



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F

Organisation: s 47G
(Service Provider)

ABN: s 47G

Address: s 47F

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer and employee of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.
- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.



[If insufficient space, attach additional pages and cross reference here. All attached pages must be initialised]

s 47F

Signed:

[your signature]

Printed name:

[your name in full]

Organisation:

s 47G

[your employer]

Date:

13 August 2019
[day] [month] [year]

Witnessed by:

s 47F

Printed name:



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping.....	7
6 Restriction on use	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information.....	10
12 Indemnity.....	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15

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- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
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- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.

6.2 I must and the Service Provider must procure that I:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

09 (day) August (month) (year) 2019

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

12 (day) August (month) 2019 (year)

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, s 47F _____ declare as follows:

- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialised]

Signed:

s 47F

_____ [your signature]

Printed name:

_____ [your name in full]

Organisation:

s 47G

_____ [your employer]

Date:

08

[day]

August

[month]

2019

[year]

s 47F

Witnessed by:

Printed name:



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Delivered by AusIndustry

s 47F



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:

s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
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5 Contact and record keeping	7
6 Restriction on use.....	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
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12 Indemnity.....	10
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14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement.....	13
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- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:
 - Claim** means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:
 - (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
- (b) the requirements of the Probity Plan,

in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.

6.2 I must and the Service Provider must procure that I:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

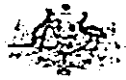
- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



18 **Applicable Law**

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 **Costs**

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a Deed Poll on:

THIRD

(day)

s 47F

AUGUST

(month)

2019

(year)

Signed Sealed and
Delivered by the
Confidant:

Printed
Name:

s 47F

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a Deed Poll on:

7th

(day)

s 47F

August

(month)

2019

(year)

Signed Sealed and
Delivered by the Service
Provider:

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.

1.2 The private or personal interest may be:

- (a) a financial or business interest, or some other form of benefit or advantage; and
- (b) personal to you, or may be a benefit to a relative or associate.

1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.

1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.

1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.

1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.

1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?

1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:

- (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
- (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
- (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.

2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:

- (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
- (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.

Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- Inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I,

-

declare as follows:

- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, Industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any

aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for Initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.

D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
<p>NIL</p>	



Business

business.gov.au
13 28 46

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s 47F

Signed:

Printed name:

s 47F

Organisation:

s 47G

Date:

THURSDAY AUGUST 2019

s 47F

Witnessed by:

Printed name:



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants in a single person company

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	6
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	7
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	8
9 Involvement in Procurement Process response	9
10 Crimes Act.....	9
11 Personal Information.....	9
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	10
19 Costs	11
Attachment A—declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F _____

Organisation: s 47G
(Service Provider)

ABN: s 47G _____

Address: s 47F _____

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer and employee of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.
- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.



- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
- (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:

- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;



- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;



Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
- (b) the requirements of the Probity Plan,

in delivering the Services and when working in relation to the Procurement Process.

3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:



- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

- 4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.
- 4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:
 - (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
 - (b) I must comply with any conditions referred to in clause 4.2(a).
- 4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

- 5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.

6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:



- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.

8 Conflict of Interest

8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have



completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.

- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act

- 10.1 I and the Service Provider, acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and that wrongful access, use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any



relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.

18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.



19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

12
(day)

August
(month)

2009
(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

12
(day)

August
(month)

2019
(year)

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

Printed
Name:

s 47G

Witnessed
by:

s 47F

Printed
Name:



Attachment A—declaration of interests and disclosure statement

- 1 What is a Conflict of Interest?
 - 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
 - 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
 - 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
 - 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
 - 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
 - 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
 - 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
 - 1.8 Your involvement in the normal business relationships between the Department and the tenderers, respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.
- 2 Conflict of Interest obligations
 - 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Programme Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Programme Manager.
 - 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (**Department**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Programme Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I, _____ declare as follows:

- A. With the exception of any Conflict of Interest identified at item D below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except in accordance with the requirements in clause 9 of the Deed Poll or otherwise with the Department's prior written approval, which may



be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	
NIL	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialised]

s 47F

Signed:

Printed name:

Organisation:

s 47G

Date:

12 August 2019
[day] [month] [year]
s 47F

Witnessed by:

Printed name:



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality	3
Recitals:	3
1 Definitions	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest	9
9 Involvement in Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information	10
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F

Organisation: s 47G
(Service Provider)

ABN: s 47G

Address: s 47G

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the **Department**) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:
- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
 - (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
 - (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

- 7.1 If:
- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
 - (c) I breach any provision of this Deed Poll
- then, except to the extent necessary to meet professional obligations, I will immediately:
- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
 - (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
 - (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.
- 7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

TWELFTH
(day)

AUGUST
(month)

2019
(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

s 47F

Witnessed
by:

s 47F

Printed
Name:

s 47F

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

12 (day)

August

(month)

2019 (year)

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.

Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

declare as follows:

- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	
NIL	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialled]

s 47F

Signed:

[your signature]

Printed name:

s 47F

Organisation:

s 47G

[your name in full]

Date:

[your employer]

TWELFTH

[day]

AUGUST

[month]

2019

[year]

s 47F

Witnessed by:

Printed name:



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F
 Organisation: s 47G
 ABN: s 47G
 Address: s 47G

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the **Department**) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.
- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

8th
(day)

August
(month)

2019
(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, **s 47F**

declare as follows:

- A. With the exception of any Conflict of Interest identified at item D below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



[If insufficient space, attach additional pages and cross reference here. All attached pages must be initialled]

s 47F

Signed:

Printed name:

Organisation:

Date:

Eighth day of August 2019

Witnessed by:

Printed name:

s 47F



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	
None	



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Delivered by AusIndustry

Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F _____

Organisation: s 47G
(Service Provider) _____

ABN: _____

Address: s 47G

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

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- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the **Department**) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

08
(day)

Aug
(month)

2019
(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

8th August 2019

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Declaration

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- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I,

declare as follows:

- s 47F
- A. With the exception of any Conflict of Interest identified at item 5. below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
 - B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



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Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
<div>[if no interest etc., write NIL]</div> <div>NIL</div>	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialised]

Signed:

s 47F

[your signature]

Printed name:

[your name in full]

Organisation:

s 47G

[your employer]

Date:

06
[day]

AUG
[month]

2019
[year]

Witnessed by:

s 47F

Printed name:



Deed Poll of Confidentiality

Non-APS Staff and consultants

s 47F

Name:

Organisation:

(Service Provider)

s 47G

ABN:

s 47G

Address:

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

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- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the
Confidant: s 47F

