



Department of  
**Education**

# DEED OF CONFIDENTIALITY, PRIVACY AND CONFLICTS OF INTEREST

**Between** <<insert name and ABN of the Customer (school)>>

(the “**Customer**”)

**And** <<insert name (and ABN if the individual has an ABN) of the Confidant (worker)>>

(the “**Confidant**”)

## **For the purpose of**

<<Insert Contract title or Purchase Order number>> executed on <<insert date>> between the Customer and <<insert Supplier's name and ABN>>

(the “**Contract**”)

## **Recitals:**

- A. In the course of the Confidant performing certain services for the Customer (whether directly or indirectly), the Confidant may become aware of information belonging to or in the possession of the Customer that is Confidential Information and/or Personal Information or that may give rise to a Conflict of Interest.
- B. Improper use or disclosure of that information would severely damage the Customer's ability to perform its governmental/statutory functions.
- C. The Customer requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Customer's Confidential Information is kept confidential and that the Confidant performs those services faithfully and without any conflicting interest.
- D. The Confidant may be an employee, agent or subcontractor of the Supplier.
- E. The Supplier has entered into the Contract with the Customer for the provision of products and/or services, which may include access to information that contains Personal Information.
- F. In the course of dealing with the Supplier, the Confidant may have access to the Personal Information.
- G. The Personal Information held by the Supplier is subject to the *Information Privacy Act 2009* (Qld).
- H. The Supplier has undertaken that in the performance of the Contract with the Customer it will comply with the *Information Privacy Act 2009* (Qld) has made other undertakings in relation to the collection, use, handling, distribution and disclosure of the Personal Information.
- I. The Supplier shall obtain from its Confidant an undertaking to observe the clauses relating to the protection of Personal Information contained in the Contract and to inform the Confidant that failure to comply with such an undertaking may lead the Supplier to take action against the Confidant.

## **Agreed Covenants:**

### **1. Recitals**

- 1.1. The Parties acknowledge the truth and accuracy of the Recitals in every particular.

### **2. Definitions and Interpretation**

## 2.1. Definitions

2.1.1. In the interpretation of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following meanings:

**“Business Day”** means between 9:00am and 5.00pm on a weekday other than a Saturday, Sunday or public holiday at the Customer’s delivery address, unless otherwise specified in the Contract / General Order;

**“Confidential Information”** means, in relation to a Party, information that:

- a) is by its nature confidential;
- b) is communicated by a Party to the other Party as being confidential; or
- c) the other Party knows or ought to know is confidential.

Subject to (a), (b) and (c) above, Confidential Information includes information that is:

- (i) provided by a third party in relation to a contract or tender process;
- (ii) comprised in or relating to any Intellectual Property Rights of the Customer;
- (ii) relating to the internal management and structure of the Customer, or the personnel, policies and strategies of the Customer unless otherwise made public;
- (iii) of any actual or potential commercial value to the Customer or to the person or corporation which supplied that information;
- (iv) information relating to the policies, strategies, practices and procedures of the Commonwealth, State or Territory Government and any information in the Confidant’s possession relating to the Commonwealth, State or Territory Government public services provided by the Customer; or
- (v) in the Confidant’s possession relating to the Customer’s clients or suppliers, and like information.

but does not include information which:

- (vi) was already lawfully disclosed by the Confidant prior to the Confidant being required to treat the information as confidential;
- (vii) is lawfully received from a third party which is not bound by a duty of confidentiality;
- (viii) has become public knowledge (other than through a breach of an obligation of confidence under the Contract and/or this Deed); and/or
- (ix) was independently developed or released by the Confidant without reference to the Confidential Information;

**“Conflicts of Interest”** includes engaging in any activity, or obtaining any interest which would compromise the ability of the Supplier to perform its obligation under the Contract and/or this Deed in good faith and objectively.

**“Contract”** means the contract between the Customer and a third party (referred to in the Contract as the “Supplier”) under which the Confidant’s services are directly or indirectly provided to the Customer.

**“Deed”** means this deed of confidentiality, privacy and conflicts of interest.

**“Intellectual Property Rights”** includes copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before on or after the commencement date of a Contract.

