

Non-APS Staff and consultants



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Deed Poll of Confidentiality

Name:	s 47F			
Organisation:	(Service Provider)	s 47G		
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 initialled]

s 47F

Signed:

[your signature]

Printed name:

[your name in full]

Organisation:

[your employer]

Date:

[your employer]

[your employer]

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

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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 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;
 - 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:





- 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;
- is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- 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:
 - 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:

- any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (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:
 - 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;
 - 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";
 - 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:
 - 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:
 - 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:
 - 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

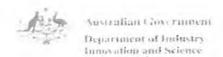
- 16.1 No waiver by the Department of a breach of any clause, obligation or provision contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- None of the provisions or clauses of this Deed Poll will be taken at Law 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 Confident at Canberra, Australian Capital Territory as a **Deed Poll** on:

99 (day)	August	(month)	(year) 2019
igned Sealed and elivered by the confidant:	s 47F		
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iame.			
Witnessed			
py:			Section 1
Printed			
lame:			
XECUTED AND DE apital Territory as a	Deed Poll on:	Service Provic	ler at Canberra, Australian
apital Territory as a	Deed Poll on:	Service Provic	
apital Territory as a 2 (day) Signed Sealed and	Deed Poll on: August s 47F		
apital Territory as a (day) Signed Sealed and Delivered by the Sen	Deed Poll on: August s 47F		
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apital Territory as a 2 (day) Signed Sealed and Delivered by the Servicer: Printed Name:	Deed Poll on: August s 47F		
apital Territory as a 2 (day) Signed Sealed and Delivered by the Senerovider: Printed Name:	Deed Poll on: August s 47F		
EXECUTED AND DECAPITATION AS A CAPITATION AS A	Deed Poll on: August 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:
 - 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



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- 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:
 - take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
 - accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
 - request, receive or obtain any property or benefit for yourself or another (c) 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		
1,			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 pages and cross re attached pages mu			
Signed:	s 47F		
Printed name:		[ye	our signature)
Organisation:	s 47G	[your	name in full]
Date:	08	Agent	our employer]
Witnessed by:	[day] s 47F	[mbnth]	[year]
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: \$ 47F Special Counsel, Mills Oakley Level 1, 121 Marcus Clarke Street Canberra City ACT 2601

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Non-APS S Name:	taff and consultants s 47F		
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ABN:	s 47G	 	
Address:	s 47G		
(Confidant)		 	

The Confident 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 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;
- 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:
 - 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;
- 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:
 - 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;
 - 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;
 - (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;
 - 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

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.
- I must and the Service Provider must procure that I: 6.2
 - 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:
 - immediately notify the Department in the event that I become aware of any (b) unauthorised access to, or use or disclosure of, any Confidential Information;
 - not use, copy or reproduce any Document or any other thing, nor allow any (c) 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
 - take all reasonable steps to ensure that the Confidential Information and all (d) 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 lf:
 - the Department asks me to return, destroy or otherwise manage any or all (a) copies of Confidential Information;
 - I no longer need to use the Confidential Information to carry out my duties (b) relating to the Procurement Process, or
 - I breach any provision of this Deed Poll (c)

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

- 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);
- 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.
- where directed by the Department in writing, agree to destroy any Document **(f)** 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.
- Return of the Documents referred to in this clause does not release me from my 7.2 obligations under this Deed Poll.

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8 Conflict of Interest

- 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 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 Division 1 of the Competition and Consumer Act 2010, and that wrongful access,

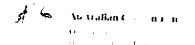
use, or disclosure by the Confidant, or providing false or misleading information to the Department, may constitute an offence punishable by imprisonment.

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
- 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.
- 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



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

THIRD		AUGUST	2319	
(day)	s 47F	(month)	、とい) (year)	
Signed Sealed and Delivered by the Confident:				
Printed Name:	s 47F			
Witnessed by:	s 47r			
Printed Name:				
EXECUTED AND DELI Capital Territory as a Do	VERED by the Seed Poll on:	Service Provider at (Canberra, Australian	
(day)		(month)	(year)	
Signed Sealed and Delivered by the Service Provider:	s 47F		G ,	
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;
 - (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:
 - 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:
 - 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:
 - take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
 - 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
NIL	
	j
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	1



Signed:	s 47F		
Printed name:	's 47F —		
Organisation:	s 47G		
Date:	547F	August	2019
Witnessed by:	3 471		
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



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Deed Poll of Confidentiality

Non-APS Sta Name:	ff and consultants s 47F			
Organisation	: _(Service Provider)	s 47G		
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.
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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;

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(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;



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- (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;



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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:
 - 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:



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- (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
- 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
- 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 lf:
 - (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
- 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



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



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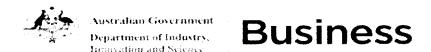
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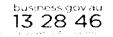
19.1 Except as otherwise provided in this Deed Poll, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.



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

12		Higust	Lag	
(day)		(month)	(year) ´	
Signed Sealed and Delivered by the Confidant:	s 47F			
Printed Name:				
Witnessed by:				
Printed Name:				
EXECUTED AND DELI Capital Territory as a De / (day)		ne Service Provider a August (month)	t Canberra, Australian	
Signed Sealed and Delivered by the Service Provider:	s 47F	(month)	(yca)	
Printed Name:	s 47G			
Witnessed by:		5 4/F	-	
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



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(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.

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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.

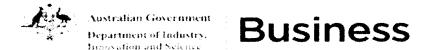
If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

- 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	



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Signed:	s 47F		
Printed name:			~e]
Organisation:	s 47G	13~~	**************************************
Date:	14	 Avgust	2019
Witnessed by:	iday) s <mark>47F</mark>	[Month]	(year)
Printed name:			







Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

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



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Deed Poll of Confidentiality

Non-APS Sta	aff and	consul	tants
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Name:

Organisation:

S 47G

(Service Provider)

ABN:

Address:

S 47G

(Confidant)

The Confident 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 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:



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- (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;
- 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
- does not include information to the extent that I:
 - independently develop or know the information other than by breach of this Deed Poll; or
 - 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:

- any paper or material on which are marks, figures, symbols or (a) perforations having a meaning for persons qualified to interpret them; and
- 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:
 - 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;
 - 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";
 - 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:
 - 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.

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3 Disclosure of information

- 3.1 I and the Service Provider acknowledge and covenant that:
 - nothing in this Deed Poll obliges the Department to disclose any particular information to me;
 - 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;
 - 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
 - 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.
- I and the Service Provider acknowledge that if the Department grants its consent to 4.2 the disclosure of any Confidential Information:
 - 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
 - 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:
 - 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

- 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:
 - 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,

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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.
- 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
- 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.
- 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.



Business 13 28 46

- 18 Applicable Law
- The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to 18.1 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.



13 28 46

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

TWELFAH		AUGUST	2	2019
(day)		(month)		(year)
Signed Sealed and Delivered by the Confidant:	s 47F			
Printed Name:	s 47F			
Witnessed by:	s 47	F		
Printed Name:	s 47	7F		
capital Territory as a	Deca i on on.			
	August	(month)	2019	(year)
2 (day) Signed Sealed and Delivered by the Ser	August s 47F		2019	(year)
2 (day) Signed Sealed and Delivered by the Ser Provider: Printed	August s 47F		2019	(year)
Capital Territory as a	August s 47F		2019	(year)

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 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.
- 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:
 - 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:
 - take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
 - 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.

1.	s 47F	declare as follows:
7.1		2001a10 a3 10110W3

- 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 proposal for management of specified conflict



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	s 47F		
Signed:			
Printed name:	s 47F	[yo	ur signature)
Organisation:	s 47G	[your	name in full]
Data		[yo	ur employer]
Date:	TWELFTH	AUGUST	2019
Witnessed by:	[day] s 47F	[month]	[year]
williaddd by.			
Printed name:	- A		



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.
- The processes and controls put in place by this Deed Poll are designed to allow the D. 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.

