

DEED

DEED FOR ENGAGEMENT TO THE SECOND REVIEW OF THE FOOD AND
GROCERY CODE OF CONDUCT

**The Commonwealth of Australia as represented by the Department of the
Treasury**

ABN 92 802 414 793

Craig Emerson

DEED

DEED for ENGAGEMENT to the Second Review of the food and grocery code of CONDUCT

Date

This Deed is made on the date on which it is signed by the parties, or if executed on separate dates, the date of the last signature.

Parties

This Deed is made between and binds the following parties:

1. **The Commonwealth of Australia as represented by the Department of the Treasury** ABN 92 802 414 793 of Langton Crescent, Parkes ACT 2600 (the **Commonwealth**)
Craig Emerson of s 47F (Appointee)

Context

This Deed is made in the following context:

- A. The Commonwealth seeks to appoint a Reviewer to conduct a review of the Food and Grocery Code of Conduct, which is set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015* under the *Competition and Consumer Act 2010* (the **Appointment**).
- B. The Commonwealth wishes to appoint the Appointee, Dr Craig Emerson, as the Reviewer as set out in this Deed.
- C. The Appointee has fully informed themselves about the Commonwealth's requirement for the Appointment.
- D. The parties have agreed that the Appointee will perform the Appointment as required under section 5 of the *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015* and on the terms and conditions contained in this Deed.

Operative provisions

In consideration of the mutual promises contained in this document, the parties to this Deed agree as follows:

1. Deed Details

- 1.1. The Deed Details set out in the table below must be read in conjunction with the other terms and conditions contained in this Deed.

Appointment (cl 4.1)	<p>The Appointee agrees to perform the Appointment by:</p> <ol style="list-style-type: none">a) Conducting the "second review" of the Food and Grocery Code of Conduct as required under s 5(3) of the <i>Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015</i> and in accordance with the Terms of Reference available at Attachment A; andb) Delivering a written report of the review to the Assistant Minister no later than 30 June 2024. <p>Prior to the delivery of the written report, the Appointee agrees to:</p> <ol style="list-style-type: none">a) Lead the public consultation process to undertake targeted public engagement with key stakeholders;b) Garner evidence to meet the Terms of Reference and to make sound findings and recommendations; andc) Lead the development of content, findings and recommendations in the write. <p>Following the delivery of the written report, the Appointee agrees to work as</p>
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	<p>required to:</p> <ul style="list-style-type: none"> a) Attend Appointment meetings and other meetings as required by the Commonwealth; b) Provide oral or written advice to the Appointment and the Commonwealth; c) Prepare, review and comment on documents as required by the Appointment; d) Support the conduct, and business of the Appointment; and e) Any other tasks or activities in connection with the Appointment as required by the Commonwealth.
Term of Deed (cl 4.1)	This Deed is effective from the date on which it is signed by the parties, or if executed on separate dates, the date of the last signature, and for a period ending on 31 August 2024 unless the Deed is extended by the Commonwealth or is terminated earlier in accordance with clause 11 or 12.
Specified Personnel (cl 4.3)	<p>There are no specified personnel for this Deed as at the date of this Deed.</p> <p>The Appointment must not be performed by any personnel other than the Appointee and any Specified Personnel listed above unless the Appointee has:</p> <ul style="list-style-type: none"> (a) advised the Commonwealth of the additional personnel and their charge rates; and (b) obtained the Commonwealth's written approval to part of the Appointment being performed by those personnel as Specified Personnel under this Deed.
Fees (cl 5)	<p>The Appointee may charge the following annual rate or daily rate in respect of the Appointee:</p> <ul style="list-style-type: none"> • Daily rate: \$1650 exclusive of GST <p>The above rates are inclusive of all taxes (excluding GST), duties and government charges imposed or levied in Australia or overseas, remuneration to the Appointee and any Specified Personnel in respect of procuring and maintaining any insurance required under this Deed, and any employer superannuation contributions payable by the Commonwealth.</p> <p>The amount of daily rate payable for the Appointee is calculated as follows:</p> <ul style="list-style-type: none"> • if the Appointee performs the Appointment for three hours or more during a single day – the full daily rate is payable; • if the Appointee performs the Appointment for more than two hours but less than three hours in a single day – an amount equal to 60% of the daily rate is payable; and • if the Appointee performs the Appointment for less than two hours in a single day - an amount equal to 40% of the daily rate is payable. <p>The Appointee may claim from the Commonwealth expenses incurred by the Appointee for travel and accommodation if it is necessary for the Appointee to travel outside their usual place of operation or business for the performance of the Appointment. The Appointee must obtain the Commonwealth's written approval prior to incurring any of these expenses.</p> <p>The Appointee may also claim from the Commonwealth for other expenses the Appointee incurs that are necessary for the performance of the Appointment. The Appointee must obtain the Commonwealth's written approval prior to incurring any of these expenses.</p> <p>The Appointee must provide a receipt or other document to the Commonwealth in support of a claim for reimbursement of any incurred expense by the Appointee.</p>

