

SOA Schedule 4 –

Confidentiality, Privacy

and Conflict of Interest Deed

<Contract title and reference number>

<Customer name>

<Supplier name>

<Approved Party name>

Contract established under SOA <SOA title and reference number>

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| INSTRUCTIONS FOR USING THIS DOCUMENT (TO BE DELETED IN FINAL EXECUTION VERSION OF SOA SCHEDULE):This is a template Confidentiality, Privacy and Conflict of Interest Deed for use with the SOA Comprehensive Contract Conditions - ICT Products and/or Services. This Deed assumes that the Customer and Supplier have entered into a Contract, and that the Details to the SOA Comprehensive Contract Conditions – ICT Products and/or Services require the Supplier’s Personnel (i.e. officers, directors, employees and agents of the Supplier) or Subcontractors (and their officers, directors, employees and agents) to sign a Confidentiality, Privacy and Conflict of Interest Deed. This Deed may otherwise be required to be executed by the Supplier’s Personnel on request by the Customer. If a Confidentiality, Privacy and Conflict of Interest Deed is required, it should be substantially in the form of this SOA Schedule 4 or such other form reasonably acceptable to the Customer. The yellow highlighted sections need to be completed.  The Supplier, as distinct from the Supplier’s Personnel, is not required to complete and sign this Deed because the Supplier is already bound by the confidentiality, privacy and conflict of interest requirements in clauses 14, 15 and 21 of the SOA Comprehensive Contract Conditions - ICT Products and/or Services. |

SOA Schedule 4 template – Issued February 2020 – Version 1.0.0

## General information

| No. | Topic | Details |
| --- | --- | --- |
|  | **Customer** | Name: <<insert>>  ABN or ACN: <<insert>> |
|  | **Supplier** | Name: <<insert>>  ABN or ACN: <<insert>> |
|  | **Approved Party** | Name: <<insert>>  ABN or ACN (if applicable): <<insert>>  Street address: <<insert>>  Postal address: <<insert>>  Email: <<insert>> |
|  | **Contract** | Contract name: <<insert>>  Contract number: <<insert>>  Date of contract: <<insert>> |

# Background

* 1. The Customer and the Supplier are parties to the Contract.
  2. As one of the Supplier’s Personnel, the Approved Party may become aware of Confidential Information and/or Personal Information in connection with the Contract.
  3. Improper use or disclosure of Confidential Information would severely damage the Customer's ability to perform its governmental or statutory functions.
  4. The Supplier has undertaken that:
     1. in the performance of the Contract it will comply with the Information Privacy Act and has made undertakings in relation to the collection, use and disclosure of Personal Information; and
     2. the Supplier and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have obligations where a Conflict of Interest is created, or might appear to be created, in conflict with the Supplier’s obligations under the Contract.
  5. The Customer requires the Supplier to obtain from the Approved Party a signed Confidentiality, Privacy and Conflict of Interest Deed in the form of this Deed.
  6. This Deed sets out:
     1. the terms on which the Approved Party will have access to the Confidential Information and Personal Information; and
     2. any declarations of the Approved Party’s Conflict of Interest (if any).

# Definitions and interpretation

* 1. **Definitions**

**Approved Party** is specified in the ‘General information’ details above.

**Approved Party’s Contract** has the meaning given in clause 4.2(a).

**Confidential Information** means all information disclosed by or on behalf of the Customer or the Supplier (**Discloser**) to the Approved Party in connection with the Contract or created using that information, which is confidential in nature and designated as confidential or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which:

* + 1. is or becomes public, except through breach of a confidentiality obligation;
    2. the Approved Party can demonstrate was already in its possession or was independently developed by the Approved Party; or
    3. the Approved Party receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.

**Conflict of Interest** includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

**Contract** means the agreement between the Customer and the Supplier described in the ‘General information’ details above.

**Customer** is specified in the ‘General information’ details above.

**Deed** means this document titled *‘SOA Schedule 4 – Confidentiality, Privacy and Conflict of Interest Deed’*.

**Discloser** has the meaning given in the definition of Confidential Information.

**Information Privacy Act** means the *Information Privacy Act 2009* (Qld).

**Laws** means all:

* + 1. Acts, ordinances, regulations, by-laws, orders, awards and proclamations in force from time to time in Queensland and any other relevant jurisdiction;
    2. certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the Contract; and
    3. the requirements of any authority with jurisdiction in connection with the Contract and/or the Site, as applicable.

**Personal Information** has the meaning given:

* + 1. for the purposes of the Information Privacy Act – in that Act; or
    2. for the purposes of the Privacy Act – in that Act.

**Personnel** means officers, directors, employees and agents, and, in the case of the Supplier, includes any Subcontractor and the Subcontractor’s officers, directors, employees and agents of a Subcontractor.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Site** means each of the site or premises at which the Contract will be performed.

