



Northern
Territory
Government

Conflict of Interest and Confidentiality Deed

FOR NOMINATED PERSON

Effective Date: 17 October 2011
Version No. 4.1.01

SAMPLE

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SAMPLE

CONFLICT OF INTEREST AND CONFIDENTIALITY DEED

GIVEN BY:

[INSERT INDIVIDUAL'S NAME]

IN FAVOUR OF:

NORTHERN TERRITORY OF AUSTRALIA

[INSERT DATE]

DETAILS

PARTIES

THIS DEED IS MADE BY:

[INSERT INDIVIDUAL'S NAME] ("You or Your")

Address for service of notices: Attention: **[insert name and/or title]**
Physical address: **[insert address]**
Postal address: **[insert address]**
Facsimile: **[insert number]**

IN FAVOUR OF:

NORTHERN TERRITORY OF AUSTRALIA care of the Department of **[insert name of agency]** (the "Principal")

Address for service of notices: Attention: Chief Executive Officer
Physical address: **[insert address]**
Postal address: **[insert address]**
Facsimile: **[insert number]**

RECITALS

- A The Principal has engaged You to provide **[insert details of the Consultant's engagement e.g. to research and prepare a report for a particular matter, or for a particular period]** (the "Services").
- B In the course of undertaking the Services, You may, directly or indirectly, become aware of, handle and obtain information which is of a confidential or private nature and that information must be kept confidential and private.
- C The Principal has agreed to disclose information to You on the condition that You enter into this Deed to protect the secret and confidential nature of that information.
- D You acknowledge the desire and right of the Principal to preserve the secrecy of Confidential Information.
- E You have agreed that where Confidential Information is provided to You on the terms of this Deed, that You will not use or disclose the Confidential Information except as expressly provided in this Deed.
- F You also acknowledge that by entering into this Deed You must advise the Principal of any conflict of interest that exists or may arise in relation to the Services.

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

In this Deed, unless the contrary intention appears:

"Business Day" means a day which is not a Saturday, Sunday or Public Holiday in <Darwin> in the Northern Territory of Australia.

"Confidential Information" means Information which is provided or disclosed by the Principal, its employees, advisors, agents or contractors to You, or accessed or obtained by You, in connection with the Services in any way, and in particular including Information which:

- (a) is marked as confidential;
- (b) is by its nature confidential;
- (c) You know, or ought to know, is confidential; or
- (d) is designated by the Principal as constituting Confidential Information for the purposes of this Deed;

and includes the terms (but not the existence) of this Deed, but excludes information which:

- (e) is or becomes public knowledge other than by:
 - (i) a fault by You;
 - (ii) breach of this Deed;
 - (iii) any other unlawful means; or
- (f) was already in Your possession before the Principal, or its employees, advisors, agents or contractors provided it to You.

"Deed" means this document.

"Information" includes documents, software, information and data stored, provided or disclosed by any means, whether electronic, written or otherwise, and where relevant, includes information provided verbally or visually.

"Moral Rights" includes:

- (a) any moral rights arising under the *Copyright Act 1968* (Cth); and
- (b) any other similar rights arising under any other law in Australia or anywhere else in the world at any time.

"Permitted Purpose" means any purpose connected with the Services.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) words importing the singular number include the plural number and vice versa;
- (c) the word "including" is not a word of limitation, and is to be interpreted as though it were immediately followed by the words "but not limited to";

- (d) where a clause in this Deed provides that an action requires consent, approval, agreement, authorisation, permission or words of similar effect (“Consent”), then that Consent must be given or obtained in writing to be effective;
- (e) if an act must be done on a day which is not a Business Day, that act must be done on the immediately following Business Day;
- (f) headings and sub-headings have been included for ease of reference only and this Deed is not to be construed or interpreted by reference to such;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) a reference to a clause or schedule is a reference to a clause or schedule of or to this Deed;
- (i) all schedules form part of this Deed; and
- (j) no rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this document or any part of it.

2. CONFIDENTIALITY OBLIGATIONS

2.1 Confidentiality

You will:

- (a) keep Confidential Information strictly confidential, and will not directly or indirectly at any time divulge or allow to be divulged to any person or entity any Confidential Information, other than in accordance with the terms of this Deed;
- (b) limit disclosures of Confidential Information to only those persons (if any) who:
 - (i) have a “need to know” in connection with the Services; and
 - (ii) are subject to a written confidentiality undertaking consistent with:
 - A. the terms of this Deed, or
 - B. the Northern Territory Public Sector Code of Conduct;and with respect to clause 2.1 (a) (ii) A, a copy of the written confidentiality undertaking must be provided to the Principal immediately upon request and prior to the person receiving the Confidential Information.
- (c) seek in writing the express approval of the Principal before releasing any Confidential Information to any third party, including consultants or advisors engaged on Your behalf, and the Principal’s approval may be withheld in the Principal’s absolute discretion, or given subject to conditions, including that the third party must first enter into a written confidentiality undertaking in terms approved by the Principal; and
- (d) put into place all reasonable and customary precautions to ensure that Confidential Information is kept confidential.

2.2 Use of Information

- (a) Without limiting Your obligations under clause 2.1, You must use the Confidential Information solely for the Permitted Purpose, and not for any other purpose.

3. MORAL RIGHTS

- (a) Where, during the course of the Services, You create, author, co-author or otherwise contribute to the production of a document or other form of work (“Copyright Work”) You consent to the Principal:

- (i) exercising any rights in relation to the Copyright Work without identifying You as the author of all or part of the Copyright Work;
 - (ii) naming the Copyright Work;
 - (iii) modifying, altering, adapting, distorting or otherwise changing any of the Copyright Work as it sees fit in its absolute discretion, including by:
 - A. adapting or translating the Copyright Work into other dimensions, formats or media; and
 - B. changing, relocating, demolishing or destroying any two or three dimensional reproduction of the Copyright Work without notifying or consulting You;
 - (iv) using the Copyright Work, whether changes have been made to it or not, in any context and with or without other material, in any way it sees fit, even if You consider that Your honour or reputation is prejudiced as a result.
- (b) You unconditionally and irrevocably agree not to enforce any Moral Rights that You may have in a Copyright Work.

4. PROTECTION OF CONFIDENTIAL INFORMATION

- (a) You must take all reasonable measures to ensure that Confidential Information is protected from misuse and loss and from unauthorised access, modification, disclosure or other misuse.

5. OWNERSHIP AND RETURN OF INFORMATION

- (a) Ownership of Confidential Information remains vested at all times in the Principal.
- (b) For the duration of the Services, You may keep working copies of Confidential Information (whether or not such Confidential Information was created by the Principal, You or someone else) in Your possession, and must ensure such Confidential Information is safely and securely stored at all times.
- (c) You must not retain, destroy or permanently remove from their records any original documents, records, notes, copies or materials containing Confidential Information without the prior written permission of the Principal.
- (d) On the earlier of a request by the Principal, or completion of the Services, You must either return to the Principal or destroy (at the Principal's option), all Confidential Information in Your possession.

6. CONFLICT OF INTEREST

- (a) For the purposes of this clause 6, "Conflict" means any matter, circumstance, interest, or activity (whether pecuniary or otherwise), or of any other association or situation affecting You or any colleague, contractor or agent of Yours, which may, or may appear to, impair Your ability or the relevant colleague, contractor or agent to carry out Your responsibilities and obligations relating to the Services diligently and independently.
- (b) You warrant that:
- (i) as at the date You sign this Deed, to the best of Your knowledge, no Conflict exists or is likely to arise in the performance of the Services; and
 - (ii) if a Conflict arises or appears likely to arise in relation to the Services, You will immediately notify the Principal in writing of the Conflict and how You intend to manage the Conflict.

7. CODE OF CONDUCT

- (a) Where You will carry out the Services or parts of the Services at premises from which the Principal operates or conducts business, You will comply with the Northern Territory Public Sector Code of Conduct made pursuant to Employment Instruction 13 of the *Public Sector Employment and Management Act* ("Code of Conduct").
- (b) A copy of the Code of Conduct will be provided to You upon request.

8. DURATION OF OBLIGATIONS

- (a) Your rights and obligations under this Deed will survive the termination of this Deed and the completion of the Services.
- (b) In particular, the provisions of this Deed will:
 - (i) continue in effect notwithstanding any contrary provisions contained in any contract entered into by You with the Principal relating to the Services; and
 - (ii) override such contrary provisions, notwithstanding any clause in any quotation or subsequent contract stating that such quotation or subsequent contract constitutes the entire agreement between the parties and overrules any previous agreement or understandings between the parties or similar.

9. BREACH OF DEED

9.1 Termination for breach

- (a) The Principal may terminate this Deed immediately by notice in writing if You breach any provision of this Deed and such breach is not remedied within seven (7) Business Days of receipt of a written notice by You of such breach.
- (b) The Principal may obtain injunctive relief against You for any breach of this Deed and nothing in clause 9.1(a) prevents the Principal from doing so.

10. NOTICES

10.1 Form and Service of Notices

- (a) Any notice, approval, consent, demand or other communication required or permitted to be given under this Deed must be in writing and given in one of the following ways:
 - (i) by hand delivering to the relevant contact person;
 - (ii) by sending a letter through registered mail to the relevant address for service;
 - (iii) by sending a fax to the relevant fax number; or
 - (iv) by sending an electronic mail to the relevant contact person at the email address, specified in the details of the parties set out at the start of this Deed or such other contact person, address, fax number or email address as may be advised by a party in writing from time to time.

10.2 Receipt of Notices

- (a) A notice given under clause 10.1(a) is deemed to be given, in the case of:
 - (i) hand delivery, immediately on delivery;

- (ii) registered mail, on the third Business Day after posting;
- (iii) facsimile, on receipt of a complete and correct transmission report by the sender; and
- (iv) email, on receipt by the sender of the email of a notification that the message has been received at the addressee's mailbox, subject to no notification being sent by or on behalf of the addressee advising that the addressee is "out of office" or similar,

but if such delivery or receipt is later than 4.00pm (addressee's time) on a Business Day, it is deemed to be received at 9.00am on the next Business Day in the place of receipt.

11. GENERAL

11.1 Governing Law and Jurisdiction

- (a) This Deed is governed by and construed in accordance with the laws of the Northern Territory of Australia and the Courts of the Northern Territory at Darwin have jurisdiction to entertain any action in respect of, or arising out of, this Deed.

11.2 Waiver

- (a) No waiver or indulgence by any party to this Deed is binding on the Parties unless it is in writing and signed by You and the Principal.

SIGNING PAGE

Executed by You as a Deed:

SIGNED SEALED AND DELIVERED by

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in the presence of:

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Signature

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Signature of Witness

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Date

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Name of Witness

SAMPLE