Confidentiality, Privacy and Conflict of Interest Deed

For General Goods and Services – Personnel

Customer: <<insert>>

Supplier: <<insert>>

Personnel’s Name: <<insert>>

Contract Reference No.: <<insert>>

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| **INSTRUCTIONS FOR USING THIS DOCUMENT** **(TO BE DELETED BEFORE SENDING TO SUPPLIER)** This is a Confidentiality, Privacy and Conflict of Interest Deed for use with the standard form Government contract for the purchase of Goods and Services.  This Deed assumes that the Customer and Supplier have entered into a contract, and that the **Supplier’s Personnel** is required to sign a Confidentiality, Privacy and Conflict of Interest Deed.  It is to be executed by the Supplier’s Personnel, on request by the Customer. The Customer needs to fill out all yellow highlighted sections with details of the Customer’s requirements.  **The Customer is to delete all highlighting before giving the Supplier’s Personnel the Deed for execution.** |

# General information

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| **No.** | **Topic** | **Details** | |
| 1 | **Customer** | Name: | <<insert>> |
| ABN / ACN: | <<insert>> |
| 2 | **Supplier** | Name: | <<insert>> |
| ABN / ACN: | <<insert>> |
| 3 | **Personnel** | Name: | <<insert>> |
| Street address: | <<insert>> |
| Postal address: | <<insert>> |
| Email: | <<insert>> |
| 4 | **Contract** | Contract name: | <<insert>> |
| Contract number: | <<insert>> |
| Date of Contract: | <<insert>> |

# Background

* 1. The Customer and the Supplier are parties to the Contract.
  2. The Supplier’s Personnel may have access to, or become aware of Confidential Information and/or Personal Information or that may give rise to a Conflict of Interest in connection with the Contract.
  3. Improper use or disclosure of Confidential Information or Personal Information and/or the failure to disclose any Conflict of Interest to the Customer 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 obligations in relation to Confidential Information and Personal Information and
       2. the Supplier and its Personnel do not have a Conflict of Interest in the performance of the Contract except as disclosed in the Contract.
  5. The Customer requires the Supplier to obtain from its Personnel a signed Confidentiality, Privacy and Conflict of Interest Deed in the form of this Deed.
  6. This Deed sets out:
     + 1. the Personnel’s obligations in relation to Confidential Information and Personal Information; and
       2. any declarations of the Personnel’s Conflict of Interest (if any) and the Personnel’s obligations in relation to the disclosure and management of any Conflicts of Interest.

# Definitions and interpretation

**Confidential Information** means all information disclosed by or on behalf of the Customer or the Supplier (**Discloser**) to the Personnel 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 and in the case of the Customer, all Customer Data. Confidential Information does not include any information which:

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

**Conflict of Interest** means having an interest, affiliation or relationship, or owing an obligation (whether personal, financial, professional or otherwise), which conflicts, may reasonably have the potential to conflict or may reasonably be perceived as conflicting with the ability of the Personnel to perform its obligations under the Contract and/or the Personnel’s Contract fairly and objectively.

**Contract** means the agreement between the Customer and the Supplier described in the ‘General information’ details above, and may include a standing offer arrangement, where specified.

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

**Customer Data** means any information, material, data, dataset or database, including Metadata:

* + 1. provided by or on behalf of the Customer to the Supplier for use, processing, storing or hosting by the Supplier in providing the goods or services the subject of the Contract and
    2. created, processed, produced or derived from using, processing, storing or hosting that information, material, data, dataset or database in the Supplier’s provision or the Customer’s use of the goods or services the subject of the Contract.

**Deed** means this document.

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

**Information Privacy Act** means the [*Information Privacy Act 2009 (Qld)*.](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2009-014)

**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;
    3. the requirements of any authority with jurisdiction in connection with the Contract and/or the Site, as applicable.

**Metadata** means any system-generated data that is created or generated in connection with the Customer’s use of the goods or services the subject of the Contract, including in using, processing, storing or hosting any information, material, data, dataset or database in the provision of the goods or services and includes any descriptive, structural and administrative metadata.

