**CONFIDENTIALITY DEED**

**DATE** *[Insert date on which the Recipient has signed this Deed]*

**PARTY** *[Insert full legal name of the government agency]*,of *[Insert address of the government agency]* (the **Recipient**)

**BACKGROUND**

The Recipient agrees to keep confidential all Confidential Information disclosed to it by or on behalf of the Ministry of Business, Innovation and Employment (**the Ministry**), on the terms set out in Schedules 1 and 2 to this Deed.

**EXECUTION**

|  |  |  |  |
| --- | --- | --- | --- |
| **SIGNED AND DELIVERED AS A DEED** for and on behalf of the Sovereign in Right of New Zealand acting by and through the Chief Executive of the [*INSERT NAME OF THE GOVERNMENT AGENCY*] or their authorised delegate: | )))))) |  |  |
|  |  |  | Signature |
| in the presence of: **WITNESS** |  |  |  |
| Signature |  |  |  |
| Print full name |  |  |  |
| Occupation |  |  |  |
| Address |  |  |  |

**SCHEDULE 1**

**DETAILS**

1. **Purpose:** (clause 1.1, Schedule 2)

The Purpose for which the Ministry discloses Confidential Information is:

To determine whether the Recipient will enter into a Participating Agency Agreement for the Open Syndicated Panel Agreement for face to face interpreting services. The Purpose does not include the use of the Confidential Information to inform any other commercial activity.

1. **Address for Notices:**

|  |  |
| --- | --- |
| **Ministry:** | **Recipient:** |
| Ministry of Business, Innovation and Employment15 Stout StreetPO Box 1473WELLINGTONEmail: LAS@mbie.govt.nz Attention: Andrew Lockhart, National Mgr. Refugee and Migrant Support | *[Insert name of government agency]**[Insert physical and postal address]*Email: *[Insert email address of agency representative]*Attention: *[Insert title of agency representative]* |

**SCHEDULE 2**

**CONFIDENTIALITY DEED TERMS**

1. **Interpretation and Definitions**
	1. In this Deed, the following terms have the following meanings:

**Business Day** means any day other than a Saturday, Sunday, or public holiday in Wellington, New Zealand;

**Confidential Information** means:

* + 1. all information (in any form) disclosed by or on behalf of the Ministry in relation to the Purpose, whether before or after the date of this Deed;
		2. any information derived from or containing any of the information described in (a) above; and
		3. the fact this Deed has been signed or that discussions are taking place in relation to the Purpose,

but does not include information:

* + 1. that is or becomes publicly available (other than through a breach of this Deed);
		2. obtained from another source that did not, to the Recipient's knowledge, owe a confidentiality obligation to the Ministry; or
		3. developed independently by the Recipient without using any Confidential Information;

**Deed** means this deed, signed and delivered by the Recipient, and includes the Details and this Schedule 2;

**Details** means Schedule 1;

**Purpose** has the meaning given to that term in the Details;

**Related Company** has the meaning given to that term in the Companies Act 1993 (read as though the reference to “company” included a body corporate, wherever incorporated); and

**Representative** means any director, officer, employee, professional advisor, agent or Related Company of the Recipient.

