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## SCHEDULE 5 - TERMS

### 1. QUALITY AND PERFORMANCE

- 1.1 The Supplier must perform all Services at the time, place, and in the manner stated in the Contract.
- 1.2 The Supplier must perform the Services at a high standard with all due skill, care and diligence.
- 1.3 The Supplier must comply with any requirements relating to the Services as stated in the Contract.
- 1.4 Without limiting **clauses 1.2** and **1.3**, all Services must be free from defects in performance, meet their purpose and be complete.
- 1.5 The Supplier in performing the Services must:
  - (a) keep CSIRO fully and regularly informed as to all matters affecting or relating to the Services;
  - (b) comply with all materially relevant laws;
  - (c) have the skills, qualifications and experience to perform the Services in an efficient and controlled manner, with a high degree of quality and responsiveness;
  - (d) continuously seek to improve the quality, effectiveness and efficiency, including cost effectiveness, of the Services; and
  - (e) ensure that all information provided to CSIRO, including in reports and documents provided to CSIRO, is correct, complete and not misleading.
- 1.6 The Supplier must not sub-contract the performance of the Services or assign the Contract without the consent of CSIRO (acting reasonably) which may be withheld or given subject to conditions. It will be a condition of CSIRO's consent that the subcontractor must comply with the relevant terms and conditions of this Contract and that the Supplier supply to CSIRO such details of the subcontractor as CSIRO requires.

### 2. INSPECTION AND ACCEPTANCE OF SERVICES

- 2.1 CSIRO may inspect the performance and outcome of the Services at any time to ensure adherence to the Contract and the Statement of Requirement, and for that purpose the Supplier must give at reasonable times and upon reasonable notice CSIRO's representatives access to the premises, records and Contract Material where the Supplier is performing Services. CSIRO may take copies of any such records and Contract Material and remove them from the premises. CSIRO will endeavour not to unreasonably delay or disrupt the Supplier's performance of its obligations under the Contract.
- 2.2 If there is a defect in the performance of the Services, or the Services are not complete, CSIRO (acting reasonably and by providing reasonable notice to the Supplier) may require the Supplier to remedy the defect, complete the Services or redo the Services at no additional cost to CSIRO.

### 3. EVALUATION OF PERFORMANCE

- 3.1 The Contract Manager will monitor the Supplier's performance systematically throughout the Term. Performance indicators will include:
  - (a) timeliness;
  - (b) provision of regular project reports;
  - (c) performance of all tasks included in the performance of the Services;
  - (d) satisfactory standards of workmanship and achievement of all performance standards included in the Contract;
  - (e) provision of advice which enables effective action to be taken by CSIRO;
  - (f) adherence to budget; and
  - (g) ability to respond effectively to the requirements of the Contract Manager under the terms and conditions of the Contract.

#### 4. AUDITOR GENERAL AND PRIVACY COMMISSIONER

- 4.1 The rights of CSIRO under clauses 2.1 apply equally to the Auditor-General, the Privacy Commissioner, or their respective delegates, for performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.
- 4.2 The Supplier must do all things necessary to comply with the Auditor-General's or the Privacy Commissioner's or their delegate's reasonable requirements.
- 4.3 Nothing in this Contract reduces limits or restricts in any way any function, power, right or entitlement of the Auditor-General, the Privacy Commissioner or their delegates.
- 4.4 This clause applies during and for 7 years from the end of this Contract.

#### 5. INTELLECTUAL PROPERTY

- 5.1 **Intellectual Property** includes business names, copyrights, and all rights in relation to inventions, patents, new plant varieties, registered and unregistered trademarks (including service marks), registered designs, and semi-conductor and circuit layouts, the right to have Confidential Information kept confidential, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- 5.2 The title to and ownership of Intellectual Property in all Contract Material will vest immediately upon its creation in CSIRO. To the extent that the Supplier owns any Intellectual Property in the Contract Material, the Supplier hereby assigns all of its right, title and interest in such Intellectual Property to CSIRO.
- 5.3 The Contract does not affect the Supplier's or CSIRO's ownership of its Background IP. However, the Supplier grants to CSIRO a perpetual, irrevocable, royalty-free, non-exclusive licence (including a right of sublicense) to use, reproduce, publish, adapt and exploit the Background IP anywhere in the world insofar as it relates to and is necessary for CSIRO's full use of the Contract Material and for full benefit of the Contract.