09/08/2019





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

8th		August	2019
(day)		(month)	(year)
Signed Sealed and Delivered by the Confidant:	s 47F		
Printed Name:			
Witnessed by:			
Printed Name:			
Capital Territory as a l			t Canberra, Australian
(day) Signed Sealed and Delivered by the Service Provider:	s 47F ce	(month)	(year)
Printed Name:			
Witnessed by:			
Printed Name:			





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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 1.

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

Documents released under FOI - FOI 300203





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Signed:		
Printed name:		
Organisation:	s 47G	
Date:	Eighth day of August 2019	
Witnessed by:	s 47F	
Printed name:		



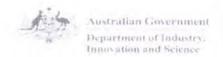




aspect of the Procurement Process (including the Statement of Requirement) and then assist, or in any way be involved, with a Tenderer or anyone else in the preparation of a Tender in response to the RFT.

- 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 proposal for management of specified conflict







Deed Poll of Confidentiality

Name:	s 47F	_		
Organisation:	(Service Provider)	s 47G		
ABN:				
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.
- 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





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

$_{\it OS}$		Avc. (month)	2019 (year)
Signed Sealed and Delivered by the Confidant:	s 47F		
Printed Name:			
Witnessed by:			
Printed Name:			
		e Service Provider a	at Canberra, Australian
Capital Territory as a De	ed Poll on:	e Service Provider a	at Canberra, Australian (year)
Capital Territory as a De 8th August 2019	eed Poll on:		
8th August 2019 (day) Signed Sealed and Delivered by the Service Provider:	eed Poll on:		
(day) Signed Sealed and Delivered by the Service Provider: Printed	eed Poll on:		





Declaration

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- 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.

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1,

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.
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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	
,	
	dr •

s 47F







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Signed:	s 47F		
Printed name:		[y	our signature]
Organisation:	s 47G	[you	r name in full]
Date:			our employer]
	06 [day] s 47F	AUG [month]	2019 [year]
Witnessed by:	64		
Printed name:			



Non-APS Staff and consultants





Deed Poll of Confidentiality

Name:	s 47F		
Organisation:	(Service Provider) s 47	'G	
ABN:			
	s 47G		
Address:			
(Confidant)	=		

The Confident 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



(day)



(month)



(year)

DOCUMENT 7

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

Signed Sealed and Delivered by the Confidant:	s 47F	AUGUST	2019
Printed Name:	s 47F		
Witnessed by:	s 47F	7	
Printed Name:	s 47F		
EXECUTED AND DE Capital Territory as a 8th August 2019		the Service Provider at	Canberra, Australian
(day)		(month)	(year)
Signed Sealed and Delivered by the Serv Provider:	s 47F		
Printed Name:			
Witnessed by:			
Printed Name:			



Business



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	

01/08/2010

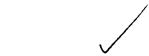


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[If insufficient space pages and cross ref attached pages mus	ference here. All		
	s 47F		
Signed:			
Printed name:	s 47F		[your signature]
Organisation:	s 47G		[your name in full]
Date:	7 H	AUGUST [month]	[your employer] 2019 [year]
Witnessed by:	s 47F	Imonital	[year]
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: Special Counsel, Mills Oakley Level 1, 121 Marcus Clarke Street Canberra City ACT 2601

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Deed Poll of Confidentiality

14011-APS 51	tarr and consultants		
Name:	s 47F		
	_		
Organisatio	n:	s 47G	
	(Service Provider)		
ABN:			
	s 47G		
	s 47F		
Address:			
(Confidant)			

The Confident 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 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:
 - 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:

- any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (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;
 - (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:
 - 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

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:
 - 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
 - immediately notify the Department in the event that I become aware of any (b) unauthorised access to, or use or disclosure of, any Confidential Information;
 - not use, copy or reproduce any Document or any other thing, nor allow any (c) 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
 - take all reasonable steps to ensure that the Confidential Information and all (d) 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
- lf:
 - the Department asks me to return, destroy or otherwise manage any or all (a) copies of Confidential Information;
 - I no longer need to use the Confidential Information to carry out my duties (b) relating to the Procurement Process, or
 - I breach any provision of this Deed Poll

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

- 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);
- if I have placed or am aware that the Documents containing Confidential (e) 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
- 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.

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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
- 13 Other instruments
- Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to 13.1 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
- 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
- 17 Remedies cumulative
- The rights and remedies provided under this Deed Poll are cumulative and not 17.1 exclusive of any other rights or remedies of the Department.



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- 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.



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

⟨ ⟨ ⟨ ⟨ day⟩ ⟩		AUGUST (month)		Z.	19
Signed Sealed and Delivered by the Confidant:	s 47F	(month)		(year)	,
Printed Name:	s 47F				
Witnessed by:	s 47F	•			
Printed Name:	_				
EXECUTED AND DEL Capital Territory as a D	.IVERED by t Deed Poll on:	he Service Prov	rider at Canb	erra, Aus	tralian
(day)	7	(month)	August	(veor)	2019
Signed Sealed and Delivered by the Servic Provider:	s 47F e	Costing	,	(year)	$\mathcal{L}(\mathcal{L})$
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.
- 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:
 - 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:
 - 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 ahy 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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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]	Specified conflict
MINA	

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pages and cross attached pages r	ace, attach additional reference here. All nust be initialled]		
<u> </u>	s 47F		
Signed:			
Printed name:	s 47F		[your signature]
Organisation:	s 47G	_	fvour name in full]
Date:	[day]	AUGUST [month	
Witnessed by:	s 47F	-] [<i>y</i> jəar]
Printed name:			
	_		

Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

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

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Deed Poll of Confidentiality

Non-APS Staff and consultants

Name:	S 4/F	
Organisation:	s 47G	
	(Service Provider)	
ABN:	s 47G	
Address:	s 47G	
(Confidant)	Y	

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.
- The Service Provider and I, as the Confidant, may wish to respond (or be part of a B. 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 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:

- 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:
- is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- 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:
 - 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:

- any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (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:
 - 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:
 - 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;
 - 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:
 - the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - 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);
- (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.
- 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.
- 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:

		August	2019	7
(day)		(month)	(year)	
Signed Sealed and Delivered by the Confidant:	s 47F			
Printed Name:	s 47F			
Witnessed by:	s 47F			
Printed Name:				
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EXECUTED AND DELIVERED by the Confident at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)	(month)	(year)
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Name:		
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by:		
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Capital Territory as a Deed (day)	ERED by the Service Provider at d Poll on: (month)	(year)
Signed Sealed and	(month)	(your)
Delivered by the Service Provider:		
Printed		
Name:		
Witnessed		
by:		
Printed		

- 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:
 - 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 1; 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
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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.

declare as follows: 1.

- 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 Confident at Canberra, Australian Capital Territory as a **Deed Poll** on:

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(day) Signed Sealed and Delivered by the Service Provider: Printed Name:	(r	month)	(year)
(day) Signed Sealed and Delivered by the Service Provider: Printed Name:	(r	month)	(year)
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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: Special Counsel, Mills Oakley Level 1, 121 Marcus Clarke Street Canberra City ACT 2601

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Non-APS Staff and consultants

Deed Poll of Confidentiality

Name: s 47F Organisation: s 47G (Service Provider) ABN: s 47G Address: s 47F (Confident)

The Confident 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 Confident, to respond (or be part of a response) to the Procurement Process.

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- I and the Service Provider recognise that I will be allowed to be a part of the Service E. Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- In the course of performing the Services to the Department, I and the Service F. 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.
- I and the Service Provider acknowledge that it could cause significant loss and G. 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.
- I and the Service Provider agree that it is necessary to take all reasonable steps H. (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 and the Service Provider accept that obligations in this Deed Poll are in addition to ١. any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

- Definitions 1
- In the interpretation of this Deed Poll, unless the contrary intention appears: 1.1

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:

- under, arising out of, or in connection with my or my employer's contract with the Department (Contract); or
- otherwise at Law or in equity, including:
 - by statute:
 - 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 Poli; 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;
- 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

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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.

- Unless the contrary intention appears: 1.2
 - 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;
 - a cross reference to a clause number includes a cross reference to (b) subclauses;
 - words in the singular include the plural and vice versa; (c)
 - words importing gender include the other gender; (d)
 - the words "including" and "includes", and any variants of those words, will be (e) read as if followed by the words "without limitation";
 - the meaning of "or" will be that of the inclusive, being one, some or all of a **(f)** number of possibilities;
 - a reference to a clause is a reference to a clause of this Deed Poll; (g)
 - 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
 - the obligations, undertakings, representations, warranties, indemnities and **(i)** 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.
 - Compliance with APS Values and Code of Conduct and Probity 2 Plan . ξ... .
 - I (and the Service Provider acknowledges that I) will comply with: 2.1
 - 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);
 - the requirements of the Probity Plan, (b) 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
- 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 lf:
 - the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - 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.
- 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.

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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:
 - 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 blas 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.

Personal Information 11

- Nothing in this Deed Poll derogates from any obligation which I may have either 11.1 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
- I and the Service Provider indemnify the Department against any and all Loss 12.1 incurred arising under any Claim relating to a breach of this Deed Poll by the Service Provider or myself.
- The Service Provider indemnifies the Department against any and all Loss incurred 12.2 arising under any Claim.
- Other instruments 13
- Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to 13.1 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.
- Uncertainty -14
- If I am uncertain as to whether any information is Confidential Information, I will 14.1 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.
- Equitable relief 15
- I and the Service Provider acknowledge that the Department may be entitled to 15.1 equitable relief against me (in addition to any rights available under contract or Law) if I breach my obligations under this Deed Poli 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.
- This Deed Poll must not be construed to exclude the operation of any principle of 15.2 Law intended to protect and preserve the confidentiality of the Confidential Information.
- Waiver *** 16
- No waiver by the Department of a breach of any clause, obligation or provision 16.1 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.
- None of the provisions or clauses of this Deed Poll will be taken at Law to have 16.2 been varied, waived, discharged or released by the Department unless by its express consent in writing.
- Remedies cumulative 17
- The rights and remedies provided under this Deed Poll are cumulative and not 17.1 exclusive of any other rights or remedies of the Department.



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- 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 Poli.
- 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.



Business 13 28 46

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

9 (day) Av Signed Sealed and Delivered by the Confidant:	GVST s 47F	(month)	2019	(year)
Printed Name:	s 47F			
Witnessed by:	\$ 4/F			
Printed Name:				
•	. — — — —			

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

17	2		08		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;
 - (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

- take action as necessary to avoid or manage the conflict as directed by the (c) Programme Manager or the SES responsible for initiating the Procurement Process.
- In addition you must not: 2.3
 - take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
 - accept a benefit connected with your functions from someone without the (b) approval of the Programme Manager; or
 - request, receive or obtain any property or benefit for yourself or another (c) 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	
1,	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:

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It insufficient spa pages and cross attached pages in	reference here All (1997) reference here All (1997) rust be initialled)		
Signed:	s 47F		
Printed name:	s 47F		[your signature]
Organisation:	s 47G		[your name in full]
Date:	9.2.2019 [day]		[your employer]
Witnessed by:	[day] s 47F	[month]	[year]
Printed name:	<u> </u>		







Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

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

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Deed Poll of Confidentiality

Non-APS Stat	f and consultants		
Name:	s 47F		
Organisation:			
	(Service Provider)	s 47G -	
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.

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- I am an officer, employee or consultant of the Service Provider which has agreed to A. 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.
- The Service Provider and I recognise that probity, including perceptions, relating to C. 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.
- The processes and controls put in place by this Deed Poll are designed to allow the D. Service Provider and I, as the Confidant, to respond (or be part of a response) to the

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- I and the Service Provider recognise that I will be allowed to be a part of the Service E. Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- In the course of performing the Services to the Department, I and the Service F. 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.
- 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 G. 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.
- 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 H. kept confidential and that in performing the Services I will do so faithfully and without any conflicting interest.
- 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 l. Department.

This Deed Poll witnesses as follows:

- Definitions 1
- In the interpretation of this Deed Poll, unless the contrary intention appears: 1.1 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:
 - under, arising out of, or in connection with my or my employer's contract with the Department (Contract); or
 - otherwise at Law or in equity, including: (b)
 - by statute: (i)
 - in tort for negligence or otherwise, including negligent (ii) misrepresentation, or
 - for restitution for unjust enrichment, (iii) 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:

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- 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;
- 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:
 - 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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- (a) any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- 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.

- Unless the contrary intention appears: 1.2
 - 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;
 - a cross reference to a clause number includes a cross reference to (b) subclauses;
 - words in the singular include the plural and vice versa; (c)
 - words importing gender include the other gender; (d)
 - the words "including" and "includes", and any variants of those words, will be (e) read as if followed by the words "without limitation";
 - the meaning of "or" will be that of the inclusive, being one, some or all of a **(f)** number of possibilities;
 - a reference to a clause is a reference to a clause of this Deed Poll; (g)
 - where a word or phrase is given a particular meaning other parts of speech (h) and grammatical forms of that word or phrase have corresponding meanings; and
 - the obligations, undertakings, representations, warranties, indemnities and (i) 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.
 - Compliance with APS Values and Code of Conduct and Probity 2 Plan
 - I (and the Service Provider acknowledges that I) will comply with: 2.1
 - 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);
 - 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:
 - nothing in this Deed Poll obliges the Department to disclose any particular information to me:
 - the Confidential Information constitutes valuable and proprietary information (b) of the Department or third parties;
 - this Deed Poll does not grant me any licence or other right in relation to any (c) Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll;
 - the Department has not made any representation or warranty, whether (d) 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
 - 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

- I and the Service Provider warrant that I have not disclosed, and will not disclose 4.1 (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.
- I and the Service Provider acknowledge that if the Department grants its consent to 4.2 the disclosure of any Confidential Information:
 - 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
 - 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.

Contact and record keeping 5

In addition to any conditions imposed under clause 4.2, I and the Service Provider 5.1 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.

Restriction on use 6

- I and the Service Provider warrant that I have not used, and agree that I will not 6.1 use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- I must and the Service Provider must procure that I: 6.2
 - 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;
 - immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - 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
 - take all reasonable steps to ensure that the Confidential Information and all (d) 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.
 - Return of documents containing Confidential Information 7
 - lf: 7.1
 - the Department asks me to return, destroy or otherwise manage any or all (a) copies of Confidential Information;
 - I no longer need to use the Confidential Information to carry out my duties (b) relating to the Procurement Process, or
 - I breach any provision of this Deed Poll

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

- 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);
- 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.
- 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.
- Return of the Documents referred to in this clause does not release me from my 7.2 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.

Personal Information 11

Nothing in this Deed Poll derogates from any obligation which I may have either 11.1 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

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

Other instruments 13

Subject to the other clauses of this Deed Poll, the rights and obligations pursuant to 13.1 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

If I am uncertain as to whether any information is Confidential Information, I will 14.1 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

- I and the Service Provider acknowledge that the Department may be entitled to 15.1 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.
- This Deed Poll must not be construed to exclude the operation of any principle of 15.2 Law intended to protect and preserve the confidentiality of the Confidential Information.