* 1. In this Deed, unless the context requires otherwise:
		1. references to clauses and Schedules are to clauses and Schedules of this Deed;
		2. the headings are for convenience only and have no legal effect;
		3. the singular includes the plural and vice versa;
		4. derivations of any defined word or term have a corresponding meaning;
		5. "including" and similar words do not imply any limitation; and
		6. any references to a statutory instrument include references to that statutory instrument as amended or replaced from time to time.
1. **Confidentiality Obligations**
	1. Except as expressly permitted by this Deed, the Recipient must:
		1. receive and hold all Confidential Information in strict confidence;
		2. ensure that it has proper and effective security measures in place to safeguard the Confidential Information from unauthorised use, copying or disclosure; and
		3. immediately notify the Ministry of any suspected or actual breach of this Deed and take all steps reasonably required to prevent or stop the suspected or actual breach.
2. **Ownership of Confidential Information**
	1. All Confidential Information (including any copies, reproductions and written versions of Confidential Information) will remain the property of the Ministry. The disclosure of Confidential Information does not transfer any intellectual property rights in that Confidential Information to the Recipient.
3. **Use and Disclosure of Confidential Information**
	1. Subject to clause 4.3, the Recipient:
		1. must use or copy the Confidential Information only for the Purpose; and
		2. may disclose the Confidential Information only to its Representatives provided that:
			1. the disclosure is on a strictly need to know basis and only for the Purpose; and
			2. the Recipient has informed the Representative of the confidential nature of the Confidential Information and the Representative has agreed to comply with the terms of this Deed.
	2. A breach of this Deed by a Representative is deemed to be a breach of this Deed by the Recipient.
	3. Notwithstanding clause 4.1, the Recipient may disclose the Confidential Information to the extent required by law (including the rules of any stock exchange to which the Recipient is subject), provided that before disclosing any Confidential Information, the Recipient must (to the extent permitted by law):
		1. promptly notify the Ministry of the disclosure requirement; and
		2. co-operate with the Ministry to agree the content of any disclosure, and takes such steps as the Ministry may reasonably require to resist disclosure or obtain assurance that the information will be kept confidential; and
		3. only disclose that part of the Confidential Information which is legally required to be disclosed.
4. **Return and Destruction**
	1. Subject to clause 5.2, at the Ministry's request, the Recipient must:
		1. return or destroy all Confidential Information held by it or its Representatives; and
		2. confirm in writing its compliance with clause 5.1a. Such confirmation must identify in reasonable detail any Confidential Information retained under clause 5.2.
	2. Clause 5.1 does not apply to Confidential Information:
		1. contained in electronic back-up facilities that are not readily accessible;
		2. contained in board or board committee papers or minutes; or
		3. that the Recipient is required to retain to comply with any law or for professional indemnity insurance purposes.
5. **Obligations Indefinite**
	1. The Recipient's obligations under this Deed continue indefinitely until all Confidential Information becomes publicly available or the Ministry and the Recipient agree in writing that the Recipient's obligations will cease.
6. **Remedies**
	1. The Recipient acknowledges that if it or a Representative breaches this Deed:
		1. the breach may result in loss to the Ministry that may not be adequately compensated by the payment of damages; and
		2. the Ministry may seek equitable relief, including where it considers a breach may occur. The equitable relief may include enforcing its rights by specific performance or injunction proceedings.
	2. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by this Deed or law.
7. **Disclaimers and Indemnity**
	1. The Ministry makes no representation that:
		1. the Confidential Information is or will be complete, accurate, audited or independently verified; or
		2. reasonable care has been or will be taken in compiling or preparing the Confidential Information.
	2. The Ministry will not be liable to the Recipient or any Representative for their use of the Confidential Information.
8. **No obligation**
	1. The Ministry is not obliged to provide, or continue to provide, information to the Recipient, or commence or continue discussions or negotiate with the Recipient in relation to the Purpose.
9. **Notices**
	1. Each notice under this Deed (a **notice**) will be in writing and delivered personally or sent by post or email to the address of the relevant party set out in clause 2 (Address for Notices) of the Details (or to any other address from time to time designated for that purpose by the relevant party by notice to the other party). A notice under this Deed is deemed to be received if:
		1. delivered personally, when delivered;
		2. posted, five Business Days after posting or, in the case of international post, 10 Business Days after posting; and
		3. sent by email, when the email enters the Recipient’s designated information system,

provided that any notice deemed received after 5:00pm or on a non-Business Day will be deemed to have been received at 9:00am on the next Business Day.

1. **No assignment**
	1. The Recipient must not assign, novate or otherwise transfer (or attempt to do so) any of its rights, interests or obligations under this Deed without the Ministry's prior written consent. Any change in the effective control of the Recipient is deemed to be an assignment.
2. **Governing law**
	1. This Deed is governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
3. **Delivery**
	1. For the purposes of section 9 of the Property Law Act 2007 and without limiting other delivery modes, this Deed is delivered by the Recipient on the earlier of:
		1. physical delivery to the Ministry of an original of the Deed properly executed by the Recipient; and
		2. transmission to the Ministry of a scanned copy of an original of the Deed properly executed the Recipient.