<p>Invoicing (cl 5)</p>	<p>Invoices must be sent to the Commonwealth at either:</p> <p>The Treasury Langton Crescent Parkes ACT 2600 Attention: Tony McDonald OR tony.mcdonald@treasury.gov.au.</p> <p>and shall include the following information:</p> <ol style="list-style-type: none"> a. relevant contract number; b. name of the Commonwealth representative for the Appointment; c. details of the Appointee's performance of the Appointment, including name of the Appointee, details of the days (including any part days and hours) worked during the relevant invoicing period; d. the amount payable to the Appointee for the performance of the Appointment and the basis for calculation of that amount; e. a breakdown of all pre-approved expenses for which reimbursement is sought, together with verifying documentation (such as copies of receipts); and f. details for payment (Bank, BSB, Account No. and Account Name). <p>Invoices for Appointment must be rendered on a monthly basis unless otherwise agreed in writing prior to the commencement of the Deed.</p> <p>The Commonwealth will pay correctly rendered invoices by electronic transfer to the account nominated by the invoice.</p> <p>The Commonwealth will pay the Appointee within 20 days after acknowledgement of the satisfactory performance of the Appointment and receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.</p> <p>An invoice is correctly rendered if:</p> <ol style="list-style-type: none"> a. it is correctly addressed and calculated in accordance with this Deed; b. relates only to the performance of the Appointment in accordance with this Deed; and c. it is a valid tax invoice in accordance with <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<p>Insurance - specified policies (cl 15)</p>	<p>No additional insurance requirements specified.</p>

2. Definitions

2.1. In this Deed, unless the context indicates otherwise:

- a. **Appointment** means the Reviewer of the Food and Grocery Code of Conduct.
- b. **Australian Privacy Principle** has the meaning that it has in the *Privacy Act 1988* (Cth);
- c. **Business Day** means a weekday other than a public holiday in the Australian Capital Territory.
- d. **Deed** means this deed and includes all schedules and attachments (if any) to this deed.
- e. **Deed Details** means the information and terms set out in clause 1 of this Deed;

- f. **Deed Material** means any Material:
 - i. created for the purposes of this Deed;
 - ii. provided or required to be provided to the Commonwealth as part of the Appointment; or
 - iii. derived at any time from the material referred to in paragraphs a or b.
- g. **Food and Grocery Code of Conduct** means the Code set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015*.
- h. **GST** has the meaning that it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- i. **Intellectual Property** includes all copyright (including rights in relation to phonograms and broadcasts); all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include moral rights;
- j. **Material** includes but is not limited to documents, equipment, information and data stored by any means;
- k. **Official Information** means any information developed, received or collected by or on behalf of the Commonwealth to which the Appointee gains access under or in connection with this Deed, and includes the Deed Material, and the terms of the Deed but excludes any information that is in the public domain other than as a result of a breach of this Deed or a breach of a confidentiality undertaking referred to in clause 9; and
- l. **Specified Personnel** means those individuals identified in the Deed Details who are approved by the Commonwealth to assist the Appointee perform the Appointment in accordance with the terms of this Deed.

3. Interpretation

- 3.1. In this Deed, unless the contrary intention appears:
 - a. words in the singular include the plural and words in the plural include the singular;
 - b. clause headings are for convenience reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - c. a reference to dollars is a reference to Australian dollars;
 - d. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - e. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - f. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
 - g. if any conflict arises between the terms and conditions contained in the clauses of this Deed and any part of the Attachments, the terms and conditions of the clauses prevail
 - h. where the day on or by which any act, matter or thing is to be done under or pursuant to this Deed is not a Business Day, the act, matter or thing must be done on the next Business Day; and
 - i. references to clauses are references to clauses of this Deed.
- 3.2. This Deed records the entire agreement between the parties in relation to its subject matter.
- 3.3. As far as possible all provisions of this Deed will be construed so as not to be void or otherwise unenforceable.
- 3.4. If anything in this contract is void or otherwise unenforceable then it will be severed and the rest of the Deed remains in force.

3.5. A provision of this Deed will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

4. Appointment requirements

- 4.1. The Appointee agrees to, and must ensure any Specified Personnel will, perform the Appointment:
- a. with due care and skill;
 - b. to a high professional standard and the reasonable satisfaction of the Commonwealth, and
 - c. at the times, in the manner and at the location set out in this Deed, or as otherwise notified in writing by the Commonwealth.
- 4.2. The Appointee agrees to comply with any directions of the Commonwealth as may be given from time to time as to the nature, manner and scope of the Appointment.
- 4.3. The Appointee agrees that the Appointment must be primarily performed by the Appointee.
- 4.4. The Specified Personnel (if any) may assist the Appointee perform the Appointment, but only as specifically provided for in this Deed.
- 4.5. Subject to clause 4.4, the Appointee agrees not to subcontract the performance of any part of the Appointment, without the prior written approval of the Commonwealth.
- 4.6. Prior to the performance of any Appointment, the Appointee must provide the Commonwealth with a signed copy of the Deed of Confidentiality at Attachment B.
- 4.7. The Appointee must ensure that the Appointee (and any Specified Personnel) completes and provides to the Commonwealth a conflict of interest declaration on an annual basis and promptly notifies the Commonwealth if a new conflict of interest (whether actual, potential or perceived) arises before the next annual declaration is provided.
- 4.8. The Appointee must not, and must ensure that any Specified Personnel do not, make contact with, or provide any information to, the media on any matters in connection with the Appointment without the prior written approval of the Commonwealth.

5. Fees and Expenses

- 5.1. Subject to the Appointee complying with clause 4.6, the Commonwealth agrees to pay the Appointee the fees and expenses, and in the manner, specified in the Deed Details, provided that the Appointee has fully and properly complied with its obligations under this Deed and the invoicing procedure specified in the Deed Details.
- 5.2. An invoice is not correctly rendered where it includes amounts that are not properly payable under this Deed or are incorrectly calculated.

6. Interest

6.1. For the purpose of this clause 6:

General Interest Charge Rate means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day that payment is due, expressed as a decimal rate per day; and

the day that payment is made is the day that the Commonwealth's system generates a payment request into the banking system for payment to the Appointee.

6.2. Subject to clause 6.3, if the Commonwealth fails to pay to the Appointee an amount under this Deed by the due date for payment, the Commonwealth will pay simple 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 payment is made in accordance with the formula set out below:

$$SI = UA \times GIC \times D$$

where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made

- 6.3. The Commonwealth will only be required to pay simple interest under clause 6.2 where the amount of interest exceeds \$100.

7. Taxes and charges

- 7.1. Any taxes or charges imposed in connection with this Deed must be borne by the Appointee.
- 7.2. Unless otherwise indicated, all consideration for a supply under this Deed is exclusive of any GST.
- 7.3. The recipient of a supply under this Deed on receipt of a tax invoice must pay the supplier any GST imposed.
- 7.4. No party may claim from the other an amount for which an input tax credit or decreasing adjustment can be obtained.