Waiver 16

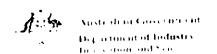
- No waiver by the Department of a breach of any clause, obligation or provision 16.1 contained or implied in this Deed Poll will operate as a waiver of another breach of the same or of any other clause, obligation or provision.
- None of the provisions or clauses of this Deed Poll will be taken at Law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

Remedies cumulative 17

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



- 18 Applicable Law
- The Laws of the Australian Capital Territory apply to this Deed Poll and I agree to 18.1 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
- Except as otherwise provided in this Deed Poll, each Party must pay its own costs 19.1 and expenses in connection with negotiating, preparing, executing and performing



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

つろり (day)	s 47F	Auaust (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:

(day)	•	(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?
- A Conflict of Interest is a situation in which you have a private or personal interest 1.1 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 financial or business interest, or some other form of benefit or advantage;
 - personal to you, or may be a benefit to a relative or associate. (b)
- A Conflict of Interest creates a reasonable appearance to outsiders that your 1.3 objective judgment is likely to be compromised, biased or partial.
- Conflicts of Interest include apparent and potential, as well as actual, conflicts of 1.4 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.
- A potential Conflict of Interest is a situation that may develop into an actual Conflict 1.6 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:
 - follow the requirements set out in the Probity Guidelines for the Procurement Process:
 - disclose that interest by completing the Declaration below and provide this (b) document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - take action as necessary to avoid or manage the conflict as directed by the (c) 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:
 - follow the requirements set out in the Probity Plan, or any other Conflict of (a) Interest guidance brought to your attention, for the Procurement Process:
 - immediately notify the Programme Manager of the circumstances; and (b)



- 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.
- In addition you must not: 2.3
 - take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
 - accept a benefit connected with your functions from someone without the (b) approval of the Programme Manager, or
 - 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.

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۱, _		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



Department of Indiana Business 13 28 46

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]	
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	1

[If insufficient space, at pages and cross refere attached pages must be	ince here. All		
	s 47F		
Signed:		_	
	-		
Printed name:	s 47F		
	_	_	
Organisation:	s 47G		
		-	
Date:	- I	AUGUST	2019
		HO4031	
	s 47F		
Witnessed by:			
Printed name:			





s 47F



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



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Deed Poll of Confidentiality

Non-APS S	taff and consultants		
Name:	s 47F		
Organisatio		s 47G	
	(Service Provider)		
ABN:	s 47G		<u> </u>
		-	
Address:	s 47G		
(Confidant)			

The Confident 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.



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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 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:



- 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;
- 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:
 - 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:

- any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (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

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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:
 - 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;
 - 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;
 - (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 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

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.
- I must and the Service Provider must procure that I: 6.2
 - 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
 - immediately notify the Department in the event that I become aware of any (b) unauthorised access to, or use or disclosure of, any Confidential Information;
 - 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
 - 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:

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

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

- 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);
- 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.
- where directed by the Department in writing, agree to destroy any Document (f) 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

- I and the Service Provider warrant that before entering into this Deed Poll I and the 8.1 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.
- If I or the Service Provider become aware of any circumstance, which places or 8.3 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
 - comply with any directions the Department considers necessary to ensure (b) 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:
 - 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;
 - may assist in the writing and preparation of the Service Provider's response. (b)
- 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
 - 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
 - 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
- 10 Crimes Act, Criminal Code Act, Competition and Consumer 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 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
- 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
- This Deed Poll must not be construed to exclude the operation of any principle of 15.2 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
- 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
- Except as otherwise provided in this Deed Poll, each Party must pay its own costs 19.1 and expenses in connection with negotiating, preparing, executing and performing



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

SiL (day)	AVEUST	(month)	2019	(year)	
Signed Sealed and Delivered by the Confidant:		s 47F	-	,	
Printed Name:	s 47F				
Witnessed by:	s 4				- .
Printed Name:					
EXECUTED AND DE Capital Territory as a (day)	ELIVERED by the Deed Poll on:				
Signed Sealed and Delivered by the Serv Provider:	s 47F	(month)	Merger	(year)	2019.
Printed Name:					
Witnessed by:					
Printed Name:					



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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 financial or business interest, or some other form of benefit or advantage;
 - (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.
- 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;
 - 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:
 - 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



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- (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:
 - 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. 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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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]			
	j		
	,		



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	s 47F		
s 47F	_		Ivour signature]
s 47G			[your name in full]
~ ~~		- ·	[your employer]
		AUGUST	2019
		[month]	[year]
s 47F			
	ference here. All st be initialled]	st be initialled] s 47F s 47G 5+h [day]	st be initialled] s 47F s 47F s 47G S+h AUC-US-T [day] [month]

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

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Non-APS Staff and consultants

Deed Poll of Confidentiality

Name:	s 47F			
Organisation:	(Service Provider)	s 47G		
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.
- В. 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.
- The processes and controls put in place by this Deed Poll are designed to allow the D. 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.
- Η. 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.
- l. 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:

- 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
 - for restitution for unjust enrichment, (iii) 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:

- 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;
- 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:
 - 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:

- any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (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

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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 !) 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

- I and the Service Provider acknowledge and covenant that: 3.1
 - 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:
 - 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
 - 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:
 - 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 lf:
 - (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.
- 122 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.



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

(day) loth		(month)	August	(year) 20 / 9
Signed Sealed and Delivered by the Confidant:	s 47F			
Printed Name:				
Witnessed by:	s 47F			
Printed Name:				
EXECUTED AND DELIN Capital Territory as a De	VERED by the Se ed Poll on:			erra, Australian (year) 2019
Signed Sealed and Delivered by the Service Provider:	s 47F	s 47F	• •	(your) you
Printed Name:	s 47F			The control of the co
Witnessed by:				wingsto makely account accounts and the first of a country property of the second property
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

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- (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.

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declare as follows:

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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 a specified conflict.
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	s 47F	ALII.	
Signed:			
		[yo	ur signature]
Printed name:	s 47F		
Organizations	s 47G	[your	name in full]
Organisation:	3470		
Date		[yo	ur employer]
Date:	6th	August	2019
	[day]	[month]	[year]
Witnessed by:	s 47F		
		- Marie Mari	····
Printed name:			
ŕ			

Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

Procurement of Entrepreneur Programme Service Providers

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

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Deed Poll of Confidentiality

Non-APS Staff	and consultants
Name:	s 47F
Organisation:	s 47G (Service Provider)
ABN:	47G
Address: S 4	77G
	17G

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:

(Confidant)

- 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.
- The Service Provider and I recognise that probity, including perceptions, relating to C. 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 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:

- 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;
- 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:
 - 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

- I and the Service Provider acknowledge and covenant that: 3.1
 - nothing in this Deed Poll obliges the Department to disclose any particular information to me:
 - the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
 - this Deed Poll does not grant me any licence or other right in relation to any (c) Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll:
 - 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
 - the Confidential Information will not be regarded as being in the public domain (e) 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:
 - 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
 - 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;
 - 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:
 - 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.

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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:
 - 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
- 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.
- 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.
- 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.



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

8 1/2		AUGUST	2019
(day)		(month)	(year)
Signed Sealed and Delivered by the Confidant:	nd s 47F		
Printed Jame:	s 47F		
Vitnessed by:	s 47F		
Printed Name:			
apital Territory a	as a Deed Poll o		UST (year) 2019
1 - 1			()/
Signed Sealed a Delivered by the			
Signed Sealed a Delivered by the Provider: Printed	IIu		
Signed Sealed a Delivered by the Provider: Printed Name: Witnessed by:	IIu		

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 financial or business interest, or some other form of benefit or advantage; and
 - 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?
- Your involvement in the normal business relationships between the Department and 1.8 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:
 - follow the requirements set out in the Probity Guidelines for the Procurement Process:
 - 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
 - take action as necessary to avoid or manage the conflict as directed by the SES responsible for initiating the Procurement Process or the Probity
- 2.2 If an actual, apparent or potential Conflict of Interest arises during the course of the Procurement Process, you must:
 - follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process:
 - 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.