- 5.4 The Supplier must not use CSIRO's name or acronym in a manner that suggests that CSIRO endorses or is associated with the Supplier's business, products or services. The Supplier must not use any CSIRO trademark or logo without CSIRO's prior written consent.

#### 6. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 6.1 **Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) is designated by a party as confidential and is described in **Schedule 2**;
- (c) either party knows or ought to know is confidential;
- (d) is comprised in or relates to Contract Material or confidential information CSIRO provides to the Supplier in connection with the Contract including documents, equipment, information and data stored by any means;

but does not include information which:

- (e) is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligations; or
- (f) a party has independently developed or acquired.

- 6.2 Neither party, its employees, agents and sub-contractors must disclose or make public any Confidential Information of the other party without the prior approval in writing of that party except in accordance with this Contract, if required to do so by law or a stock exchange, or as strictly required in relation to legal proceedings relating to this Contract.

- 6.3 CSIRO may disclose any of the Supplier Confidential Information:

- (a) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over CSIRO;

- (b) for public accountability reasons, including a request for information by parliament or a parliamentary committee;
- (c) for any other reporting requirements of CSIRO; or
- (d) to CSIRO staff and contractors on a need-to-know basis where they have entered into an arrangement to preserve the confidentiality of the information.

6.4 This clause will survive the end of the Contract for a period of 7 years.

## 7. PRIVACY

7.1 In providing the Goods and/or Services, the Supplier must comply, and ensure that its officers, employees, agents and subcontractors comply, with the *Privacy Act 1988* (Cth) and not do anything which, if done by CSIRO, would breach an Australian Privacy Principle as defined in that Act. The Supplier will notify CSIRO if it becomes aware that it may be required to disclose Personal Information by law or to the Australian Information Commissioner.

7.2 The Supplier undertakes to notify CSIRO when it experiences a data breach or a potential data breach as soon as possible but no later than 3 days following the breach and to comply with the Notifiable Data Breach Scheme.

7.3 The Supplier will only use and store information on Australian-based servers.

7.4 This clause will survive the end of the Contract.

## 8. CONFLICT OF INTEREST

8.1 The Supplier warrants to the best of its knowledge that, at the date of signing the Contract, no conflict or potential conflict of interest exists or is likely to arise in its performance of the Contract which CSIRO has not already consented to in writing.

8.2 If, during the term of the Contract, a risk of conflict of interest arises, the Supplier will notify CSIRO immediately in writing of that risk and to take steps as CSIRO reasonably requires dealing with the conflict. If the Supplier does not deal with the conflict

as reasonably required, CSIRO may terminate the Contract in accordance with **clause 13**.

## 9. CSIRO BUSINESS RECORDS

9.1 The Supplier must ensure that all material (including any correspondence) which contains information which it created in the performance of the Services is stored in electronic copy in a medium that CSIRO advises is reasonably acceptable.

## 10. COMPLIANCE WITH CSIRO'S POLICIES

10.1 The Supplier must, when using CSIRO's premises or facilities, comply with all reasonable directions of CSIRO and all procedures and policies of CSIRO relating to occupational health (including no smoking), safety and security in effect at those premises or facilities, as CSIRO notifies or as might reasonably be inferred from the use to which the premises or facilities are being put.

10.2 The Supplier must comply with the relevant sections of the Protective Security Manual issued by the Australian Government in performing this Contract. The Supplier acknowledges that on occasion, before it or its employees, agents or subcontractors can perform under this Contract, they must obtain appropriate security clearances if requested by CSIRO.

