
12.4	Return or destruction of Confidential Information.....	23
13.	POLICY AND LAW.....	23
13.1	Compliance with laws and policies.....	23
13.2	Environmental sustainability.....	23
13.3	Not Used	24
13.4	Not Used	24
13.5	Workplace Gender Equality	24
13.6	Shadow Economy Policy	24
13.7	Work health and safety.....	26
13.8	Not Used	27
13.9	Modern Slavery Act.....	27
13.10	Freedom of Information.....	28
13.11	Archives Act.....	28
13.12	Privacy	29
13.13	Fraud	29
13.14	Criminal Code.....	30
13.15	Public Interest Disclosure.....	30
13.16	National Anti-Corruption Commission	31
13.17	Notification of Significant Events.....	31
14.	SECURITY	32
14.1	Compliance with Customer requirements and access to security classified information	32
14.2	Security clearance	33
14.3	Storage of security classified information	33
14.4	Security Incidents.....	34
14.5	Highest level of security classified information	34
14.6	Removal of Customer Data	34
15.	UNFORESEEN EVENTS	34
15.1	Occurrence of Unforeseen Events.....	34

15.2	Notice of Unforeseen Events.....	34
15.3	Termination	35
16.	DISPUTE RESOLUTION	35
16.1	Procedure for dispute resolution	35
16.2	Costs	35
16.3	Confidentiality	36
16.4	Breach of this clause	36
16.5	Termination of process	36
16.6	Obligations continue.....	36
16.7	Exemption	36
17.	TERMINATION	36
17.1	Termination by the Supplier for default.....	36
17.2	Termination by the Customer for default.....	37
17.3	Potential Default	38
17.4	Termination by the Customer in relation to disrepute	39
17.5	Termination by the Customer for convenience	40
17.6	Termination does not affect accrued rights.....	40
17.7	Termination does not affect Contracts	41
18.	GENERAL	41
18.1	Nature of the relationship	41
18.2	Counterparts.....	41
18.3	Further action	41
18.5	Waiver	41
18.6	Variation.....	41
18.7	Assignment and novation.....	41
18.8	Approvals and consents.....	42
18.9	Announcements.....	42
18.10	Disclosure of information	42
18.11	Survival.....	42
18.12	Applicable law	43

Schedule

1	Deed Details	44
2	Glossary	47
3	Scope of Services	58
4	Management of the Deed	60
5	Fees and Payment.....	62
6	Request for Quote.....	64
7	Official Order.....	67
8	Confidential Information	71
9	Deed of Confidentiality	72
10	Australian Industry Participation Plan	Error! Bookmark not defined.

THIS DEED is made

BETWEEN:

1. **Commonwealth of Australia as represented by the Department of Agriculture, Fisheries and Forestry** ABN 34 190 894 983 (**Customer**); and
2. [**Insert name of Supplier**] ACN/ABN [**Insert number**] (**Supplier**).

RECITALS:

- (A) The Customer requires the provision of certain services for the purposes of chemical analytical testing for the National Residue Survey.
- (B) The Supplier has fully informed itself on all aspects of the work required to be performed and has represented that it has the skills and experience to perform that work.
- (C) The Customer has agreed to engage the Supplier to provide the Services on the terms and conditions in this Deed and as set out in any Contract.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The meanings of the acronyms and defined terms used in this Deed and in any Contract are set out in Schedule 2 (Glossary).

1.2 **Rules of interpretation**

In this Deed and in any Contract, unless the contrary intention appears:

- (a) a word that suggests one gender includes the other genders;
- (b) a singular word includes the plural, and vice versa;
- (c) a reference to a person includes a body politic, body corporate or partnership;
- (d) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;
- (e) headings are for convenience only and do not affect interpretation;
- (f) a reference to 'dollars', 'AUD' or '\$' is a reference to Australian dollars;
- (g) the word 'includes' in any form is not a word of limitation;
- (h) the meaning of general words is not limited by specific examples;
- (i) if the last day of any period for the doing of an action falls on a day which is not a Business Day, the action must be done no later than the end of the next Business Day;
- (j) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Deed;
- (k) a reference to any legislation, or legislative provision, includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;

- (l) a reference to a 'party' is to a party to this Deed and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it, or a Contract or any part of it;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (p) the Schedules and any Attachments form part of this Deed.

1.3 **Precedence of documents**

If there is any inconsistency between the terms of this Deed, a descending order of precedence will be accorded to:

- (a) the agreed terms and conditions of this Deed and the Glossary;
- (b) the other Schedules in their order of appearance;
- (c) any Attachments to the Schedules; and
- (d) documents incorporated by reference in this Deed,

so that the term in the higher ranked document will, to the extent of the inconsistency, prevail.

1.4 **Entire agreement**

To the extent permitted by law, this Deed and each Contract represents the entire agreement between the parties about its subject matter and replaces any previous understandings, agreements or representations.

2. **TERM**

2.1 **Commencement**

This Deed begins on the Commencement Date and (unless otherwise terminated earlier) continues for the duration of the Initial Deed Period (**Term**).

2.2 **Option to extend**

- (a) The Customer may extend the Term for the Option Period(s), on the terms and conditions then in effect, by giving the Supplier notice in writing at any time prior to the expiration of this Deed, unless otherwise specified at item 3 of Schedule 1 (Deed Details).
- (b) Any extensions exercised in accordance with clause 2.2(a) take effect from the end of the Initial Deed Period.

3. FORMATION, SCOPE AND OPERATION OF THE DEED

3.1 Standing Offer

- (a) This Deed constitutes a standing offer for the Term during which the Customer may, on an as-required basis, enter into a Contract with the Supplier in accordance with the process set out under clause 3.2.
- (b) The range of Services which the Supplier offers to the Customer under this Deed are set out at Schedule 3 (Scope of Services).

3.2 Ordering Services

- (a) If the Customer requires Services from the Supplier, the Customer Contract Manager may issue the Supplier with either an:
 - (i) RFQ substantially in the form of Schedule 6 (Request for Quotation); or
 - (ii) Official Order.
- (b) For the avoidance of doubt, the Customer may issue the Supplier with an Official Order pursuant to clause 3.2(a)(ii) without having issued an RFQ.
- (c) Upon the receipt of an RFQ, the Supplier must either:
 - (i) provide a Quotation by the date the Quotation is required; or
 - (ii) decline the invitation.
- (d) A Quotation provided in accordance with clause 3.2(c)(i) must contain all the information required by the RFQ.
- (e) Quotations must remain open for acceptance by the Customer for a minimum of 30 days or for such time as specified by the Customer in the RFQ.
- (f) Following the receipt of a Quotation, the Customer Contract Manager must within a reasonable period either:
 - (i) accept the Quotation by issuing an Official Order; or
 - (ii) notify the Supplier that the Quotation has been rejected.
- (g) If the Customer Contract Manager issues an Official Order to the Supplier, the Official Order will form the Contract for the relevant Services.

3.3 Terms of a Contract

- (a) Unless otherwise expressly agreed in the Official Order, the terms of each Contract will be those set out in the following documents in a descending order of precedence:
 - (i) the terms and conditions of this Deed as applicable to the Contract;
 - (ii) the attachments to this Deed as applicable to the Contract;
 - (iii) the Official Order; and
 - (iv) any documents incorporated by express reference as part of the Contract,so that the term in the higher ranked document will prevail, to the extent any inconsistency between the terms of these documents arises.

- (b) A Contract begins on the Order Commencement Date and continues for the Order Term, unless the Contract is terminated earlier in accordance with clause 17 of this Deed or otherwise in accordance with the terms of the relevant Contract.
- (c) No Services must be provided by the Supplier, and no amount will become payable to the Supplier in respect of the Services, unless and until an Official Order has been issued by the Customer Contract Manager in accordance with clause 3.2(f)(i).

3.4 **No Assurance of Orders**

- (a) The Customer does not make any representations or in any way bind itself to place any specific number of orders, or any orders at all, during the Term.
- (b) Nothing in this Deed or any Contract is to be interpreted as providing that the:
 - (i) Supplier has the right to be the sole provider of the Services, or any part of the Services, to the Customer; or
 - (ii) Customer is prevented from seeking services that are similar to, or the same as, the Services from other suppliers.

4. **PROVISION OF SERVICES**

4.1 **Supplier to provide Services**

For each Contract formed in accordance with clause 3, the Supplier must provide the relevant Services in accordance with this Deed and the relevant Contract.

4.2 **Use of the Information Management System (IMS)**

- (a) The Supplier must use the IMS in the provision of Services including to receive and report sample results in accordance with this Deed and a Contract and the Guidelines for Contract Laboratories.
- (b) The Customer may provide training to the Supplier in the use of the IMS.
- (c) The Supplier must:
 - (i) nominate an IMS Primary User to receive technical advice from the Customer on the IMS (**IMS Primary User**);
 - (ii) ensure that the IMS Primary User:
 - (A) disseminates technical advice to Supplier Personnel and subcontractors as appropriate, in order to minimise disruption to the Services; and
 - (B) provides advice, as requested by the Customer to assist in resolution of the IMS's technical issues; and
 - (iii) where that IMS Primary User changes, advise the Customer in writing accordingly.
- (d) The Supplier must report all breaches of IT security or unauthorised access to the Customer including where Supplier Personnel suspect that a breach may have occurred.
- (e) If the Customer considers that the Supplier has breached this clause 4.2, the Customer may, at its absolute discretion immediately suspend or terminate Supplier access to the IMS.

- (f) If the Customer suspends or terminates access to the IMS under clause 4.2, it may, at its sole and absolute discretion, impose conditions on any resumption of access.

Any action taken by the Customer under clause 4.2 does not limit any other rights the Customer has under this Deed or at law.

4.3 **Acceptance and ownership of Deliverables**

- (a) Unless a different timeframe is specified in an Official Order, the Customer may accept or, where these do not comply with the requirements of this Deed or the relevant Contract, reject any Deliverable within 10 Business Days after the Deliverable is received.
- (b) If the Customer rejects a Deliverable, the Customer may require the Supplier to provide, at the Supplier's cost, replacement or rectified Deliverables which comply with the requirements of this Deed and the relevant Contract, within a period notified by the Customer.
- (c) Title to the Deliverables passes to the Customer upon acceptance of these in accordance with clause 4.3(a).

4.4 **Unsatisfactory performance**

- (a) If:
 - (i) the Supplier does not, in the reasonable opinion of the Customer, provide any part of the Services within the timeframes or to the standard required by the Customer; and
 - (ii) that failure is not remedied within the time period specified in an Official Order (and if no time period is specified, 10 Business Days) after the Supplier is given a notice requiring the unsatisfactory performance to be remedied,the Customer may in its discretion:
 - (iii) direct the Supplier to remedy the failure, at the Supplier's expense, under the supervision of and in accordance with the directions of the Customer;
 - (iv) require the Supplier to engage another person as specified by the Customer to perform the Services within a reasonable timeframe, at the expense of the Supplier;
 - (v) engage another person to perform the Services at the Supplier's expense; or
 - (vi) terminate this Deed or an affected Contract in accordance with clause 17.2.
- (b) For the avoidance of doubt, this clause 4.4 does not limit any other remedy that the Customer has in respect of unsatisfactory performance, including to recover any amounts calculated in accordance with any performance regime set out in the relevant Contract.

4.5 **Representations and warranties of the Supplier**

In performing its obligations under clause 4.1, the Supplier represents and warrants that:

- (a) **(standards)** the Services will comply with relevant Australian industry standards, best practices and guidelines, or where none apply, the relevant international

industry standards, best practice and guidelines, including standards specified in item 29 of the Official Order;

- (b) **(directions)** it will act in accordance with any reasonable directions provided by the Customer from time to time;
- (c) **(personnel)** in providing the Services it will use appropriately qualified, skilled and experienced Personnel;
- (d) **(approvals, compliance)** it will obtain and maintain any licences, permits, registrations or regulatory approvals which are:
 - (i) required by law and necessary for the provision of the Services;
 - (ii) otherwise specified as necessary at item 5 of Schedule 1 (Deed Details); or
 - (iii) otherwise specified for a Contract in an Official Order;
- (e) **(security)** it will periodically review its security arrangements under this Deed and the relevant Contract to ensure the Supplier's security arrangements are current and address the risks and security environments relevant to the provision of the Services;
- (f) **(cooperation)** it will cooperate with the Customer, and any other service providers to the Customer where necessary, and otherwise act in good faith;
- (g) **(fitness)** the Services provided will:
 - (i) conform to the requirements of and be provided in accordance with this Deed and the relevant Contract; and
 - (ii) be fit for purpose;
- (h) **(materials)** any materials that the Supplier incorporates into the Services are free from defects in design, performance and workmanship;
- (i) **(no disputes)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, are threatened which, if adversely decided, could have an adverse effect on the Supplier's ability to perform its obligations under this Deed; and
- (j) **(capacity)** it has the right to enter into the Contract.

4.6 **Conduct at Customer's Premises**

The Supplier must, if using or accessing the Customer's premises, comply with all reasonable directions and procedures relating to work health and safety and security in operation at those premises whether specifically drawn to the attention of the Supplier or as might reasonably be inferred from the circumstances.

5. **FEES AND PAYMENT**

5.1 **Obligation to pay**

- (a) The Contract Fees:
 - (i) will be as set out in the relevant Official Order;
 - (ii) must be based on the rates and payment arrangements set out in Schedule 5 (Fees and Payment), unless otherwise agreed; and

- (iii) are payable in accordance with this Deed and the relevant Contract.
- (b) The total invoiced amount for a Contract must not exceed the total amount of the Contract Fees payable, unless the parties vary the Contract Fees amount in advance in writing.

5.2 Recipient Created Tax Invoices

- (a) For Australian-based Suppliers, it is agreed that the Supplier and the Customer are both registered for GST.
- (b) The Supplier agrees that the Customer can issue Recipient Created Tax Invoices in respect of routine Services made to the Customer under this Deed or any resulting Contract.
- (c) The Supplier will notify the Customer immediately if it ceases to be registered for GST (where applicable) and if it ceases to satisfy any of the requirements of a Determination made by the Commissioner of Taxation under subsection 29-70 of the *A New Tax System (Goods and Services Tax) Act 1999*.
- (d) The Customer will notify the Supplier immediately if it ceases to be registered for GST (where applicable).
- (e) The Supplier will not issue tax invoices in respect of routine Services provided to the Customer under any resulting Contract, but may issue a tax invoice for non-routine Services (i.e. analyses requested for special investigations and/or tracebacks) where performed.
- (f) The Supplier agrees to provide any information the Customer requests in relation to Recipient Created Tax Invoices within 10 Business Days.
- (g) The Supplier may submit a claim for payment for non-routine Services in accordance with this Deed and the relevant Contract.
- (h) All claims for payment submitted under clause 5.2(a) must be:
 - (i) in the form of a correctly rendered invoice in accordance with clause 5.6; and
 - (ii) provided to the Customer Contract Manager.