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l,	declare as follows:
_	s 47F
	item'D

- A. With the exception of any Conflict of Interest identified at item & 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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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]	



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	s 47F	- a Hardeleona su-suo	
Signed:			
	3	[you	ur signature]
Printed name:	s 47F		
		your	name in full]
Organisation:	s 47G		
D 2/2		[yo	ur employer]
Date:	6th	Avgus T [month]	2019
	[day] s 47F	[month]	[year]
Witnessed by:			
Printed name:	s 47F		
	· ·	0.01	



Non-APS Staff and consultants

Business



Deed Poll of Confidentiality

Name:	s 47F		
Organisation:	apparlamenta in marakita mpomp a na parata and and and and and and an	s 47G	
*	(Service Provider)		
ABN:	s 47G		meneral and an analysis of the second
	- Control of the Cont		
Address:	s 47F		
(Confident)	Spel dight manner		#990000000 constantina filosome

The Confident 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.
- The Service Provider and I, as the Confidant, may wish to respond (or be part of a B. 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.
- The processes and controls put in place by this Deed Poll are designed to allow the D. 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 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 Dead Poll, unless the contrary intention appears:

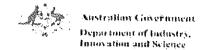
Claim means any claim, action or allegation which a person, or Party may make or bring against another Party, or which a third party may bring against a Party:

- (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 Polf;

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

Confidential Information means all information that:

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- 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
- 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



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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:
 - 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;
 - a cross reference to a clause number includes a cross reference to (b) subclauses:
 - words in the singular include the plural and vice versa; (c)
 - words importing gender include the other gender; (d)
 - the words "including" and "includes", and any variants of those words, will be (e) read as if followed by the words "without limitation";
 - the meaning of "or" will be that of the inclusive, being one, some or all of a **(f)** number of possibilities:
 - a reference to a clause is a reference to a clause of this Deed Poli: (g)
 - 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
 - the obligations, undertakings, representations, warranties, indemnities and (i) 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:
 - 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):
 - the requirements of the Probity Plan,

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

3 Disclosure of information

- I and the Service Provider acknowledge and covenant that: 3.1
 - 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;
 - this Deed Poll does not grant me any licence or other right in relation to any (c) Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll:
 - the Department has not made any representation or warranty, whether (d) 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
 - 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

- I and the Service Provider warrant that I have not disclosed, and will not disclose 4.1 (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:
 - 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
 - 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

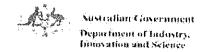
- 6.1 I and the Service Provider warrant that I have not used, and agree that I will not use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- I must and the Service Provider must procure that it 6.2
 - 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:
 - immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - not use, copy or reproduce any Document or any other thing, nor allow any (c) 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
 - take all reasonable steps to ensure that the Confidential Information and all (d) 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 f:
 - the Department asks me to return, destroy or otherwise manage any or all (a) copies of Confidential Information:
 - I no longer need to use the Confidential Information to carry out my duties (b) relating to the Procurement Process, or
 - I breach any provision of this Deed Poll

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

- 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);
- 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.
- where directed by the Department in writing, agree to destroy any Document **(f)** 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.
- Return of the Documents referred to in this clause does not release me from my 7.2 obligations under this Deed Poll.





8 Conflict of Interest

- I and the Service Provider warrant that before entering into this Deed Poll I and the 8.1 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.
- I and the Service Provider must not, during the course of involvement in performing 8.2 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.
- If I or the Service Provider become aware of any circumstance, which places or 6.3 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:
 - immediately disclose this circumstance to the Department; and (a)
 - comply with any directions the Department considers necessary to ensure that a conflict does not arise.

Involvement in Procurement Process response 9

- 9.1 Subject to clause 9.2, I and the Service Provider acknowledge and agree that I:
 - 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;
 - 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:
 - 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
 - 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.
- Crimes Act, Criminal Code Act, Competition and Consumer Act 10 2010
- I and the Service Provider acknowledge that my attention has been drawn to the 10.1 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,



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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.

Equitable relief 15

- 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.



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- 18 Applicable Law
- 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.

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

Zrn		Arbuse	2015	7
(day)		(month)	(year)	
Signed Sealed a Delivered by the Confident:		s 47F		na kida sa dha sa ga sa gallaga ga ga gha ga dha ga gha ga gha ga dha ga
Printed Name:	S	47F		
Witnessed by:	s 47F			
Printed Name:				
(day)	as a Deed Poll of		hUST (vear)	2019
Signed Sealed a Delivered by the Provider:	s 47F nd			h/Haddachang
Printed Name:	· herenneye n			190anassassassi
Witnessed by:	Whatelinus			VM A CHRONICION LATER CO.
Printed Name:	ymannasi teresi dalah kelalah ke			

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:
 - personal to you, or may be a benefit to a relative or associate. (b)
- 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.
- An apparent Conflict of Interest is a situation in which a reasonable person would 1.5 think that your judgment is likely to be brased, 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:
 - follow the requirements set out in the Probity Guidelines for the Procurement Process:
 - disclose that interest by completing the Declaration below and provide this (b) document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager: and
 - 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:
 - follow the requirements set out in the Probity Plan, or any other Conflict of Interest guidance brought to your attention, for the Procurement Process:
 - immediately notify the Programme Manager of the circumstances: and s 47F (b)



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- (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 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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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]	
	. 475
	s 47F



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Signed:	s 47F		
Printed name:	s 47F	and the second s	[your signature]
Organisation:	s 47G	D/	our name in full]
Date:	774	Avour	[your employer]
Witnessed by:	[day] s 47F	[month]	(year]
Printed name:	<u></u>		

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

	Hugust	2019
(day)	(month)	(year)
Signed Sealed and Delivered by the Confidant:	s 47F	
Printed Name:		
Witnessed by:		
Printed Name:		
ALCOILD AND DEL	IVERED by the Service Provider at	
	Deed Poll on:	
(day) Signed Sealed and Delivered by the Service	Deed Poll on: (month)	(year)
(day) Signed Sealed and Delivered by the Service Provider:	Deed Poll on: (month)	
Signed Sealed and Delivered by the Service Printed	Deed Poll on: (month)	

Business

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			
NIL			
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Business

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Signed:	s 47F		
Printed name:		Lond	your signature]
Organisation:	s 47G	F	'ı full]
Date:		August [month]	/our employer]
Witnessed by:	s 47F	prioritary	[year]
Printed name:			



Deed Poll of Confidentiality and Declaration of Interests

For Non APS staff and consultants

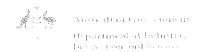
Procurement of Entrepreneur Programme Service Providers

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



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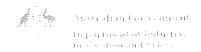
Deed Poll of Confidentiality

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ABN:	s 47G	A CONTRACTOR OF THE STATE OF TH	
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:

- I am an officer, employee or consultant of the Service Provider which has agreed to A. 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.
- The Service Provider and I, as the Confidant, may wish to respond (or be part of a В. response) to the Procurement Process.
- The Service Provider and I recognise that probity, including perceptions, relating to C. 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.
- The processes and controls put in place by this Deed Poll are designed to allow the D. Service Provider and I, as the Confidant, to respond (or be part of a response) to the Procurement Process.





- I and the Service Provider recognise that I will be allowed to be a part of the Service Ē, Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- In the course of performing the Services to the Department, I and the Service F. 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.
- I and the Service Provider acknowledge that it could cause significant loss and G. 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.
- I and the Service Provider agree that it is necessary to take all reasonable steps Н. (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 and the Service Provider accept that obligations in this Deed Poll are in addition to ١. any contractual obligations of confidentiality between me or my employer and the Department.