AUGUST

2019

Printed
Name: s 47F

Witnessed
by: s 47F

Printed
Name: s 47F

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

8th August 2019

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the Service
Provider: s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
<div>[if no interest etc., write NIL]</div> <div><u>NIL</u></div>	



[If insufficient space, attach additional pages and cross reference here. All attached pages must be initialised]

s 47F

Signed:

Printed name:

s 47F

[your signature]

Organisation:

s 47G

[your name in full]

Date:

7th

[day]

AUGUST

[month]

2019

[year]

Witnessed by:

s 47F

Printed name:



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Department of Industry,
Innovation and Science

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s 47F



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:

s 47F

Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping.....	7
6 Restriction on use.....	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response.....	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information	10
12 Indemnity.....	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver.....	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement.....	13
1 What is a Conflict of Interest?.....	13
2 Conflict of Interest obligations.....	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F

Organisation: s 47G
(Service Provider)

ABN: s 47G

s 47F

Address:

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the Department) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the Services) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2

Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2

Compliance with APS Values and Code of Conduct and Probity Plan

2.1

I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
- (b) the requirements of the Probity Plan,

in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.

6.2 I must and the Service Provider must procure that I:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



- 18 **Applicable Law**
- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.
- 19 **Costs**
- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a Deed Poll on:

6
(day)

AUGUST
(month)

2019
(year)

Signed Sealed and
Delivered by the
Confidant: s 47F

Printed
Name: s 47F

Witnessed
by: s 47F

Printed
Name: s 47F

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a Deed Poll on:

(day) 7

(month) August (year) 2019.

Signed Sealed and
Delivered by the Service
Provider: s 47F

Printed
Name: s 47F

Witnessed
by: s 47F

Printed
Name: s 47F



Attachment A—declaration of interests and disclosure statement

- 1 What is a Conflict of Interest?
 - 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
 - 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
 - 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
 - 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
 - 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
 - 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
 - 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
 - 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.
- 2 Conflict of Interest obligations
 - 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
 - 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (Commonwealth) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I,

_____ declare as follows:

- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions [if no interest etc., write NIL]	Description of proposal for management of specified conflict
N/A	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialised]

s 47F

Signed:

Printed name:

s 47F

[your signature]

Organisation:

s 47G

[your name in full]

Date:

[your employer]

6 August 2019

[day] [month] [year]

Witnessed by:

s 47F

Printed name:



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Department of Industry,
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For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping.....	7
6 Restriction on use.....	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response.....	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information	10
12 Indemnity.....	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations.....	13
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Non-APS Staff and consultants

Name: s 47F

Organisation: s 47G
(Service Provider)

ABN: s 47G

Address: s 47G

(Confidant)

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- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
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- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

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Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:
- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
 - (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
 - (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

- 7.1 If:
- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
 - (c) I breach any provision of this Deed Poll
- then, except to the extent necessary to meet professional obligations, I will immediately:
- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
 - (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
 - (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.
- 7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

12

(day)

August

(month)

2019

(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

s 47F

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

12 (day)

August

(month)

2019 (year)

s 47F

**Signed Sealed and
Delivered** by the Service
Provider:

s 47G

Printed
Name:

s 47F

Witnessed
by:

Printed
Name:



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the
Confidant:

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the Service
Provider:

Printed
Name:

Witnessed
by:

Printed
Name:



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I,

declare as follows:

- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
<p>[If no interest etc., write NIL]</p> <p>NIL</p>	



[If insufficient space, attach additional pages and cross reference here. All attached pages must be initialed]

Signed:

s 47F

[your signature]

Printed name:

s 47F

[your name in full]

Organisation:

s 47G

[your employer]

Date:

6

AUGUST

2019

[day]

[month]

[year]

Witnessed by:

s 47F

Printed name:



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Consumer Australia

[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialled]

s 47F

Signed:

_____ [your signature]

Printed name:

s 47F

_____ [your name in full]

Organisation:

s 47G

_____ [your employer]

Date:

_____ - 11 | 08 | 2019

s 47F

_____ [year]

Witnessed by:

Printed name:



Declaration

The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (**Department**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Programme Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I, _____

declare as follows:

- A. With the exception of any Conflict of Interest identified at item D below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except in accordance with the requirements in clause 9 of the Deed Poll or otherwise with the Department's prior written approval, which may



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

14 / 08 / 2019

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

s 47F

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the Service
Provider:

Printed
Name:

Witnessed
by:

Printed
Name:



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Delivered by Australia

s 47F

Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:

s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of Information	7
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use.....	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement In Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information.....	10
12 Indemnity	10
13 Other Instruments	10
14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations.....	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F

Organisation: s 47G
(Service Provider)

ABN: s 47G

Address: s 47F

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the Department) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the Services) subject to the undertakings and covenants made in this Deed Poll. The Services will be an Input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 **Compliance with APS Values and Code of Conduct and Probity Plan**

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

- 4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.
- 4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:
 - (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
 - (b) I must comply with any conditions referred to in clause 4.2(a).
- 4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

- 5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.

6.2 I must and the Service Provider must procure that I:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



18 Applicable Law

- 18.1** The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1** Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a Deed Poll on:

9 (day) August (month) 2019 (year)

Signed Sealed and
Delivered by the
Confidant:

s 47F

Printed
Name:

s 47F

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a Deed Poll on:

(day) 12 (month) 08 (year) 2019

Signed Sealed and
Delivered by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

- 1 What is a Conflict of Interest?**
 - 1.1** A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
 - 1.2** The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
 - 1.3** A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
 - 1.4** Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
 - 1.5** An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
 - 1.6** A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
 - 1.7** The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
 - 1.8** Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.
- 2 Conflict of Interest obligations**
 - 2.1** If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
 - 2.2** If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for Initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I,

declare as follows:

- _____
- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialed.

Signed: s 47F

Printed name: s 47F

[your signature]

Organisation: s 47G

[your name in full]

Date:

[your employer]

9.2.2019
[day]

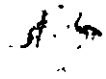
s 47F

[month]

[year]

Witnessed by:

Printed name:



Australian Government
Department of Industry
Science and Resources

Business

Doc ID: 300203
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s 47F



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601

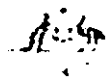


Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use.....	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information.....	10
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations.....	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F

Organisation: s 47G
(Service Provider)

ABN: s 47G

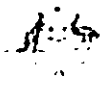
Address: s 47F

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the Department) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the Services) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

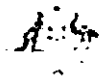
Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute any legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

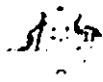
4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.