5.3 Payment

- (a) On receipt of a claim for payment, the Customer Contract Manager must either accept or reject the claim within a reasonable period.
- (b) If a claim is approved under clause 5.3(a), unless otherwise specified in the Order, the Customer must pay the Supplier:
 - (i) within 20 calendar days of the Recipient Created Tax Invoice or receipt of the claim. If this period ends on a day which is not a Business Day, payment is due on the next Business Day; or
 - (ii) within 5 calendar days of receipt of an eInvoice, where the Customer and the Supplier both have the capability to deliver and receive eInvoices through the Pan-European Public Procurement On-Line framework (**Peppol**).
- (c) If the Customer Contract Manager rejects a claim under clause 5.3(a), the Customer Contract Manager must, within the time period specified in item 6 of Schedule 1

(Contract Details) (and if no time period is specified, 10 Business Days) of the receipt of the claim, notify the Supplier in writing of:

- (i) the need to resubmit the claim;
- (ii) the reasons for rejection of the claim; and
- (iii) any action to be taken by the Supplier for the claim to be rendered correct for payment.

5.4 **Late payment**

(a) If Customer fails to pay an approved claim:

- (i) within 20 calendar days of the Recipient Created Tax Invoice or receipt of the claim; or
- (ii) within 5 calendar days of receipt of an eInvoice, where the Customer and Supplier both have the capability to deliver and receive eInvoices through Peppol,

the Customer must pay interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Customer makes the late payment.

(b) Interest will only be payable in accordance with clause 5.4(a) if the interest amount owed by the Customer to the Supplier in respect of the late payment exceeds \$100.00.

5.5 **Withholding payment**

If:

- (a) a correctly rendered invoice is not provided in accordance with clause 5.6; or
- (b) the performance of the Supplier under this Deed or a Contract is in dispute,

the Customer may:

- (c) reject any related claim in accordance with clause 5.3(a); and
- (d) withhold all or part of any payment due to the Supplier under the relevant Contract, until the relevant issue is resolved.

5.6 **Invoicing**

An invoice is correctly rendered if it meets the requirements of a valid tax invoice under the GST Law and:

- (a) bears a unique invoice number;
- (b) sets out the Supplier's name and ABN.;
- (c) specifies the period covered by the invoice;
- (d) identifies the Official Order (TechOne number) and which part of the Services the invoice relates to;
- (e) specifies the total amount payable (including the amount of GST which is to be shown separately);

- (f) is correctly addressed and calculated in accordance with this Deed and the relevant Contract;
- (g) provides the date of issue for the tax invoice; and
- (h) specifies the purchase order and/or contract reference number (TechOne number).

5.7 **Right of the Customer to recover money**

- (a) Without limiting the Customer's other rights or remedies under this Deed or any Contract, if:
 - (i) the Customer elects in accordance with this Deed or any Contract to recover an amount from the Supplier; or
 - (ii) the Supplier otherwise owes any debt to the Customer in relation to this Deed or any Contract,the Customer may do one or both of the following:
 - (iii) deduct the amount from any amounts payable by the Customer to the Supplier under this Deed or any Contract; or
 - (iv) give the Supplier a notice of the existence of a debt recoverable which must be paid by the Supplier within 30 days after receipt of the notice.
- (b) If any sum of money owed to the Customer is not received by its due date for payment, the Supplier must pay to the Customer interest at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Supplier makes the required payment.

5.8 **Taxes**

Unless expressly stated otherwise:

- (a) all amounts payable, consideration provided or monetary limits in this Deed or any Contract are inclusive of any taxes, duties or other government charges; and
- (b) all taxes, duties or other government charges levied in connection with this Deed or any Contract, are to be borne by the Supplier.

5.9 **Payment Times Procurement Connected Policy (PT PCP) Subcontracts**

- (a) In this clause 5.9:
 - (i) Correctly Rendered PT PCP Subcontractor Invoice means an invoice which is:
 - (A) rendered in accordance with all of the requirements of the written contract (note that written contracts will often specify that the invoice must be a tax invoice and/or that certain information must be included in the invoice and/or the format of the invoice); and
 - (B) for amounts that are correctly calculated and due for payment and payable under the terms of the written contract;
 - (ii) PT PCP means the Payment Times Procurement Connected Policy of the Commonwealth, as amended from time to time (available at <https://treasury.gov.au/publication/p2021-183909>);

- (iii) PT PCP Policy Team means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day;
- (iv) PT PCP Evaluation Questionnaire means a questionnaire in substantially the form of Appendix C of the PT PCP;
- (v) PT PCP Purpose means:
 - (A) the review, evaluation, monitoring, assessment and reporting on the PT PCP, including the compliance by those Customer's suppliers and their subcontractors that are Reporting Entities; or
 - (B) improving payment times to PT PCP Subcontractors.
- (vi) PT PCP Remediation Plan means a written remediation plan substantially in the form of Appendix D of the PT PCP;
- (vii) PT PCP Subcontract means a subcontract between a Reporting Entity and another party (Other Party) where:
 - (A) the subcontract is (wholly or in part) for the provision of goods or services for the purposes of this Deed or a Contract;
 - (B) both parties are carrying on business in Australia; and
 - (C) the component of the subcontract for the provision of goods or services for the purposes of this Deed or a Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work/official orders entered into that are valued up to \$1 million (GST inclusive) under standing offer (panel) arrangements),
but does not include the following subcontracts:
 - (D) subcontracts entered into prior to the Reporting Entities' tender response for this Deed;
 - (E) subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
 - (F) subcontracts for the purposes of:
 - (aa) procuring and consuming goods or services overseas; or
 - (bb) procuring real property, including leases and licences.
- (viii) PT PCP Subcontractor means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract;
- (ix) Reporting Entity has the meaning given in the PTR Act;
- (x) Reporting Entity Subcontractor means any person that:
 - (A) is a Reporting Entity; and

- (B) provides goods or services directly or indirectly to the Supplier for the purposes of this Deed or a Contract where the value of such goods or services are estimated to exceed \$4,000,000 (GST inclusive).

'Reporting Entity Subcontract' has a corresponding meaning.

- (b) The Supplier must comply with the PT PCP.
- (c) If the Supplier enters into a PT PCP Subcontract in connection with a Contract, the Supplier must include in that subcontract:
 - (i) a requirement for the Supplier to pay the PT PCP Subcontractor:
 - (A) subject to clause 5.9(e), within 20 calendar days after the acknowledgement of the satisfactory delivery of the goods or services and receipt of a Correctly Rendered PT PCP Subcontractor Invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
 - (B) subject to clause 5.9(f), for payments made by the Supplier after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with clause 5.9(f);
 - (ii) a statement that the PT PCP applies to that subcontract; and
 - (iii) a statement that the subcontractor may make a complaint to the PT PCP Policy Team or to the Customer in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 5.9(c).
- (d) If the Supplier enters into a Reporting Entity Subcontract in anticipation of (or after) entering into a Contract, the Supplier must use reasonable endeavours to include in that subcontract:
 - (i) obligations equivalent to those in clause 5.9(a); and
 - (ii) a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
 - (A) obligations equivalent to those in clause 5.9(a); and
 - (B) obligations equivalent to this clause 5.9(c)(ii) (such that the obligations in this clause 5.9(d)(ii) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- (e) Clause 5.9(c)(i)(A) does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 5.9(c)(i)(A).
- (f) The Supplier is not required to pay interest in accordance with clause 5.9(c)(i)(B) if either:
 - (i) the Customer has failed to pay the Supplier in accordance with the timeframes and requirements under this Deed or a Contract; or
 - (ii) the amount of the interest payable is less than \$100 (inc GST).
- (g) Interest payable under clause 5.9(c)(i)(B) will be simple interest at the General Interest Charge Rate calculated in respect of each day from the day after the amount

was due and payable, up to and including the day that the Supplier makes the late payment.

- (h) If requested in writing by the Customer, the Supplier must properly complete and return a PT PCP Evaluation Questionnaire within 30 calendar days of the request.
- (i) If the Customer considers or becomes aware that the Supplier has not or may not have complied with:
 - (i) the requirements of clauses 5.9(a)—5.9(g); or
 - (ii) the payment requirements of a PT PCP Subcontract,the Customer may direct the Supplier to provide to the Customer either or both of the following within the timeframes specified by the Customer:
 - (iii) information to enable the Customer to review the Supplier's compliance; or
 - (iv) a properly completed PT PCP Remediation Plan.
- (j) The Supplier must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 5.9(i)(iv).
- (k) If the Customer considers that the Supplier has failed to comply with any of its obligations under this clause 5.9, without limiting the Customer's rights and remedies at law or otherwise under this Deed or the relevant Contract, the Customer may do either or both of the following:
 - (i) take the failure or non-compliance into account as part of the Customer's monitoring of the Supplier's performance under this Deed or the relevant Contract; or
 - (ii) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.
- (l) The Supplier agrees that if it is the subject of a complaint in relation to its compliance with clauses 5.9(a)—5.9(g) or the associated payment provisions of a PT PCP Subcontract:
 - (i) it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
 - (ii) it will cooperate in good faith with the Customer in connection with any investigation or inquiry and any attempt to resolve the complaint.
- (m) For any PT PCP Purpose, the Supplier consents to the Customer:
 - (i) using and sharing with any other Commonwealth Agency the information provided by the Supplier as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Customer in connection with this Deed or a Contract or a PT PCP Subcontract; and
 - (ii) receiving information obtained under, or in accordance with, the PTR Act **(Protected Information)** from an Entrusted Person and using such Protected Information.
- (n) By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the PT PCP that includes any personal information within the meaning of Privacy Act, the Supplier warrants and represents that it has

obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by clauses 5.9(m)–5.9(n). The Supplier will provide evidence of such consents to the Customer on request.

- (o) A reference to the Customer in clauses 5.9(h), 5.9(i), 5.9(l)(ii) and 5.9(m)–5.9(n) includes the PT PCP Policy Team.

6. **GST**

6.1 **Interpretation**

In this clause 6, a word or expression defined in the GST Law has the meaning given to it in the GST Law.

6.2 **GST gross up**

If a party (**Provider**) makes a supply under or in connection with this Deed or a Contract in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Provider an additional amount equal to the GST payable on the supply (**GST Amount**).

6.3 **Reimbursements**

If a party must reimburse or indemnify another party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss and then increased in accordance with clause 6.2.

6.4 **Exclusion of GST from calculations**

If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

6.5 **Adjustments**

- (a) If the GST payable by a Provider on any supply made under or in connection with this Deed or a Contract varies from the GST Amount paid or payable by the Recipient under clause 6.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Provider will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 6.2.
- (c) If an adjustment event occurs in relation to a supply, the Provider must issue an adjustment note to the Recipient in relation to that supply within 10 Business Days after becoming aware of the adjustment.
- (d) A party need not make a payment for a taxable supply made under or in connection with this Deed or any Contract:
 - (i) until it receives a tax invoice or a Recipient Created Tax Invoice is generated for the supply to which the payment relates; and
 - (ii) in the case of any tax invoice issued by the Provider, unless the tax invoice complies with clause 5.6.

7. INTELLECTUAL PROPERTY

7.1 Foreground IP

- (a) Ownership of all Foreground IP vests on its creation in the Customer.
- (b) The Customer grants the Supplier a limited, royalty-free, revocable, world-wide and non-exclusive licence to use, reproduce, adapt, communicate the licences granted under this clause 7.1(b)) all Foreground IP solely for the purpose of performing its obligations under the relevant Contract.

7.2 Background IP and Third Party IP

- (a) Nothing in this Deed or a Contract affects the ownership of Background IP or Third Party IP.
- (b) The Supplier grants to the Customer a perpetual, irrevocable, royalty-free, fully-paid up, world-wide and non-exclusive licence to use, reproduce, adapt, communicate, exploit and further sub-license the Supplier's Background IP in order to receive the full benefit of the Services.
- (c) The Customer grants to the Supplier a licence to use the Customer's Background IP in accordance with clause 10.5(e).
- (d) The Supplier will use reasonable endeavours to ensure the Customer is granted a licence in respect of any Third Party IP on the best available commercial terms.

7.3 Intellectual Property warranty

- (a) The Supplier warrants and must ensure that:
 - (i) the Intellectual Property rights assigned or licensed to the Customer under clause 7 are sufficient to enable the Customer to receive the full benefit of the Services contemplated under this Deed and any Contract; and
 - (ii) an activity permitted, or purportedly permitted, by or under a licence or assignment of Intellectual Property to the Customer under this Deed or a Contract will not:
 - (A) infringe the Intellectual Property rights or Moral Rights of any person; or
 - (B) give rise to any liability to make royalty or other payments to any person.
- (b) The Supplier must notify the Customer if it becomes aware of any challenge, claim or proceeding arising in respect of any Intellectual Property assigned or licensed to the Customer under this Deed or any Contract or in respect of the Moral Rights of any person.

7.4 Moral Rights

The Supplier must use reasonable endeavours to obtain genuine consents in writing from its Personnel for the Supplier or the Customer to use material created by those Personnel in the manner anticipated under this Deed or a Contract, including consent to the Specified Acts.

8. INDEMNITIES, RISK AND LIABILITY

8.1 **Responsibility of Supplier**

The Supplier is fully responsible for the performance of this Deed and any Contract and the Customer will not be responsible for any aspect of the delivery of the Services.

8.2 **Indemnity**

- (a) The Supplier must indemnify the Customer (and any of the Customer's officers, employees or agents, for whom the Customer holds the benefit of this indemnity on trust) and pay on demand the amount of any Loss arising out of or in connection with any:
 - (i) breach of this Deed or any Contract by the Supplier or its Personnel;
 - (ii) negligent, unlawful or wilfully wrongful act or omission of the Supplier or its Personnel;
 - (iii) use or disclosure by the Supplier or its Personnel of Personal Information or Confidential Information held or controlled in connection with this Deed or any Contract; or
 - (iv) infringement or alleged infringement of a third party's Intellectual Property rights or Moral Rights where the infringement or alleged infringement arises out of any activity permitted or purportedly permitted under any assignment or licence referred to in clause 7 or otherwise under this Deed or any Contract.
- (b) The Supplier's liability under clause 8.2(a) will be reduced proportionately to the extent that the Supplier demonstrates the Loss arose out of or as a consequence of any negligent, unlawful or wilfully wrongful act or omission of the Customer or its officers, employees or agents.

9. **INSURANCE**

9.1 **Insurance policies**

Subject to clause 9.2, in connection with this Deed and the performance of any Contract, the Supplier must have and maintain for the Term, valid and enforceable insurance policies for:

- (a) workers compensation;
- (b) public liability;
- (c) professional indemnity; and
- (d) any other insurance policy specified at item 7 of Schedule 1 (Deed Details) or in an Official Order,

for the amounts and with the coverage specified at item 7 of Schedule 1 (Deed Details) or the Official Order.