This Deed Poll witnesses as follows:

- **Definitions** 1
- In the interpretation of this Deed Poll, unless the contrary intention appears: 1.1

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:

- under, arising out of, or in connection with my or my employer's contract with the Department (Contract); or
- otherwise at Law or in equity, including: (b)
 - by statute; (i)
 - in tort for negligence or otherwise, including negligent misrepresentation, or
 - for restitution for unjust enrichment, (iii) 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:



- 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;
- is by its nature confidential to any person including the Commonwealth (b) 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:
 - independently develop or know the information other than by breach of this Deed Poll; or
 - am required to disclose the information by Law; (ii)

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:

- any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- any article or material from which sounds, images or writings are (b) 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:
 - 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;
 - a cross reference to a clause number includes a cross reference to subclauses;
 - (c) words in the singular include the plural and vice versa;
 - words importing gender include the other gender; (d)
 - (e) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
 - the meaning of "or" will be that of the inclusive, being one, some or all of a (f) 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;
 - the obligations, undertakings, representations, warranties, indemnities and (i) 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:
 - 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);
 - the requirements of the Probity Plan,

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



Disclosure of information 3

- 3.1 I and the Service Provider acknowledge and covenant that:
 - nothing in this Deed Poll obliges the Department to disclose any particular information to me;
 - the Confidential Information constitutes valuable and proprietary information of the Department or third parties;
 - this Deed Poll does not grant me any licence or other right in relation to any (c) Confidential Information or Intellectual Property except as expressly provided for in this Deed Poll:
 - the Department has not made any representation or warranty, whether (d) 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
 - 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.

Obligation of confidence 4

- 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:
 - it may impose conditions on that consent, including requiring me to procure (a) the execution of a deed in these terms by the person to whom I propose to disclose the Confidential Information; and
 - 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.



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6 Restriction on use

- I and the Service Provider warrant that I have not used, and agree that I will not 6.1 use, copy or reproduce the Confidential Information other than for the Procurement Process, and in accordance with the requirements of this Deed Poll.
- I must and the Service Provider must procure that I: 6.2
 - 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;
 - immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - not use, copy or reproduce any Document or any other thing, nor allow any (c) 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
 - 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.

Return of documents containing Confidential Information 7

- 7.1 lf:
 - the Department asks me to return, destroy or otherwise manage any or all (a) 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
 - I breach any provision of this Deed Poll

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

- 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);
- 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.
- where directed by the Department in writing, agree to destroy any Document (f) 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.
- Return of the Documents referred to in this clause does not release me from my 7.2 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:
 - immediately disclose this circumstance to the Department; and (a)
 - comply with any directions the Department considers necessary to ensure (b) 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:
 - 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;
 - may assist in the writing and preparation of the Service Provider's response. (b)
- 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:
 - My, and the Service Provider's, involvement in the redesign process may be (a) 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
 - 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

Nothing in this Deed Poll derogates from any obligation which I may have either 11.1 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

If I am uncertain as to whether any information is Confidential Information, I will 14.1 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

- I and the Service Provider acknowledge that the Department may be entitled to 15.1 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.
- This Deed Poll must not be construed to exclude the operation of any principle of 15.2 Law intended to protect and preserve the confidentiality of the Confidential Information.

16 Waiver

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

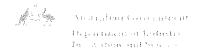
17 Remedies cumulative

The rights and remedies provided under this Deed Poll are cumulative and not 17.1 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.



Business

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

5 TH		AUGUST (month)		19 s 47F
(day) Signed Sealed and Delivered by the Confidant:		(month)	(уег	· ·
Printed Name:	s 47F			
Witnessed by:	Market 1 Novelo 1/2	•	·	dan Ambaran
Printed Name:	s 47F			

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

ANGUST 57H (day) (month) (vear) 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 financial or business interest, or some other form of benefit or advantage;
 - personal to you, or may be a benefit to a relative or associate. (b)
- 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.
- An apparent Conflict of Interest is a situation in which a reasonable person would 1.5 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?
- Your involvement in the normal business relationships between the Department and 1.8 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.
- Conflict of Interest obligations 2
- If you have an actual, apparent or potential Conflict of Interest in relation to the 2.1 Procurement Process, then you must:
 - follow the requirements set out in the Probity Guidelines for the Procurement (a) Process:
 - disclose that interest by completing the Declaration below and provide this (b) document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - 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.
- If an actual, apparent or potential Conflict of Interest arises during the course of the 2.2 Procurement Process, you must:
 - follow the requirements set out in the Probity Plan, or any other Conflict of (a) Interest guidance brought to your attention, for the Procurement Process;
 - immediately notify the Programme Manager of the circumstances; and (b)



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

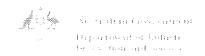
If any discussion or enquiry of this nature is made by anyone other than a Departmental officer, employee or consultant adviser involved in the Procurement Process I will immediately:

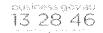
- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them:
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was 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 ١, declare as follows:

- A. With the exception of any Conflict of Interest identified at item 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 NII.]	
NIL	NIL





Ilí insufficient space, attach additional pages and cross reference here. All afteched pages must be initialistly		s 47F	
Signed:			
Printed name:	s 47F		
Organisation:	s 47G	(ar com sky hill
Date:		August	yani sandaysil 2019 Ward
Witnessed by:	S 4	47F	·
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 bv: \$ 47F Special Counsel, Mills Oakley Level 1, 121 Marcus Clarke Street Canberra City ACT 2601

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Deed Poll of Confidentiality

Non-APS Staff and consultants

Name:	s 47F	
Organisatio	n: s 47G (Service Provider)	
ABN:	s 47G	
Address:	s 47F	
(Confidant)		

The Confident 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 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:

 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

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.
- 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.
- 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.
- 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.



Business 13

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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:	1		
Printed Name:			
Witnessed by:			
Printed Name:			
Capital Territory as a I 8th (day)	Deed Poll on:	rvice Provider at Canbe (month) 2019	(year)
Signed Sealed and Delivered by the Service Provider:	s 47F		() - 2,
Printed Name:	s 47F		
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.

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	
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[If insufficient space, pages and cross refe attached pages must	erence here. All		
-	s 47F		
Signed:			
5	_	P * 1 to 100	[your signature]
Printed name:			
Organisation:	s 47G		[your name in full]
Date:		7	[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 bv: s 47F Special Counsel, Mills Oakley Level 1, 121 Marcus Clarke Street Canberra City ACT 2601

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Non-APS Staff and consultants

Deed Poll of Confidentiality

Name:	S 4/F	
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.

- 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 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:

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

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

- 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);
- if I have placed or am aware that the Documents containing Confidential (e) 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.
- where directed by the Department in writing, agree to destroy any Document (f) 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.

- 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) 67	X	(month) Agus C	(year) 20/9
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		Angust	2019.	
(day)	s 47F	(month)	(year)	s 47
Signed Sealed and Delivered by the Se Provider:		s 47G		
Printed Name:	s 47F			
Witnessed by:	6			
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 financial or business interest, or some other form of benefit or advantage;
 - (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.
- An apparent Conflict of Interest is a situation in which a reasonable person would 1.5 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:
 - follow the requirements set out in the Probity Guidelines for the Procurement Process:
 - disclose that interest by completing the Declaration below and provide this (b) document immediately to the SES responsible for initiating the Procurement Process, the Probity Manager; and
 - 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:
 - follow the requirements set out in the Probity Plan, or any other Conflict of (a) 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:

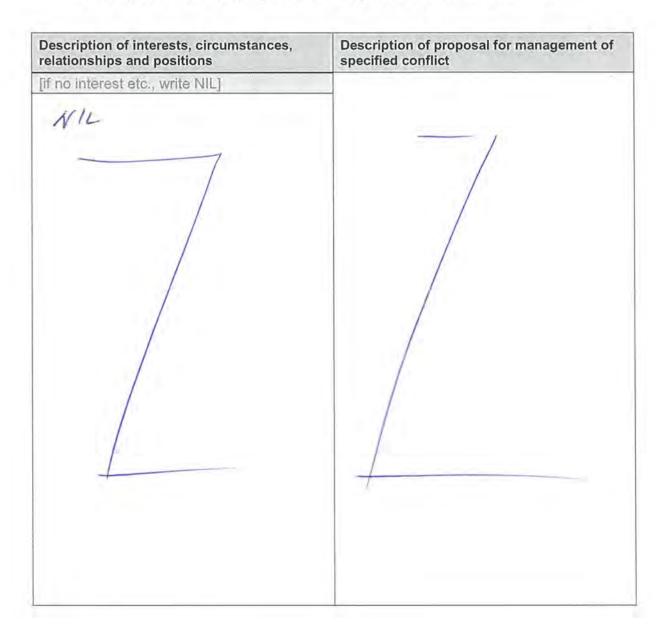
- inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was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



[If insufficient space pages and cross ref attached pages mus	erence here. All			
	s 47F			
Signed:				
Printed name:				[your signature]
Organisation:	s 47G			[your name in full]
Date:	- 6th Agust	2019		[your employer]
	[day]		[month]	[year]
Witnessed by:	s 47F			
	-			
Printed name:				





13 28 46

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

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Deed Poll of Confidentiality

Non-APS Staff and consultants

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.

Recitals:

- I am an officer and employee of the Service Provider which has agreed to provide A. 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.
- The Service Provider and I, as the Confidant, may wish to respond (or be part of a B. 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.
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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:
 - 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:

 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;

- 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:
 - independently develop or know the information other than by breach of this Deed Poll; or
 - am required to disclose the information by Law:

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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:
 - 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;
 - 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";
 - 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.
- Compliance with APS Values and Code of Conduct and Probity Plan
- 2.1 I (and the Service Provider acknowledges that I) will comply with:
 - 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:

- nothing in this Deed Poll obliges the Department to disclose any particular information to me:
- the Confidential Information constitutes valuable and proprietary information (b) of the Department or third parties;
- 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;
- 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
- 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.

Obligation of confidence 4

- 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:
 - 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
 - I must comply with any conditions referred to in clause 4.2(a). (b)
- 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

In addition to any conditions imposed under clause 4.2, I and the Service Provider 5.1 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.

Restriction on use 6

- 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:

- 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;
- 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 lf:
 - the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - 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

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.
- 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.



Business



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

7	AUGUST	2019
(day)	(month)	(year)
Signed Sealed and Delivered by the Confident:	s 47F	
rinted ame:		
Vitnessed y:		
Printed		
Name: XECUTED AND DEL	LIVERED by the Service Provider a	at Canberra, Australian
XECUTED AND DEL apital Territory as a I	LIVERED by the Service Provider a Deed Poll on: AUGUST	at Canberra, Australian
XECUTED AND DEL	Deed Poll on:	
TXECUTED AND DEL Capital Territory as a C 7 (day) Signed Sealed and Delivered by the Service	Deed Poll on: AUGUST (month) s 47F	2019
EXECUTED AND DEL Capital Territory as a C	Deed Poll on: AUGUST (month) s 47F	2019
XECUTED AND DEL capital Territory as a D 7 (day) Signed Sealed and Delivered by the Service Provider: Printed Name:	Deed Poll on: AUGUST (month) s 47F	2019
TXECUTED AND DEL capital Territory as a C 7 (day) Signed Sealed and Delivered by the Service Provider:	Deed Poll on: AUGUST (month) s 47F	2019
CXECUTED AND DEL capital Territory as a C 7 (day) Signed Sealed and Delivered by the Service Provider: Printed Name:	Deed Poll on: AUGUST (month) s 47F	2019

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 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.
- 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?
- 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:
 - 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:
 - 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:
 - take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
 - 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 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



Business



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 proposal for management of specified conflict
N N



Business



s 47F —		
[day]	[month]	[year]
7	AUGUST	2019
		[your employer]
s 47G		[your name in full]
	-	[your signature]
s 47F		
arence here. All t be initialled]		
	s 47F s 47G	s 47F s 47G AUGUT [day] [menth]





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

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Deed Poll of Confidentiality

Non-ADS Staff and concultants

HOIPMEO O	tati alla consoliditta	
Name:	s 47F	
Organisatio	on: s 47G	
_	(Service Provider)	
ABN:	s 47G	
	s 47G	
Address:		
(Confidant)	1	

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:

- 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.
- The Service Provider and I, as the Confidant, may wish to respond (or be part of a В. response) to the Procurement Process.
- The Service Provider and I recognise that probity, including perceptions, relating to C. 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.



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- I and the Service Provider recognise that I will be allowed to be a part of the Service E. Provider's tender response to the Procurement Process but only strictly in accordance with the requirements of clause 9 of this Deed Poll.
- In the course of performing the Services to the Department, I and the Service F. 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.
- I and the Service Provider acknowledge that it could cause significant loss and G. 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.
- I and the Service Provider agree that it is necessary to take all reasonable steps Н. (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 and the Service Provider accept that obligations in this Deed Poll are in addition to ١. any contractual obligations of confidentiality between me or my employer and the Department,

This Deed Poll witnesses as follows:

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

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:

- under, arising out of, or in connection with my or my employer's contract with the Department (Contract); or
- otherwise at Law or in equity, including:
 - by statute;
 - in tort for negligence or otherwise, including negligent (ii) misrepresentation, or
 - for restitution for unjust enrichment, in respect of eny 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:



- 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;
- is by its nature confidential to any person including the Commonwealth of Australia, its agencies, suppliers or consultants;
- 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
- does not include information to the extent that I:
 - independently develop or know the information other than by breach of this Deed Poll; or
 - 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:

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

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

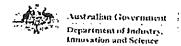
Programme Manager means the person appointed by the Department who is responsible for the day-to-day administration of the Procurement Process or any person who is otherwise identified as being an appropriate person to report probity issues or Conflict of Interests to:

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:
 - 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;
 - 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;
 - 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;
 - the obligations, undertakings, representations, warranties, indemnities and liabilities of the Confidant ere 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
- 2.1 I (and the Service Provider acknowledges that I) will comply with:
 - 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);
 - the requirements of the Probity Plan,

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



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3 Disclosure of information

- 3.1 I and the Service Provider acknowledge and covenant that:
 - nothing in this Deed Poll obliges the Department to disclose any particular information to me;
 - the Confidential Information constitutes valuable and proprietary information of the Department or third parties:
 - 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:
 - 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
 - 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:
 - 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
 - I must comply with any conditions referred to in clause 4.2(a).
- If I or the Service Provider hold a reasonable belief that I am required by Law to 4.3 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

In addition to any conditions imposed under clause 4.2, I and the Service Provider 5.1 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.



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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:
 - 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;
 - immediately notify the Department in the event that I become aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
 - 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
 - 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
 - the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - I no longer need to use the Confidential Information to carry out my duties relating to the Procurement Process, or
 - I breach any provision of this Deed Poll

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

- 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);
- if I have placed or am aware that the Documents containing Confidential (e) 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.
- 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
 - 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,



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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 Poli 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

If I am uncertain as to whether any information is Confidential Information, I will 14.1 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 profils may not be a sufficient remedy for any breach of the obligations I owe to the Department or a third party.
- This Deed Poll must not be construed to exclude the operation of any principle of 15.2 Law inlended 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 remedles provided under this Deed Poll are cumulative and not exclusive of any other rights or remedies of the Department.