6.2 I must and the Service Provider must procure that I:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.

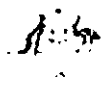


18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a Deed Poll on:

3rd
(day)

AUGUST
(month)

2019
(year)

s 47F

**Signed Sealed and
Delivered by the
Confidant:**

—

Printed
Name:

s 47F

—

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a Deed Poll on:

(day)

12

(month)

08

(year)

2019

**Signed Sealed and
Delivered by the Service
Provider:**

s 47F

—

Printed
Name:

—

Witnessed
by:

—

Printed
Name:

—



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.

1.2 The private or personal interest may be:

- (a) a financial or business interest, or some other form of benefit or advantage; and
- (b) personal to you, or may be a benefit to a relative or associate.

1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.

1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.

1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.

1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.

1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?

1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:

- (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
- (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
- (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.

2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:

- (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
- (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

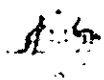
- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, s 47F

declare as follows:

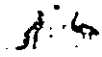
- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	



[If insufficient space, attach additional pages and cross reference here. All attached pages must be initialled]

s 47F

Signed:

Printed name:

s 47F

Organisation:

s 47G

Date:

3rd

AUGUST

2019

s 47F

Witnessed by:

Printed name:



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Delivered by AusIndustry

s 47F



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information.....	10
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F

Organisation: s 47G
(Service Provider)

ABN: s 47G

Address: s 47G

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the Department) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the Services) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.

s 47F



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
- (b) the requirements of the Probity Plan,

in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.

6.2 I must and the Service Provider must procure that I:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.

8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.

8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:

- (a) immediately disclose this circumstance to the Department; and
- (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:

- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
- (b) may assist in the writing and preparation of the Service Provider's response.

9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:

- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
- (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



- 18 **Applicable Law**
- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.
- 19 **Costs**
- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a Deed Poll on:

5th (day) AUGUST (month) 2019 (year)

Signed Sealed and
Delivered by the
Confidant:

s 47F

Printed
Name:

s 47F

Witnessed
by:

s 4

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a Deed Poll on:

(day) 7 (month) August (year) 2019.

Signed Sealed and
Delivered by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

s 47F



Attachment A—declaration of interests and disclosure statement

- 1 What is a Conflict of Interest?
 - 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
 - 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
 - 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
 - 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
 - 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
 - 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
 - 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
 - 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.
- 2 Conflict of Interest obligations
 - 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
 - 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (Commonwealth) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, s 47F

declare as follows:

s 47F

- A. With the exception of any Conflict of Interest identified at item D below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of Interests, circumstances, relationships and positions (if no interest etc., write Nil)	Description of proposal for management of specified conflict



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialised]

s 47F

Signed:

Printed name:

s 47F

[your signature]

Organisation:

s 47G

[your name in full]

Date:

[your employer]

5th

AUGUST

2019

[day]

[month]

[year]

Witnessed by:

s 47F

Printed name:

s 47F



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping.....	7
6 Restriction on use.....	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response.....	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information	10
12 Indemnity.....	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations.....	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F

Organisation: s 47G
(Service Provider)

ABN: s 47G

Address: s 47F

(Confidant) s 47F

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the **Department**) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
- (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
- (b) the requirements of the Probity Plan,

in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:
- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
 - (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
 - (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

- 7.1 If:
- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
 - (c) I breach any provision of this Deed Poll
- then, except to the extent necessary to meet professional obligations, I will immediately:
- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
 - (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
 - (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.
- 7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day) 6th

(month) August

(year) 2019

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day) 6th

(month) AUGUST (year) 2019

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

s 47F

Printed
Name:

s 47F

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

- 1 What is a Conflict of Interest?**
 - 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
 - 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
 - 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
 - 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
 - 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
 - 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
 - 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
 - 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.
- 2 Conflict of Interest obligations**
 - 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
 - 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, **s 47F**

declare as follows:
s 47F

- Item D*
- A. With the exception of any Conflict of Interest identified at ~~item 5~~ *Item D* below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
<input type="checkbox"/> No interest etc. write (N/A)	



If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialed.

s 47F

Signed:

[your signature]

Printed name:

s 47F

[your name in full]

Organisation:

s 47G

[your employer]

Date:

6th

August

2019

[day]

[month]

[year]

Witnessed by:

s 47F

Printed name:



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Delivered by AusIndustry

Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:

s 47F

Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use.....	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information.....	10
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: **s 47F**

Organisation: **s 47G**
(Service Provider)

ABN: **s 47G**

Address: **s 47G**

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the **Department**) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:
- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
 - (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
 - (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

- 7.1 If:
- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
 - (c) I breach any provision of this Deed Poll
- then, except to the extent necessary to meet professional obligations, I will immediately:
- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
 - (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
 - (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.
- 7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

8th

(day)

AUGUST

(month)

2019

(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

s 47F

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)

8th

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AUGUST

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2019

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

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Printed
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Attachment A—declaration of interests and disclosure statement

- 1 What is a Conflict of Interest?
 - 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
 - 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
 - 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
 - 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
 - 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
 - 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
 - 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
 - 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.
- 2 Conflict of Interest obligations
 - 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
 - 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I,

declare as follows:

s 47F

item D

- A. With the exception of any Conflict of Interest identified at item ~~5~~ below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialised]

s 47F

Signed:

-

[your signature]

Printed name:

s 47F

-

[your name in full]

Organisation:

s 47G

[your employer]

Date:

6th

[day]

s 47F

AUGUST

[month]

2019

[year]

Witnessed by:

Printed name:

s 47F



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Department of Industry, Innovation and Science

Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F

Organisation: s 47G

(Service Provider)

ABN: s 47G

Address: s 47F

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the **Department**) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.

s 47F



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:

s 47F



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or

S 47F



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
- (b) the requirements of the Probity Plan,

in delivering the Services and when working in relation to the Procurement Process

s 47F



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute any legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.

s 47F



6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:
- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
 - (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
 - (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

- 7.1 If:
- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
 - (c) I breach any provision of this Deed Poll
- then, except to the extent necessary to meet professional obligations, I will immediately:
- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
 - (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
 - (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.
- 7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll. s 47F



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access

s 47F



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department. s 47F



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll. s 47F



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a Deed Poll on:

7th
(day)

August
(month)

2019
(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

s 47F

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a Deed Poll on:

(day)

8th

(month)

AUGUST

(year)

2019

s 47F

**Signed Sealed and
Delivered** by the Service
Provider:

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and ^{s 47F}



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.

s 47F



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, _____ **s 47F** declare as follows:
s 47F

- ITEM 5**
- A. With the exception of any Conflict of Interest identified at **ITEM 5** below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any

s 47F



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	

s 47F



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialled]