9.2 **Insurance period**

- (a) If the Supplier takes out a 'claims made' policy, which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Supplier must maintain the policy (or a policy in like terms) during the Term and for a period of seven years on and from the expiry or the early termination of this Deed.

- (b) If the Supplier takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Supplier must maintain the policy during the Term.

9.3 **Evidence of insurance policies**

The Supplier must provide the Customer with a copy of the insurance policies or certificates of currency on written request by the Customer.

10. **DEED MANAGEMENT**

10.1 **Administration of the Deed**

- (a) Each party must at all times during the Term ensure that it has nominated one suitably qualified administrator under this Deed. As at the Commencement Date the administrator for each party will be:
 - (i) for the Customer, the Customer Contract Manager; and
 - (ii) for the Supplier, the Supplier Contract Manager.
- (b) The Supplier must:
 - (i) liaise with the Customer Contract Manager as reasonably required; and
 - (ii) comply with reasonable directions of the Customer Contract Manager issued in accordance with this Deed or any Contract.
- (c) The giving of a direction by the Customer Contract Manager will not in any way reduce or otherwise affect the Supplier's obligations under this Deed or any Contract.

10.2 **Notices**

- (a) A notice, consent or other communication under this Deed or any Contract is only effective if it is in writing, and either:
 - (i) signed by the person giving the notice and sent by mail; or
 - (ii) transmitted electronically or by email, by the person giving the notice.
- (b) A notice that complies with clause 10.2(a) is regarded as given and received:
 - (i) if sent by mail, upon delivery to the relevant address; or
 - (ii) if sent by email, on the day on which it is transmitted or, if transmitted after 5:00pm, on the next Business Day.
- (c) A party's address and contact details are those set out in Schedule 1 (Deed Details), or as the party notifies the sender from time to time.

10.3 **Specified Personnel**

- (a) The Supplier must ensure that:
 - (i) performance of any Contract involves the use of the Specified Personnel; and
 - (ii) all Personnel are aware of and ensure compliance with the Supplier's obligations under this Deed and any relevant Contract.

- (b) Where Specified Personnel are unable to undertake work in relation to a relevant Contract, the Supplier must:
 - (i) notify the Customer Contract Manager immediately;
 - (ii) offer a suitable replacement acceptable to the Customer at the earliest opportunity; and
 - (iii) obtain the Customer's written consent prior to appointing any such replacement person. The Customer must not unreasonably withhold consent.
- (c) The Customer may, by written notice to the Supplier, require the removal of any Personnel (including Specified Personnel) from the performance of a Contract. The Supplier must promptly arrange for the removal of such Supplier Personnel and for a suitable replacement acceptable to the Customer at the earliest opportunity.
- (d) If the Supplier replaces any Personnel under this clause 10.3, they must do so at their own cost.

10.4 **Subcontracting**

- (a) The Supplier must not Subcontract the whole or any part of the work performed under this Deed or any Contract, except:
 - (i) with the Customer's prior written approval;
 - (ii) to those entities set out in Item 26 of the Official Order; and
 - (iii) on such conditions (if any) the Customer considers appropriate.
- (b) The Customer may revoke its consent to a Subcontractor, on reasonable grounds, at any time.
- (c) The Supplier must ensure that:
 - (i) each Subcontractor agrees that the Customer may disclose the Subcontractor's name and the nature of the services being subcontracted, publicly; and
 - (ii) every Subcontract approved contains clauses that impose obligations on the Subcontractor and grant rights to the Customer (either directly or through the Supplier) the same as those obligations imposed on the Supplier and those rights granted to the Customer, under:
 - (A) clause 7 (Intellectual Property);
 - (B) clause 9 (Insurance);
 - (C) clause 10.4 (Subcontracting);
 - (D) clause 10.6 (Conflict of interest);
 - (E) clause 11 (Recordkeeping and audit);
 - (F) clause 12 (Confidentiality);
 - (G) clause 13.5 (Workplace Gender Equality);
 - (H) clause 13.7 (Work health and safety)

- (I) clause 13.8 (Child Safety);
 - (J) clause 13.9 (Modern Slavery Act);
 - (K) clause 13.10 (Freedom of Information);
 - (L) clause 13.12 (Privacy);
 - (M) clause 14 (Security); and
 - (N) clause 17 (Termination).
- (d) None of the following reduce or limit the Supplier's obligations or liabilities under or in relation to this Deed or any Contract:
- (i) the Supplier Subcontracting any part of the work under this Deed or any Contract;
 - (ii) the Customer's approval of, or refusal to approve, a Subcontractor; or
 - (iii) an act or omission of a Subcontractor.
- (e) If requested by the Customer, the Supplier must promptly provide to the Customer a copy of any contract relating to the Services and/or any material relating to the engagement of the subcontractor.

10.5 **Provision and use of Customer Material**

- (a) Except as expressly provided for in any Contract, the Customer is not required to provide any Customer Material to the Supplier to assist in the provision of the Services.
- (b) The Supplier must, and must ensure that its Personnel, only use the Customer Material:
 - (i) for the purposes of the relevant Contract;
 - (ii) in a manner consistent with any applicable requirements for the Customer Material, including any conditions set out in a Contract; and
 - (iii) for a purpose for which the Customer Material was designed, manufactured or constructed.
- (c) The Supplier must:
 - (i) protect all Customer Material from loss or damage;
 - (ii) maintain Customer Material in good order; and
 - (iii) promptly return Customer Material to the Customer, upon request by the Customer.
- (d) The Supplier will be liable for any loss of, or damage to, any Customer Material whilst it is in the possession or control of the Supplier, whether or not the loss or damage arises due to the fault of the Supplier.
- (e) To the extent that the Supplier needs to use any Customer Material to satisfy an express requirement of a Contract, the Customer grants to the Supplier a limited, royalty-free, revocable, world-wide and non-exclusive licence to use, reproduce,

adapt, communicate and further sub-license (subject to the same restrictions (as a minimum) as the licence granted under this clause 10.5(e)) all Background IP in or related to the Customer Material, solely for the purpose of the Supplier performing its obligations under the relevant Contract.

- (f) The Supplier must not, without the prior written approval of the Customer Contract Manager:
 - (i) modify Customer Material; or
 - (ii) transfer possession or control of Customer Material to any other person,except to the extent reasonably necessary to enable the Supplier to satisfy an express requirement of a Contract.
- (g) The Supplier acknowledges that Customer Material remains, at all times, the property of the Customer.

10.6 **Conflict of interest**

- (a) The Supplier warrants that as at the Commencement Date, to the best of its knowledge after making diligent inquiries, no conflict of interest exists or is likely to arise in relation to this Deed or any potential Contract, or any of its Personnel, that would impair its ability to impartially and objectively perform its obligations under this Deed or any Contract.
- (b) If during the performance of any Contract a conflict of interest arises or is likely to arise, the Supplier must:
 - (i) notify the Customer immediately in writing;
 - (ii) provide full disclosure of all information relating to the conflict;
 - (iii) detail how the Supplier intends to resolve or manage the conflict; and
 - (iv) take such steps the Customer reasonably requires to resolve or otherwise deal with the conflict.

10.7 **Delays**

- (a) In the event of an actual or potential Delay, the Supplier must:
 - (i) immediately notify the Customer of the nature and consequences of the Delay;
 - (ii) develop and provide to the Customer for approval a plan to work around or remove the problem in order to prevent, limit or rectify the Delay;
 - (iii) regularly update the Customer in relation to the Delay as reasonably required by the Customer; and
 - (iv) take all steps reasonably required by the Customer to prevent, limit or rectify the Delay.
- (b) To the extent a Delay is caused by:
 - (i) an Unforeseen Event, then the provisions of clause 15 apply;

- (ii) the Supplier (or its Personnel), any costs and expenses incurred by the Supplier to implement an approved workaround plan will be borne by the Supplier (this is without limitation to any other right or remedy of the Customer under this Deed or a Contract or otherwise); or
 - (iii) the Customer's (or any third party under the Customer's control) failure to meet any of its obligations under this Deed or a Contract that are necessary for the Supplier to achieve a Milestone, then the relevant Milestone date will be extended by a period equal to the length of the Delay caused by the Customer.
- (c) Clause 10.7(b)(iii) will only apply where the Supplier takes all reasonable steps to mitigate the effects of the Delay caused by the Customer.

10.8 **Progress meetings**

The parties will meet at the times and in the manner set out in:

- (a) Schedule 4 (Deed Management) (or otherwise as agreed in writing by the parties) to discuss any issues in relation to this Deed or the provision of Services under any Contracts; and
- (b) any Official Order (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services under the Contract.

The Supplier must ensure that the Supplier Contract Manager and the Customer must ensure the Customer Contract Manager is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

10.9 **Reporting**

The Supplier must provide the Customer with Reports in accordance with Schedule 4 and any Official Order (or otherwise as agreed in writing by the parties).

11. **RECORDKEEPING AND AUDIT**

11.1 **Records of work**

- (a) The Supplier must keep full and accurate records relating to the performance of its obligations under this Deed and any Contract.
- (b) The Supplier must maintain its records:
 - (i) in a manner that enables them to be conveniently and properly audited; and
 - (ii) for a period of at least 7 years from the date on which the records were created.

11.2 **Access, inspection and audit**

- (a) The Supplier must:
 - (i) following the provision of reasonable notice; and
 - (ii) at reasonable times,permit the Customer, or any person nominated in writing by the Customer, to:
 - (iii) access the premises of the Supplier where a Contract is being performed;

- (iv) inspect and copy documentation, books and records, however stored, in the custody or control of the Supplier which are relevant to the performance of this Deed or any Contract; and
 - (v) conduct audits relevant to the Supplier's performance under this Deed or any Contract.
- (b) The Supplier must provide all necessary facilities for the purpose of clause 11.2(a).
- (c) Without limiting clause 11.2(a), the Supplier acknowledges and agrees:
 - (i) that the Auditor-General has the power to conduct audits of the Supplier and Subcontractors in relation to the performance of this Deed and any Contract;
 - (ii) that the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to this Deed or any Contract to any person who in the Auditor-General's opinion has a special interest in the report or the content of the extract; and
 - (iii) to provide the Auditor-General the same access and inspection rights as those provided to the Customer under clause 11.2(a).
- (d) The Supplier must participate cooperatively in any audits conducted by the Customer, its nominee or the Auditor-General (as the case may be). The participation in audits does not in any way reduce the Supplier's obligations under this Deed or any Contract.

11.3 Information Commissioner Investigations

- (a) The Supplier acknowledges and agrees that it may be subject to investigation by the Information Commissioner under the Privacy Act.
- (b) The Supplier acknowledges and agrees:
 - (i) that it will participate cooperatively in any investigation by the Information Commissioner; and
 - (ii) to provide the Information Commissioner the same access and inspection rights as those provided to the Customer under clause 11.2(a).
- (c) The participation in an investigation conducted by the Information Commissioner does not in any way reduce the Supplier's obligations under this Deed or any Contract.

11.4 Assistance in conduct of Inquiries

The Supplier must provide the Customer with reasonable assistance in relation to any inquiry concerning the Services, this Deed or any Contract. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Customer), any request for information directed to the Customer, and any inquiry conducted by Parliament or any Parliamentary committee.

11.5 Costs

Each party must bear its own costs of any reviews and / or audits relevant to the Supplier's performance under this Deed or any Contract except for audits involving international delegations, where the Customer will make a payment per audit to the Supplier of \$1500 (excluding GST) where the Supplier facilitates the audit with staff participation and will provide catering.

12. CONFIDENTIALITY

12.1 Use and disclosure of Confidential Information

Each party must not:

- (a) use any of the other party's Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Deed or any Contract; or
- (b) disclose any of the other party's Confidential Information except in accordance with clause 12.2.

12.2 Permitted disclosures

- (a) The restriction in clause 12.1 does not apply to a disclosure of Confidential Information to the extent that the disclosure is:
 - (i) required or authorised by law;
 - (ii) necessary for the conduct of any legal proceedings arising in connection with this Deed or any Contract;
 - (iii) made by the Customer, a Minister or Parliament:
 - (A) to another Commonwealth Agency, Minister or Parliament; or
 - (B) in accordance with statutory or portfolio duties or functions or for public accountability reasons, including following a request by Parliament, a Parliamentary committee or a Minister; or
 - (iv) to any of the following persons:
 - (A) a legal adviser, insurer, financier, auditor or accountant of a party to the extent required to enable them to perform those roles; or
 - (B) any officers, employees or agents who need to know the information, in order to enable the person to exercise their rights or perform their duties under this Deed or any Contract.

12.3 Obligations on disclosure

- (a) Where a party discloses Confidential Information to another person pursuant to clause 12.2 (other than a disclosure by the Customer under clause 12.2(a)(iii)), the disclosing party must notify the receiving person that the information is Confidential Information and not provide the information unless the receiving person agrees to keep the information confidential.
- (b) If directed to do so by the Customer, the Supplier must ensure all Personnel execute a Deed of Confidentiality in the form set out at Schedule 9 (Deed of Confidentiality) prior to disclosing any Confidential Information in accordance with clause 12.2(a)(iv)(B).

12.4 **Return or destruction of Confidential Information**

- (a) Subject to clause 12.4(b), on termination or expiry of this Deed or the relevant Contract, the Supplier must immediately:
 - (i) deliver to the Customer all documents and other materials containing, recording or referring to the other party's Confidential Information; and
 - (ii) erase or destroy all electronic records containing or referring to the other party's Confidential Information,

which are in the possession, power or control of the Supplier or of any person to whom the Supplier has given access.
- (b) The Supplier may retain any documents containing Confidential Information where such documents are:
 - (i) retained in order to comply with any legal, professional or insurance obligations; or
 - (ii) stored in electronic backups or records that are produced in the normal course, where it is not reasonably practicable to destroy such backups or records.
- (c) Return or destruction of Confidential Information does not release the Supplier from its obligations under this clause 12.

13. **POLICY AND LAW**

13.1 **Compliance with laws and policies**

The Supplier must, and must ensure that its Personnel, comply with:

- (a) all applicable laws of the Commonwealth, any State, Territory or local authority in providing the Services; and
- (b) any applicable Commonwealth policies as set out in this Deed or a Contract or as notified by the Customer Contract Manager to the Supplier from time to time.

13.2 **Environmental sustainability**

- (a) The Supplier must support the Customer's environmental sustainability policy objectives by, for each Contract:
 - (i) (laws) complying with all relevant environmental legislation applicable to the Supplier in the performance of the Services;
 - (ii) (Environmental Sustainability Plan) delivering to the Customer a draft Environmental Sustainability Plan that complies with clause 13.2(b) within 20 Business Days of the Order Commencement Date for Customer approval. The Customer must within 10 Business Days notify the Supplier of its approval of the Supplier's draft Environmental Sustainability Plan or outline required changes for the draft Environmental Sustainability Plan. The Supplier must resubmit a revised draft Environmental Sustainability Plan which addresses the required changes within 10 Business Days of being notified of the required changes for approval and this clause will apply to any resubmitted draft Environmental Sustainability Plan;

- (iii) (Environmental Sustainability Plan – reporting) reporting against the Supplier's approved Environmental Sustainability Plan(s) on an annual basis or when otherwise directed by the Customer to do so;
 - (iv) (Continuous improvement – environmental sustainability) reviewing and reporting to the Customer on further opportunities to improve environmental sustainability outcomes and increase use of recycled content over the Order Term as opportunities arise and at regular intervals with a frequency of no less than annually. The Supplier must utilise these opportunities when directed by the Customer to do so, subject to the parties agreeing any reasonable amendments to the fees and payment arrangements directly associated with the relevant opportunities;
- (b) The Supplier's Environmental Sustainability Plan must describe:
 - (i) how the Supplier will work with other suppliers and the Customer to minimise or avoid waste to landfill throughout the life cycle of goods delivered or consumed in delivery of the Services, including what happens to goods at end of life;
 - (ii) how the Supplier proposes to use recycled content in the Services to the maximum extent possible without compromising quality, safety or capability.

13.3 **Not Used**

13.4 **Not Used**

13.5 **Workplace Gender Equality**

- (a) This clause applies only to the extent that the Supplier is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth).
- (b) The Supplier must:
 - (i) comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**); and
 - (ii) notify the Customer Contract Manager if it becomes non-compliant with the WGE Act during the Term of this Deed.
- (c) The Supplier must not enter into a Subcontract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the WGE Act.
- (d) If this Deed Term exceeds 18 months, the Supplier must provide a current letter of compliance issued by the Workplace Gender Equality Agency within 18 months from the Commencement Date and following this, annually, to the Customer.

13.6 **Shadow Economy Policy**

- (a) The Supplier warrants that at the Commencement Date it holds a satisfactory and valid Statement of Tax Record (**STR**).
- (b) The Supplier must hold a satisfactory and valid STR at all times during the Term of this Deed (including any options) and, on request by the Customer, provide to the Customer a copy of any such STR.

- (c) Without limiting its other rights under this Deed or at law, any failure by the Supplier to comply with the requirements outlined in clauses 13.6(a) and 13.6(b) will be a breach of this Deed.
- (d) The Supplier must not enter into a Subcontract with a proposed Subcontractor (or agree to a novation of a Subcontract to a proposed Subcontractor) if the total value of all work under the Subcontract is expected to exceed \$4 million (inc GST), unless the Supplier has obtained and holds one of the following **STRs** at all times during the term of the relevant Subcontract, as applicable to the proposed Subcontractor:

Item No.	If the proposed Subcontractor is:	STRs required
1.	A body corporate or natural person	a satisfactory and valid STR in respect of that body corporate or natural person.
2.	A partner acting for and on behalf of a partnership	a satisfactory and valid STR: (i) on behalf of the partnership; and (ii) in respect of each partner in the partnership that will be directly involved in the delivery of the Subcontract.
3.	A trustee acting in its capacity as trustee of a trust	a satisfactory and valid STR in respect of the: (i) trustee; and (ii) the trust.
4.	A joint venture participant	a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator.
5.	A member of a Consolidated Group	a satisfactory and valid STR in respect of: (i) the relevant member of the Consolidated Group who will be the Subcontractor; and (ii) the head company in the Consolidated Group.
6.	A member of a GST Group	a satisfactory and valid STR in respect of the: (i) GST Group member who will be the Subcontractor; and (ii) GST Group representative.

- (e) The Supplier must obtain and hold additional STRs in the following circumstances within 10 Business Days of the Supplier becoming aware of the circumstances arising:

Item No.	If the Supplier or Subcontractor is:	Additional STRs required
1.	A partner acting for and on behalf of a partnership	a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of any Contract or Subcontract (as applicable).
2.	A trustee acting in its capacity as trustee of a trust	a satisfactory and valid STR in respect of any new trustee appointed to the trust.
3.	A joint venture participant	a satisfactory and valid STR in respect of any new: (i) participant in the joint venture; or (ii) operator of the joint venture.
4.	A member of a Consolidated Group	a satisfactory and valid STR in respect of any new head company of the Consolidated Group.
5.	A member of a GST Group	a satisfactory and valid STR in respect of any new representative for the GST Group.

- (f) The Supplier must provide the Customer with copies of the STRs referred to in clause 13.6(a) or 0 within **5** Business Days after receiving a written request from the Customer.
- (g) For the purposes of the Contract, an STR is taken to be:
- (i) **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Policy, of having a satisfactory engagement with the Australian tax system; and
 - (ii) **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.

13.7 Work health and safety

- (a) The Supplier must, and must ensure that its Personnel, comply with all applicable WHS Legislation and any relevant Customer policies and procedures relating to work health and safety.
- (b) The Supplier acknowledges that it will meet its obligations under this clause 13.7 solely at its own cost and expense, and without charge to or reimbursement from the Customer.

- (c) The Supplier must:
 - (i) ensure, so far as is reasonably practicable, the health and safety of its Personnel while those Personnel are at work in relation to this Deed or any Contract;
 - (ii) consult, co-operate and coordinate with the Customer in relation to its workplace health and safety duties;
 - (iii) on request, give all reasonable assistance to the Customer, by way of provision of information and documents, to assist the Customer and its officers to comply with their duties under the WHS Act; and
 - (iv) comply with any direction of the Customer relating to specified measures which the Customer considers are reasonably necessary for work health and safety.
- (d) If an event happens in relation to the Supplier's performance of a Contract that leads, or could lead, to the death, injury or illness of a person (**Notifiable Incident**), the Supplier must:
 - (i) immediately notify the Customer of the Notifiable Incident and provide all relevant details;
 - (ii) as soon as possible after the Notifiable Incident:
 - (A) formally investigate the Notifiable Incident to determine, so far as is possible, its cause and what adverse effects it will have on the Supplier's performance under the relevant Contract or any other Contracts, and health and safety; and
 - (B) report to the Customer the outcomes of the formal investigation; and
 - (iii) take all reasonable steps to:
 - (A) remedy any effects of the Notifiable Incident on health and safety; and
 - (B) ensure that an event or circumstance of the kind that caused the Notifiable Incident does not recur.

13.8 **Not Used**

13.9 **Modern Slavery Act**

- (a) In this clause 13.9:
 - (i) **Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth).
- (b) The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services.
- (c) The Supplier must comply with the Modern Slavery Risk Management Plan in its performance of this Deed and any Contract. For the avoidance of doubt, nothing in this clause derogates from the Supplier's other obligations arising under any Contract or otherwise in relation to the provision of the Services.

- (d) If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Deed or any Contract, the Supplier must as soon as reasonably practicable:
 - (i) take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains; and
- (e) The Supplier must, within 10 Business Days of a written request from the Customer, provide, and must ensure that each of its Subcontractors provides, any information reasonably required by the Customer in relation to:
 - (i) the Supplier;
 - (ii) a Subcontractor; and
 - (iii) the performance of this Deed or any Contract and relevant Subcontracts,for the purposes of the Customer satisfying its obligations as a reporting entity under the *Modern Slavery Act 2018* (Cth).

13.10 **Freedom of Information**

- (a) The Supplier acknowledges that:
 - (i) this Deed and any Contract may be a 'Commonwealth contract' within the meaning of the *Freedom of Information Act 1982* (Cth) (**FOI Act**); and
 - (ii) accordingly the Supplier may be a 'contracted service provider' within the meaning of the FOI Act.
- (b) If the Customer receives a request for a document under the FOI Act which:
 - (i) was created by or is in the possession of the Supplier (or its Personnel); and
 - (ii) relates to, or was created in, the performance of this Deed or any Contract (other than the entry into this Deed or the relevant Contract),then, if requested to do so by the Customer in writing, the Supplier must provide a copy of the document to the Customer at no additional cost to the Customer.

13.11 **Archives Act**

- (a) The Supplier must not transfer, or permit the transfer of, ownership or allow the destruction of a Commonwealth Record without the prior written approval of the Customer.
- (b) All Commonwealth Records must be protected at all times from unauthorised access, use, misuse, damage or destruction by a third party.
- (c) Commonwealth Records must be delivered to the Customer after the expiry or termination of this Deed or the relevant Contract, as directed by the Customer.

13.12 Privacy

- (a) The Supplier agrees:
 - (i) to collect, use or disclose Personal Information obtained during the course of performing this Deed or any Contract only for the purposes of this Deed or the relevant Contract;
 - (ii) to maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of Personal Information held in connection with this Deed or any Contract;
 - (iii) not to commit any act, omission or engage in any practice which is contrary to the Privacy Act;
 - (iv) not to engage in any act or practice which if done or engaged in by an Agency, would be a breach of an APP or a Registered APP Code;
 - (v) not to engage in an act or practice that would breach an APP or a Registered APP Code (where applied to the Supplier);
 - (vi) to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Deed or a Contract that are inconsistent with an APP or a Registered APP Code binding on a party);
 - (vii) to notify the Customer Contract Manager immediately if the Supplier becomes aware of:
 - (A) an Eligible Data Breach; or
 - (B) a breach or possible breach of any of the obligations contained in, or referred to in this clause 13.12 whether by the Supplier or its Personnel;
 - (viii) to notify the Customer Contract Manager promptly if the Supplier receives a complaint alleging an interference with the privacy of an individual by the Supplier or its Personnel;
 - (ix) to comply with any reasonable directions, guidelines, determinations or recommendations to the Supplier made by the Customer in respect of privacy issues and the management of Personal Information; and
 - (x) to ensure that all Personnel required to deal with Personal Information for the purposes of this Deed or any Contract are made aware of the obligations of the Supplier set out in this clause 13.12.
- (b) Without limiting any of the Supplier's obligations under this clause 13.12, the Supplier must do all things necessary to assist the Customer to respond to an Eligible Data Breach in accordance with the Privacy Act.
- (c) The Supplier's obligations in this Deed or any Contract are in addition to the Supplier's obligations (if any) under the Privacy Act and prevail to the extent of any lesser standard required under the Privacy Act.

13.13 Fraud

- (a) The Supplier must not, and must ensure that its Personnel do not, engage in any Fraud in relation to the performance of this Deed or any Contract.

- (b) The Supplier must immediately notify the Customer if the Supplier becomes aware of any actual or suspected Fraud in relation to the performance of this Deed or any Contract.
- (c) The Customer may conduct an investigation in relation to any actual or suspected Fraud in relation to the performance of this Deed or any Contract. If the Customer conducts an investigation in accordance with this clause 13.13(c), the Supplier must provide all reasonable assistance and comply with any direction given by the Customer in relation to the investigation.
- (d) If an investigation conducted in accordance with clause 13.13(c) finds that the:
 - (i) the Supplier or any of its Personnel have committed Fraud; or
 - (ii) the Supplier failed to take reasonable steps to prevent Fraud by its Personnel;then,
 - (iii) the Supplier must indemnify the Customer and pay on demand the amount of any Loss arising out of or in connection with the Fraud; and
 - (iv) the Customer may terminate this Deed or any Contract in accordance with clause 17.2.
- (e) The Supplier must advise its officers and employees that:
 - (i) they are Commonwealth public officials for the purposes of section 142.2 of the Criminal Code Act 1995 (Cth);
 - (ii) acting with the intention of dishonestly obtaining a benefit for any entity is punishable by penalties including imprisonment; and
 - (iii) disclosures of "disclosable conduct" under the Public Interest Disclosure Act 2013 (Cth) can be made directly to their supervisors within the Supplier, or to an Authorised Officer of the Customer as specified on the Customer's website (<https://www.agriculture.gov.au/about/commitment/integrity>), and where a disclosure of "disclosable conduct" is made to a supervisor within the Supplier, the supervisor is required under section 60A of the Public Interest Disclosure Act 2013 (Cth) to pass information about the conduct to an Authorised Officer of the Customer.

13.14 **Criminal Code**

- (a) The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the Schedule to the Criminal Code Act 1995 (Cth).
- (b) The Supplier must ensure that any Subcontractor engaged in connection with this Deed or any Contract is aware of the information identified in this clause 13.14.

13.15 **Public Interest Disclosure**

- (a) Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013 (PID Act)*. Prior to making a disclosure, refer to information available at: <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure/information-for-disclosers>.

- (b) All public interest disclosure matters (relating to this Deed or any Contract) should be referred to integrity@aff.gov.au.

13.16 **National Anti-Corruption Commission**

- (a) The Supplier acknowledges and agrees that:
 - (i) this Deed or any resultant Contract may be a 'Commonwealth contract' within the meaning of the National Anti-Corruption Commission Act 2022 (Cth) (NACC Act); and
 - (ii) accordingly the Supplier may be a 'contracted service provider' within the meaning of the NACC Act.
- (b) The Supplier must take all reasonable steps to prevent and detect Corrupt Conduct in relation to the performance of this Deed or any Contract. The Supplier acknowledges the occurrence of Corrupt Conduct will constitute a breach of this this Deed of Standing Offer or any resultant Contract.
- (c) The Supplier acknowledges that its Personnel are public officials as defined under the NACC Act. The National Anti-Corruption Commissioner, or their delegate, may investigate, refer for investigation or consideration the issue of whether a public official has engaged in, is engaged in or will engage in Corrupt Conduct. If the Supplier suspects any Personnel have, will or are engaged in Corrupt Conduct in connection with this this Deed of Standing Offer or any resultant Contract, this conduct must be reported to integrity@aff.gov.au.
- (d) The Supplier must comply with any reasonable request, policy or direction issued by the Customer and otherwise cooperate with the Customer in relation to any action taken by the Customer required or authorised by the NACC Act.

13.17 **Notification of Significant Events**

- (a) For the purposes of this clause, 'Significant Event' means:
 - (i) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Supplier or its officers, employees, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
 - (ii) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Supplier or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- (b) The Supplier must immediately issue the Customer a Notice on becoming aware of a Significant Event.
- (c) The Notice issued under clause 13.17(b) must provide a summary of the Significant Event, including the date that it occurred and whether any Specified Personnel or other personnel engaged in connection with the Services were involved.
- (d) The Customer may notify the Supplier in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Supplier must issue a Notice under clause 13.17(b) in relation to the event within three (3) Business Days of being notified by the Customer.

