

CONFIDENTIALITY DEED

This **Confidentiality Deed** is made.....2009

PARTIES

The State of Victoria as represented by the Department of Human Services of 50 Lonsdale Street, Melbourne
("DHS")

AND

[Enter Name of Party, Address of Party]
("Recipient")

INTRODUCTION

- A. DHS is the owner of the Confidential Information.
- B. DHS has agreed to give the Recipient access to the Confidential Information for the purpose of [insert purpose or name of project].
- C. The Recipient must deal with the Confidential Information in accordance with the terms of this Deed.

1 INTERPRETATION

Definitions

"**Confidential Information**" means all information or data made accessible to the Recipient by DHS, but does not include:

- (a) information that is, or becomes part of the public domain other than by breach of this Deed by the Recipient;
- (b) information lawfully obtained by the Recipient from another person without any restriction as to use and disclosure;
- (c) information in the Recipient's possession prior to disclosure to it by DHS;

"**Deed**" means this document, including any schedule or annexure to it;

"**Department**" means the Department of Human Services;

"**Project**" means [insert details of Project]

"**Recipient**" means the person who accesses or is given the Confidential Information

2 NON DISCLOSURE

- 2.1 The Recipient will treat as secret and confidential all Confidential Information.
- 2.2 The obligations of the Recipient under this Deed shall not be taken to have been breached where the Confidential Information is legally required to be disclosed.

3 PRIVACY

3.1 Without limiting clause 2, to the extent that the Confidential Information includes information about an individual or from which the identity of an individual is reasonably ascertainable, the Recipient will comply with and is bound by, or for the purposes of this Deed is deemed to be bound by, the provisions of:

- (a) the Privacy Act 1988 (Cth) as amended or replaced from time to time, and in relation to any information the Recipient obtains in performance of the Project, it will comply with the National Privacy Principles set out in that Act; and
- (b) the Information Privacy Act 2000 (Vic) and Health Records Act 2001(Vic) (both as amended or replaced from time to time), and their respective Information Privacy Principles and Health Privacy Principles and any applicable code of practice, with respect to any act done, or practice engaged in, by the Recipient for the purposes of the Project in the same way and to the same extent as the Department would have been bound by them in respect of that act or practice had it been directly done or engaged in by the Department.

4 RESTRICTION ON USE

4.1 The Recipient will use the Confidential Information only for the purpose of its dealings with the Department (whether directly or indirectly).

4.2 The Recipient will:

- (a) not copy or reproduce the Confidential Information without the prior consent of the Department;
- (b) not allow any other person access to the Confidential Information, without the prior consent of the Department, other than employees of the Department involved in the Project; and
- (c) take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information in their control.

4.3 If the Department grants its consent under clause 4.2(a) or 4.2(b), it may impose conditions on that consent. In particular, the Department may require that the Recipient obtain the execution of a Deed in these terms by the person to whom the Recipient proposes to disclose the Confidential Information.

5. UNCERTAINTY

5.1 If the Recipient is uncertain as to whether any information is Confidential Information, the Recipient will treat the information as if it were Confidential Information.

6. SECURITY OF MATERIALS

6.1 The Recipient is responsible for and must take all reasonable measures to ensure the security of the Confidential Information for so long as that Confidential Information is within its control, and in so doing must ensure that the Confidential Information is protected at all times from access, use or misuse, damage or destruction, by any person not authorised in accordance with this Deed to have access to it.

7. UNAUTHORISED DISCLOSURE OR USE

7.1 The Recipient will immediately notify the Department of any unauthorised disclosure or use of the Confidential Information of which the Recipient becomes aware and will take all steps that the Department may reasonably require in relation to such unauthorised disclosure or use.

8 PRODUCTION OF DOCUMENTS

8.1 Immediately upon request by the Department, the Recipient must deliver to the Department all documents in the possession or control of the Recipient containing Confidential Information.

8.2 If at the time of such a request the Recipient is aware that documents containing Confidential Information are beyond the possession or control of the Recipient, then the

Recipient must provide full details of where the documents containing the Confidential Information are, and the identity of the person who has control of them and seek to return them.