**Personal Information** has the meaning given:

1. for the purposes of the [*Information Privacy Act*](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2009-014) – in that Act; or
2. for the purposes of the *Privacy Act 1988 (Cth)* – in that Act.

**Personnel** means:

1. the officers, directors, employees, agents and temporary contractors of the Supplier; and
2. any subcontractor to the Supplier, and the subcontractor’s officers, directors, employees, agents and temporary contractors; and
3. any other person employed or engaged by the Supplier in the performance of the Contract.

**Personnel’s Contract** means the agreement or arrangement between the Supplier and the Personnel pursuant to which the Supplier engages the Personnel to perform services in connection with the Contract.

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

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

# Undertaking

3.1 The Personnel undertakes to comply with the terms of this Deed.

# Confidentiality

* 1. The Personnel must:
     1. keep all Confidential Information confidential;
     2. use the Confidential Information only for the purpose of performing 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;
     4. not disclose the Confidential Information to any person except:
        1. with the Customer’s prior written consent (consent is at the absolute discretion of, and subject to any conditions imposed by, the Customer); or
        2. as required by Law; and
     5. immediately notify the Customer if it becomes aware:
        1. that a disclosure of Confidential Information is, or may be, required by Law;
        2. of a breach of this clause; or
        3. of any loss, unauthorised access, use, modification, disclosure or other misuse of any Confidential Information.
  2. The Personnel must:
     1. not take or retain any material containing any Confidential Information after the end of the Contract or the Personnel’s Contract; and
     2. immediately deliver up to the Customer, at the Customer’s request, all material in its possession or control containing the Confidential Information.

# Privacy

* 1. This clause applies to Personal Information:
     1. in the Customer’s documents and other material or information systems; or
     2. collected or accessed by the Personnel in connection with the Contract.
  2. The Personnel must:
     1. not access, use, modify or retain Personal Information except for the purpose of performing the Contract;
     2. not disclose the Personal Information without the Customer’s prior written consent (consent is at the absolute discretion of, and subject to any conditions imposed by, the Customer);
     3. not transfer any Personal Information outside of Australia, except with the Customer’s prior written consent;
     4. ensure that any Personal Information in its possession or control is protected against loss or unauthorised access, use, modification or disclosure or other misuse;
     5. comply with such other privacy measures as notified by the Customer;
     6. immediately notify the Customer if it becomes aware:
        1. that a disclosure of Personal Information is, or may be, required by Law;
        2. of a breach of this clause; or
        3. of any loss, unauthorised access, use, modification, disclosure or other misuse of any Personal Information.
  3. The Personnel must:
     1. not take or retain any material containing any Personal Information after the end of the Contract or the Personnel’s Contract; and
     2. 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 Personnel declares that they do not have an actual, potential or perceived Conflict of Interest, except as follows:

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| **Conflict of interest details** |
| *Provide a brief outline of any actual, potential 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 Personnel must:
     1. keep the declaration under clause 6.1 of this Deed updated throughout the term of the Personnel’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. The Customer 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 Personnel’s Contract.
  3. This Deed may only be varied by a deed entered into by the Customer and the Personnel.
  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 rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by Law or any other such right or remedy.
  7. The Personnel must not assign or novate this Deed, in whole or part, except with the prior written consent of the Customer.
  8. The laws of the State of Queensland govern this Deed and the Personnel submits to the non-exclusive jurisdiction of the courts of Queensland.

## Executed as a deed poll

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| **Where the Personnel is an individual:** |

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| Date …………………………………………………  **SIGNED AND DELIVERED** as a deed by:  .............................................................................  Name of Personnel(block letters)  in the presence of:  ………………………………………………………..  Name of Witness(block letters) |  | …………………………………………………….  Signature of Personnel  ……………………………………………………  Signature of Witness |

**Where the Personnel is a company under the *Corporations Act 2001* (Cth)**

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| --- | --- | --- |
| **EXECUTED as a deed by the Supplier**:  **<<insert name of Supplier >>**  on <<insert date>>  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 |