Signed:

s 47F

Printed name:

s 47F

[your signature]

Organisation:

s 47G

[your name in full]

Date:

[your employer]

7TH

[day]

AUGUST

[month]

2019

[year]

Witnessed by:

s 47F

Printed name:

Deed Poll of Confidentiality

Non-APS Staff and consultants

Name:

s 47F

Organisation:

s 47G

(Service Provider)

ABN:

s 47G

s 47F

Address:

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer and employee of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.
- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

11th
(day)

AUGUST
(month)

2019
(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the Service
Provider:

Printed
Name:

Witnessed
by:

Printed
Name:



be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
<div><div>[if no interest etc., write NIL]</div><div>NIL</div></div>	



[If insufficient space, attach additional pages and cross reference here. All attached pages must be initialised]	
---	--

s 47F

Signed:

—

Printed name:

[your signature]

Organisation:

s 47G

[full]

Date:

[your employer]

11th

August

2019

[day]

[month]

[year]

s 47F

Witnessed by:

—

Printed name:

—



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:
S 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information.....	10
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations.....	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants **s 47F**

Name: _____

Organisation: **s 47G**
(Service Provider) _____

ABN: **s 47G** _____

Address: **s 47G**

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the **Department**) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

- 1.2 Unless the contrary intention appears:
- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
 - (b) a cross reference to a clause number includes a cross reference to subclauses;
 - (c) words in the singular include the plural and vice versa;
 - (d) words importing gender include the other gender;
 - (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
 - (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
 - (g) a reference to a clause is a reference to a clause of this Deed Poll;
 - (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; and
 - (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

- 2.1 I (and the Service Provider acknowledges that I) will comply with:
- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.

3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.

6.2 I must and the Service Provider must procure that I:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a Deed Poll on:

5TH
(day)

AUGUST
(month)

2019, s 47F
(year)

**Signed Sealed and
Delivered** by the
Confidant:

Printed
Name:

s 47F

Witnessed
by:

Printed
Name:

s 47F

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a Deed Poll on:

5TH
(day)

AUGUST
(month)

2019
(year)

**Signed Sealed and
Delivered** by the Service
Provider:

Printed
Name:

Witnessed
by:

Printed
Name:

s 47F



Attachment A—declaration of interests and disclosure statement

- 1 What is a Conflict of Interest?
 - 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
 - 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
 - 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
 - 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
 - 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
 - 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
 - 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
 - 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.
- 2 Conflict of Interest obligations
 - 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
 - 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and

- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (Commonwealth) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I, _____ declare as follows:
s 47F

- A. With the exception of any Conflict of Interest identified at item **D** below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	
NIL	NIL



(If insufficient space, attach additional pages and cross reference here. All attached pages must be initialed)	s 47F
---	-------

Signed:

Printed name:

s 47F

Organisation:

s 47G

Date:

_____		_____	
[Signature]		[Date]	
s 47F		August 2019	

Witnessed by:

Printed name:

s 47F



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants in a single person company

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	6
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	7
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	8
9 Involvement in Procurement Process response	9
10 Crimes Act.....	9
11 Personal Information.....	9
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	10
19 Costs	11
Attachment A—declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F _____

Organisation: s 47G
(Service Provider) _____

ABN: s 47G _____

Address: s 47F _____

(Confidant) _____

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer and employee of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.
- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.



- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
- (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:

- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;



- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;



Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.

3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:



- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute any legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

- 4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.
- 4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:
 - (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
 - (b) I must comply with any conditions referred to in clause 4.2(a).
- 4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

- 5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.

6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I and the Service Provider must procure that I:



- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.

8 Conflict of Interest

8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have



completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.

- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act

- 10.1 I and the Service Provider, acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and that wrongful access, use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any



relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.

18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.



19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)

(month)

(year)

**Signed Sealed and
Delivered** by the
Confidant:

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

8th (day)

August (month)

2019 (year)

**Signed Sealed and
Delivered** by the Service
Provider:

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the tenderers, respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Programme Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Programme Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (**Department**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Programme Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, **s 47F**

declare as follows:

- _____
- A. With the exception of any Conflict of Interest identified at item D below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except in accordance with the requirements in clause 9 of the Deed Poll or otherwise with the Department's prior written approval, which may



be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	
NIL	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialled]

s 47F

Signed:

[your signature]

Printed name:

[your name in full]

Organisation:

s 47G

[your employer]

Date:

8 August 2019

[day]

[month]

[year]

Witnessed by:

s 47F

Printed name:



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:

s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality	3
Recitals:	3
1 Definitions	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping.....	7
6 Restriction on use.....	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest	9
9 Involvement in Procurement Process response.....	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information	10
12 Indemnity.....	10
13 Other instruments.....	10
14 Uncertainty.....	10
15 Equitable relief.....	10
16 Waiver.....	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations.....	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

s 47F

Name: _____

Organisation: _____

s 47G

(Service Provider)

ABN: _____

s 47G

Address: _____

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the **Department**) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.

s 47F



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
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This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

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Document includes:

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- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
- (b) the requirements of the Probity Plan,

in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.

s 47F



6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:
- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
 - (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
 - (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

- 7.1 If:
- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
 - (c) I breach any provision of this Deed Poll
- then, except to the extent necessary to meet professional obligations, I will immediately:
- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
 - (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
 - (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.
- 7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.

s 47F



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.

s 47F



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day) 6th (month) August (year) 2019

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

6th (day) August (month) 2019 (year)

s 47F

s 47F

**Signed Sealed and
Delivered** by the Service
Provider:

s 47G

Printed
Name:

s 47F

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

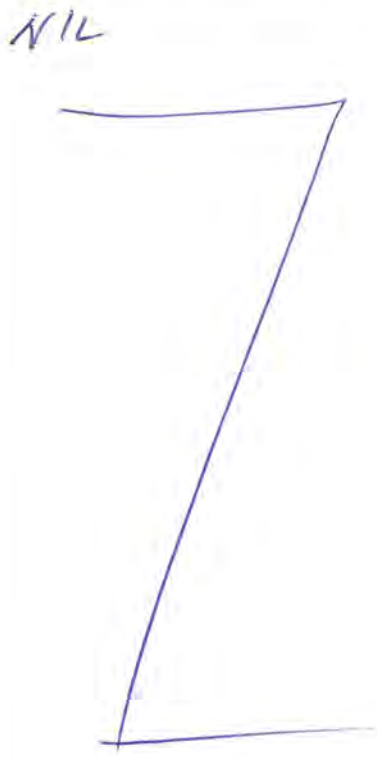
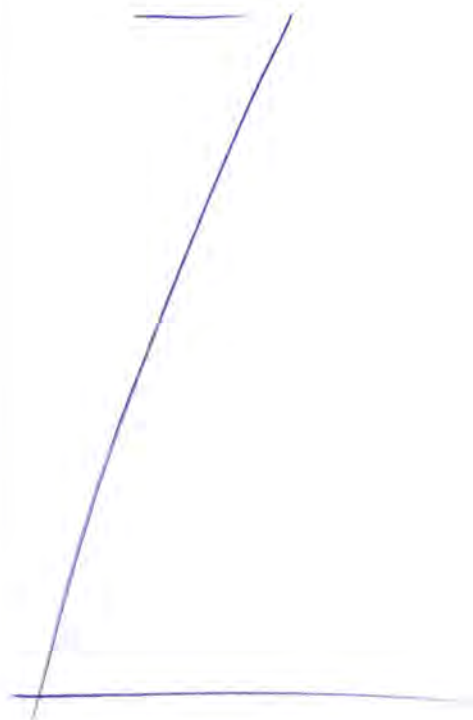
I, _____ declare as follows:

- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	
	



[If insufficient space, attach additional pages and cross reference here. All attached pages must be initialised]

s 47F

Signed:

_____ [your signature]

Printed name:

_____ [your name in full]

Organisation:

s 47G

_____ [your employer]

Date:

6th August 2019
[day] [month] [year]

Witnessed by:

s 47F

Printed name:



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Call free from landlines

Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants in a single person company

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	6
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	7
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	8
9 Involvement in Procurement Process response	9
10 Crimes Act.....	9
11 Personal Information.....	9
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	10
19 Costs	11
Attachment A—declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations.....	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F _____

Organisation: (Service Provider) s 47G _____

ABN: s 47G _____

s 47G _____

Address: _____

(Confidant) _____

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer and employee of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.
- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.



- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
- (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:

- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;



- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;



Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.

3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:



- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute any legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

- 4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.
- 4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:
 - (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
 - (b) I must comply with any conditions referred to in clause 4.2(a).
- 4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

- 5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.

6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:



- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.

8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have



completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.

- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act

- 10.1 I and the Service Provider, acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and that wrongful access, use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any



relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.

18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.



19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

7
(day)

AUGUST
(month)

2019
(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

7
(day)

AUGUST
(month)

2019
(year)

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the tenderers, respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Programme Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Programme Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (**Department**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Programme Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, **s 47F**

declare as follows:

- A. With the exception of any Conflict of Interest identified at item D below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except in accordance with the requirements in clause 9 of the Deed Poll or otherwise with the Department's prior written approval, which may



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialed]

s 47F

Signed:

[your signature]

Printed name:

[your name in full]

Organisation:

s 47G

[your employer]

Date:

7

[day]

AUGUST

[month]

2019

[year]

Witnessed by:

s 47F

Printed name:



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Government Australia 13 28 46

s 47F

Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	9
9 Involvement in Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information.....	10
12 Indemnity.....	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F _____

Organisation: s 47G
(Service Provider) _____

ABN: s 47G _____

s 47G _____

Address: _____

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the Department) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the Services) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
- (b) the requirements of the Probity Plan,

In delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute and legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll,

6.2 I must and the Service Provider must procure that I:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



Australian Government
Department of Industry,
Innovation and Science

Business

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Small Business Helpline

EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a Deed Poll on:

06

(day)

08

(month)

2019

(year)

Signed Sealed and
Delivered by the
Confidant:

s 47F

Printed
Name:

s 47F

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a Deed Poll on:

7

(day)

August

(month)

2019

(year)

Signed Sealed and
Delivered by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

- 1 What is a Conflict of Interest?
 - 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
 - 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
 - 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
 - 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
 - 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
 - 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
 - 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
 - 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.
- 2 Conflict of Interest obligations
 - 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
 - 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (Commonwealth) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- Inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I,

declare as follows:

- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
(if no interest etc., write NIL) s 47F	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialled]

s 47F

Signed:

Printed name:

s 47F

[Your signature]

Organisation:

s 47G

[Your name (if not)]

Date:

06

08

2019

Day

Month

Year

Witnessed by:

s 47F

Printed name:



Australian Government
Department of Industry,
Innovation and Science

Business

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Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants in a single person company

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality	3
Recitals:	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	6
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	7
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	8
9 Involvement in Procurement Process response	9
10 Crimes Act	9
11 Personal Information.....	9
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	10
19 Costs	11
Attachment A—declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F _____

Organisation: s 47G
(Service Provider) _____

ABN: s 47G _____

Address: s 47F _____

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer and employee of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.
- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.



- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:

- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;



- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;



Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.

3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:



- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

- 4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.
- 4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:
 - (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
 - (b) I must comply with any conditions referred to in clause 4.2(a).
- 4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

- 5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.

6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:



- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.

8 Conflict of Interest

8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have



completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.

- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act

- 10.1 I and the Service Provider, acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and that wrongful access, use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any



relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.

18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.



19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.

EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

21

AUGUST

2019

(day)

(month)

(year)

**Signed Sealed and
Delivered by the
Confidant:**

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

11

AUGUST

2019

(day)

(month)

(year)

**Signed Sealed and
Delivered by the Service
Provider:**

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the tenderers, respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Programme Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Programme Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (**Department**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (BAU) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Programme Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, **s 47F** declare as follows:

- A. With the exception of any Conflict of Interest identified at item D below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except in accordance with the requirements in clause 9 of the Deed Poll or otherwise with the Department's prior written approval, which may



be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
<div>[if no interest etc., write NIL]</div> <div>NIL</div>	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialised]

Signed:

s 47F

_____ [your signature]

Printed name:

s 47F

_____ [your name in full]

Organisation:

s 47G

_____ [your employer]

Date:

11 AUGUST 2019
[day] [month] [year]

Witnessed by:

s 47F

Printed name:



Australian Government
Department of Industry,
Innovation and Science

Business

business.gov.au
13 28 46
Call free from landlines

Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants in a single person company

Procurement of Entrepreneur Programme Service Providers

Prepared by:

s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality.....	3
Recitals:.....	3
1 Definitions.....	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	6
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	7
7 Return of documents containing Confidential Information	8
8 Conflict of Interest.....	8
9 Involvement in Procurement Process response	9
10 Crimes Act.....	9
11 Personal Information.....	9
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief.....	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	10
19 Costs	11
Attachment A—declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47F _____

Organisation: s 47G
(Service Provider) _____

ABN: s 47G _____

Address: s 47G _____

(Confidant) _____

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer and employee of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.
- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.



- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
- (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:

- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;



- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;



Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.

3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:



- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute any legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

- 4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.
- 4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:
 - (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
 - (b) I must comply with any conditions referred to in clause 4.2(a).
- 4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

- 5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.

6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:



- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
- (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
- (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

7.1 If:

- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
- (c) I breach any provision of this Deed Poll

then, except to the extent necessary to meet professional obligations, I will immediately:

- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
- (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
- (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.

7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.

8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have



completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.

- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act

- 10.1 I and the Service Provider, acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and that wrongful access, use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any



relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.

18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.



19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

7
(day)

AUGUST
(month)

2019
(year)

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

7
(day)

AUGUST
(month)

2019
(year)

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the tenderers, respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Programme Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Programme Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (**Department**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Programme Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

I, **s 47F**

declare as follows:

- A. With the exception of any Conflict of Interest identified at item D below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except in accordance with the requirements in clause 9 of the Deed Poll or otherwise with the Department's prior written approval, which may

be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
<p data-bbox="233 943 580 974">(If no interest etc., write NIL)</p>	



[If insufficient space, attach additional pages and cross reference here. All attached pages must be initialled]	
--	--

s 47F

Signed:

[your signature]

Printed name:

[your name in full]

Organisation:

s 47G

[your employer]

Date:

7 AUGUST 2019
[day] [month] [year]

s 47F

Witnessed by:

Printed name:



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

Prepared by:
s 47F Special Counsel, Mills Oakley
Level 1, 121 Marcus Clarke Street
Canberra City ACT 2601



Table of contents

Deed Poll of Confidentiality	3
Recitals:	3
1 Definitions	4
2 Compliance with APS Values and Code of Conduct and Probity Plan	6
3 Disclosure of information	7
4 Obligation of confidence	7
5 Contact and record keeping	7
6 Restriction on use	8
7 Return of documents containing Confidential Information	8
8 Conflict of Interest	9
9 Involvement in Procurement Process response	9
10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010	9
11 Personal Information	10
12 Indemnity	10
13 Other instruments	10
14 Uncertainty	10
15 Equitable relief	10
16 Waiver	10
17 Remedies cumulative	10
18 Applicable Law	11
19 Costs	11
Attachment A – declaration of interests and disclosure statement	13
1 What is a Conflict of Interest?	13
2 Conflict of Interest obligations	13
Declaration	15



Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: _____ s 47F

Organisation: _____ s 47G
(Service Provider)

ABN: _____ s 47G

Address: _____ s 47G

(Confidant)

The Confidant and the Service Provider jointly and severally make this Deed Poll of Confidentiality at Canberra, Australian Capital Territory, for the benefit of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (ABN 74 599 608 295) on the date set out in the Execution Clause at the end of this document.

Recitals:

- A. I am an officer, employee or consultant of the Service Provider which has agreed to provide services to the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (the **Department**) in relation to the redesign of the services model for the Department's Entrepreneur's Programme (the **Services**) subject to the undertakings and covenants made in this Deed Poll. The Services will be an input into the Procurement Process.
- B. The Service Provider and I, as the Confidant, may wish to respond (or be part of a response) to the Procurement Process.
- C. The Service Provider and I recognise that probity, including perceptions, relating to the Procurement Process are a very important part of the requirements relating to any Commonwealth procurement under the Public Governance, Performance and Accountability regime requirements including the Commonwealth Procurement Rules and relevant Department of Finance guidance (including website guidance) and that these requirements apply to the Services and the Procurement Process.
- D. The processes and controls put in place by this Deed Poll are designed to allow the Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.



- E. I and the Service Provider recognise that I will be allowed to be a part of the Service Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- F. In the course of performing the Services to the Department, I and the Service Provider acknowledge that I have and may, have access to or become aware of Confidential Information belonging to the Department, or in the possession of the Department but belonging to third parties, including in relation to elements relevant to the Procurement Process.
- G. I and the Service Provider acknowledge that it could cause significant loss and damage to the Department and any third parties with intellectual property rights or other rights comprised in the Confidential Information, if I use or disclose the Confidential Information other than as necessary for my duties relating to the Services and that improper use or release of Confidential Information could have a significant negative impact on the Procurement Process and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations of confidentiality I owe to the Department or a third party.
- H. I and the Service Provider agree that it is necessary to take all reasonable steps (including the execution of this Deed Poll) to ensure that Confidential Information is kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- I. I and the Service Provider accept that obligations in this Deed Poll are in addition to any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

1 Definitions

- 1.1 In the interpretation of this Deed Poll, unless the contrary intention appears:

Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (a) under, arising out of, or in connection with my or my employer's contract with the Department (**Contract**); or
 - (b) otherwise at Law or in equity, including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation, or
 - (iii) for restitution for unjust enrichment,
- in respect of any fact, matter or thing under, arising out of, or in connection with the Contract or this Deed Poll;

Commonwealth Minister means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the Department;

Confidential Information means all information that:



- (a) is provided to me, I become aware of, or create (whether disclosed to me orally, in writing, or in any other form) while carrying out my duties for the Department in relation to the Procurement Process;
- (b) is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- (c) includes all copies and notes that I make based on or arising out of any disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- (d) does not include information to the extent that I:
 - (i) independently develop or know the information other than by breach of this Deed Poll; or
 - (ii) am required to disclose the information by Law;

Deed Poll means this deed and includes any attachments;

Department means the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science and administered by the Commonwealth Minister;

Document includes:

- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

Intellectual Property means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered or unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government), and includes the common law or equity as applicable from time to time;

Loss means all losses, liabilities, damages, fines, costs and expenses (including legal fees on a solicitor / own client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties);

Party means a party to this Deed Poll and includes the Department;

Personal Information has the meaning given in section 6 of the *Privacy Act 1988* (Cth);

Probity Plan means the probity plan established for the Procurement Process and includes any probity protocols, probity guidelines or reasonable direction in relation to probity;

Procurement Process means the process commencing from the time a decision is made to procure goods or services for the Entrepreneur's Programme and does not end until a panel contract or deed is signed with the successful Tenderer or



Tenderers, all debriefings are completed and the time for the taking of any claim or action under the *Government Procurement (Judicial Review) Act 2018* (Cth) has expired;

Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to;

Secrecy Legislation includes, but is not limited to, the *Crimes Act 1914* (Cth), the *Criminal Code Act 1995* (Cth) (Part 5.6 particularly Division 122 – Secrecy of Information), the Australian Government Protective Security Policy Framework (PSPF) (including the Protective Security Manual), Australian Government ICT Security Manual, the Department's security policies and other policy or legislation as notified by the Department from time to time.

