



Australian Government

**Department of Agriculture,
Water and the Environment**

NEXDOC

VIP02 - Vendor Terms and Conditions



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Overview

NEXDOC is the Department of Agriculture, Water and the Environment's new export documentation system. It will replace EXDOC and streamlines the way our clients:

- register as an export establishment;
- apply for a meat export licence;
- receive export permits and health certificates;
- request supporting export documentation;
- request certificates as to condition;
- lodge phytosanitary certificates to export; and
- receive additional certificates and letters.

The current export systems are more than 20 years old and while they are fit for purpose, and continue to support exporters, the technology is aging. Upgrading these legacy export systems makes us more flexible and responsive to changes in trade. The new system will be more efficient and reduce unnecessary processes and red tape.

Commodities will be moved to NEXDOC in phases, with the transition happening throughout 2020 and 2021.

There will be a transition period where EXDOC and NEXDOC will continue to function in parallel to ensure that export trade is not disrupted. Manual documents will continue to be available during the transition period.

Third party software vendors play a critical role in the implementation of NEXDOC as they provide the interface software that exporters will use to interact with NEXDOC. It is essential that Software Vendors are provided with all the information needed to effectively integrate their software and the exporter's business processes with NEXDOC and the Department's processes and regulatory functions.

Purpose

This document describes the legal terms and conditions that Software Vendors must agree to, and continue to comply with, in order to have access to the NEXDOC production environment.

Terms and Conditions

- A. NEXDOC is the Department's web-based system which allows end users, such as exporters, to request Export Documentation for primary produce via a third party software program.
- B. The Software Vendor seeks to develop Software to facilitate end user access to NEXDOC.
- C. In consideration of the promises and obligations set out in this Agreement, the Department grants the Software Vendor access to the NEXDOC production environment and agrees that the Software Vendor may carry out the Software Development Activities on the terms and conditions set out below.

1. Definitions

In this Agreement, capitalised terms have the meaning as set out below:

Agreement means this document and the Agreement Documents.

Agreement Documents includes the:

- a) Vendor Software Requirements;
- b) Vendor Software Development Guide; and
- c) Vendor Conformance Suite,

as provided by the Department to the Software Vendor and as may be updated and notified by the Department to the Software Vendor from time to time.

Department means the Department of Agriculture, Water and the Environment.

Eligible Data Breach has the meaning given to this term in the Privacy Act.

Export Control Laws means:

- a) the Export Control Act 1982 (Cth);
- b) the Export Control Act 2020 (Cth);
- c) any other applicable Commonwealth Laws (including transitional arrangements) in force in relation to export control; and
- d) any rules or Orders made or issued under the Laws referenced in paragraphs a), b) or c),

as may be amended, consolidated or replaced from time to time.

Export Documentation means export documentation for primary produce as required under the Export Control Laws and the authorities of importing countries, including export permits, export certificates, letters of facilitation and re-export certification.

Harmful Code means any computer virus, malware or other code that is harmful, malicious, disabling or which is designed to enable any denial of service or any unauthorised access to, or disclosure, modification or loss of data.

Law means all legally binding laws, including applicable common law and principles of equity, as well as any other applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia.

Loss means liability, damage, loss, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, demand, claim or payment of any nature.

NEXDOC means the Department's "Next Export Documentation System" (or any replacement system). NEXDOC is a web-based system that allows users to request and obtain Export Documentation.

OWASP means the Open Web Application Security Project.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable (whether the information is recorded in a material form or not).

Privacy Act means the Privacy Act 1988 (Cth).

Protected Information has the same meaning as in section 12 of the Export Control Act 2020 (Cth).

Security Incident means any incident or breach (whether accidental or deliberate) that causes or has the intent to cause any:

- a) unauthorised or unlawful access to, or use of, NEXDOC;
- b) unauthorised or unlawful access to, or use, disclosure, modification or loss of, Protected Information, Personal Information, the Department's confidential information or any data stored within or accessible through NEXDOC; or
- c) privacy breach in connection with the Agreement or the use of NEXDOC, including an Eligible Data Breach.