8. Intellectual Property and Deed Material

- 8.1. Intellectual Property in all Deed Material vests or will vest on creation in the Commonwealth.
- 8.2. Clause 8.1 does not affect the ownership of Intellectual Property in any Material in existence on the date this Deed becomes effective.
- 8.3. The Appointee grants to (or will procure for) the Commonwealth a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, distribute, exploit and communicate any existing Material referred to in clause 8.2 (including any Intellectual Property in it) provided by the Appointee to the Commonwealth, in conjunction with the Deed Material.
- 8.4. The Appointee will ensure that the Deed Material is used, copied, supplied or reproduced only for the purposes of the Deed.

9. Confidentiality and other security obligations

- 9.1. The Appointee agrees to, and must ensure that any Specified Personnel, secure all Official Information against loss and unauthorised access, use, modification or disclosure.
- 9.2. The Appointee must not, and must ensure any Specified Personnel must not, without prior written authorisation from the Commonwealth, disclose any Official Information to any person unless required to do so by law.

10. Privacy

- 10.1. The Appointee must not do, and must ensure any Specified Personnel do not do, any act or engage in any practice which, if done by the Commonwealth, would be a breach of an Australian Privacy Principle.

11. Termination and reduction of Appointment

- 11.1. The Commonwealth may by notice, at any time and in its absolute discretion, terminate the Deed or reduce the scope of the Appointment immediately.
- 11.2. In the event of termination under clause 11.1, the Commonwealth will be liable only:
- a. to pay any fees due under clause 5 relating to Appointment completed before and up to the date of termination; and
 - b. to reimburse any expenses properly and directly incurred in accordance with the Deed Details before the date of termination.

- 11.3. In the event of a reduction in the scope of the Appointment under clause 11.1, the Commonwealth's liability to pay fees under clause 5 will reduce in accordance with the reduction in the Appointment.

12. Termination for fault

- 12.1. In addition to clause 11, if the Appointee fails to satisfy any of its obligations under this Deed or the Appointee is not available to perform the Appointment for more than 20 consecutive Business Days without the Commonwealth's consent, then the Commonwealth may, by notice, terminate the Deed immediately.

13. Survival

- 13.1. Unless the contrary intention appears, the expiry or earlier termination of this Deed will not affect the continued operation of any provisions relating to intellectual property, confidentiality, security, privacy, and any other provision which expressly or by implication from its nature is intended to continue.

14. Work health and safety

- 14.1. The Appointee agrees to comply with, and must ensure the Specified Personnel comply with, all relevant legislation and all applicable policies and procedures relating to work health and safety when performing the Appointment, including those requirements that apply to the Commonwealth's premises when using those premises.

15. Insurance

- 15.1. The Appointee will effect and maintain insurance policies of the types and with the amounts of cover that a prudent operator in the Appointee's industry or profession would consider normal and adequate including when performing an Appointment of this kind, and any other insurance as required by law.
- 15.2. In addition, the Appointee agrees to effect and maintain the insurance policies specified in the Deed Details.
- 15.3. If requested by the Commonwealth the Appointee will provide the Commonwealth with a certificate of currency in respect of its insurance policies.

16. Conflict of interest

- 16.1. The Appointee warrants that, at the date of entering into this Deed, no conflict of interest exists or is likely to arise in the performance of the Appointment, including in respect of the Specified Personnel.
- 16.2. If, during the period of the Deed a conflict arises, or appears likely to arise, the Appointee agrees:
- a. to promptly notify the Commonwealth; and
 - b. to take any steps the Commonwealth reasonably requires to resolve or otherwise deal with the conflict.

17. Relationship of parties

- 17.1. The Commonwealth engages the Appointee to provide the Appointment as an independent contractor. The Appointee (and any Specified Personnel) are not by virtue of this Deed an officer, employee, partner or agent of the Commonwealth, nor does the Appointee (nor any Specified Personnel) have any power or authority to bind or represent the Commonwealth.

18. Notices

- 18.1. A notice under this Deed is only effective if it is in writing, signed by the party giving notice, addressed to the other party and delivered to the other party's address for notices as set out below:

a. Commonwealth representative:

Toby Robinson
Acting Assistant Secretary
The Treasury
Langton Crescent
Parkes ACT 2600
toby.robinson@treasury.gov.au

b. Appointee:

Dr Craig Emerson

s 47F

19. Variation

19.1. A variation of this Deed is binding only if agreed in writing and signed by the parties.

20. Assignment

20.1. The Appointee cannot assign its obligations, and agrees not to assign its rights, under this Deed without the Commonwealth's prior written approval.

21. Waiver

21.1. A failure or delay by a party to exercise any right or remedy it holds under this Deed or at law does not operate as a waiver of that right.

21.2. A single or partial exercise by a party of any right or remedy it holds under this Deed or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

22. Compliance with laws

22.1. The Appointee agrees, in carrying out this Deed, to comply with all applicable laws.

23. Applicable law

23.1. This Deed is to be construed in accordance with, and any matter relating to it is to be governed by, the law of the Australian Capital Territory.

23.2. The parties submit to the jurisdiction of the courts of that State or Territory.

24. Counterparts

24.1. This Deed may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document. Execution of the Deed will be complete when each party holds a copy of this Deed signed by the other party.

EXECUTED AS A DEED

SIGNATURES

SIGNED, SEALED and DELIVERED for)
and on behalf of The Commonwealth of)
Australia as represented by the Treasury)
by:

s 22 [Redacted]

Toby Robinson

Signature

In the presence of:

s 22 [Redacted]

s 22 [Redacted]

Signature of witness

Dated: _____

21 December 2023

SIGNED, SEALED and DELIVERED by)
the Appointee:)

s 47F [Redacted]

Craig Emerson

Signature

In the presence of:

s 22 [Redacted]

s 22 [Redacted]

Signature of witness

Dated: _____

21 December 2023

Attachment A: Terms of Reference
Attachment B: Deed of Confidentiality

Food and Grocery Code Review 2023-24

Terms of reference

The *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015* (the Code) was introduced to improve transparency and certainty in the commercial dealings between retailers, wholesalers and suppliers, and provide an effective process for parties to resolve their disputes.

The Code was reviewed by Professor Graeme Samuel AC in 2018, resulting in amendments in October 2020 to improve the operation of certain provisions in the Code, particularly in relation to the dispute resolution procedures.

The regulations require that the Government initiate two separate reviews of the Code, the first review considered the operation of the dispute resolution provisions (Part 5 of the Code) and the second review will consider the operation of the remaining provisions.

The Treasury completed the first review in September 2023, the final report has been delivered to the Government for consideration.

This second review will commence in October 2023, within 3 years from the commencement of the October 2020 amendments. This review will not revisit the dispute resolution provisions contained in Part 5 of the Code.

The Code is scheduled to sunset (be automatically repealed) on 1 April 2025. Prior to sunset, a review of the Code is also required to determine whether the Code remains fit for purpose.

In accordance with these requirements, a reviewer will be appointed to undertake this review of the Code, supported by a secretariat within Treasury.

The review will:

- assess the effectiveness of the Code provisions (other than Part 5 of the Code) in achieving the purpose of the Code to improve the commercial relationship between retailers, wholesalers and suppliers in the grocery sector, and
- consider the need for the Code, including whether it should be remade, amended or repealed.

In evaluating the purpose and features of the Code, the review will have particular regard to:

- the impact of the Code in improving commercial relations between grocery retailers, wholesalers and suppliers,
- whether the Code's provisions should be extended to other retailers or wholesalers operating in the food and grocery sector,

- whether the Code should be made mandatory, and
- whether the Code should include civil penalty provisions.

Process and timing

A report of the review is to be prepared by 30 June 2024 for consideration by the Assistant Minister for Competition, Charities and the Treasury. The report will include findings and any recommendations based on the evidence received during the review process, in response to the terms of reference.

The review will include the release of a consultation paper to seek public submissions and consultations with key stakeholders (including the Code's signatories, industry body representatives, the Australian Competition and Consumer Commission and other agencies).

Attachment B

DEED OF CONFIDENTIALITY

DEED OF CONFIDENTIALITY IN RELATION TO THE SECOND REVIEW OF THE
FOOD AND GROCERY CODE OF CONDUCT

Craig Emerson

The Commonwealth of Australia as represented by the Department of the Treasury
ABN 92 802 414 793

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DEED OF CONFIDENTIALITY

Date

This Deed of Confidentiality is made on 21 December 2023.

Parties

This Deed of Confidentiality is made by:

1. Dr Craig Emerson of s 47F (the Confidant)
in favour of and legally enforceable by:
2. The Commonwealth of Australia as represented by and acting through the Department of the Treasury of Langton Crescent, Parkes ACT 2600 ABN 92 802 414 793 (the Agency).

Context

This Deed is made in the following context:

- A. The Confidant may require access to Agency Confidential Information in relation to the Purpose.
- B. The Agency is willing to provide access to necessary Confidential Information to the Confidant strictly and solely for the Purpose in accordance with this Deed.

Operative provisions

By this Deed the Confidant covenants and agrees as follows:

1. Interpretation

- 1.1. In this Deed, unless the context indicates otherwise:

- | | |
|---------------------------------|--|
| Confidential Information | means all information, documents and data: <ol style="list-style-type: none">a. that are designated either specifically or generally in Schedule 1 to this Deed; orb. that are reasonably designated in any way by the Agency or its owner as confidential; orc. which the Confidant knows or ought to know is confidential, |
|---------------------------------|--|

and that are provided by the Agency to the Confidant or that the Confidant otherwise accesses or becomes aware of in relation to the Purpose. The Confidential Information includes this Deed.

Conflict	means any matter, circumstance, interest or activity involving the Confidant which is likely, or is likely to appear, to conflict with the Confidant's obligation to handle Confidential Information in accordance with this Deed
Deed	means this deed and includes all schedules and attachments (if any) to this deed.
Organisation	means any organisation the Confidant is affiliated with including as a consultant, employee, officer, contractor or agent.
Personnel	means, in respect of an Organisation, its employees, officers, contractors and agents.
Purpose	means the "second review" referred to in s 5(3) of the <i>Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015</i> to assess the impact of the code set out in Schedule 1 to those Regulations, in improving commercial relations between grocery retailers, wholesalers and suppliers.

2. Confidentiality

- 2.1. The Confidant must use the Confidential Information only as is legitimate and necessary for the Confidant to perform its role in respect of the Purpose and strictly in accordance with this Deed.
- 2.2. The Confidant will not, without the prior express written authorisation of the Agency, disclose any Confidential Information to any person (including any Organisation Personnel) unless the disclosure to that person (Receiving Person) is expressly permitted by clause 2.4 of this Deed or required by law.
- 2.3. In giving its authorisation under clause 2.2, the Agency may notify the Confidant of conditions on the disclosure and the Confidant must comply with these conditions.
- 2.4. The Confidant may only disclose an item of Confidential Information to a person (Receiving Person) if:
- the disclosure to the Receiving Person is expressly specified in Schedule 1 of this Deed or has otherwise been expressly approved in writing by the Agency;
 - the disclosure to the Receiving Person is necessary for the Confidant or the Receiving Person to perform their duties with respect to the Purpose;
 - the Receiving Person has been informed of the Confidant's obligations under this Deed; and

- d. the Receiving Person has executed and provided a current confidentiality deed poll, in the form required by the Agency regarding that item of Confidential Information.
- 2.5. Where the Confidant is required by law to disclose the Confidential Information, the Confidant must:
- a. use their best endeavours to notify the Agency prior to disclosing the Confidential Information;
 - b. provide full details of the relevant legal requirement and information to be disclosed; and
 - c. take any reasonable action requested by, and reasonably cooperate with any action taken by, the Agency to challenge, prevent or limit such disclosure.
- 2.6. The Confidant agrees to secure all Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 2.7. The Confidant agrees to implement security procedures to ensure that the Confidant meets their obligations under this Deed and will provide details of these procedures to the Agency on request.
- 2.8. Without limiting the Confidant's obligations under this Deed, the Confidant will comply with any additional conditions set out in Schedule 1 to this Deed.

3. Privacy

- 3.1. In this clause 3:
- Australian Privacy Principle** has the same meaning as it has in the *Privacy Act 1988* (Cth).
- 3.2. The Confidant agrees in relation to the Purpose:
- a. not to do any act or engage in any practice which, if done or engaged in by the Agency, would be a breach of an Australian Privacy Principle; and
 - b. to comply with any directions, guidelines, determinations or recommendations of the Agency to the extent that they are consistent with the Australian Privacy Principles.

4. Dealing with Copies

- 4.1. In this clause 4:
- Copy** means any document, device, article or medium in which Confidential Information is, or may be, embodied.

- 4.2. The Confidant agrees, immediately upon request by the Agency, to deal with all Copies as directed by the Agency, subject to any legal requirement binding on the Confidant. If the Agency requests, the Confidant will provide a statutory declaration to the Agency confirming that, subject to those legal requirements, the Confidant has returned or destroyed all such Copies.

5. Confidant's obligations

- 5.1. The Confidant agrees to notify the Agency immediately, and provide full details, if the Confidant is aware or reasonably suspects that:
- a. Confidential Information has, or might have been, accessed, used, modified or disclosed in any way other than as permitted under this Deed; or
 - b. there has been any other breach of this Deed.
- 5.2. The Confidant acknowledges that the Agency may seek recourse against the Confidant for any Confidant non-compliance with the requirements in this Deed and that the obligations arising out of this Deed are in addition to any obligations of confidence at common law or in equity.

6. Conflict of Interest

- 6.1. Except as otherwise declared in writing to the Agency, the Confidant warrants at the execution of this Deed that the Confidant has no Conflict, and no Conflict is likely to arise, in the performance of the Confidant's obligations under this Deed.
- 6.2. If the Confidant becomes aware that a Conflict has arisen or is likely to arise in relation to the Confidant's handling of Confidential Information in accordance with this Deed, the Confidant must:
- a. immediately notify the Agency in writing of the Conflict and all relevant details regarding the Conflict;
 - b. comply with any reasonable requirements notified by the Agency to resolve or otherwise manage the Conflict; and
 - c. cease dealing with or handling Confidential Information until and unless the Agency advises it is satisfied that the Confidant is appropriately managing the Conflict.
- 6.3. The Agency may, at any time, require the Confidant to execute a Conflict declaration in the form specified by the Agency.
- 6.4. If the Confidant fails to notify the Agency of any Conflict, or does not comply with the Agency's reasonable requirements to resolve or manage the Conflict, in accordance with clause 6.2 then without limiting any of the Agency's other rights, the Confidant must return or otherwise deal with any Copies as specified by the Agency under clause 4.2.

7. Period of confidentiality

- 7.1. Except as otherwise may be agreed by the parties in writing, all Confidential Information shall remain subject to the requirements of this Deed until it becomes available from a legal public source without restriction.
- 7.2. For the avoidance of doubt, Confidential Information that becomes available wholly or partially due to a breach of confidence has not become available from a legal public source without restriction.

8. Survival

- 8.1. This Deed will survive the termination or expiry of any deed, agreement or arrangement of any kind between the Agency and the Confidant relating to the Purpose.

9. Compliance with Legislation and Policies

- 9.1. Without limiting anything contained in this Deed, the Confidant acknowledges and agrees that they will comply with any legislative provision that prohibits or restricts the disclosure of the Confidential Information and that the *Criminal Code Act 1995 (Cth)* apply to a breach of this Deed.
- 9.2. Provisions that may prohibit or restrict disclosure of the Confidential Information include, but are not limited to:
- a. *Privacy Act 1988 (Cth)*.

10. Applicable law

- 10.1. This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 10.2. The Confidant submits to the jurisdiction of the court of the Australian Capital Territory.

SCHEDULE 1 – ADDITIONAL CONDITIONS

A. Designated Confidential Information

Information and documents provided by the Commonwealth to the Confidant in relation to the Purpose.

B. Receiving Persons approved by the Agency to receive Confidential Information from the Confidant

None specified.

C. Additional Conditions

For the purpose of clause 2, there are no applicable conditions.

EXECUTED as a Deed Poll

SIGNED, SEALED AND DELIVERED)
by:)
)

Craig Emerson
Name of Confidant

s 47F

Signature of Confidant

21 December 2023
Date

In the presence of:

s 22

Name of Witness

s 22

Signature of witness