## 11. NEGATION OF EMPLOYMENT AND AGENCY

11.1 The Contract and its context do not make the Supplier an employee, partner or agent of CSIRO. The Supplier or its employees must not represent themselves as being employees, partners or agents of CSIRO.

## 12. TERMINATION FOR CONVENIENCE

12.1 CSIRO may terminate the Contract at any time by notice in writing the Supplier must cease or reduce work according to the tenor of the notice and must immediately do everything possible to mitigate consequential losses.

12.2 If CSIRO terminates the Contract under **clause 12.1**, CSIRO is only liable for:

- (a) payment of fees for Services the Supplier performed before the effective date of

termination, provided the Supplier performed those Services in accordance with the Contract and the Supplier is not otherwise in breach of the Contract; and

- (b) subject to this clause, any unavoidable Loss the Supplier incurs or sustains and directly attributable to the termination of the Contract, provided that the Supplier reasonably substantiates the costs to CSIRO.

### 13. OTHER TERMINATION

13.1 In addition to its rights at common law, CSIRO may, by notice in writing to the Supplier, end the Contract immediately if:

- (a) the Supplier suffers an Insolvency Event;
- (b) the Supplier breaches the Contract and the breach is not capable of rectification;
- (c) the Supplier breaches the Contract and the Supplier does not rectify the breach within 14 days after receiving a notice from CSIRO requiring the Supplier to rectify the breach;
- (d) the Supplier engages in dishonest or fraudulent conduct; or
- (e) the Supplier fails to perform its obligations for over 60 days due to an Unforeseen Event that CSIRO did not cause.

13.2 **Insolvency Event** means any of:

- (a) The Supplier, being a company, enters into liquidation or has a controller liquidator or administrator appointed except to reconstruct or amalgamate while solvent or enters into, or resolves to enter into, a scheme of arrangement or composition with all or any class of its creditors, or it proposes a reorganisation or moratorium involving any of them;
- (b) The Supplier being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors;

- (c) The Supplier being a partnership, any step is taken to dissolve that partnership; or

- (d) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

13.3 Where, before the Contract ends under **clause 13.1**, CSIRO has made any payment in advance to the Supplier for which it has not received Services, the amount of that payment must be repaid by the Supplier to CSIRO immediately on termination and, if not repaid, it becomes a debt.

13.4 If the Contract ends under **clause 13.1**:

- (a) subject to the Contract, the parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- (b) any rights to damages are not affected; and
- (c) the Supplier must comply with all obligations in the Contract relating to Contract Material.

### 14. INDEMNITY

14.1 The Supplier indemnifies CSIRO against all Loss that CSIRO may sustain or incur from any breach of the Contract by the Supplier and any negligent act or omission of the Supplier, except to the extent that any negligent act or omission of CSIRO contributed to the Loss.

14.2 The Supplier's liability under this clause 14 will not exceed the sum stated in Item 11 - Indemnity Amount, except this limit will not apply where the liability results from any unlawful or wilfully wrong act or omission of the Supplier, property damage, personal injury or death caused by the Supplier.

14.3 If payment under an indemnity to CSIRO gives rise to a liability for CSIRO to pay GST, the Supplier must pay and indemnify CSIRO against the amount of such GST.

14.4 This **clause** will survive the end of the Contract.

## 15. VARIATION OF CONTRACT

15.1 The parties may only vary the Contract by mutual consent in writing.

15.2 The Contract is the entire agreement between the parties and supersedes all previous correspondence, contracts and arrangements between the parties relating to the Services except to the extent the Contract expressly incorporates them.

## 16. NOTICES

16.1 A party may deliver notices under the Contract by prepaid postage, by hand, by facsimile or by e-mail transmission to another party at the address set out at the beginning of the Contract or such other address a party may notify in writing to the other.

## 17. UNFORESEEN EVENT

17.1 When an Unforeseen Event has occurred, the non-performing party will not have to perform the obligations affected for as long as the circumstances prevail provided the non-performing party is without fault in causing or reasonably failing to prevent the failure or delay and continues to use its best endeavours to recommence performance whenever and to whatever extent possible as soon as reasonably practicable. Any party delayed in its performance will promptly notify the party to whom performance is due and describe in reasonable detail the circumstances causing the delay.

## 18. UNPAID EMPLOYEE ENTITLEMENTS

18.1 The Supplier warrants that it does not at any time during this Contract have any judicial decisions against it (except any under appeal by it) in respect of unpaid employee entitlements, and has not paid the claim.

## 19. WORKPLACE GENDER EQUALITY ACT 2012 (CTH)

19.1 This clause 19 applies only, where the total Contract Fee is valued at \$400,000 (GST inclusive) or above, and to the extent that the Supplier is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* (the WGE Act).

19.2 The Supplier must comply with its obligations, if any, under the WGE Act.

19.3 If the term of the Contract exceeds 18 months, the Supplier must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Commencement Date and following this, annually to the CSIRO Contract Manager.

19.4 If the Supplier becomes non-compliant with the WGE Act during the term of the Contract, the Supplier must promptly notify the CSIRO Contract Manager upon advice of the non-compliance.

19.5 Compliance with the WGE Act does not relieve the Supplier from its responsibilities to comply with its other obligations under the Contract.

## 20. SHADOW ECONOMY

20.1 The Supplier warrants in relation to any immediate subcontractor it has engaged to deliver Services with an estimated value of over \$4 million (GST inclusive) that the Supplier either:

(a) provided a Valid and Satisfactory Statement of Tax Record for the subcontractor in its response that resulted in this contract; or

(b) holds a Satisfactory Statement of Tax Record for the subcontractor that was Valid at the time of entry into the subcontract by the Supplier and the subcontractor.

The supplier warrants that at the Commencement Date it holds a Valid and Satisfactory Statement of Tax Record.

The Supplier must hold a Valid and Satisfactory Statement of Tax Record at all times during the Term and, on request by CSIRO, provide to CSIRO a copy of any the Statement of Tax Record.

Any failure by the Supplier to comply with the requirements outlined in this clause will be a breach of this contract.

The Supplier must ensure that any immediate subcontractor engaged to deliver Services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax

Record at all times during the term of the relevant subcontract.

The Supplier must retain a copy of any Statement of Tax Record held by any immediate subcontractor in accordance with this clause and must, on request by CSIRO, provide to CSIRO a copy of any such Statement of Tax Record.

**Shadow Economy Procurement Connected**

**Policy** means the *Shadow economy – increasing the integrity of government procurement*.

*Procurement connected policy guidelines March 2019* available at

<https://treasury.gov.au/publication/p2019-t369466>.

**Satisfactory** means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.

**Statement of Tax Record** means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at

[https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting\\_an\\_STR](https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR).

**Valid** means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.

**21. NATIONAL ANTI-CORRUPTION COMMISSION ACT 2022 (CTH) REQUIREMENTS**

21.1 The Supplier acknowledges that in providing the Services to CSIRO under the Contract, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act).

21.2 The Supplier must comply with any reasonable request, policy or direction issued by CSIRO and otherwise cooperate with CSIRO in relation to any action taken by CSIRO required or authorised by the NACC Act.

**22. GOODS AND SERVICES TAX**

22.1 CSIRO warrants that it is an “Australian-based business recipient” for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

22.2 Unless otherwise expressly stated and / or separately in agreed in writing between the parties:

(a) all amounts or other sums payable or to be provided in accordance with this Contract are inclusive of any GST; and

(b) the party liable to provide consideration for a supply made under or pursuant to this Contract is not required to “gross up” or pay any additional amount to the supplier on account of the relevant supply being a taxable supply.

22.3 Where a supply made under or in connection with this Contract is a progressive or periodic supply, this **clause 22** applies to each component of the progressive or periodic supply as if it were a separate supply.

