



Northern
Territory
Government

Conflict of Interest and Confidentiality Deed

FOR COMPANIES

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 COMPANY NAME]

IN FAVOUR OF:

NORTHERN TERRITORY OF AUSTRALIA

[INSERT DATE]

DETAILS

PARTIES

THIS DEED IS MADE BY:

[INSERT COMPANY NAME] (“the The The Consultant”) (ACN **[INSERT ACN number]**)

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 the Consultant 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, the Consultant 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 the Consultant on the condition that the Consultant enter into this Deed to protect the secret and confidential nature of that information.
- D The Consultant acknowledges the desire and right of the Principal to preserve the secrecy of Confidential Information.
- E The Consultant have agreed that where Confidential Information is provided to the Consultant on the terms of this Deed, that the Consultant will not use or disclose the Confidential Information except as expressly provided in this Deed.

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 the Consultant, or accessed or obtained by the Consultant, 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) the Consultant 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 the Consultant;
 - (ii) breach of this Deed;
 - (iii) any other unlawful means; or
- (f) was already in the Consultant’s possession before the Principal, or its employees, advisors, agents or contractors provided it to the Consultant.

“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.

“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

The Consultant agrees that it 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 employees (if any) of the Consultant who have a “need to know” in connection with the Services, and only after ensuring that any employee receiving Confidential Information is subject to a written confidentiality undertaking consistent with the terms of this Deed, a copy of which written confidentiality undertaking must be provided to the Principal prior to the employee 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 the Consultant’s 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 by the Consultant, as well as any of the Consultant’s employees, contractors and agents who may be provided with or obtain any of the Confidential Information.

2.2 Use of Information

- (a) Without limiting the obligations of the Consultant under clause 2.1, the Consultant must, and must ensure that its employees, contractors and agents use the Confidential Information solely for the Permitted Purpose, and not for any other purpose.

3. PROTECTION OF CONFIDENTIAL INFORMATION

- (a) The Consultant 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.

4. 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, the Consultant may keep working copies of Confidential Information relating to the Services (whether or not such Confidential Information was

created by the Principal, the Consultant or someone else) in its possession, and must ensure such Confidential Information is safely and securely stored at all times.

- (c) The Consultant 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 so much of the Services, the Consultant must either return to the Principal or destroy (at the Principal's option), all Confidential Information in the Consultant's possession.

5. CONFLICT OF INTEREST

- (a) For the purposes of this clause 5, "Conflict" means any matter, circumstance, interest, or activity (whether pecuniary or otherwise), or of any other association or situation affecting the Consultant or any employee, contractor or agent of the Consultant, which may, or may appear to, impair the ability of the Consultant or the relevant employee, contractor or agent to carry out the Consultant responsibilities and obligations relating to the Services diligently and independently.
- (b) The Consultant warrants that, as at the date the Consultant signs this Deed, to the best of its knowledge, no Conflict exists or is likely to arise in the performance of the Services a Conflict arises, or appears likely to arise, the Consultant will immediately notify the Principal in writing of the Conflict.

6. DURATION OF OBLIGATIONS

- (a) The rights and obligations of the Consultant 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 the Consultant with the Principal relating to the Services; and
 - (ii) override such contrary provisions, notwithstanding any clause in any quotation/tender or subsequent contract stating that such quotation/tender or subsequent contract constitutes the entire agreement between the parties and overrules any previous agreement or understandings between the parties or similar.

7. BREACH OF DEED

7.1 Injunctive Relief

- (a) The Principal may obtain injunctive relief against the Consultant for any breach of this Deed.

8. NOTICES

8.1 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.

8.2 Receipt of Notices

(a) A notice given under clause 8.1(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.

9. GENERAL

9.1 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.

9.2 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 the Consultant and the Principal.

SIGNING SECTION

Executed by the Consultant as a Deed:

SIGNED by (name of company) in accordance with section 127 of the Corporations Act in the presence of:

)
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)
)
)

.....
Director

.....
Director

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Name of Director

.....
Name of Director

.....
Date

SAMPLE