**SOA Comprehensive Contract Conditions - ICT Products and/or Services** means the document titled *‘SOA Comprehensive Contract Conditions – ICT Products and/or Services’*.

**Supplier** is specified in the ‘General information’ details above.

* 1. **Interpretation**

Unless it is expressly stated that a different rule of interpretation will apply:

* + 1. (**agreement**) a reference to an agreement includes any variation or replacement of the agreement;
    2. (**currency**) all currency amounts are in Australian dollars;
    3. (**headings**) headings are provided for convenience and do not affect the interpretation of this Deed;
    4. (**includes**) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
    5. (**corresponding meaning**) if a word or phrase is defined its other grammatical forms have corresponding meanings;
    6. (**law**) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
    7. (**person**) a person includes the person’s executors, administrators, novatees and assignees;
    8. (**construction**) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it; and
    9. (**severability**) if any part of this Deed is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of this Deed will not be affected.

# Undertaking

The Approved Party undertakes to comply with the terms of this Deed.

# Confidentiality

* 1. The Approved Party must:
     1. keep all Confidential Information confidential;
     2. not use the Confidential Information except for the purposes of the Contract;
     3. ensure that any Confidential Information in its possession or control is protected against loss or unauthorised access, use, modification or disclosure or other misuse; and
     4. not disclose the Confidential Information to any person except:
        1. with the Customer’s prior written consent (at the absolute discretion of, and subject to any conditions imposed by, the Customer); or
        2. to the extent required by Law.
  2. The Approved Party must:

1. not take or retain any material containing any Confidential Information after the end of the Contract or the contract providing for the performance of services by the Approved Party (**Approved Party’s Contract**); and
2. immediately deliver up to the Customer, at the Customer’s request, all documents (in any media) in its possession or control containing the Confidential Information.

# Privacy

* 1. This clause 5 applies to Personal Information:

1. in the Customer’s documents and other material or information systems; or
2. collected or accessed by the Approved Party in connection with the Contract.
   1. The Approved Party must:
      1. not access, use, modify or retain Personal Information except for the purpose for which the Approved Party is given access to the Personal Information;
      2. not disclose the Personal Information without the Customer’s prior written consent;
      3. not transfer any Personal Information outside of Australia, except with the Customer’s prior written consent; and
      4. take any steps to prevent unauthorised use or disclosure of Personal Information as notified by the Customer.
   2. The Approved Party must:
3. not take or retain any material containing any Personal Information after the end of the Contract or the Approved Party’s Contract; and
4. immediately deliver up to the Customer, at the Customer’s request, all material in its possession or control containing Personal Information.

# Conflict of Interest

* 1. The Approved Party declares that it:

1. does not hold any office or possess any property;
2. is not engaged in any business or activity; or
3. does not have any obligations,

where a Conflict of Interest is created, or might appear to be created, in conflict with the Approved Party’s obligations, except as follows:

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| **Conflict of Interest details** |
| *Provide a brief outline of any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.*  *If there is no Conflict of Interest, leave blank or insert ‘nil’.* |

* 1. The Approved Party must:
     1. keep the declaration under clause 6.1 of this Deed updated throughout the term of the Approved Party’s Contract; and
     2. comply with the Customer’s requirements to manage, mitigate or eliminate any Conflict of Interest.

# General

* 1. This Deed is executed as a deed poll for the benefit of the Customer and the Supplier. The Customer and the Supplier may enforce this Deed, despite not being a party to it.
  2. The obligations under this Deed will continue after the end of the Contract and the Approved Party’s Contract.
  3. This Deed may only be varied by a deed entered into by the Customer, the Supplier and the Approved Party.
  4. This Deed does not exclude the operation of any Laws concerning Personal Information or principle of law or equity concerning Confidential Information.
  5. The Customer’s rights concerning this Deed will not be deemed to be waived except by notice in writing signed by the Customer. Failure or delay by the Customer to enforce any provision of this Deed will not waive the Customer’s rights.
  6. The laws of the State of Queensland govern this Deed and the Approved Party submits to the non-exclusive jurisdiction of the courts of Queensland.

**Where the Approved Party is an individual:**

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| --- | --- | --- | --- |
| |  |  |  | | --- | --- | --- | | Date ……………………………………..  **SIGNED, SEALED AND DELIVERED as a deed poll by**:    Name of Approved Party  in the presence of:    Signature of witness    Name of witness (block letters) | )  )  )  )  )  )  )  )  )  )  )  )  ) | Signature of Approved Party | |

**Where the Approved Party is a company under the *Corporations Act 2001* (Cth):**

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| --- | --- | --- | --- |
| |  |  |  | | --- | --- | --- | | Date ……………………………………..  **EXECUTED as a deed by**:    Name of Approved Party; ACN and ABN  in accordance with s.127 of the *Corporations Act 2001* (Cth)    Name of Director    Name of Director/Secretary | )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Signature of Director    Signature of Director/Secretary | |