



Australian Government

**Fisheries Research and
Development Corporation**

DEED OF CONFIDENTIALITY

Fisheries Research and Development Corporation

ABN 74 311 094 913

AND

<<Name of Confidant>>

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DEED OF CONFIDENTIALITY

BETWEEN:

Fisheries Research and Development Corporation (ABN 74 311 094 913) a body incorporated in accordance with the *Primary Industries Research and Development Act 1989* (FRDC).

AND

<<Name of Confidant>> (the **Confidant**)

RECITALS:

- A. FRDC may disclose FRDC Confidential Information to the Confidant for the Permitted Purpose.
- B. Where FRDC discloses FRDC Confidential Information to the Confidant it will do so on the condition that the Confidant keeps all such FRDC Confidential Information strictly confidential.
- C. FRDC requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed of Confidentiality) to ensure that FRDC Confidential Information is kept confidential and that Personal Information is treated in accordance with the Information Privacy Principles set out in the *Privacy Act 1988* (Cth) (**Privacy Act**).

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this Deed of Confidentiality, unless the contrary intention appears:

Chairperson has the same meaning as in the *Primary Industries Research and Development Act 1989*.

Document includes:

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

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FRDC Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by FRDC as confidential;
- (c) the Confidant knows or ought to know is confidential;
- (d) is comprised in or relates to FRDC Material;
- (e) is Personal Information accessed by the Confidant in the course of undertaking activities related to the Permitted Purpose;

and includes, to the extent it is confidential:

- (f) all information, Documents and data stored by any means which is made available to the Confidant;
- (g) information comprised in or relating to any Intellectual Property of FRDC or third parties; and
- (h) information relating to the internal management and structure of FRDC;

but does not include information that:

- (i) is or becomes public knowledge other than by a breach of this Deed of Confidentiality, or any other confidentiality obligations.

FRDC Material means any Material provided by FRDC to the Confidant for the Permitted Purpose, or which is copied or derived from Material so provided.

Intellectual Property includes all rights in copyright, registered and unregistered trademarks (including service marks) registered designs, all rights in relation to inventions (including patent rights), trade secrets, know how, rights in relation to circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields or any rights to registration of such rights existing in Australia or elsewhere, whether created before, on or after the date of this Deed of Confidentiality.

Material includes documents, equipment, software, goods, information or data stored by any means.

Meeting means a meeting of FRDC called by the Chairperson of FRDC in accordance with Part 2, Division 6 of the *Primary Industries Research and Development Act 1989*.

Parties means FRDC and the Confidant.

Permitted Purpose means review of any information, Documents, and data,

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

2. NON-DISCLOSURE

- 2.1 In consideration of FRDC disclosing certain FRDC Confidential Information to the Confidant, the Confidant acknowledges and agrees that all FRDC Confidential Information is confidential, is the property of FRDC, and is of value to it, and that any FRDC Confidential Information disclosed to the Confidant is disclosed to the Confidant only pursuant to the terms of this Deed of Confidentiality.
- 2.2 The Confidant must not use, disclose, divulge or deal with any FRDC Confidential Information, nor allow any act, matter or thing to be done or occur whereby any FRDC Confidential Information may be ascertained or used by, or disclosed or communicated to, any other person, without the prior written consent of the Chairperson of FRDC, which consent the Chairperson may grant or withhold in its absolute discretion.
- 2.3 For the purpose of **clause 2.2**, written consent includes agreement of the Chairperson of FRDC in a Meeting where that consent is documented in formal minutes of the Meeting.

3. TREATMENT OF PERSONAL INFORMATION

- 3.1 The Confidant understands that, in the course of undertaking activities concerning the Permitted Purpose, the Confidant may have access to Personal Information.
- 3.2 The Confidant acknowledges and agrees that the Confidant will not access, use, disclose, publish, communicate or retain, or otherwise deal in any way, with Personal Information except for the Permitted Purpose.
- 3.3 The Confidant agrees to abide by the provisions of the Privacy Act in respect of Personal Information, including the Information Privacy Principles set out in that Act, whether or not the Confidant is legally bound to comply with that Act.
- 3.4 The Confidant agrees to treat all Personal Information with the utmost care and to protect that information at all times.