Tenderer means a person, entity or service provider who tenders a response in accordance with the Procurement Process.

1.2 Unless the contrary intention appears:

- (a) the clause headings are for convenient reference only and have no effect of limiting or extending the language of the provision to which they refer;
- (b) a cross reference to a clause number includes a cross reference to subclauses;
- (c) words in the singular include the plural and vice versa;
- (d) words importing gender include the other gender;
- (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (f) the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (g) a reference to a clause is a reference to a clause of this Deed Poll;
- (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; and
- (i) the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant are given and assumed jointly and severally by each of the Confidant, the Service Provider. They bind each of the Confidant and, the Service Provider jointly and severally.

2 Compliance with APS Values and Code of Conduct and Probity Plan

2.1 I (and the Service Provider acknowledges that I) will comply with:

- (a) the Values specified in section 10 of the *Public Service Act 1999* (Cth) and the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999* (Cth);
 - (b) the requirements of the Probity Plan,
- in delivering the Services and when working in relation to the Procurement Process.



3 Disclosure of information

3.1 I and the Service Provider acknowledge and covenant that:

- (a) nothing in this Deed Poll obliges the Department to disclose any particular information to me;
- (b) the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
- (c) this Deed Poll does not grant me any licence or other right in relation to any Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
- (d) the Department has not made any representation or warranty, whether express or implied, as to the accuracy or completeness of Confidential Information and I will not bring or institute legal proceedings in equity, contract, tort, for breach of statutory duty or otherwise against the Department in respect of the Confidential Information provided to me by the Department (except to the extent the Department may ask me to take such action to protect the Department's rights and interests); and
- (e) the Confidential Information will not be regarded as being in the public domain if some portion of it is public information or information is publicly available which, together with other information, could be used to produce the Confidential Information.

4 Obligation of confidence

4.1 I and the Service Provider warrant that I have not disclosed, and will not disclose (except to the extent required by Law), Confidential Information to any person, without the prior written consent of the Department. The Department may grant or withhold its consent in its absolute and unfettered discretion.

4.2 I and the Service Provider acknowledge that if the Department grants its consent to the disclosure of any Confidential Information:

- (a) it may impose conditions on that consent, including requiring me to procure the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
- (b) I must comply with any conditions referred to in clause 4.2(a).

4.3 If I or the Service Provider hold a reasonable belief that I am required by Law to disclose the Department's Confidential Information, I must immediately notify the Department of the anticipated or actual requirement and must use reasonable endeavours to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

5 Contact and record keeping

5.1 In addition to any conditions imposed under clause 4.2, I and the Service Provider acknowledge that I must keep, and provide to the Department, detailed records of any contact I have with potential suppliers and Tenderers at any stage of the Procurement Process.



6 Restriction on use

- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- 6.2 I must and the Service Provider must procure that I:
- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, and all Documents, and all other things recording, containing, setting out or referring to any Confidential Information under my effective control;
 - (b) immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - (c) not use, copy or reproduce any Document or any other thing, nor allow any other person to use or reproduce any such thing, recording, containing, setting out or referring to any Confidential Information otherwise than for the purposes specified in clause 6.1; and
 - (d) take all reasonable steps to ensure that the Confidential Information and all Documents and all other things recording, containing, setting out or referring to the Confidential Information are protected at all times from any unauthorised use or access.

7 Return of documents containing Confidential Information

- 7.1 If:
- (a) the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - (b) I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
 - (c) I breach any provision of this Deed Poll
- then, except to the extent necessary to meet professional obligations, I will immediately:
- (d) deliver to the Department all Documents containing Confidential Information in my possession power or control and I will never disclose or make further use of the Confidential Information (except where disclosure is required by Law); or
 - (e) if I have placed or am aware that the Documents containing Confidential Information are beyond my possession or control, then I will provide full particulars of the whereabouts of the Documents containing the Confidential Information and the identity of the person in whose custody or control the Documents are in.
 - (f) where directed by the Department in writing, agree to destroy any Document in its possession, power or control which contain or relate to any Confidential Information, including that which I have made and stored in electronic form on any equipment other than the Commonwealth owned equipment.
- 7.2 Return of the Documents referred to in this clause does not release me from my obligations under this Deed Poll.



8 Conflict of Interest

- 8.1 I and the Service Provider warrant that before entering into this Deed Poll I and the Service Provider have disclosed to the Department all the past, current and anticipated interests which may conflict with or restrict my performance of the services in relation to the Procurement Process and independently, and have completed the Declaration at Attachment A—declaration of interests and disclosure statement of this Deed Poll.
- 8.2 I and the Service Provider must not, during the course of involvement in performing the Services or in relation to any aspect of the Procurement Process, engage in any activity or obtain any interest likely to conflict with or restrict me in performing those services fairly and independently.
- 8.3 If I or the Service Provider become aware of any circumstance, which places or may place me or the Service Provider in conflict, or potential conflict, with or restrict me in performing the Services fairly and independently, I must:
- (a) immediately disclose this circumstance to the Department; and
 - (b) comply with any directions the Department considers necessary to ensure that a conflict does not arise.

9 Involvement in Procurement Process response

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
- (a) may be named as specified personnel in the Service Providers response to the Procurement Process and may provide my curriculum vitae, qualifications and experience details for the response;
 - (b) may assist in the writing and preparation of the Service Provider's response.
- 9.2 I and the Service Provider acknowledge and agree that there could be significant issues of perceptions of unfairness, conflict of interest and bias relating to me, the Service Provider and the Department in the Department permitting the actions in clause 9.1 and my involvement in the provision of the Services. In order to properly manage these perceptions:
- (a) My, and the Service Provider's, involvement in the redesign process may be detailed in the documentation relating to the Procurement Process, including on potential approach to the market (including any Request for Tender relating to the Procurement Process); and
 - (b) I and the Service Provider may be directed in writing by the Department to take certain actions during the Procurement Process, particularly in relation to any approach to the market (including any Request for Tender relating to the Procurement Process), and I and the Service Provider will comply with all of these directions.

10 Crimes Act, Criminal Code Act, Competition and Consumer Act 2010

- 10.1 I and the Service Provider acknowledge that my attention has been drawn to the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth) (including Part 5.6 and particularly Division 122 – Secrecy of Information and section 137.1 relating to providing false and misleading information to the Commonwealth), and Part IV, Division 1 of the *Competition and Consumer Act 2010*, and that wrongful access,



use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

11 Personal Information

- 11.1 Nothing in this Deed Poll derogates from any obligation which I may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between me or my employer and the Department, in relation to the protection of Personal Information.