22.4 If some or all of the consideration for a taxable supply made by a party under or pursuant to this Contract is not expressed as an amount of money (Non-Monetary Consideration) and its provision also constitutes a supply by the recipient, the parties agree that:

(a) the Non-Monetary Consideration is GST inclusive and will not be increased on account of GST;

(b) any remaining portion of the supplier’s taxable supply which is not made for Non-Monetary Consideration shall be treated as being made for monetary consideration which is inclusive of any GST; and

(c) the GST inclusive market value of the taxable supply and the sum of the Non-Monetary Consideration and any monetary consideration provided for that supply are of equal value.

- 22.5 The supplier of a taxable supply must issue a tax invoice to the recipient of the taxable supply before the supplier is entitled to any payment.
- 22.6 Where any indemnity, reimbursement or similar payment under this agreement is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.
- 22.7 References to GST payable and input tax credit entitlements include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

### 23. TAXES GENERALLY

- 23.1 Unless otherwise agreed in writing,
- (a) subject to **clause 23.1(b)**, all amounts to be paid or provided under this Contract are inclusive of any sales, use, value added, goods and services, withholding and other taxes or duties, however designated (collectively, Taxes);
  - (b) the Supplier is liable for any Taxes which may be payable or recognisable under or in respect of any payment, supply or provision of goods or services made pursuant to this Contract. This includes, but is not limited to, GST (or other forms of value added tax), customs and duties but does not include:
    - (i) any tax payable by reference to the income of CSIRO, or
    - (ii) any GST payable on a taxable supply where the GST liability is reverse charged and payable by CSIRO; and
  - (c) for the avoidance of doubt, where it is required by law to make a payment subject to the deduction or withholding of any Tax, CSIRO will not increase or “gross up” its Fee or other amounts payable to the Supplier such that the amount received by the Supplier is the sum net of any deduction or withholding of Taxes.

- 23.2 If a party is required by law to make a deduction or withholding from an amount payable to the other party under or in connection with this Contract, whether for tax or otherwise, it must

- (a) notify the other party as soon as reasonably practicable that it is required to make the deduction or withholding;
- (b) promptly make the deduction or withholding and pay the amount in the manner required to the government or other entity entitled to receive it; and
- (c) if requested by the other party, as soon as reasonably practicable, deliver evidence satisfactory to the other Party that the payment has been made.

- 23.3 CSIRO may reasonably request that the Supplier provide it with evidence of the Supplier’s Australian Business Number or, alternatively, a validly completed Statement by a Supplier form. The failure by a Supplier to provide CSIRO with either evidence of its Australian Business Number or a validly completed Statement by a Supplier form may result in CSIRO withholding payments to the Supplier in accordance with the *Taxation Administration Act 1953* and related legislation.

### 24. INTERPRETATION

- 24.1 In the Contract:

**Background IP** means any Intellectual Property owned or controlled by a party, prior to the commencement of the Contract or developed independently of the Contract, which a party contributes to the Services.

**Contract Material** means all material created or required to be developed or created as part of, or for performing, the Services, including documents, equipment, information and data stored by any means.

**Unforeseen Event** means any event which is not within the reasonable control of the party affected, including a declared pandemic but does not include any act or omission of the other party (including any sub-contractors) to the Contract.



**Item** means an item specified on the front or immediately subsequent pages of the Contract.

**Loss** means any loss, cost or expense (including legal costs and expenses on a solicitor and own client basis) or liability, however it arises and whether it is present or future, fixed or unascertained, actual or contingent. Loss includes, for the purposes of **clause 7**, any amount paid by CSIRO for an interference with the privacy of an individual being a reasonable amount as compensation for loss or damage for which CSIRO is liable, or would have been liable under the *Privacy Act 1988* if such breach had been that of CSIRO.

24.2 Unless otherwise defined in this Contract, words or expressions used in the Contract which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in the Contract.

24.3 Words importing a gender include any gender. Words in the singular number include the plural and the converse.

24.4 If there is inconsistency between the provisions of the Contract, the decreasing order of precedence will be the Statement of Requirement, the Items, any Special Conditions and the Terms.