Software means the software to be developed by the Software Vendor to facilitate end user access to NEXDOC.

Software Development Activities means all tasks and activities (including tests) to be carried out by the Software Vendor in relation to the development of the Software.

Software Vendor means the entity who executes and enters into this Agreement.

2. Agreement Documents

- a) This Agreement comprises:
 - i. these terms and conditions (clauses 1 to 21);
 - ii. Vendor Software Requirements;
 - iii. Vendor Software Development Guide; and
 - iv. Vendor Conformance Suite.
- b) In the event of any conflict or inconsistency between the above documents, the document listed higher in the list will prevail to the extent of such conflict or inconsistency.

3. Software Vendor's Obligations

- a) In the development of the Software and other Software Development Activities, the Software Vendor will implement the Vendor Software Requirements provided by the Department and comply with this Agreement.
- b) The Vendor Software Requirements implement the regulatory, security, policy and other requirements of the Department in respect of third party software systems that interface with NEXDOC and other Department systems.
- c) The Software Vendor will:
 - i. comply with the Department's registration process;
 - ii. provide the Department with necessary artefacts to enable the Department to approve the Software Vendor's registration, including any updated artefacts to reflect any changes in law or regulatory requirements;
 - iii. comply with any request from the Department in relation to the Software Vendor's registration and the Software Development Activities; and
 - iv. take all reasonable steps to prevent the copying, modification or change to any Export Documentation generated in NEXDOC once it has been printed.

- d) The Software Vendor must carry out and successfully complete all Software tests specified in the Vendor Software Requirements or other Agreement Documents. These tests must be completed in accordance with the timeframes and requirements set out in the Vendor Software Requirements. If the Software Vendor fails to satisfy these testing requirements or if the Software fails a Software test, the Department may (without prejudice to any other right or remedy at Law or under this Agreement) deny, or suspend, the Software Vendor's access to the NEXDOC production environment until tests have been successfully completed.
- e) The Software Vendor will design and implement the Software and carry out the Software Development Activities in a manner that will prevent, to the extent reasonably practicable, their personnel and users of their Software from using NEXDOC and the Department's information systems in a manner that breaches this Agreement or that:
 - i. infringes upon intellectual property rights or any licence agreements, third party rights or contracts;
 - ii. interferes with or impedes the intended use of information resources provided through NEXDOC;
 - iii. uses any computer, network or software to attempt to gain unauthorised access, or devises or executes any scheme to defraud or obtain money, or other things of value by false pretences or misrepresentation;
 - iv. transmits, or causes to be transmitted, communications which may invade the privacy of another individual or be construed as harassment or disparagement of others based on anti-discrimination legislation or Department policy;
 - v. violates relevant Laws pertaining to the use of computing resources or networks;
 - vi. accesses, stores, disseminates or publishes any information, data, material or document that:
 - A. is false or misleading; or
 - B. may be offensive, obscene or in violation of anti-discrimination or workplace health and safety legislation;
 - vii. invades the privacy of another individual or causes a Security Incident;
 - viii. interferes with NEXDOC or introduces any Harmful Code into NEXDOC or the Department's information systems; or
 - ix. breaches any other applicable laws.

4. Privacy and Security

4.1 General

The Software Vendor acknowledges and agrees that:

- a) the performance of the Software Development Activities may involve access to Protected Information, Personal Information and the Department's confidential information. The Department is concerned to ensure that such information is safeguarded and protected in accordance with the requirements of this Agreement and all applicable Laws; and
- b) nothing in this Agreement is intended to limit or restrict any obligations that the Software Vendor has at Law, including under the Privacy Act, with respect to Protected Information and Personal Information.

4.2 Privacy

- a) The Software Vendor must act in accordance with the Privacy Act and the Department's Privacy Policy to the extent applicable to the Software Development Activities and the Software Vendor's obligations under this Agreement.