**“Personal Information”** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

## 2.2. Interpretation

- 2.2.1. The following rules shall apply in interpreting this Deed, unless the contrary intention appears:
- (a) monetary references are references to Australia currency;
  - (b) the clause and sub-clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
  - (c) a cross reference to a clause number is a reference to all its sub-clauses;
  - (d) words in the singular number include the plural and vice versa;
  - (e) words importing a gender include any other gender;
  - (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
  - (g) a reference to a clause or subclause is a reference to a clause or sub-clause of this Deed; and
  - (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## 3. Non Disclosure

- 3.1. The Confidant must not disclose the Confidential Information and/or Personal Information of the Customer to any person without the prior written consent of the Customer.
- 3.2. The Customer may grant or withhold its consent in its absolute and unfettered discretion.
- 3.3. If the Customer grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Customer may require that the Confidant procure the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information and/or Personal Information.
- 3.4. If the Customer grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.5. The obligations of the Confidant under this Deed shall not be taken to have been breached where the Confidential Information and/or Personal Information is legally required to be disclosed.

## 4. Restriction on Use

- 4.1. The Confidant will use the Confidential Information and/or Personal Information of the Customer only for the purpose of its dealings with the Customer (whether directly or indirectly).

## 5. Confidant's Undertaking

- 5.1. The Confidant undertakes -
- a) in relation to any Personal Information of the Customer that he or she or it has acquired from the Supplier, to comply with the Information Privacy Act 2009 to the same extent as it applies to the Supplier in relation to the Contract and as if the Confidant was the Supplier;
  - b) not to access, use, modify, disclose or retain any Confidential Information and/or Personal Information of the Customer that he or she has acquired from the Supplier, except for the purpose for which the Confidential Information and/or Personal Information was acquired in relation to the Contract; and
  - c) in addition to any direction as to particular measures specified by the Supplier, take all reasonable measures to ensure that any Confidential Information and/or Personal Information held in connection with the Contract is protected against loss, unauthorised access, use, modification or disclosure and against other misuse.

## 6. Breach

- 6.1. The Confidant acknowledges that failure to comply with this Deed may lead to action by the Supplier or the Customer or both.

## 7. Survival

- 7.1. This Deed will survive the termination or expiry of the Contract or any other contract providing for the performance of services by the Confidant (whether directly or indirectly).

## 8. Acknowledgement by Confidant

- 8.1. The Confidant undertakes that in signing this Deed:

- a) he or she understands the Supplier's responsibilities in relation to Confidential Information and/or Personal Information and Conflicts of Interest;
- b) he or she will not access, use, disclose or retain Personal Information except in relation to the purpose for which the Personal Information was acquired; and
- c) he or she understands the possible consequences of a breach of this undertaking.

## **9. Powers of the Customer**

### **9.1. Production of Documents**

- 9.1.1. The Customer may demand (without needing to reduce the demand to writing) the delivery up to the Customer of all documents in the possession or control of the Confidant containing the Confidential Information and/or Personal Information of the Customer.
- 9.1.2. The Confidant must as soon as reasonably practicable comply with a demand under this clause 9.
- 9.1.3. If the Customer makes a demand under this clause 9, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information and/or Personal Information, and the identity of the person in whose custody or control they lie.
- 9.1.4. In this clause 9, "documents" includes any form of storage of information, whether visible to the eye or not.

### **9.2. Legal Proceedings**

- 9.2.1. The Confidant acknowledges that the Customer may take legal proceedings against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

## **10. Conflict of Interest**

- 10.1. The Confidant warrants that before entering into this Deed it has disclosed to the Customer all the past, current and anticipated interests of the Confidant which may conflict with or restrict the Confidant in performing services to the Customer fairly and independently.
- 10.2. The Confidant shall not during the course of this Deed engage in any activity or obtain any interest likely to conflict with or restrict the Confidant in providing services to the Customer fairly and independently and shall immediately disclose to the Customer such activity or interest.
- 10.3. If during the course of this Deed, the Confidant becomes aware of any real, perceived or potential Conflicts of Interest, the Confidant must as soon as practicable declare the Conflict of Interest to the Customer.

