CONFIDENTIALITY DEED
for consultants engaged under the PMS Scheme

**Your Details (*you*** or ***your*)**

|  |  |
| --- | --- |
| Name: |  |
| Address: |  |

## Background

1. [Name of consultancy firm] has been engaged by NSW Department of Finance, Services and Innovation (**DFSI**) under the NSW government’s Performance and Management Services Scheme (**PMS** **Scheme**) to provide consultancy services for a project involving [insert details of project] (**Project**). Your firm has obligations under the PMS Scheme and under the DFSI Business Ethics Statement to keep confidential information confidential and to protect confidential, personal and private data.
2. As an employee of [name of consultancy firm], you will be providing consultancy services to DFSI for the Project (**Permitted** **Purpose**). In providing those services, you may have access to confidential information and personal and private data in connection with the Project.
3. You undertake to keep the Confidential Information confidential and to protect Confidential Information and personal and private data on the terms of this deed and in accordance with the requirements of the PMS Scheme and the Business Ethics Statement.

## Executed as a deed poll

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| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Your signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Witness |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name (printed) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name (printed) |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

### What is Confidential Information

Confidential Information is all information of whatever nature and in whatever medium belonging to or held by DFSI whenever and however it is disclosed or is made available to you, including information that is by its nature confidential, that is designated as confidential or you know or ought to know is confidential. It includes all information relating to DFSI’s (or another government agency’s) business policies, plans, strategies, financial details and proposals and all materials generated in the course of providing services in connection with the Project.

### Use and disclosure

* 1. You:
1. must keep all Confidential Information confidential and may only use it for the Permitted Purpose. You must not use it for any other purpose or permit any other person to do so without DFSI’s written consent;
2. may only disclose Confidential Information:
	1. to other officers and employees of your consultancy firm who have a need to know for the Permitted Purpose (and only to the extent each has a need to know) and are aware and agree that the Confidential Information is confidential and must be kept secret;
	2. if disclosure is required by law (and then only to the extent, and to the persons, required by law in accordance with clause 2.3); or
	3. to fulfil any obligations to report to any government.
	4. Even though information is Confidential Information, you do not have to comply with clause 2.1 in relation to that Confidential Information if
3. the Confidential Information becomes public knowledge; or
4. you become aware of that Confidential Information from a third person,

in circumstances where there was no breach of any obligations of confidence.

* 1. If you must make a disclosure referred to in clause 2.1(b)b or 2.1(b)c, before making such a disclosure you must:
1. ensure that DFSI is provided with written notice of the full circumstances of the required disclosure and the Confidential Information proposed to be disclosed;
2. consult with DFSI as to the form of disclosure; and
3. give DFSI a reasonable opportunity to take any steps if considers necessary to protect the confidentiality of the information.
	1. You must take all steps reasonably necessary to safeguard Confidential Information from unauthorised access, use or disclosure, including by not reproducing, transforming or storing the Confidential Information on a computer or device that is accessible to any persons not authorised to access, use or disclose the Confidential Information.
	2. You must inform DFSI as soon as possible on becoming aware, or if you suspect, that there has been any unauthorised access to, disclosure or use of Confidential Information.

### Return and destruction of information

At the request of DFSI, you must return or destroy (and provide evidence to DFSI’s satisfaction of that destruction) all of the Confidential Information (including any copies) in your power, possession or control.

### Remedies

 You acknowledge that you are aware that any breach of this deed may result in damage to DFSI and that DFSI is entitled to enforce its rights by seeking specific performance or injunction proceedings as monetary damages may not be sufficient relief.

### Disclaimer

DFSI makes no representation or warranty that the Confidential Information is accurate or complete and accepts no responsibility for any interpretation that you may form in relation to the Confidential Information.

### Conflict of Interest

* 1. You warrant that at the date of this deed, no conflict of interest exists or is likely to arise in the performance by you of services in connection with this deed.
	2. You undertake to notify DFSI immediately in writing on becoming aware of any actual or potential conflict of interest.

### General

1. The failure of a party at any time to insist on performance of any provision of this agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this deed.
2. This agreement is governed by the law applicable in New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that state.
3. This deed may only be amended or modified by a deed signed by an authorised representative of each party.
4. The clauses, paragraphs, and subparagraphs contained in this deed are intended to be read and construed independently of each other. If any part of this deed is held to be invalid, this invalidity will not affect the operation of any other part of this deed.