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- 18 Applicable Law
- 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 18.1 Territory in respect of all matters arising under, or in relation to, this Deed Poll.
- 19
- Except as otherwise provided in this Deed Poll, each Party must pay its own costs 19.1 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**:

06		08	2019
(day)		(month)	(year)
Signed Sealed as Delivered by the Confident:	nd	s 47F	
Printed Name:	s 47F		
Wilnessed by:	s 47F		
Printed Name:			
Sapital Territory a	s a veed Poll	by the Service Provider at on: -5 -5 - 5 - (month)	Canberra, Australian
(day) Signed Sealed an Delivered by the S Provider:	d	(month)	(year)
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 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, blased or partial.
- 1.4 Conflicts of Interest Include apparent and potential, as well as actual, conflicts of interest.
- 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:
 - follow the requirements set out in the Probity Guidelines for the Procurement Process;
 - 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:
 - 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



Department of Industry. Business gov. au 13 28 46 find on a find a street of Augustra

- 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:
 - take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
 - accept a benefit connected with your functions from someone without the approval of the Programme Manager; or
 - 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.



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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:

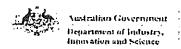
- Inform the person making the enquiry that I cannot discuss any aspect of the Procurement Process with them;
- report in writing this contact and the details of the enquiry to the Department contact officer for the Procurement Process or the Probity Manager, including when and where the enquiry was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



Business

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	
	,



pages and cross r attached pages m		s 47F	_	
Signed:				
Printed name:	s 47F		us 20000-1	[yet / signature]
Organisation:	s 47G			Continue (98)
Date:	06		୍ଷ	5 87 diepteyes 2019
Witnessed by:	s 47F		incoute	(year)
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

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Deed Poll of Confidentiality

Non-APS Staff and consultants

Name: s 47G Organisation: (Service Provider) s 47G ABN: 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.
- The Service Provider and I, as the Confidant, may wish to respond (or be part of a B. response) to the Procurement Process.
- The Service Provider and I recognise that probity, including perceptions, relating to C. 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.
- I and the Service Provider recognise that I will be allowed to be a part of the Service E. 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 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:

 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;

- is by its nature confidential to any person including the Commonwealth (b) of Australia, its agencies, suppliers or consultants;
- includes all copies and notes that I make based on or arising out of any (c) disclosure under (a) or (b) above and includes Personal Information, Protected Information and information subject to protection under Secrecy Legislation; and
- does not include information to the extent that I: (d)
 - 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:

- any paper or material on which are marks, figures, symbols or (a) 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:
 - 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;
 - 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:
 - 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:

- nothing in this Deed Poll obliges the Department to disclose any particular (a) information to me:
- the Confidential Information constitutes valuable and proprietary information (b) 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
- 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.
- I and the Service Provider acknowledge that if the Department grants its consent to 4.2 the disclosure of any Confidential Information:
 - 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
 - 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;
- 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);
- (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.
- If I or the Service Provider become aware of any circumstance, which places or 8.3 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:
 - immediately disclose this circumstance to the Department; and (a)
 - comply with any directions the Department considers necessary to ensure (b) that a conflict does not arise.

Involvement in Procurement Process response 9

- Subject to clause 9.2, I and the Service Provider acknowledge and agree that I: 9.1
 - 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;
 - may assist in the writing and preparation of the Service Provider's response. (b)
- I and the Service Provider acknowledge and agree that there could be significant 9.2 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:
 - 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
 - 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

- I and the Service Provider, acknowledge that my attention has been drawn to the 10.1 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
- Nothing in this Deed Poll derogates from any obligation which I may have either 11.1 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.
- 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

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





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

11		AUGUST	2019
(day)		(month)	(year)
igned Sealed and Delivered by the Confidant:	s 47F		
rinted ame:	-		
Vitnessed y:	4		
rinted lame:			
apital Territory as a D		e Service Provider at 0	
			2019
(day)		(month)	(year)
Signed Sealed and Delivered by the Service	e s 47F	(month)	
igned Sealed and Delivered by the Service Provider:	s 47F —	(month)	
(day) Signed Sealed and Delivered by the Service Provider: Printed Name: Witnessed	s 47F	(month)	

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:
 - 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:
 - 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 declare as follows: ١,

- 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



attached pages m	sust be initialled]		
Signed:	s 47F		
Printed name:	s 47F	[yo	ur signature]
Organisation:	s 47G	[your	name in full]
Date:	11	AUGUST	ur employer]
	[day]	[month]	[year]
Witnessed by:	s 47F —		
Printed name:			





13 28 46

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

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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 Confident 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 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:
 - 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:

 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;

- 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:
 - independently develop or know the information other than by breach of this Deed Poll; or
 - 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:

- any paper or material on which are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- 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:
 - 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;
 - 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.
- Compliance with APS Values and Code of Conduct and Probity Plan
- 2.1 I (and the Service Provider acknowledges that I) will comply with:
 - 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:
 - 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:

- 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;
- 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 lf:
 - the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
 - 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

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.
- 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	AUGUST	2019
(day)	(month)	(year)
igned Sealed and relivered by the confidant:	s 47F	
rinted ame:		
Vitnessed by:		
Printed Name:		
EXECUTED AND DE	LIVERED by the Service Provider Deed Poll on:	at Canberra, Australian
apital Territory as a	Deed Poll on:	
apital Territory as a	ELIVERED by the Service Provider Deed Poll on: AUGUST (month)	at Canberra, Australian 2019 (year)
7 (day) Signed Sealed and Delivered by the Serv	Deed Poll on: AUGUST (month) s 47F	2019
apital Territory as a 7 (day) Signed Sealed and Delivered by the Server Provider:	Deed Poll on: AUGUST (month) s 47F	2019
Capital Territory as a	Deed Poll on: AUGUST (month) s 47F	2019

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 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.
- 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?
- 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:
 - 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:
 - 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:
 - take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
 - 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

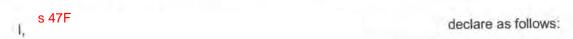
The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science (**Department**) requires full probity in the delivery of the Services and the Procurement Process including communications in regards to Tender information, handling of Tenders and the evaluation of Tenders.

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.



- 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
lif no interest etc., write NIL) s 47F	

[If insufficient space pages and cross re attached pages mu	e, attach additional eference here. All ust be initialled]		
Signed:	s 47F		
Printed name:			[your signature]
Organisation:	s 47G		[your name in full]
Date:			[your employer]
Dute.	[day]	AUGUNT [men	2019 (year)
Witnessed by:	s 47F		
Printed name:	2		







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



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Deed Poll of Confidentiality

Non-APS Staff	and consultants			
Name:		s 47F		
Organisation:	(Service Provider)	s 47G		
ABN:		s 47G	.	
Address:	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 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:





- 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;
- 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:
 - 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:

- 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:
 - 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;
 - 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";
 - 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:
 - 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:
 - 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;
 - 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
 - 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:
 - 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
 - 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:

- the Department asks me to return, destroy or otherwise manage any or all copies of Confidential Information;
- 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);
- (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
 - 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:
 - 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:
 - 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
 - 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
- 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.
- 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 Confident at Canberra, Australian Capital Territory as a **Deed Poll** on:

(day)	6	(month)	08	(year)	2019
Signed Sealed and Delivered by the Confidant:	s 47F				
Printed Name:	s 47F				
Witnessed	s 47F				
by:	_				
Printed Name:					
turno.	4				
(12_ (day)	August	(month)	2019	(year)	
Signed Sealed and Delivered by the Ser 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:
 - 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:
 - 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



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- 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:
 - take, or seek to take, advantage of your functions in order to obtain a benefit from some other person;
 - accept a benefit connected with your functions from someone without the (b) approval of the Programme Manager; or
 - request, receive or obtain any property or benefit for yourself or another (c) 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		
1,		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	



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