## **11. No Exclusion of Law or Equity**

- 11.1. This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information and/or privacy of the Personal Information.

## **12. Variation and Waiver**

- 12.1. This Deed shall not be varied either in law or in equity except by agreement in writing signed by the Customer and the Confidant.
- 12.2. A waiver by one party of a breach of a provision of this Deed by another party shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Deed. The failure of a party to enforce a provision of this Deed shall not be interpreted as a waiver of that provision.

## **13. Applicable Law**

- 13.1. The laws of the State of Queensland govern this Deed and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

## **14. Remedies Cumulative**

- 14.1. Rights Cumulative

14.1.1 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.

#### 14.2. *Other Instruments*

14.2.1. Subject to the other covenants of this Deed, the rights and obligations of the Parties pursuant to this Deed are in addition to and not in derogation of any other right or obligation between the Parties under any other deed or agreement to which they are Parties.

### 15. Assignment

15.1. The Supplier and the Confidant, or either of these, shall not assign, in whole or in part, or novate this Deed without first obtaining the prior written consent of the Customer.

### 16. Severability

16.1. If any part of this Deed is void or voidable, then that part is severed from the Deed but without affecting the continued operation of the remainder of the Deed.

### 17. Notices

17.1. A notice or other communication which may be given to or served on either Party under this Deed is deemed to have been duly given or served if it is in writing, signed by the Party giving the notice ("the first Party") and is either delivered by hand, posted, sent via facsimile or a copy transmitted via electronic mail or other electronic means to the other Party at the address set out in the Schedule to this Deed or such other address as is notified in writing to the first Party from time to time.

17.2. Such notice or other communication is deemed to have been duly received:

- a) if delivered by hand – at the time when the first Party holds a receipt for that document signed by a person apparently employed at that address for service;
- b) if sent by post – at the time when, in the ordinary course of the post, it would have been delivered at the address to which it is sent;
- c) if sent via facsimile – at the time when the machine on which the notice is sent reports in writing that the notice has been transmitted satisfactorily; or
- d) if sent via electronic mail or other electronic means – at the time when the other Party acknowledges receipt by any means.

17.3 If delivery or receipt of a notice or communication occurs on a day other than a Business Day or is later than four (4.00) pm (Customer local time) it will be taken to have duly occurred at nine (9.00) am (Customer local time) on the next Business Day.

#### Schedule – Notice Details (clause 17)

##### Customer

<b>Contact Person</b>	
<b>Address</b>	
<b>Phone number</b>	
<b>Email address</b>	

##### Confidant

<b>Contact Person</b>	
<b>Address</b>	
<b>Phone number</b>	
<b>Email address</b>	

The Parties to this Deed of Confidentiality, Privacy and Conflicts of Interest have executed the Deed on the dates set out below.

**EXECUTED AS A DEED OF CONFIDENTIALITY,  
PRIVACY AND CONFLICTS OF INTEREST**

**EXECUTED BY CUSTOMER**

Signed, Sealed and Delivered for and on behalf of  
the

.....  
(insert name of Customer)  
by

.....  
(insert name of Customer representative)

this ..... day of  
..... 20.....

In the presence of:

.....  
(insert name of witness)

.....  
(signature of Customer representative)

.....  
(signature of witness)

**EXECUTION BY CONFIDANT**

Signed, Sealed and Delivered for and on behalf of  
and by

.....  
(insert Confidant's name)

this ..... day of  
..... 20.....

in the presence of:

.....  
[insert name of witness]

.....  
(signature of Confidant)

.....  
(signature of witness)

Where an attorney or other agent executes this Deed or affixes a seal on behalf of a Confidant, the form of execution must indicate the source of this authority and such authority must be in the form of a deed and a certified copy thereof provided to the Customer.

**Privacy Statement** - The Department is collecting Personal Information from the Confidant for the purpose of administering the Contract. This Personal Information may be shared with Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, States or Territories for the purpose of administering the Contract. Personal Information will not be disclosed to any other third party without consent of the Confidant, except where authorised or required by law.