- (e) Where reasonably requested by the Customer, the Supplier must provide the Customer with any additional information regarding the Significant Event within three (3) Business Days of the request.
- (f) If requested by the Customer, the Supplier must prepare a draft remediation plan and submit that draft plan to the Customer's Contract Manager for approval within ten (10) Business Days of the request.
- (g) A draft remediation plan prepared by the Supplier under clause 13.17(f) must include the following information:
 - (i) how the Supplier will address the Significant Event in the context of the Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Services or compliance by the Supplier with its other obligations under the Deed or any resultant Contract; and
 - (ii) how the Supplier will ensure events similar to the Significant Event do not occur again; and
 - (iii) any other matter reasonably requested by the Customer.
- (h) The Customer will review the draft remediation plan and either approve the draft remediation plan or provide the Supplier with the details of any changes that are required. The Supplier must make any changes to the draft remediation plan reasonably requested by the Customer and resubmit the draft remediation plan to the Customer for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by the Customer. This clause 13.17(h) will apply to any resubmitted draft remediation plan.
- (i) Without limiting its other obligations under the Contract, the Supplier must comply with the remediation plan as approved by the Customer. The Supplier agrees to provide reports and other information about the Supplier's progress in implementing the remediation plan as reasonably requested by the Customer.
- (j) A failure by the Supplier to comply with its obligations under this clause 13.17 will be a material breach of the Deed. The Customer's rights under this clause 13.17 are in addition to and do not otherwise limit any other rights the Customer may have under the Deed. The performance by the Supplier of its obligations under this clause will be at no additional cost to the Customer.

14. **SECURITY**

14.1 **Compliance with Customer requirements and access to security classified information**

- (a) The Supplier must, and must ensure that its Subcontractors and Personnel comply with:

- (i) all relevant security and other requirements specified in the Australian Government Protective Security Policy Framework;
 - (ii) any security requirements specified in item 13 of Schedule 1 (Deed Details);
 - (iii) any security requirements specified in an Official Order; and
 - (iv) any other security procedures or requirements notified, in writing, by the Customer to the Supplier. The Supplier must comply with such a security procedure or requirement, from the date specified in the notice, or if none is specified, within 5 Business Days of receipt of the notice.
- (b) Where the Supplier and its Personnel (including Specified Personnel) may have access to security classified information of the Customer, the Supplier and its Personnel (including Specified Personnel) involved in providing the Services must complete, to the Customer's satisfaction, the Security Awareness Training Program, prior to accessing security classified information.
- (c) The Supplier must notify the Customer of any changes to circumstances (including any changes in respect of its Personnel) which has or may affect the Supplier's capacity to supply the Services in accordance with the Customer's security requirements.
- (d) If the Supplier, or its Personnel, breach any of the Customer's security requirements and this breach has a material adverse impact on the Customer, the Customer may terminate this Deed in accordance with clause 17.2.

14.2 **Security clearance**

- (a) The Customer may, from time to time, notify the Supplier of the level of security or access clearance applicable to the Supplier's Personnel, and the date from which, or the period during which, that clearance will be effective and the Supplier must comply with and ensure its Personnel act in accordance with that notice.
- (b) The Supplier must prevent access to security classified information by its Personnel (including Specified Personnel) who do not hold security clearances, or whose security clearances are revoked, lapse or are inadequate for the level of security classified information, or who no longer require access to that information.
- (c) The Supplier must report to the Customer any contact with security classified information by its Personnel (including Specified Personnel), where those Personnel do not hold security clearances, or hold security clearances that have been revoked, lapsed or are inadequate for the level of security classified information, within 5 Business Days of the contact with the security classified information occurring.
- (d) The Supplier is responsible for all costs and expenses associated with obtaining security clearances.

14.3 **Storage of security classified information**

- (a) This clause 14.3 applies where the Supplier will handle or store security classified information of the Customer outside the Customer's premises and / or systems.
- (b) The Supplier must ensure that the premises and facilities used to handle or store security classified information of the Customer meet the appropriate security level as determined by the Customer.

- (c) The Supplier must have the appropriate systems able to meet designated information security standards for the electronic processing, storage, transmission and disposal of official information.
- (d) The Supplier bears all the costs and expenses associated with ensuring that the storage of security classified information meets the appropriate security level as determined by the Customer.

14.4 **Security Incidents**

- (a) The Supplier must report to the Customer any actual or suspected Security Incident within 5 Business Days of the actual or suspected Security Incident.
- (b) The Supplier must report any incidents or breaches of information and / or communications technology security, not involving Customer Material to CERT Australia within 5 Business Days of the incident or breach.

14.5 **Highest level of security classified information**

- (a) The Supplier may have access to security classified information up to the level specified in item 12 of Schedule 1.

14.6 **Removal of Customer Data**

The Supplier must not, and must ensure that its Personnel do not:

- (a) remove Customer Data or allow Customer Data to be removed from the Customer's premises; or
- (b) take Customer Data or allow Customer Data to be taken outside of Australia, without the Customer's prior written consent.

15. **UNFORESEEN EVENTS**

15.1 **Occurrence of Unforeseen Events**

- (a) A party (**Affected Party**) is excused from performing its obligations under this Deed or any Contract to the extent it is prevented by circumstances beyond its reasonable control, including acts of God, natural disasters, acts of war, riots, strikes outside that party's organisation and the improper acts and omissions of the other party over which they have no control (**Unforeseen Events**).
- (b) For the purposes of clause 15.1(a) an Unforeseen Event does not include (in the case of the Supplier's breach or non-performance of this Deed or any Contract) lack of funds for any reason, any strike specific to its Personnel, any Fraud or theft, any Personnel becoming unavailable for any reason including illness, injury or death or any disruption caused by any person exercising a right of access, inspection or audit.

15.2 **Notice of Unforeseen Events**

- (a) When an Unforeseen Event arises or is reasonably considered by the Affected Party to be an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect this will have on performance.
- (b) An Affected Party must make all reasonable efforts to minimise the effects of Unforeseen Events on the performance of this Deed and any Contract.

15.3 Termination

- (a) If the Affected Party's performance of this Deed or the relevant Contract continues to be impacted by the Unforeseen Event for a period of more than 10 consecutive Business Days, the other party may terminate this Deed or the relevant Contract immediately by giving notice to the Affected Party.
- (b) If this Deed or any Contract is terminated under clause 15.3(a):
 - (i) each party will bear its own costs and neither party will incur further liability to the other; and
 - (ii) where the Supplier is the Affected Party, it will be entitled to payment for work performed prior to the Unforeseen Event.

16. DISPUTE RESOLUTION

16.1 Procedure for dispute resolution

If a dispute arises under this Deed or any Contract, the parties must act in good faith and use reasonable endeavours to resolve the dispute as follows:

- (a) the party claiming a dispute has arisen must give the other party notice setting out the details of the dispute;
- (b) during the 10 Business Days after notice of the dispute is given, the Customer Contract Manager and Supplier Contract Manager must attempt to resolve the dispute (First Tier Response Process);
- (c) if the dispute cannot be resolved within 10 Business Days after notice of the dispute is given, the parties must, within a further 10 Business Days, use reasonable efforts through a meeting of an executive of each party (who must have authority to resolve the dispute) (or their nominees) to resolve the Dispute;
- (d) if the dispute cannot be resolved within that further 10 Business Day period, the parties must refer the dispute to a mediator if one of them requests this;
- (e) the parties:
 - (i) may agree on an independent third person to act as the mediator; or
 - (ii) if they cannot agree on an independent third person within 5 Business Days after a request made under clause 16.1(d), the chairperson of the Resolution Institute or the chairperson's nominee will appoint a mediator; and
- (f) if the parties have been unable to resolve the dispute within a further 20 Business Days following the appointment of a mediator, either party may commence legal proceedings.

16.2 Costs

Each party will bear its own costs of complying with this clause 16. The parties must equally pay the costs of any mediator.

16.3 **Confidentiality**

Any information or documents disclosed by a party under this clause 16:

- (a) must be kept confidential; and
- (b) may only be used in an attempt to resolve the dispute.

16.4 **Breach of this clause**

If a party breaches clauses 16.1, 16.2 or 16.3, the other party does not have to comply with that clause in relation to the dispute.

16.5 **Termination of process**

A party to a dispute may terminate the procedure for dispute resolution by giving notice to each other party after it has complied with clause 16.1. Clauses 16.2 and 16.3 survive termination of the procedure for dispute resolution.

16.6 **Obligations continue**

- (a) Despite the existence of a dispute, the parties must continue to perform their obligations under this Deed or any Contract unless a direction is issued in accordance with clause 16.6(b).
- (b) If directed and notified in writing by the Customer to do so, the Supplier must cease performing the obligations of the Supplier under this Deed or any Contract which are specified in the Customer's notice until the Customer issues a further written notice to the Supplier directing it to resume performance of these obligations.

16.7 **Exemption**

This clause 16 does not apply to:

- (a) action under, or purportedly under, clause 17; or
- (b) legal proceedings commenced by either party seeking urgent interlocutory relief.

17. **TERMINATION**

17.1 **Termination by the Supplier for default**

Without limiting any other rights or remedies the Supplier may have against the Customer arising out of or in connection with this Deed or any Contract, the Supplier may:

- (a) terminate this Deed effective immediately by giving notice to the Customer, if:
 - (i) the Customer breaches a material provision of this Deed where that breach is not capable of remedy; or

- (ii) the Customer breaches any provision of this Deed and fails to remedy the breach within 10 Business Days after receiving notice of the breach, or such longer period as may be specified in the notice of the breach; and
- (b) terminate any Contract effective immediately by giving notice to the Customer, if:
 - (i) the Customer breaches a material provision of the Contract where that breach is not capable of remedy; or
 - (ii) the Customer breaches any provision of the Contract and fails to remedy the breach within 10 Business Days after receiving notice of the breach, or such longer period as may be specified in the notice of the breach.

17.2 Termination by the Customer for default

- (a) Without limiting any other rights or remedies the Customer may have against the Supplier arising out of or in connection with this Deed or any Contract, the Customer may:
 - (i) terminate this Deed effective immediately by giving notice to the Supplier, if:
 - (A) the Supplier breaches a material provision of this Deed where that breach is not capable of remedy;
 - (B) the Supplier breaches any provision of this Deed and fails to remedy the breach within 10 Business Days after receiving notice of the breach, or such longer period as may be specified in the notice of the breach; or
 - (C) an event specified in clause 17.2(c) happens to the Supplier, except to the extent that the exercise of a right under this clause 17.2(a)(ii)(C) is prevented by law; and
 - (ii) terminate any Contract effective immediately by giving notice to the Supplier, if:
 - (A) the Supplier breaches a material provision of the Contract where that breach is not capable of remedy;
 - (B) the Supplier breaches any provision of the Contract and fails to remedy the breach within 10 Business Days after receiving notice of the breach, or such longer period as may be specified in the notice of the breach; or
 - (C) an event specified in clause 17.2(c) happens to the Supplier, except to the extent that the exercise of a right under this clause 17.2(a)(ii)(C) is prevented by law.
- (b) Without limitation, for the purposes of clause 17.2(a)(i)(A) and clause 17.2(a)(ii)(A), each of the following constitutes a breach of a material provision:
 - (i) the occurrence of an event or circumstance where this Deed or a Contract expressly states that the Customer may terminate this Deed or the relevant Contract, as applicable, on that specific event or circumstance occurring;
 - (ii) breach of a warranty under clause 4.5; and

- (iii) a failure to comply with:
 - (A) clause 7 (Intellectual Property);
 - (B) clause 9 (Insurance);
 - (C) clause 10.6 (Conflicts of interest);
 - (D) clause 12 (Confidentiality);
 - (E) clause 13.7 (Work Health and Safety);
 - (F) clause 13.8 (Child Safety);
 - (G) clause 13.9 (Modern Slavery Act);
 - (H) clause 13.12 (Privacy)
 - (I) clause 13.17 (Notification of Significant Events);
 - (J) clause 14 (Security); or
 - (K) clause 18.7 (Assignment and novation).
- (c) The Supplier must notify the Customer promptly if any of the following events or circumstances are experienced by the Supplier:
 - (i) a Change of Control, where the prior written consent of the Customer has not been obtained; or
 - (ii) an Insolvency Event.

17.3 **Potential Default**

- (a) For the purposes of this clause 17.3, **Potential Default** means any event, thing or circumstance which does not fall within the scope of clause 17.2 and which likely would, for a Contract:
 - (i) result in the Supplier not being able to achieve a Milestone; or
 - (ii) give rise to a right of termination pursuant to clause 17.2 with the giving of notice or the passage of time.
- (b) The Supplier must notify the Customer immediately upon becoming aware of a Potential Default and must include the following information, substantially in the form of the template provided by the Customer (if any), in its notice:
 - (i) the nature of and reason for the Potential Default;
 - (ii) how the Supplier proposes to rectify the Potential Default;
 - (iii) the date on which the Supplier proposes that the Potential Default will be rectified; and
 - (iv) any expected impact that the Potential Default may have on the delivery of the Services.
- (c) If the Customer becomes aware of a Potential Default either through the receipt of notice from the Supplier under clause 17.3(b) or by any other means, the Customer may provide the Supplier with a written notice setting out the nature of the Potential

Default (**Notice of Potential Default**), any extension of time permitted and any requirements the Customer has in relation to the rectification of the Potential Default or reduction in scope of the Services.

- (d) On receipt of a Notice of Potential Default the Supplier must remedy the Potential Default or, where the Potential Default is not capable of being remedied, prepare a plan for the Customer's approval of the actions that the Supplier proposes to take to deal with the impact of the Potential Default (**Potential Default Plan**).
- (e) If:
 - (i) the Supplier does nothing in response to the Notice of Potential Default;
 - (ii) the Customer is not satisfied with the Potential Default Plan; or
 - (iii) the Supplier subsequently fails to comply with the Potential Default Plan,the Customer acting reasonably, may by written notice to the Supplier, require the Supplier to immediately suspend the Services under the affected Contract (in whole or in part) and / or terminate the affected Contract in its entirety.
- (f) No action taken by the Customer pursuant to this clause 17.3 will:
 - (i) relieve the Supplier from, or alter or affect, the Supplier's liabilities or responsibilities whether under this Deed or any Contract or otherwise according to law; or
 - (ii) prejudice the Customer's rights against the Supplier whether under this Deed or any Contract or otherwise according to law.

17.4 Termination by the Customer in relation to disrepute

- (a) The Supplier must promptly notify the Customer if it becomes aware of, or reasonably suspects, any act, omission, situation or occurrence has occurred, or may occur, which will bring about any of the circumstances described in clauses 17.4(b)(i) to 17.4(b)(iii).
- (b) Where the Supplier, its Personnel or any Related Body Corporate of the Supplier engages in any act, omission, situation or occurrence (either in connection with this Deed, any Contract or otherwise) that in the Customer's reasonable opinion:
 - (i) brings the Supplier or the Customer into disrepute;
 - (ii) subjects the Supplier or the Customer to scandal, contempt, embarrassment or public ridicule; or
 - (iii) will, or will tend to, shock, insult, or offend the community, public morals or public decency,

the Customer may provide written notice of this to the Supplier and require the Supplier to provide, within 5 Business Days, reasons as to why this Deed or any Contract should not be terminated.