12 Indemnity

- 12.1 I and the Service Provider indemnify the Department against any and all Loss incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- 12.2 The Service Provider indemnifies the Department against any and all Loss incurred arising under any Claim.

13 Other instruments

- 13.1 Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to this Deed Poll are in addition to and not in derogation of any other right or obligation under any other deed or agreement with the Department.

14 Uncertainty

- 14.1 If I am uncertain as to whether any information is Confidential Information, I will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Department confirms in writing that the information is in the public domain.

15 Equitable relief

- 15.1 I and the Service Provider acknowledge that the Department may be entitled to equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poll and that damages or an account of profits may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- 15.2 This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- 16.2 None of the provisions or clauses of this Deed Poll will be taken at Law to have been varied, waived, discharged or released by the Department unless by its express consent in writing.

17 Remedies cumulative

- 17.1 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



18 Applicable Law

- 18.1 The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed Poll.

19 Costs

- 19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



EXECUTED AND DELIVERED by the Confidant at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day) 06 (month) 08 (year) 2019

**Signed Sealed and
Delivered** by the
Confidant:

s 47F

Printed
Name:

s 47F

Witnessed
by:

s 47F

Printed
Name:

EXECUTED AND DELIVERED by the Service Provider at Canberra, Australian Capital Territory as a **Deed Poll** on:

12 (day) August (month) 2019 (year)

**Signed Sealed and
Delivered** by the Service
Provider:

s 47F

Printed
Name:

Witnessed
by:

Printed
Name:



Attachment A—declaration of interests and disclosure statement

1 What is a Conflict of Interest?

- 1.1 A Conflict of Interest is a situation in which you have a private or personal interest that may influence, or may appear to influence, the objective exercise of your work duties.
- 1.2 The private or personal interest may be:
 - (a) a financial or business interest, or some other form of benefit or advantage; and
 - (b) personal to you, or may be a benefit to a relative or associate.
- 1.3 A Conflict of Interest creates a reasonable appearance to outsiders that your objective judgment is likely to be compromised, biased or partial.
- 1.4 Conflicts of Interest include apparent and potential, as well as actual, conflicts of interest.
- 1.5 An apparent Conflict of Interest is a situation in which a reasonable person would think that your judgment is likely to be biased, even if you think that it is not.
- 1.6 A potential Conflict of Interest is a situation that may develop into an actual Conflict of Interest.
- 1.7 The test is to ask whether it would be reasonable for a person (such as a Tenderer, respondent, a journalist or any other person) to think that your judgment and objectivity might be biased as a result of your personal or private interest. Would others trust your judgment if they knew the situation you were in?
- 1.8 Your involvement in the normal business relationships between the Department and the Tenderers or respondents is not a Conflict of Interest but is something that may need to be managed appropriately in the context of the procurement.

2 Conflict of Interest obligations

- 2.1 If you have an actual, apparent or potential Conflict of Interest in relation to the Procurement Process, then you must:
 - (a) follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - (b) disclose that interest by completing the Declaration below and provide this document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - (c) take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity Manager.
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - (a) follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process;
 - (b) immediately notify the Programme Manager of the circumstances; and



- (c) take action as necessary to avoid or manage the conflict as directed by the Programme Manager or the SES responsible for initiating the Procurement Process.

2.3 In addition you must not:

- (a) take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
- (b) accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
- (c) request, receive or obtain any property or benefit for yourself or another person on the understanding that the exercise of your duty or functions will or may be influenced.



Declaration

The Commonwealth of Australia (**Commonwealth**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

All personnel involved in the Procurement Process must not be influenced by any Conflict of Interest. It is acknowledged that some personnel involved in the Procurement Process will need to communicate with the Department incumbent service providers or other suppliers (who may or may not be potential Tenderers) to conduct business as usual (**BAU**) tasks. The BAU tasks must not include any discussion about this Procurement Process or anything relating to it.

If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was made, the person(s) making the enquiry and the organisation they represent.

If any circumstances exist or occur which may give rise to an actual, potential or perceived Conflict of Interest, full disclosure of the circumstances must be provided immediately to the Department contact officer for the Procurement Process or the Programme Manager. They will take appropriate steps to ensure the actual, potential or perceived Conflict of Interest does not adversely affect the Procurement Process including the established Evaluation Process. Where the Department contact officer for the Procurement Process or the Programme Manager has identified their own potential Conflict of Interest, that person must refer the issue to the SES responsible for initiating the Procurement Process, or the Programme Manager for advice on the appropriate steps to take.

s 47F

I, _____

declare as follows:

- A. With the exception of any Conflict of Interest identified at item 5 below, to the best of my knowledge and belief, no actual, potential or perceived Conflict of Interest exists which may hinder or prevent me from exercising fairly and impartially, and in the best interests of the Commonwealth, any activity related to the Procurement Process including but not limited to the preparation and review of Procurement documentation, industry briefings (if any), communications with Tenderers (including potential Tenderers), evaluation of Tenders or technical advice in relation to the evaluation process for the Procurement Process.
- B. I will use my best endeavours to ensure that no situation arises which may give rise to an actual, potential or perceived Conflict of Interest. I will not, in conducting BAU tasks with the incumbent service providers or potential Tenderers discuss the Procurement or the Procurement Process. In particular, if I am a contractor to the Department I am aware that except with the Department's prior written approval, which may be withheld at the Department's absolute discretion, I am not able to work on, or in any way be involved with, the preparation of the RFT documentation or any



aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- C. I will advise the Probity Adviser, Programme Manager and the Chair of the Committee – or, if I am the Chair of the Committee, I will advise the SES responsible for initiating the Procurement Process – immediately if any circumstances arise during any part of the Procurement Process, including the evaluation process, which may give rise to an actual, potential or perceived Conflict of Interest, and will comply with any directions given by the Probity Adviser, Programme Manager, the Chair of the Committee, or the SES responsible for initiating the Procurement Process (as the case may be) for dealing with that Conflict of Interest.
- D. I declare that I have the following Conflict(s) of Interest in relation to the Procurement Process, or that the following situations may result in a Conflict of Interest:

Description of interests, circumstances, relationships and positions	Description of proposal for management of specified conflict
[if no interest etc., write NIL]	
NIL	



[If insufficient space, attach additional
pages and cross reference here. All
attached pages must be initialised]

s 47F

Signed:

_____ [your signature]

Printed name:

s 47F

_____ [your name in full]

Organisation:

s 47G

_____ [your employer]

Date:

06 08 2019
[day] [month] [year]

s 47F

Witnessed by:

Printed name:
