**Mutual Deed of Confidentiality**

**Date**

**Parties *[insert name]***

***[insert ABN]***

***[insert street address]***

***[insert city, state, postcode]*** (**[insert party name]**)

**and**

Indigenous Business Australia

ABN 25 192 932 833

Level 21, 66 Goulburn Street,

Sydney NSW 2000 (**IBA**)

**Recitals**

1. The parties to this deed wish to consider and discuss IBA’s tender for loan, security, settlement and MIP/recovery services (**Approved Purpose**).
2. For that purpose, either party may wish to disclose to the other party Confidential Information relating to the Approved Purpose and that party has agreed to receive that information on the terms and conditions set out in this deed.

The parties agree:

# **Confidential Information** means all information (regardless of its form) disclosed to the Receiving Party by the Disclosing Party or its Representatives for or in connection with the Approved Purpose, which:

### is marked as confidential;

### is confidential to a third party to whom the Disclosing Party owe an obligation of confidence;

### includes, or relates to the business, financial records, staff, technology, intellectual property rights, trade secrets, financial position, customers, suppliers or marketing of a Disclosing Party; or

### in the circumstances surrounding disclosure or because of the nature of the information, ought in good faith to be treated as confidential,

### but excludes information which:

### is in or becomes part of the public domain otherwise than through a breach of this deed;

### was already known to the Receiving Party or its Representatives at the time of disclosure by the Disclosing Party or any of its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidence owed to or by a third party);

### was developed by the Receiving Party or its Representatives independently of disclosure by the Disclosing Party; or

### was disclosed to the Receiving Party or its Representatives by a third party who was entitled to disclose it.

# **Disclosing Party** means in respect of any Confidential Information, the party who discloses or otherwise makes available that Confidential Information.

# **Receiving Party** means the party receiving the Confidential Information.

# **Representative** of a party includes a Related Body Corporate of the party and a director, employee, agent, auditor, adviser, partner, consultant, joint venturer, contractor or sub-contractor of that party.

# **Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

# The Receiving Party must maintain the confidential nature of the Confidential Information.

# The Receiving Party must not, without the Disclosing Party’s prior written consent, disclose any of the Confidential Information to any person other than to those of the Receiving Party’s Representatives who need to have access to the Confidential Information in connection with the Approved Purpose, unless disclosure is required:

### by any law;

### by order of a government agency;

### by the rules of any stock exchange; or

### (if the Receiving Party is IBA) because the Receiving Party forms the view that a disclosure of the Confidential Information is necessary or appropriate having regard to its status and functions and accountability to the relevant Commonwealth Minister or the Commonwealth Parliament.

# The Receiving Party must inform each of its Representatives who have access to the Confidential Information to keep the Confidential Information confidential and to only use it for the Approved Purpose.

# The Receiving Party and its Representatives may use and make copies of the Confidential Information as reasonably necessary for the Approved Purpose.

# If any Confidential Information contains any information or an opinion about an individual whose identity is reasonably ascertainable from that information (**Personal Information**), the Disclosing Party must:

### comply with all applicable privacy laws or data protection laws as may be in force from time to time; and

### promptly notify the Disclosing Party of any complaint or investigation under, or relating to, any of the laws referred to in paragraph 10(a).

# On written demand by the Disclosing Party, the Receiving Party must deliver to the Disclosing Party or its nominee or, at the Receiving Party’s discretion, destroy or alter so as not to contain any Confidential Information, all documents and all other materials in the Receiving Party’s possession which contain Confidential Information. However, the Receiving Party is not required to return, destroy or alter documents or other material to the extent that:

### the Receiving Party is obliged by law to keep them;

### the documents are legal advice, internal working papers, opinions or materials used for the purpose of providing opinions or due diligence reports prepared by the Receiving Party or board minutes which contain Confidential Information; or

### the documents are located on an off-site server as a result of the automatic back-up of data in the usual operations of the Receiving Party and they are not readily accessible to the Receiving Party.

# Nothing in this deed obliges the parties to negotiate with any person or enter into any commercial transaction or transactions contemplated by the Approved Purpose.

# The Receiving Party agrees and acknowledges that it must make its own assessment of all Confidential Information and satisfy itself as to the accuracy, content, legality and completeness of that information.

# The Receiving Party acknowledges that damages may not be a sufficient remedy for any breach of this deed and the Disclosing Party is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Receiving Party, in addition to any other remedies available to it at law or in equity.

# Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the sender or an authorised person of the sender and marked for the attention of the persons identified in this deed or, if the recipient has notified otherwise, then marked for attention in the way last notified.

# This deed ceases to have any force or effect three years after it is executed.

# A provision of this deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

# The parties agree that:

### this deed may be executed in any number of counterparts, and all counterparts together will be regarded as one instrument. A party may sign any one counterpart;

### where permitted by the governing law of this deed, this deed may be signed using an electronic signature and exchanged by electronic communication.  Without limiting other methods, the parties agree that electronic signature is used to identify the person signing and to indicate that the signing party intends to be bound by this deed. An electronic copy of this deed that contains the electronic signatures of the parties will be treated as an original;

### this deed and a party’s signatory’s name and email address may be provided to a digital platform provider to enable electronic signature. Each party warrants that it will notify their signatories of this;

### in this clause 18,

* **electronic signature** means a person’s signature placed by electronic means, such as DocuSign or other method as agreed between the parties;
* **electronic communication includes by electronic** mail or communication in the form of data, text or images by electromagnetic energy.

# This deed is governed by of the law in force in Queensland.

**Executed as Deed.**

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalfof **INDIGENOUS BUSINESS AUSTRALIA** by: | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | .................................................................................  Signature of delegate      .................................................................................  Name of delegate (block letters)    .................................................................................  Title of delegate (block letters)    .................................................................................  Date |

***[Drafting note: Choose the relevant execution block below for counterparty execution and delete those that are not relevant.]***

[Company - 2 Directors or 1 Director and 1 Company Secretary]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signed sealed and delivered by | |  |  | |
| [#insert company name (in title case)] ACN [#insert ACN] on         /       /      by: | |  |  | |
|  | |  |  | |
| ⮙ | Director |  | ⮙ | Director/Secretary |
|  | |  |  | |
| ⮙ | Full name of Director |  | ⮙ | Full name of Director/Secretary |

[Sole Director/Company Secretary]

|  |  |  |  |
| --- | --- | --- | --- |
| Signed sealed and delivered by |  |  | |
| [#insert company name (in title case)] ACN [#insert ACN] on         /       /      by: |  |  | |
|  |  | ⮙ | Signature of [#insert name of sole director or sole secretary] who signs in the capacity of sole secretary and sole director |

[Individual]

|  |  |  |
| --- | --- | --- |
| Signed sealed and delivered by [#insert name] on         /       /      : |  | |
|  | ⮙ | Signature of [#insert name] |

[If a partnership, insert signing clause for each partner (as relevant)]

[Partner 1]

|  |  |  |  |
| --- | --- | --- | --- |
| Signed sealed and delivered by [#insert name] as partner in the [#insert name of partnership] partnership on         /       /      : |  |  | |
|  |  | ⮙ | Signature of [#insert name] |

[Partner 2, etc]

|  |  |  |  |
| --- | --- | --- | --- |
| Signed sealed and delivered by [#insert name] as partner in the [#insert name of partnership] partnership on         /       /      : |  |  | |
|  |  | ⮙ | Signature of [#insert name] |

[Execution under power of attorney]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signed sealed and delivered for and on behalf of | |  |  | |
| [#insert name of principal and ACN, if applicable] under Power of Attorney on         /       /      : | |  |  | |
|  | |  |  | |
|  |  |  | ⮙ | Signature of Attorney |
|  |  |  | ⮙ | Full name of Attorney |