- (c) If the Supplier either:
 - (i) fails to provide reasons in response to the notice issued under clause 17.4(b), or fails to provide these within the specific timeframe; or
 - (ii) the Customer is not reasonably satisfied with the reasons provided,

the Customer may terminate this Deed or any Contract by giving **10 Business Days'** written notice to the Supplier.

- (d) In the event of termination under clause 17.4(c), the Customer will be liable only for payments due in relation to work performed before the date the termination takes effect.
- (e) The parties agree that the mere fact that the Supplier is performing the Services will be deemed not to bring about the circumstances described in clauses 17.4(b)(i) to 17.4(b)(iii).

17.5 Termination by the Customer for convenience

- (a) The Customer may, by notice to the Supplier, at any time and in its discretion:
 - (i) terminate; or
 - (ii) reduce the scope of,this Deed or any Contract for convenience. Such termination or reduction in scope will take effect on and from the time specified in the notice.
- (b) Following receipt of a notice of termination or reduction of scope issued under clause 17.5(a), the Supplier must:
 - (i) stop or reduce work in connection with any current Contracts affected by the notice;
 - (ii) comply with any other direction in the notice;
 - (iii) take all available steps to minimise Loss resulting from the termination or reduction; and
 - (iv) continue any work under any part of this Deed or any Contract, or under any other Contracts, not affected by the notice.
- (c) In the event of termination or reduction of scope under clause 17.5(a), the Customer will be liable only:
 - (i) for payments due in relation to work performed before the date the termination or reduction takes effect; and
 - (ii) any reasonable costs incurred by the Supplier that are directly attributable to the termination or reduction, and then only when the Supplier substantiates these amounts to the satisfaction of the Customer Contract Manager.
- (d) None of the other provisions of this Deed or any Contract limit the Customer's ability to terminate or reduce the scope of this Deed or a Contract under this clause 17.5.
- (e) If the scope of the Services is reduced, the Customer's liability to pay the Fees or to provide Customer Material abates in accordance with the reduction in the Services.

17.6 Termination does not affect accrued rights

The expiry or termination of this Deed or any Contract does not affect any accrued rights or remedies of a party.

17.7 Termination does not affect Contracts

- (a) Termination of this Deed does not affect the continuance of any Contract formed under this Deed.
- (b) Termination of a Contract does not affect the continuance of any other Contract formed under this Deed.

18. GENERAL

18.1 Nature of the relationship

- (a) The Supplier is engaged as an independent contractor. The Supplier is not, by virtue of this Deed or any Contract, an officer, employer, partner or agent of the Customer.
- (b) The Supplier does not have any power or authority to bind or represent the Customer and agrees not to misrepresent its relationship with the Customer.

18.2 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

18.3 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Deed, any Contract and any transactions contemplated by this Deed or any Contract.

18.4 Severability

- (a) As far as possible all provisions of this Deed and any Contract will be interpreted so as not to be illegal, invalid or otherwise unenforceable.
- (b) If any part of this Deed or any Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Deed or the relevant Contract will not be affected and will be read as if that part had been severed.

18.5 Waiver

- (a) A failure or delay by a party to exercise any right or remedy it holds under this Deed, any Contract or at law, does not operate as a waiver of that right.
- (b) A single or partial exercise by a party of any right or remedy it holds under this Deed, any Contract or at law, does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

18.6 Variation

A variation of this Deed or any Contract is binding only if agreed in writing by an authorised officer of both parties.

18.7 Assignment and novation

The Supplier may only:

- (a) assign its rights; or

- (b) novate its rights and obligations,

under this Deed or any Contract with the prior written consent of the Customer.

18.8 **Approvals and consents**

Except where this Deed or any Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Deed or any Contract.

18.9 **Announcements**

- (a) The Supplier must, before making a public announcement in connection with this Deed or any transaction contemplated by it, obtain the Customer's agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).
- (b) If the Supplier is required by law or a regulatory body to make a public announcement in connection with this Deed or any transaction contemplated by this Deed, the Supplier must, to the extent practicable, first consult with and take into account the reasonable requirements of the Customer.
- (c) Where reasonably practicable, the Customer must, on or before making a public announcement in connection with any Contract, or any transaction contemplated by it, provide notice to the Supplier of the general nature of the announcement. For the avoidance of doubt, the Customer does not require the consent of the Supplier to the making of the announcement.

18.10 **Disclosure of information**

Notwithstanding any other provision of this Deed, the Customer may disclose information about this Deed, including Personal Information, required to be reported by the Customer.

18.11 **Survival**

Unless the contrary intention appears, the following provisions (and any rights arising on or from expiry or termination of this Deed or any Contract) survive expiry or termination of this Deed or any Contract:

- (a) clause 5.7 (Right of the Customer to recover money);
- (b) clause 6 (GST);
- (c) clause 7 (Intellectual Property);
- (d) clause 8 (Indemnities, risk and liability);
- (e) clause 9 (Insurance);
- (f) clause 10.4 (Subcontracting);
- (g) clause 11 (Recordkeeping and audit);
- (h) clause 12 (Confidentiality);
- (i) clause 13.5 (Workplace Gender Equality);
- (j) clause 13.7 (Work Health and Safety);

- (k) clause 13.9 (Modern Slavery);
- (l) clause 13.12 (Privacy);
- (m) clause 13.16 (National Anti-Corruption Commission);
- (n) clause 14 (Security);
- (o) clause 17.6 (Termination does not affect accrued rights); and
- (p) any other provision which expressly or by implication from its nature is intended to survive expiry or termination of this Deed or any Contract.

18.12 Applicable law

- (a) This Deed or any Contract, and any dispute arising out of or in connection with this Deed or any Contract, is to be governed in accordance with the laws of the Australian Capital Territory.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

SCHEDULE 1**Deed Details**

Item No.	Description	Clause reference	Details	
1.	Commencement Date	2.1	1 July 2024	
2.	Initial Deed Period	2.1	3 years	
3.	Option Period	2.2	Timing requirements for the exercise of the Option Period(s)	1 period of 2 years in duration to immediately follow the Initial Deed Period
			Number of Option Periods	1
			Duration of Option Period(s)	2 years
4.	Standards and guidelines	4.5(a)	Guidelines for Contract Laboratories Proficiency Tests Handbook	
5.	Required licences, permits, registrations and approvals	4.5(d)	Accreditation by NATA (or international equivalent) for the relevant analytical method(s) to ISO/IEC 17025.	
6.	Reject claim for payment	5.3(c)		
7.	Insurance amounts	9.1	Workers Compensation	As required by law.
			Public Liability	\$20 million for each and every occurrence and unlimited in the aggregate.
			Professional Indemnity	Either professional indemnity insurance or errors and omissions insurance for an insured amount of \$20 million for any one claim and in the aggregate for all claims. The policy must cover the civil liability of the Supplier arising from wrongful acts or omissions of the Supplier,

Item No.	Description	Clause reference	Details
			Personnel, or of someone for whose wrongful acts or omissions the Supplier is legally responsible. The policy must include cover for infringement of copyright or trademark, solely with respect to software and software code and design, committed or attempted in the performance of professional services.
			<p>Cyber risk insurance</p> <p>\$10 million for each claim and in the aggregate for all claims.</p> <p>The policy must cover:</p> <p>(a) the Supplier and Supplier Personnel for their:</p> <p>(i) repair, replacement, recreation or restoration costs for systems or data;</p> <p>(ii) investigation, public relations, business interruption and legal costs; and</p> <p>(iii) loss of money or property paid in connection with an extortion demand; and</p> <p>(b) the liability of the Supplier and any Supplier Personnel (including liability to the buyer) for third party claims, fines, penalties and other costs for breach of confidentiality or privacy; information theft; loss of, damage or destruction to any electronic, or electronically stored, information or media; unauthorised disclosure or use of, or unauthorised access to, personal or corporate information; unauthorised alteration</p>

Item No.	Description	Clause reference	Details	
				of electronic, or electronically stored, information or media; act or omission by an unauthorised person or entity resulting in loss of, or damage or destruction to software and data owned or used by the Supplier, and security failure.
8.	Customer Contract Manager	10.1		
9.	Supplier Contract Manager	10.1		
10.	Customer notice details	10.2	Address	70 Northbourne Avenue Canberra ACT 2601 GPO Box 858 Canberra ACT 2601
			Email	
11.	Supplier notice details	10.2	Address	
			Email	
12.	Highest level of security classified information	14.5(a)	Not Applicable	
13.	Additional Security Requirements	14.1(a)(ii)	Personnel Security	Not Applicable
			Physical Security	Not Applicable
			Information / Cyber Security	Not Applicable

SCHEDULE 2**Glossary****1. Acronyms**

- 1.1 In this Deed and any Contract, unless the contrary intention appears, the following acronyms are used:

Acronym	Description
APP	Australian Privacy Principles
ATO	Australian Taxation Office
FOI Act	<i>Freedom of Information Act 1982 (Cth)</i>
GST	Goods and Services Tax
IP	Intellectual Property
MEC	Multiple Entry Consolidated
NATA	National Association of Testing Authorities
NRS	National Residue Survey
PT	Proficiency Testing
PTR Act	means the <i>Payment Times Reporting Act 2020 (Cth)</i> , as amended from time to time, and includes a reference to any subordinate legislation made under the PTR Act.
STR	Statement of Tax Record
WGE Act	<i>Workplace Gender Equality Act 2012 (Cth)</i>
WHS	Work Health and Safety

2. Definitions

- 2.1 In this Deed and any Contract, unless the contrary intentions appear, the following definitions are used:

Defined Term	Definition
Affected Party	has the meaning provided at clause 15.1.
Agency	has the meaning provided to it in the Privacy Act.
Attachment	means a document attached to this Deed or incorporated by reference in the Schedule, as amended from time to time.

Defined Term	Definition
Authorised Contract Manager	means the person nominated by a Commonwealth Agency as their Authorised Contract Manager.
Australian Privacy Principles	has the meaning provided in the Privacy Act.
Background IP	means any Intellectual Property, other than Third Party IP, that is: <ul style="list-style-type: none"> (a) in existence at the Commencement Date or subsequently brought into existence other than as a result of the performance of this Deed or any Contract; and (b) is embodied in, or attached to, the Services or is otherwise necessarily related to the functioning or operation of the Services.
Business Day	means any day that is not a Saturday, Sunday, public holiday in the Australian Capital Territory or a national public holiday, where a 'national public holiday' is a public service holiday throughout Australia promulgated in the Australian Government Gazette.
Change of Control	means: <ul style="list-style-type: none"> (a) a body corporate or other entity that Controls the Supplier, ceases to Control the Supplier; or (b) a body corporate or other entity that does not Control the Supplier comes to Control the Supplier.
Commencement Date	means the date of the last signature by the parties to this Deed, unless otherwise specified in item 1 of Schedule 1 (Deed Details).
Commonwealth Agency	means any Commonwealth entity, within the meaning of the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Commonwealth Record	means a Commonwealth record as defined in the <i>Archives Act 1983</i> (Cth).
Confidential Information	means information that: <ul style="list-style-type: none"> (a) identified as confidential in Schedule 8 (Confidential Information);

Defined Term	Definition
	<p>(b) is by its nature confidential; or</p> <p>(c) the party knows or ought to know is confidential, including without limitation by reason of it carrying special markings indicating sensitivity or confidentiality,</p> <p>but does not include information that:</p> <p>(d) is or becomes public knowledge other than by breach of this Deed, any Contract or by any other unlawful means;</p> <p>(e) is in the possession of that person without restriction in relation to disclosure before the date of receipt; or</p> <p>(f) has been independently developed or acquired by that party.</p>
Consolidated Group	means a Consolidated Group or a MEC group as those terms are defined in section 995-1 of the <i>Income Tax Assessment Act 1997</i> (Cth).
Contract	means an enforceable contract that is created when an Official Order is issued under this Deed as amended from time to time, and includes any Attachments.
Contract Fees	means the amount payable by the Customer to the Supplier for the provision of Services under a Contract.
Control	<p>means, in respect of a body corporate, any of the following:</p> <p>(a) the power to control the composition of the body corporate's board;</p> <p>(b) the power to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or</p> <p>(c) holding more than one-half of the issued share capital of the body corporate.</p>
Corrupt Conduct	has the same meaning as in the <i>National Anti-Corruption Commission Act 2022</i> (Cth).

Defined Term	Definition
Customer	means the Commonwealth of Australia as represented by the Department of Agriculture, Fisheries and Forestry ABN 34 190 894 983.
Customer Data	all data and information relating to the Customer, and its operations, facilities customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Customer.
Customer Material	means all information, equipment, materials and facilities made available by the Customer to the Supplier for the purpose of this Deed or a Contract.
Customer Contract Manager	means the person nominated at item 8 of Schedule 1 (Deed Details).
Deed	means this deed between the Customer and the Supplier, as amended from time to time, and includes its Schedules and any attachments.
Delay	means a failure to meet any obligation under this Deed or a Contract which has a timeframe for performance.
Deliverable	means any items or materials developed or supplied by the Supplier in the course of providing the Services.
eInvoice	means an electronic invoice delivered and received through Peppol.
Eligible Data Breach	has the meaning provided in the Privacy Act.
Environmental Sustainability Plan	means the plan prepared by the Supplier in accordance with clause 13.2(a)(ii) and approved by the Customer which outlines the measures and activities the Supplier will undertake to satisfy environmental sustainability requirements or goals within nominated timeframes.
Entrusted Person	has the meaning given in the PTR Act.
Fees	means the fees payable to the Supplier under this Deed as set out in Schedule 5 (Fees and Payment).
Foreground IP	means all Intellectual Property, other than any Third Party IP, which is created under or

Defined Term	Definition
	otherwise in relation to this Deed or any Contract.
Fraud	means dishonestly obtaining a benefit from the Customer or causing a Loss to the Customer by deception or other means.
General Interest Charge Rate	means the ATO sourced general interest charge rate determined under section 8AAD of the <i>Tax Administration Act 1953</i> (Cth) on the day payment is due, expressed as a decimal rate per day.
GST	has the meaning given by the GST Law.
GST Amount	has the meaning provided at clause 6.2.
GST Group	means a GST group formed in accordance with Division 48 of the GST Law.
GST Law	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Guidelines for Contract Laboratories	the document titled Guidelines for Contract Laboratories, Issue No: 12T.4, 24 April, as updated from time to time
Handling Fee	means the amount payable to the Supplier under conditions set out in Schedule 5 (Fees and payment), paragraph 1(c) Rates Card
High Value Contract	<p>means a Contract where:</p> <ul style="list-style-type: none"> (a) the Services will be delivered in Australia; (b) the value of the Services is \$7.5 million (GST inclusive) or more; and (c) more than half the value of the Contract is being spent in one or more of the following industry sectors: <ul style="list-style-type: none"> (i) building, construction and maintenance services; (ii) transportation, storage and mail services; (iii) education and training services; (iv) industrial cleaning services;

Defined Term	Definition
	(v) farming, fishing, forestry and wildlife contracting services;
	(vi) editorial, design, graphic and fine art services;
	(vii) travel, food, lodging and entertainment services;
	(viii) politics and civic affairs services;
	(ix) financial instruments, products, contracts and agreements;
	(x) mining and oil and gas services;
	(xi) industrial production and manufacturing services;
	(xii) environmental services;
	(xiii) management and business professionals and administrative services (not subject to a sub-category exemption under the Indigenous Procurement Policy);
	(xiv) engineering and research and technology based services;
	(xv) financial and insurance services (not subject to a sub-category exemption under the Indigenous Procurement Policy);
	(xvi) healthcare services;
	(xvii) personal and domestic services;
	(xviii) national defence and public order and security and safety services (not subject to a sub-category exemption under the Indigenous Procurement Policy); or
	(xix) organisations and clubs.

Defined Term	Definition
Indigenous Enterprise	means an organisation that is 50 percent or more Indigenous owned that is operating a business. Supply Nation maintains a list of enterprises that meet the definition of 'Indigenous Enterprises' (www.supplynation.org.au).
Initial Deed Period	means the period specified at item 2 of Schedule 1 (Deed Details).
Information Commissioner	means the person appointed under section 14 of the <i>Australian Information Commissioner Act 2010</i> (Cth) as the Australian Information Commissioner.
Insolvency Event	<p>means, in respect of a person, the person:</p> <ul style="list-style-type: none"> (a) disposing of the whole or any part of its assets, operations or business other than in the ordinary course of business; (b) ceasing to carry on business; (c) being a body corporate: <ul style="list-style-type: none"> (i) ceasing to be able to pay its debts as and when they become due; (ii) entering into a scheme of arrangement or compromise under Part 5.1 of the <i>Corporations Act 2001</i> (Cth); (iii) having an: <ul style="list-style-type: none"> (A) administrator; (B) controller or managing controller (to the whole or any part of the body corporate's assets); or (C) liquidator, appointed under the <i>Corporations Act 2001</i> (Cth); or (d) being a natural person, he or she is declared bankrupt or assigns his or her estate for the benefit of creditors; or (e) being a partnership, any step is taken to dissolve that partnership.

Defined Term	Definition
Intellectual Property	means all present and future rights conferred by law in, or in relation to, any of the following: (a) copyright; (b) rights in relation to a circuit layout, patent, registrable design or registered and unregistered trademarks (including service marks); and (c) any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world, whether registered or unregistered.
Loss	means any loss, damage, liability, compensation, fine, penalty, charge, cost or expense, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
Milestone	means any fixed date specified in a Contract to be met by the Supplier in performing its obligations under the relevant Contract.
Modern Slavery	has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).
Moral Rights	means any of the following, the: (a) right of attribution of authorship; (b) right of integrity of authorship; and (c) right not to have authorship falsely attributed.
Notifiable Incident	has the meaning provided at clause 13.7(d).
Official Order	means the document, substantially in the form at Schedule 7 (Official Order), by which the Customer is to accept a Quotation for Services and enter into a Contract with the Supplier.
Option Period	means the period(s) specified in item 3 of Schedule 1 (Deed Details).
Order Commencement Date	means the date that the Customer Contract Manager issues the Official Order to the Supplier in accordance with clause 3.2(f)(i).

Defined Term	Definition
Order Term	means the timeframe specified in an Official Order for the delivery of the Services.
Peppol	means the Pan-European Public Procurement On-Line framework
Personal Information	has the meaning provided in the Privacy Act.
Personnel	means the Supplier's officers, employees, agents and Subcontractors, and the Subcontractor's officers, employees and agents.
Privacy Act	means the <i>Privacy Act 1988</i> (Cth).
Proficiency Tests Handbook	the Proficiency Tests Handbook, 20 th edition, Issue 2, April 2023, as updated from time to time.
Protective Security Policy Framework	means the Protective Security Policy Framework of the Commonwealth, as amended from time to time (available at https://www.protectivesecurity.gov.au/).
Provider	has the meaning provided at clause 6.2.
Quotation	means the Supplier's response to any RFQ issued under clause 3.2(c)
Recipient	has the meaning provided at clause 6.2.
Recipient Created Tax Invoice	has the meaning given in section 195-1 of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Related Body Corporate	has the meaning provided in the <i>Corporations Act 2001</i> (Cth).
Registered APP Code	has the meaning provided in the Privacy Act.
Remote Area	means the areas identified in the map on the Indigenous Procurement Website (https://www.niaa.gov.au/resource-centre/indigenous-affairs/ripp-map-data), as updated from time to time.
Sample On-forwarding	has the meaning given in section 1 of Schedule 5
Schedules	means the schedules to this Deed, as amended from time to time.
Security Awareness Training Program	any security training program implemented by the Customer from time to time.

Defined Term	Definition
Security Incident	any incident or breach of security that may impact: (a) the Supplier's ability to deliver the Services; or (b) the Customer Material which is held by, or in transit to and / or from, the Supplier.
Services	means the services as described in Schedule 3 (Scope of Services) to be provided under a Contract. This definition includes any Deliverables or other items required to be delivered by the Supplier under a Contract.
Shadow Economy Policy	means the Shadow Economy Procurement Connected Policy of the Commonwealth, as amended from time to time (available at https://treasury.gov.au/publication/p2019-t369466).
Specified Acts	means: (a) falsely attributing the authorship of any Deliverable, or any content in the Deliverable (including literary, dramatic, artistic works and cinematograph films within the meaning of the <i>Copyright Act 1968</i> (Cth)); (b) materially altering the style, format, colours, content or layout of the Deliverable and dealing in any way with the altered Deliverable or infringing copies (within the meaning of the <i>Copyright Act 1968</i> (Cth)); (c) reproducing, communicating, adapting, publishing or exhibiting any Deliverable including dealing with infringing copies, within the meaning of the <i>Copyright Act 1968</i> (Cth), without attributing the authorship; and (d) adding any additional content or information to the Deliverable.
Specified Personnel	means the Personnel specified in a Contract as Specified Personnel.

Defined Term	Definition
Statement of Tax Record	means a statement of tax record issued by the ATO.
Subcontract	means a contract entered into between the Supplier and a Subcontractor by which some or all of the Services are provided.
Subcontractor	means a person that, under a Subcontract, provides services to, or performs work for, the Supplier (whether directly or indirectly) in order for the Supplier to meet its obligations under this Deed or any Contract.
Supplier Contract Manager	means the person nominated at item 9 of Schedule 1 (Deed Details).
Sustainable Procurement Guide	means that guide of that name published by the Customer (as updated from time to time), which at the Commencement Date is accessible at https://www.environment.gov.au/system/files/resources/856a1de0-4856-4408-a863-6ad5f6942887/files/sustainable-procurement-guide.pdf .
Term	has the meaning provided at clause 2.1.
Third Party IP	means Intellectual Property that is owned by a party other than the Customer, the Supplier or a Subcontractor and is: <ul style="list-style-type: none"> (a) embodied in, or attached to, the Services or any Deliverables; or (b) otherwise necessarily related to the functioning or operation of the Services or any Deliverables.
Turnaround Time or TAT	the time period specified by the Customer for each sample to be tested and results to be reported to the Customer
Unforeseen Event	has the meaning provided at clause 15.1.
WHS Act	means the <i>Work Health and Safety Act 2011</i> (Cth).
WHS Legislation	means any of the following: <ul style="list-style-type: none"> (a) the WHS Act and the <i>Work Health and Safety Regulations 2011</i> (Cth); and (b) any corresponding WHS law as defined in section 4 of the WHS Act.

SCHEDULE 3

Scope of Services

Note to Potential Suppliers: For the purpose of preparing an execution version of this Deed, this Schedule 3 will be updated to reflect the detail provided in the Statement of Requirement incorporated in the ATM and updated as required to capture a successful Potential Supplier's tender response.

1. OVERVIEW

The Supplier must throughout the Deed Period, when issued with an Official Order, provide accurate chemical analytical testing services on samples provided by the Customer for any of the following program(s), as specified in the Official Order – routine Services.

The Supplier may, from time to time, be requested to additionally provide accurate chemical analytical testing services on samples provided by the Customer to support investigations and/or tracebacks – non-routine Services.

2. DESCRIPTION OF SERVICES

Program number	Program name
[to be completed]	[to be completed]

3. COMPLIANCE WITH THE GUIDELINES FOR CONTRACT LABORATORIES AND PROFICIENCY TESTS HANDBOOK

- (a) Suppliers will be required to comply with the Guidelines for Contract Laboratories. The Guidelines for Contract Laboratories set out the Customer's requirements for the delivery of chemical analytical testing services for the NRS including: sample handling, analysis, data interpretation and reporting, laboratory timing and price paid for service, payment, provision of method summary information and quality assurance.
- (b) The Proficiency Tests Handbook set out the organisation of NRS residue monitoring programs and proficiency testing programs in addition to the requirements for participants in the proficiency testing schemes offered by the NRS. Suppliers must continue participation in the relevant NRS PT for the duration of the Deed Period, always maintaining the minimum required performance level in accordance with the Proficiency Tests Handbook;
- (c) As stated in detail in the Guidelines for Contract Laboratories, the Supplier must:
 - (i) prepare samples prior to analysis in particular ways;
 - (ii) analyse NRS samples for the required tests in accordance with strict turnaround times (TAT);
 - (iii) ensure the sample results are reported to the NRS IMS within the appropriate TAT otherwise, where results are received late, outside the required TAT, and an extension has not been approved, the standard sample handling fee only (\$30 ex GST) will be paid for each sample result;
 - (iv) provide a conclusive test method summary prior to the commencement of the relevant Deed, describing the applicable analytical method, including summary validation data. The analytical method used during the Deed Period

for routine samples should be the same one used in all relevant pre-tender proficiency tests and all proficiency tests performed throughout the Deed Period. Modifications should be negotiated with the Director of the RC-LPE section of NRS and current versions of the applicable method summary should always be lodged with the Manager of the RC-LPE section of the NRS.

- (v) gain, or maintain, NATA (or international equivalent) accreditation to the requirements of ISO/IEC 17025, for the specific method unless otherwise advised. Status of accreditation will be verified by the Customer prior to commencement of the Deed Period and periodically throughout the Deed Period;

The Customer recognises that laboratories developing a capability for the first time may not have specific NATA (or international equivalent) accreditation in place at the time the tender is being lodged. Under those circumstances, laboratories will need to have completed the necessary method validation and have submitted an appropriate data package to NATA (or international equivalent) to ISO/IEC 17025, by end of January 2024 with the aim of gaining specific accreditation within a short time frame, should they be successful in gaining a Deed.

- (vi) confirm and reanalyse samples containing residue results above critical decision levels appropriately in accordance with the criteria in the Guidelines for Contract Laboratories;
- (vii) confirm the identity of all detected analytes according to Sections 1.2.3 and 1.2.4 of EU Regulation 2021/808/EC Performance of analytical methods for residues of pharmacologically active substances used in food-producing animals and on the interpretation of results as well as on the methods to be used for sampling;
- (viii) notify the Customer of any changes that may adversely affect the function or performance of, or decrease the efficiency of, the laboratory Services provided to the Customer, for example moving of the laboratory facility. In this instance, the Customer may suspend the flow of samples to the laboratory, pending satisfactory performance in proficiency test samples;
- (ix) ensure that results of the analyses and/or other work are not released or published without the permission of the Director of the RC-LPE section of NRS;
- (x) notify the Director of RC-LPE section of NRS of any legislative requirement imposed on the Contractor to report chemical residue results above maximum residue limit (MRL) to a state standards officer or any other party.

4. **ADDITIONAL SERVICES**

The Customer may also issue Official Orders under this Deed for Additional Services as and if required at any time during the Deed Period. Additional Services may be required to meet the requirements of changes to government priorities in relation to managing the risk of chemical residues and environmental contaminants in Australian food products and/or in the event that new NRS monitoring programs are announced or existing programs are modified. Changes in program arrangements and pricing as a result of a request for Additional Services, will be negotiated between the Supplier and the Customer and reflected in the applicable Official Order.

SCHEDULE 4**Management of the Deed and Contract****1. PROGRESS MEETINGS (CLAUSE 10.8)**

The Customer may initiate progress meetings, as required. The Customer does not envisage that progress meetings will be held on a regular basis.

2. REPORTS (CLAUSE 10.9)

Report type and content	Frequency
Draft Environmental Sustainability Plan	Provided to Customer within 20 days of Order
Environmental Sustainability Plan	Provided to Customer within 10 days of Customer feedback on draft Environmental Sustainability Plan
Continuous improvement – Environmental Sustainability	Provided to Customer annually from the Commencement Date
Letter of Compliance from Workplace Gender Equality Agency	Provided to Customer within 18 months from the Commencement Date and following this, annually

3. VISITS AND AUDITS (CLAUSE 11.2)

- (a) The Customer will monitor performance of the Supplier through on-site laboratory visits and audits under clause 11.2 of the Deed.
- (b) The Supplier must host audits when requested to allow the Customer to verify the integrity of the residue monitoring system. The Customer will audit each Supplier's laboratory or laboratories at least once during the Deed. Additionally, the Customer may audit a Supplier's laboratory in conjunction with other Department Personnel and government officials of trading partners to demonstrate the laboratory's compliance with the Customer's requirements in supporting Australia's residue testing system. These audits also serve to permit the Customer to satisfy its requirements as representative of the competent authority, providing oversight of the Supplier's laboratories;

At all audits, the Supplier is required to co-operate in the auditing of laboratory processes, staffing and infrastructure arrangements, relevant records and methods, and support the exchange of information between the laboratory, the Customer and NATA (or international accreditation equivalent). Audits are typically completed within one day and may require participation of up to a maximum of three laboratory staff at any one time.

- (c) If required, the Customer may disclose the Supplier's summary analytical methods to government officials of trading partners, notwithstanding that the Supplier's summary analytical methods are designated as Confidential Information in Schedule 8

4. **PERFORMANCE UNDER CONTRACT**

- (a) The Customer will monitor the Supplier's performance against the following requirements throughout the Deed Period:
 - (i) participation in, and maintenance of, the required level of performance in the relevant Proficiency Tests in accordance with the Proficiency Tests Handbook; and
 - (ii) operational performance as specified in the Guidelines for Contract Laboratories, including implementing and maintaining a quality control system and a fully operational intra-laboratory check sample program.

SCHEDULE 5**Fees and Payment**

Note to Potential Suppliers: For the purpose of preparing an execution version of this Deed, this Schedule 5 will be populated based on a Potential Supplier's tender in the event the Potential Supplier is a preferred Potential Supplier.

1. RATES CARD

- (a) The Rates Card at Table A below sets out the analytical rate per sample that the Supplier is permitted to charge the Customer for the analysis and result reporting of a sample for the specified NRS Program.

Table A: Rates Card

NRS Program Number	Rate/sample (ex GST)	GST Amount*
Handling Fee	30.00	3.00
Sample on-forwarding		

* Applicable to Australian suppliers only

- (b) The Customer will not pay the relevant Rate for a particular sample to the Supplier if the result for the relevant sample is not reported to the Customer within the TAT and an extension has not been approved by the Customer.

- (c) Handling Fee

The Customer will only pay the Supplier the Handling Fee and no other service charges will be payable, if:

- (i) a sample is received by the Supplier in an unfit condition to be analysed or tested;
- (ii) the results are received outside of the TAT (and an extension has not been approved by the Customer); or
- (iii) an agreed administrative problem occurs regarding sample receipt or collection.

The Supplier must notify the Customer of the receipt of a sample deemed unsuitable for analysis, as specified in the Guidelines for Contract Laboratories, to be eligible for payment of the Handling Fee.

- (d) Sample On-forwarding

- (i) Where testing of a sample under a program or programs that requires more than one test is awarded to separate contractor laboratories, the first recipient Supplier laboratory of the sample must on-forward the sample to the second relevant recipient of the sample (Sample On-forwarding).

- (ii) Where applicable, the pesticide/multiresidue program contractor laboratory will serve as an on-forwarding point for all minor program samples for that commodity. If applicable, the pesticide/multiresidue program contractor laboratory must repackage and forward on-forwarded samples, as directed by and using the Customer's courier system, no later than 24 hours after receipt at the pesticide/multiresidue program Supplier's laboratory.
- (iii) The cost of repackaging samples is to be borne by the on-forwarding contractor laboratory and the applicable Sample On-forwarding Rate will apply (see Table_A above).
- (e) For audits involving international delegations, the Customer will make a payment per audit to the Supplier of \$1500 (excluding GST) where the Supplier facilitates the audit with staff participation and will provide catering.
- (f) Alternative pricing structure

There may be occasions when the Customer requires the application of different pricing structures. Each Order will specify the applicable pricing principles.

2. **EXPENSES**

No allowances or expenses are payable to the Supplier.

3. **ADJUSTMENT OF FEES**

3.1 **Review Date**

- (a) No alteration of Rates will be permitted where actual annual sample numbers supplied to the Supplier by the Customer fall below the estimated annual sample numbers.
- (b) The Rates may be varied, in accordance with the following methodology on:
 - (i) Each anniversary of the Commencement Date during the Initial Deed Period; and
 - (ii) On commencement of each Option Period (if exercised by the Customer) and annually thereafter on the anniversary of that date.

3.2 **Method of review**

[Option 1 – Fixed review]

The Fees must be adjusted on each Review Date by **[insert method of escalation]**.

[Option 2 – CPI]

- (a) In this Item:
 - (i) **CPI** means the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics or international equivalent relevant to the Supplier involved or if that index is no longer published then such other index measuring changes in pricing for consumer products and services that the parties agree should replace it; and
 - (ii) **Quarter** means a period of 3 consecutive months.

SCHEDULE 6**Request for Quote**To: **[Insert Supplier's name]**

Please provide a Quotation for the provision of the Services in accordance with the following RFQ.

1. CONTRACT TERMS

Item No.	Issue	Details
Customer Information		
1.	Date of issue	[Insert]
2.	Deed of Standing Offer Title / Number	[Insert]
3.	RFQ No.	[Insert]
RFQ Details		
4.	RFQ release date	[Insert]
5.	RFQ closing date	[Insert]
6.	Proposed Order Commencement Date	[Insert]
7.	Proposed Order Term	[Insert]
Statement of Work		
8.	Detailed description of the Services	[Insert details of the Services being sought. Specify fully and precisely all duties, responsibilities and actions that are required of the Supplier, giving a complete description of the Supplier's obligations and work to be performed]
9.	Location of work	[Insert]
10.	Timeframes and Deliverables	[Insert details of the timeframe for the delivery of the Services and the timing requirements for the provision of any specific Deliverables]
11.	Acceptance of Deliverables	[Specify if an alternative time period for clause 4.3(a) will apply]
12.	Specific Performance Requirements	[Insert]
13.	Evaluation Criteria for Services	[Insert criteria for Supplier to address. Otherwise insert 'Not applicable'.]
14.	Progress Meetings	[Insert]

Item No.	Issue	Details
15.	Reporting	[Insert]
16.	Performance Criteria	[Insert details of Performance Criteria against which the Services and Deliverables will be assessed, any Milestones (if known) and the date of assessment. The definition of Performance Criteria applies the requirements in clauses 4.5(g)(ii) and 4.5(b) if no requirements are specified.]
17.	Application of eInvoicing	[Specify if applicable]
Additional Details		
18.	Fees and Payment	[Specify the department's preferred pricing model that will apply, with reference to Schedule 5 if appropriate. If no pricing model is preferred, insert 'to be proposed by the Supplier']
19.	Unsatisfactory performance	[Specify if an alternative time period for clause 4.4(a)(ii) will apply]
20.	Not Applicable	
21.	Customer Material to be provided	[Specify if applicable, otherwise insert 'Not applicable']
22.	Additional Standards	[Specify if applicable, otherwise insert 'No additional standards specified']
23.	Required licences, permits, registrations and approvals	[Specify if applicable, otherwise insert 'No required licences, permits, registrations and approvals specified']
24.	Additional security requirements	[Specify if applicable, otherwise insert 'Not applicable']
25.	Additional insurance requirements	[Specify if applicable, otherwise insert 'Not applicable']

2. INFORMATION TO BE PROVIDED BY SUPPLIER IN QUOTATION

Item No.	Issue	Information Required from Supplier
1.	Supplier response to Statement of Work	[Note to Supplier: Either confirm that you 'agree' or provide all relevant details of your offer]

Item No.	Issue	Information Required from Supplier
2.	Referees	[Note to Supplier: Identify contact details for [insert number] referees]
3.	Subcontractors	[Note to Supplier: Provide names and ABNs of any proposed subcontractors. Otherwise insert 'Not applicable'.]
4.	Specified Personnel	[Note to Supplier: Provide names and positions of proposed Specified Personnel. Supplier to attach a curriculum vitae for each of the Specified Personnel proposed to provide the Services.]
5.	Contract Fees	[Note to Supplier: Insert proposed pricing structure and the Supplier's proposed Contract Fee (or estimated Contract Fee if payable on a time and materials basis) based on the Fees in Schedule 5 of the Deed]
6.	Indigenous Participation Plan to be provided?	[Yes / No]
7.	Supplier Confidential Information	[Note to Supplier: Identify any proposed items of Supplier Confidential Information and the period of confidentiality of each item]
8.	[Insert any additional information required from Supplier]	

SCHEDULE 7**Official Order**To: **[Insert Supplier's name]**

Item No.	Information	Details	
1.	Date of issue		
2.	Deed of Standing Offer Title / Number		
3.	Official Order Number		
Party Details			
4.	Supplier Details		
5.	Supplier Contract Manager	Name	
		Position	
		Number	
		Email	
6.	Customer Details	the Commonwealth of Australia as represented by the Department of Agriculture, Fisheries and Forestry	
7.	Customer Contract Manager	Name	
		Position	
		Number	
		Email	
Official Order Details			
8.	Order Commencement Date		
9.	Order Term		
Statement of Work			
10.	Detailed description of the Services		

Item No.	Information	Details
11.	Location of Work	
12.	Timeframes and Deliverables	
13.	Acceptance of Deliverables	[Specify if an alternative time period for clause 4.3(a) will apply]
14.	Specific Performance Requirements	
15.	Progress Meetings	
16.	Reporting	
17.	Performance Criteria	
Price and payment		
18.	Contract Fees	
19.	Expenses	'No Change'
20.	Application of eInvoicing	
21.	Additional Payment Arrangements	
Additional Details		
22.	Indigenous Participation Plan attached?	No – 'Not Applicable'
23.	Unsatisfactory performance	[Specify if alternative time period applicable for clause 4.4(a)(ii) will apply]
24.	Not Applicable	
25.	Specified Personnel	
26.	Approved Subcontractors	

Item No.	Information	Details	
27.	Customer Material		
28.	Confidential Information	Customer Confidential Information	Individual and collated analytical testing results
		Supplier Confidential Information	Analytical method summary(ies) and rates / sample
29.	Additional Standards	Guidelines for Contract Laboratories Proficiency Tests Handbook	
30.	Required licences, permits, registrations and approvals	Accreditation by NATA (or international equivalent) for the relevant analytical method(s) to ISO/IEC 17025.	
31.	Additional security requirements		
32.	Additional insurance requirements		
33.	Additional terms / requirements		

EXECUTED as an **AGREEMENT**

SIGNED for and on behalf of **THE COMMONWEALTH OF AUSTRALIA AS REPRESENTED BY THE DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY** ABN 34 190 894 983 by its duly authorised officer, in the presence of:

Signature of authorised officer

Signature of witness

Name

Date

[Insert signature block for Supplier]

SCHEDULE 8

Confidential Information

1. CUSTOMER'S CONFIDENTIAL INFORMATION

Item No.	Confidential Information	Period of Confidentiality
1.	Individual and collated analytical testing results	Indefinitely

2. SUPPLIER'S CONFIDENTIAL INFORMATION

Item No.	Confidential Information	Period of Confidentiality
1.	Analytical method summary(ies) and rates / sample	Indefinitely

SCHEDULE 9

Deed of Confidentiality

This Deed Poll is made on [Insert date] by:

[Insert Confidant name] of [Insert address] (Confidant) in favour of the Commonwealth of Australia as represented by the **Department of Agriculture, Fisheries and Forestry** ABN 34 190 894 983 of 70 Northbourne Avenue, Canberra ACT (Department).

RECITALS:

- (A) The Department and the [Insert name of Supplier] (Supplier) have entered into a deed of standing offer dated [Insert date] for [Insert a description of the Services being provided] (Deed of Standing Offer).
- (B) The Confidant is [Insert a description of the relationship of the Confidant to the Supplier and their role in relation to the Deed of Standing Offer].
- (C) The Confidant agrees to take all necessary steps to ensure that the Confidential Information is kept confidential, and is used only for the Permitted Purposes.

AGREED TERMS

1. DEFINITIONS

In this Deed, unless the contrary intention appears:

Confidential Information means any information that is:

- (a) by its nature confidential; or
- (b) the Confidant knows or ought to know is confidential, including without limitation by reason of it carrying special markings indicating sensitivity or confidentiality,

but does not include information which:

- (c) is or becomes public knowledge other than by breach of this Deed;
- (d) is in the possession of the party without restriction in relation to disclosure before the date of receipt; or
- (e) has been independently developed or acquired by the Confidant.

Deed means this deed of confidentiality, dated [Insert execution date].

Deed of Standing Offer means the deed of standing offer referred to in paragraph (A) of the Recitals, as amended from time to time, and includes any contract entered into under the deed of standing offer.

Permitted Purposes means:

- (a) use of the Confidential Information by the Confidant for the purpose of performing their duties in relation to the Deed of Standing Offer; and
- (b) any other purpose that may be approved in writing by the Department from time to time.

Personnel means the Supplier's officers, employees, agents and Subcontractors, and the Subcontractor's officers, employees and agents.

Subcontractor means a person that, under a subcontract, provides services to, or performs work for, the Supplier (whether directly or indirectly) in order for the Supplier to meet its obligations under the Deed of Standing Offer.

2. **CONFIDENTIALITY UNDERTAKINGS**

2.1 The Confidant:

- (a) acknowledges and agrees that this Deed is for the benefit of the Department and is directly enforceable by the Department even though it is not a party to this Deed;
- (b) must ensure that the Confidential Information is kept confidential and secure from disclosure;
- (c) must only use the Confidential Information for the Permitted Purposes;
- (d) must not without the prior written consent of the Department, disclose or permit any person to disclose any of the Confidential Information to any person, other than as permitted under clause 2.2; and
- (e) must promptly notify the Department of any unauthorised possession, disclosure or use of the Confidential Information contrary to this Deed, and take all steps necessary to prevent the recurrence of such possession, disclosure or use.

2.2 Clause 2.1 does not apply to a disclosure of any Confidential Information to the extent that the disclosure is for any of the following purposes:

- (a) to any other Personnel for a Permitted Purpose;
- (b) as required or authorised by law; and
- (c) as necessary for the conduct of any legal proceedings.

2.3 The Confidant acknowledges that it may be provided with the ability to access the Department-held information (in addition to the Confidential Information) in connection with its performance of the Permitted Purposes, including through access to the Department information technology systems. Without limiting the Confidant's other obligations under this Deed or otherwise at law, the Confidant must not seek to access or use the Department-held information except to the extent strictly required to undertake the Permitted Purposes.

3. **RETURN OF CONFIDENTIAL INFORMATION**

Without limiting the Confidant's obligations at law, the Confidant must deliver to the Department, or destroy or erase, as required by the Department, all documents (including electronically stored or otherwise) in its possession or control which contain or relate to the Confidential Information on the earlier of:

- (a) the date specified in a notice given by the Department (acting reasonably); and
- (b) the time the documents and any other material are no longer required for the Permitted Purposes.

4. **VARIATIONS**

No term or provision of this Deed must be amended or varied unless such amendment or variation is agreed by the Department in writing.

5. **SURVIVAL**

This deed will survive the termination or expiry of any contract between the Supplier and the Confidant providing for the performance of services by the Confidant (whether directly or indirectly).

6. **APPLICABLE LAW**

The laws of the Australian Capital Territory must apply to this Deed. The Confidant agrees to submit to the applicable jurisdiction of the courts of that Territory in respect of all matters arising out of this Deed.

EXECUTED as a DEED POLL

SIGNED, SEALED AND DELIVERED by
[Insert name of Confidant] in the
presence of:

Signature of Confidant

Signature of witness

Name

Address of witness

EXECUTED as a **DEED**

SIGNED, SEALED AND DELIVERED for
and on behalf of **THE COMMONWEALTH
OF AUSTRALIA AS REPRESENTED BY
THE DEPARTMENT OF AGRICULTURE,
FISHERIES AND FORESTRY** ABN 34 190
894 983 by its duly authorised officer, in
the presence of:

Signature of authorised officer

Signature of witness

Name

Name

Note to Drafters: Ensure the appropriate execution block is included in the Contract for the Supplier. The execution block required will vary depending the type of legal entity the Supplier. The below signature block should only be used for Suppliers that are Corporations Act companies that are executing the Contract by two directors of the company or a director and the company secretary. Please contact the DAFF Procurement Team for information on the signature blocks to be used for other legal entities.

SIGNED, SEALED AND DELIVERED
by **[INSERT NAME OF SUPPLIER]**
ACN/ABN **[INSERT NUMBER]** in
accordance with the requirements of
section 127 of the *Corporations Act
2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name