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4. RESTRICTION ON USE

- 4.1 The Confidant may use FRDC Confidential Information only for the Permitted Purpose;
- 4.2 The Confidant must ensure that they do not disclose the Confidential Information to any other person
- 4.3 The Confidant must not copy or reproduce FRDC Confidential Information without the written approval of FRDC, and must take all necessary precautions to prevent unauthorised access to or copying of FRDC Confidential Information
- 4.4 FRDC Confidential Information remains the property of FRDC at all times.

5. DISCLOSURE TO NOMINEES

- 5.1 If:
 - (a) the Confidant has nominated a person to whom the Confidant may give access to or disclose FRDC Confidential Information to (a nominee); and
 - (b) FRDC consents in writing to such access or disclosure being provided to that Nominee,

the Confidant may give access to or disclose FRDC Confidential Information to the Nominee on such conditions as may be imposed by FRDC.

- 5.2 For the purpose of **clause 5.1(b)**, written consent includes agreement of the Chairperson of FRDC in a Meeting of FRDC where that consent is documented in formal minutes of the Meeting.
- 5.3 The Confidant must ensure that any Nominee to whom access or disclosure of any Confidential Information is to be given pursuant to **clause 5.1**, signs a deed of confidentiality in the form of this Deed of Confidentiality and for the benefit of FRDC, prior to any such access or disclosure being given.

6. DISCLOSURE AS REQUIRED BY LAW

- 6.1 The Confidant may disclose any FRDC Confidential Information that the Confidant is required by law to disclose, but only if:
 - (a) the extent and manner of the disclosure is strictly limited to what is required by law; and

- (b) the Confidant has:
 - (i) given FRDC sufficient notice to enable FRDC to seek a protective order or other relief from disclosure; and
 - (ii) provided all assistance and cooperation that FRDC reasonably considers necessary for that purpose.

7. MATERIAL PERSONAL INTERESTS

7.1 The Confidant must declare all relevant material personal interests and:

- (a) behave in a transparent manner
- (b) manage or remove potential, perceived or actual material personal interests, to facilitate the resolution of competing interests via an open and structured process

8. DELIVERY UP OF DOCUMENTS

8.1 FRDC may demand, either orally or in writing, at any time and without notice, that the Confidant deliver to FRDC all documents containing FRDC Confidential Information in the possession or control of the Confidant.

9. COMMENCEMENT

9.1 This Deed of Confidentiality commences on the date on which the Confidant first received FRDC Confidential Information, whether or not that date was before the date of the execution of this Deed of Confidentiality.

10. SURVIVAL

10.1 The obligations in this Deed of Confidentiality continue for so long as any information disclosed to the Confidant is FRDC Confidential Information.

11. APPLICABLE LAW

11.1 This Deed of Confidentiality will be governed by and construed in accordance with the laws of the Australian Capital Territory.

12. NO EXCLUSION

12.1 This Deed of Confidentiality does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of FRDC Confidential Information.

12.2 The rights and remedies provided under this Deed of Confidentiality are cumulative and not exclusive of any rights or remedies provided by law.

13. WAIVER

Failure by FRDC to enforce a provision of the Deed of Confidentiality will not be construed as in any way affecting the enforceability of that provision or of the Deed of Confidentiality as a whole.

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This **DEED OF CONFIDENTIALITY** is **EXECUTED** as a deed.

DATE <<insert date>>

SIGNED sealed and delivered for and on behalf of <<**Name of Confidant**>> in the presence of:

Signature of Confidant

Signature of witness

Name of witness

SIGNED sealed and delivered for and on behalf the Fisheries Research and Development Corporation, ABN 74 311 094 913 by its duly authoursed delegate

in the presence of:

Signature of delegate

Signature of witness

Name of delegate (print)

Name of witness

Position of delegate (print)