- b) The Department's Privacy Policy is available at <https://www.awe.gov.au/about/commitment/privacy> (or such other link as may be updated and notified by the Department to the Software Vendor from time to time).
- c) The Software Vendor must ensure, to the extent applicable, that the Software includes privacy notices at the points where Personal Information is collected that:
 - i. comply with Australian Privacy Principle 5 under the Privacy Act; and
 - ii. are in the form provided by the Department.
- d) Where the Software Vendor or its personnel collects, uses, holds or is provided with, or has access to, any Personal Information in connection with this Agreement or the carrying out of the Software Development Activities, the Software Vendor must:
 - i. not do any act or engage in any practice that would breach the Privacy Act or the Australian Privacy Principles, or which if done or engaged in by the Department, would be a breach of the Privacy Act or the Australian Privacy Principles;
 - ii. not access, use or disclose any Personal Information other than for the sole purpose of carrying out its obligations under this Agreement, except with the prior written approval of the Department;
 - iii. ensure that Personal Information is protected against loss and unauthorised access, use, modification or disclosure and other misuse;
 - iv. co-operate with the Australian Information Commissioner and the Department in relation to any enquiries about the management of Personal Information in connection with NEXDOC or the Software;
 - v. immediately notify the Department of a breach of its obligations under this clause or any privacy complaint that it receives in relation to NEXDOC or the Software; and
 - vi. comply with such other privacy obligations or policies as the Department reasonably notifies the Software Vendor of in writing from time to time.
- e) If the Software Vendor has reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information that the Software Vendor holds as a result of this Agreement or the Software Development Activities, the Software Vendor must:
 - i. notify the Department immediately on becoming aware;
 - ii. comply with the Privacy Act in relation to the matter;
 - iii. unless otherwise directed by the Department, allow the Department to participate in the Software Vendor's assessment of whether an Eligible Data Breach has occurred; and
 - iv. take any other action as reasonably directed by the Department.
- f) If the Software Vendor has reasonable grounds to believe that there has been, or where the Department notifies the Software Vendor that there has been, an Eligible Data Breach in relation to any Personal Information that the Software Vendor holds as a result of this Agreement or the Software Development Activities, the Software Vendor must:
 - i. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
 - ii. comply with the Privacy Act in relation to the matter; and
 - iii. take any other action as reasonably directed by the Department.

4.3 Security

- a) The Software Vendor must:

- i. comply with all security requirements specified in the Vendor Software Requirements and such other reasonable security requirements as notified by the Department to the Software Vendor from time to time;
 - ii. identify and ensure that there is effective and appropriate ongoing monitoring and management of any risks and issues associated with the performance of its obligations under this Agreement, including in relation to Security Incidents;
 - iii. ensure that all access to the Software and systems used to provide Software Development Activities or that interface with NEXDOC are through passwords and other secure access controls to prevent a Security Incident; and
 - iv. take all necessary steps to prevent and detect any Harmful Code from entering into NEXDOC and the Department's information systems, including:
 - A. using up-to-date virus detection software for preventing and detecting any Harmful Code; and
 - B. conducting vulnerability assessments and penetration testing.
- b) Without limiting the generality of clause 4.3a) above, the Software Vendor must ensure, to the extent applicable, that the Software and systems that interface with NEXDOC comply with:
- i. all applicable requirements of the Australian Government Information Security Manual;
 - ii. the "Essential Eight" - the Australian Signals Directorate's Strategies to Mitigate Cyber Security Incidents available at <https://www.cyber.gov.au/acsc/view-all-content/essential-eight> (or such other link as may be updated and notified by the Department to the Software Vendor from time to time);
 - iii. any applicable OWASP application security verification standards; and
 - iv. any updates to the requirements, policies and standards referenced above as notified by the Department to the Software Vendor.
- c) The Software Vendor must securely store, access, view and process all data obtained, accessed or processed in connection with the Software Development Activities or this Agreement, including all Protected Information and Personal Information. The Software Vendor must not store, access, view or process such data:
- i. in a location that may compromise the Software Vendor's ability to discharge its obligations under this Agreement, including in relation to privacy and security; or
 - ii. in a country other than Australia, unless the Software Vendor has notified the Department in writing and demonstrated to the Department's satisfaction that the Software Vendor is able to safeguard and protect the data in accordance with this Agreement.
- d) The Software Vendor must establish, maintain and enforce security measures to ensure that all Protected Information, Personal Information and the Department's confidential information is protected against loss and from any unauthorised use, access, modification or disclosure.
- e) Notwithstanding any other provision of this Agreement, if there is any conflict or inconsistency between the security requirements in this Agreement and the other Agreement Documents, the higher or more onerous standard of security applies.

5. Responding to Security Incidents

- a) Unless otherwise directed by the Department, the Software Vendor must develop a Security Incident response plan (**Response Plan**). The Response Plan must:
 - i. set out measures in relation to the notification procedures the Software Vendor will use to notify the Department of any Security Incidents;

- ii. set out measures for how the Software Vendor will prevent, respond to and mitigate against Security Incidents, such as Harmful Code or the unauthorised disclosure of data;
 - iii. specify the key roles and responsibilities of the Software Vendor's personnel in relation to preventing, responding to and mitigating against Security Incidents; and
 - iv. not be inconsistent with the Software Vendor's security and privacy obligations under this Agreement and the Vendor Software Requirements.
- b) The Software Vendor must review (and if necessary update) the Response Plan on an annual basis or at such other times as required by the Department. The Software Vendor must comply with the latest version of the Response Plan approved by the Department.
 - c) The Software Vendor must report any suspected or actual Security Incidents to the NEXDOC help desk as soon as practicable and within at least 72 hours of becoming aware of the suspected or actual Security Incident. In reporting the Security Incident, the Software Vendor must provide particulars of the Security Incident, including its cause and such other information as required by the Department.
 - d) The NEXDOC help desk can be contacted by telephone on +61 6272 4700 or email at nexdoc@agriculture.gov.au or at such other contact details as advised by the Department from time to time.
 - e) The Software Vendor must co-operate fully with the Department and its authorised nominee in relation to any investigation and diagnosis of a Security Incident. Where the Security Incident is caused or contributed to by the Software Vendor or its personnel, the Software Vendor must also take immediate action to contain and mitigate the Security Incident.

6. Compliance with Laws

The Software Vendor must comply with all applicable Laws, including the Export Control Laws.

7. Tests

The Department reserves the right (at its cost) to reasonably undertake its own tests in relation to the Software to confirm that it meets the requirements of this Agreement, including the Vendor Software Requirements. The Software Vendor must co-operate with the Department in relation to all tests.

8. Intellectual Property

- a) Nothing in this Agreement is intended to affect the ownership of intellectual property rights subsisting in the Software, NEXDOC or any other works or materials.
- b) The Department provides the Software Vendor with a non-exclusive and revocable licence to access and use the NEXDOC production environment for the sole purpose of performing the Software Development Activities in accordance with the terms of this Agreement.

9. Recordkeeping and System Monitoring

- a) The Software Vendor must keep and maintain complete and up-to-date records and other evidence of its compliance with its obligations under this Agreement. These records and evidence must be retained for a period of 7 years from the date of creation and must be promptly provided to the Department or its nominee on the Department's request.
- b) The Software Vendor acknowledges and agrees that usage of NEXDOC and the Department's information systems is monitored and regularly audited. Logs and other audit mechanisms may be used to detect any unauthorised, atypical or illegal activities or as evidence of a breach of this Agreement, Department policy or criminal activity.

10. Suspension and Termination

- a) The Software Vendor acknowledges and agrees that it is provided with access to the NEXDOC production environment on the condition that it complies with this Agreement.
- b) If the Software Vendor fails to comply with this Agreement, the Department may immediately, and without notice to the Software Vendor, suspend or terminate its access to, and use of, the NEXDOC production environment. If the Department exercises its rights under this clause, the Department will provide a reason for suspending or terminating the Software Vendor's access to and use of NEXDOC.
- c) Without limiting its other rights and remedies under this Agreement or at Law, the Department may immediately terminate this Agreement, with notice to the Software Vendor, if the Software Vendor:
 - i. breaches this Agreement; or
 - ii. makes any statement or representation which is false or misleading and the Department is satisfied that such statement or representation affected the Department's decision to enter into this Agreement or to grant the Software Vendor access to the NEXDOC production environment.
- d) The Department may immediately terminate this Agreement for its sole convenience, and for any reason, by giving 30 days' notice to the Software Vendor.

11. Consequences of Suspension or Termination

- a) If the Department suspends or terminates the Software Vendor's access to, or use of, the NEXDOC production environment or terminates this Agreement the:
 - i. Software Vendor must discontinue all access and use of the NEXDOC production environment and make no further attempt to access or use the NEXDOC production environment, unless otherwise notified by the Department in writing; and
 - ii. Department will have no liability to the Software Vendor regardless of the cause or reason for the termination.
- b) Termination of this Agreement will be without prejudice to any other rights or obligations which may have accrued under this Agreement on or before termination.

12. Insurance

For as long as it is carrying out the Software Development Activities, the Software Vendor must have and maintain:

- a) workers' compensation insurance as required by Law;
- b) insurance that covers any loss or damage that may be suffered as a result of a Security Incident or the loss or unauthorised or unlawful disclosure of data, including Protected Information and Personal Information; and
- c) all other appropriate insurances that a provider carrying out obligations under this Agreement would have and hold having regard to the nature of the obligations under this Agreement.

13. Acknowledgements and Disclaimers

- a) NEXDOC and its functionality may change over time. Except for urgent changes, the Department will use its reasonable endeavours to notify the Software Vendor a minimum of 30 Business Days prior to making any changes to the functionality of NEXDOC.

- b) The Department disclaims and excludes, to the maximum extent permissible by Law, all warranties, express or implied, in relation to NEXDOC and its content, including in relation to its reliability, quality, availability, functionality and fitness for purpose.
- c) To the maximum extent permissible by Law, the Software Vendor agrees to release the Department from all Loss that it may suffer or incur under or in connection this Agreement or the access and use of the Department's ICT systems or the NEXDOC production environment, and whether or not that Loss was reasonably foreseeable.

14. Warranties and Representations

The Software Vendor warrants and represents that:

- a) it has the power, authority and capacity to enter into this Agreement and to lawfully comply with it;
- b) all actions necessary for the authorisation, execution and performance of this Agreement have been taken by it; and
- c) it has all necessary intellectual property rights required to provide the Software Development Activities and to carry out its obligations under this Agreement.

15. No Agency

The Software Vendor is not an agent, employee or partner of the Department and must not represent itself as such. Nothing in this Agreement will be deemed to create any agency, partnership or similar arrangement.

16. Governing Law

This Agreement shall be governed by and interpreted in accordance with the Laws of the Australian Capital Territory. The Software Vendor submits to the jurisdiction of the courts of the Australian Capital Territory and the courts entitled to hear appeals from those courts.

17. Entire Deed

This Agreement records the entire agreement between the Software Vendor and the Department and supersedes any prior agreements, understandings or representations in relation to its subject matter.

18. Waiver

Any failure or delay by the Department to exercise or enforce a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or any other right or remedy.

19. Severability

If any term or condition of this Agreement is found to be void or unenforceable, the validity and enforceability of the remaining provisions will not be affected.

20. No Exclusion

Except to the extent expressly set out in this Agreement, nothing in this Agreement is intended to exclude or restrict:

- a) any other right or remedy provided by Law; or

- b) if the Software Vendor is also an NEXDOC user, any of the obligations that the Software Vendor has under the NEXDOC User Terms and Conditions.

21. Costs

The Software Vendor acknowledges and agrees that:

- a) it will not be entitled to any payment for the Software Development Activities and the performance of its obligations under this Agreement; and
- b) it must pay its own costs in connection with the preparation and execution of this Agreement.

Executed as an agreement:

[Option 1: To be used if the Software Vendor is an individual]

Executed by _____
Full Name

in the presence of:

Signature of witness

Signature

Full name of witness

[Option 2: To be used if the Software Vendor is a corporation and signing pursuant to s 127 of the Corporations Act]

Executed by _____
Software Vendor's Name and ABN

in accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director