9 REMEDY

- 9.1 The Recipient acknowledges and accepts that the Department would suffer financial and other loss and damage if the Confidential Information were disclosed to any other person or used for any purpose other than allowed under this Deed and that monetary damages would be an insufficient remedy. The Recipient acknowledges and accepts that, in addition to any other remedy that may be available in law or equity, the Department is entitled to injunctive relief to prevent a breach of this Deed and to compel specific performance of this Deed.

10 INDEMNITY

10.1 Indemnity for Costs

The Recipient indemnifies the Department against all Costs incurred or suffered by the Department as a result of any breach of this Deed by the Recipient, or incurred in enforcing the obligations of the Recipient under this Deed.

10.2 Scope of Indemnity

For the purposes of the indemnity in Clause 10.1 "Costs" includes all costs, damages and expenses incurred by the Department arising directly or indirectly out of any action, suit, proceedings, claim or demand ("Claims") and includes:

- (a) legal costs and disbursements incurred in defending or otherwise in relation to any Claims, on a full indemnity basis;
- (b) any sums paid in settlement of any such Claims; and
- (c) any amounts payable in respect of a breach or alleged breach by the Department of its obligations under the Information Privacy Act 2001 (Vic) arising directly out of the Recipient's breach of this Deed.

11 NOTICE IN CASE OF DISCLOSURE

- 11.1 If the Recipient becomes aware of a disclosure of the Confidential Information, or is required, or anticipates that it may be required, by law or court order to disclose the Confidential Information, the Recipient must immediately notify the Department of the actual or anticipated disclosure.
- 11.2 If the Recipient is required by law or court order to disclose the Confidential Information to any person, the Recipient must, before disclosure, notify that person of the existence of this Deed and the Recipient's obligation of confidence.

12 ENFORCEABILITY

- 12.1 If any part of this Deed is found to be void, unenforceable, or otherwise legally ineffective ("Ineffective") in any jurisdiction, that part will be read down to the extent necessary to ensure that it is no longer Ineffective. If an Ineffective part cannot be so read down, it may be severed and the remainder of the Deed will be construed in a manner so as to ensure the remaining parts continue in force to the greatest extent possible.

13 WAIVER

- 13.1 No right under this Deed is waived or deemed to be waived except by notice in writing signed by the Department. A waiver given by the Department does not prejudice its rights in respect of any subsequent breach of this Deed.

14 VARIATION

- 14.1 This Deed may not be varied except in writing by the Recipient and with the written consent of the Department.

15 GOVERNING LAW

15.1 The laws of the State of Victoria govern this Deed. The Recipient irrevocably submits to the non-exclusive jurisdiction of the courts in the State of Victoria.

16 BENEFICIARY AND DURATION

16.1 The Recipient acknowledges that this Deed is executed for the benefit of, and each of the covenants is granted in favour of, the Department. The obligations of this Deed are continuing and, to the extent that any of the covenants are capable of having effect beyond the expiry or termination of any agreement relating to the Project, those covenants continue in effect.

17 NOTICES

- 17.1 Any notices to be served on a party to this Deed may be served by:
 - (a) hand; or
 - (b) pre-paid post to the address of the party to be served or to such address as notified by the relevant party in writing from time to time; or
 - (c) facsimile forwarded to the facsimile number of the party to be served or to such facsimile number as notified by the relevant party in writing from time to time.
- 17.2 A notice given to a party in accordance with this clause is treated as having been given and received:
 - (a) if delivered, on the day of delivery if delivered before 4.00 pm on a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid post, on the third day after the day on which it was posted; and
 - (c) if sent by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed before 4.00 pm on a Business Day, otherwise on the next Business Day.

18 ENTIRE AGREEMENT

18.1 This Deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, and whether made before the execution of this Deed.

Executed as a Deed

SIGNED SEALED AND DELIVERED)

by)
 [print name of person requesting Confidential) Signature of Recipient
 information]

position.....

organisation

in the presence of)
 [insert name of witness]) Signature of witness

Please complete the following information

Organisation:

Contact Phone No:

Contact Email: