

Confidentiality and Intellectual Property Deed Poll

Participant Name: _____ of _____

Recitals

- A. You are either:
- (a) engaging with Cancer Council as a volunteer; or
 - (b) performing an unpaid vocational placement
- at The Cancer Council NSW (ACN 116 463 846) of 153 Dowling St Woolloomooloo NSW 2011 (**Cancer Council**).
- B. This Deed Poll (**Deed**) applies to both scenarios contemplated by clause A above.
- C. While engaged by Cancer Council, the Participant may create materials for Cancer Council and obtain access to Confidential Information belonging to Cancer Council.
- D. This Deed sets out the agreement between the Participant and Cancer Council about Intellectual Property Rights in any materials the Participant creates, and Confidential Information the Participant may access during their engagement with Cancer Council.

Operative provisions

1 Definitions

1.1 In this Deed:

Authorised Person means a licensee, contractor, assignee and successor of Cancer Council, and their licensees and any other person authorised by any of them.

Confidential Information means:

- (a) Personal Information;
- (b) information about donors, fundraisers, service recipients and other constituent data in the possession of Cancer Council and its Related Bodies Corporate;
- (c) all information relating to or used by Cancer Council and its Related Bodies Corporate, including without limitation know-how, trade secrets, ideas, marketing strategies, financial information and operational information;
- (d) all information concerning the business affairs (including products, services, customers and suppliers) or property of Cancer Council and its Related Bodies

Corporate, including any business, property or transaction in which Cancer Council may be or may have been concerned or interested;

- (e) any other information disclosed by or on behalf of Cancer Council or its Related Bodies Corporate or obtained by the Participant in the course of their engagement and/or in the delivery of services to Cancer Council which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential; and
- (f) Work;

including any such information made available to the Participant by any third party, but excluding any information:

- (i) which is publicly known;
- (ii) which is disclosed to the Participant without restriction by a third party and without any breach of confidentiality by the third party; or
- (iii) which is developed independently by the Participant without reliance on any of the Confidential Information.

Intellectual Property Rights means any intellectual or industrial property rights conferred under statute, common law or equity now or in the future anywhere in the world, including, without limitation, patents, trade marks, service marks, trade names, brand names, database rights, designs, copyright, eligible layout rights, chip topography rights, know how, trade secrets, domain names, internet addresses, rights in confidential information, and all and any other intellectual property rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, whether registered or unregistered, and including all applications and rights to apply for any of the foregoing.

Moral Rights means the rights conferred on individuals in Part IX of the Copyright Act 1968 (Cth) – including the rights of attribution, no false attribution and integrity – and any similar personal rights anywhere in the world that are by law non-assignable.

Participant means an individual engaging with Cancer Council as an unpaid volunteer or as a student performing an unpaid vocational placement.

Permitted Purpose means for the purposes of engaging with Cancer Council as a Participant.

Personal Information means 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 which is held by Cancer Council or to which the Participant has access in any way as part of their engagement.

Work has the meaning given to it in clause 6.1(a).

2 Acknowledgement of confidentiality

2.1 The Participant acknowledges that:

- (a) all Confidential Information given by Cancer Council to the Participant, whether

supplied in oral or written form, is highly confidential and has been disclosed in strict confidence and only for the Permitted Purpose;

- (b) a breach of this Deed may cause the Cancer Council irreparable damage for which payment of monetary damages would be an inadequate remedy; and
- (c) in addition to any other remedies that may be available, Cancer Council may seek injunctive (or similar) relief against any breach or threatened breach of this Deed by the Participant.

3 Obligations of confidentiality

- 3.1 The Participant must not use any of the Confidential Information other than for the Permitted Purpose.
- 3.2 Except as expressly permitted or required by this Deed, the Participant must not disclose to any other person any of the Confidential Information without the prior written consent of Cancer Council.
- 3.3 The Participant may disclose the Confidential Information:
 - (a) when required to do so by law or any regulatory authority;
 - (b) to persons who have already been approved in writing by Cancer Council from time to time, provided that the Participant:
 - (i) ensures that each person to whom such disclosure is made is informed of the confidentiality of the information and the obligations of confidentiality under this Deed; and
 - (ii) ensures that each person to whom such disclosure is made complies with those obligations as if they were bound by them.
- 3.4 Where the Participant seeks to disclose Confidential Information under clause 3.3(a), it must:
 - (a) immediately notify Cancer Council of the requirement to disclose the Confidential Information; and
 - (b) give Cancer Council a reasonable opportunity to challenge the requirement, and all reasonable assistance and co-operation which Cancer Council considers necessary to prevent or minimise disclosure of the Confidential Information.

4 Security

- 4.1 The Participant must:
 - (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure and in doing so will implement measures to protect the Confidential Information;
 - (b) immediately notify Cancer Council of any potential, suspected or actual breach of this Deed of which it becomes aware; and

- (c) comply with all directions from Cancer Council in relation to Confidential Information, including those given in any policy or procedure.

5 Return or destruction of Confidential Information

- 5.1 On termination of the engagement and whenever requested by Cancer Council, the Participant will:
 - (a) promptly return or, at Cancer Council's option, destroy, all hard copy documents and other materials constituting Confidential Information (including any copies) in the possession or control of the Participant;
 - (b) promptly delete all of the Confidential Information in the possession or control of the Participant which is stored in an electronic or other medium and retrievable in perceivable form; and
 - (c) stop using the Confidential Information.
- 5.2 The obligations of confidentiality set out in this Deed shall continue to apply to all Confidential Information retained by the Participant in accordance with this clause.

6 Intellectual Property

- 6.1 The Participant agrees that, unless otherwise agreed in writing by Cancer Council:
 - (a) the Intellectual Property Rights in any materials created, made, discovered or otherwise acquired by the Participant in the course of their engagement or otherwise using the facilities, resources, time or any other opportunity provided by Cancer Council (together, **Work**) will be owned by Cancer Council and this Deed assigns any rights the Participant may have in Work (now or in the future) to Cancer Council;
 - (b) the Participant will do all things necessary and execute any document required to give effect to clause 6.1(a) above, including upon request by Cancer Council, do anything reasonably requested to evidence or perfect Cancer Council's ownership of the Work;
 - (c) the Participant will promptly and fully communicate to Cancer Council all Work created, made or discovered by the Participant;
 - (d) all Work is Confidential Information and is subject to the obligations in clause 3 above;
 - (e) in respect of any Work, the Participant provides irrevocable and unconditional consent to the doing of any acts or omissions by Cancer Council (including by its employees, agents and representatives, licensees and any other persons licensed by them) in any way Cancer Council requires, including but not limited to:
 - (i) not acknowledging the Participant as author of the Work;
 - (ii) using, producing, publishing or communicating the Work;

- (iii) modifying, editing or updating the Work; or
- (iv) incorporating all or part of the materials into other documents, materials or Work.

7 Moral rights

- 7.1 To the maximum extent permitted by law and without limiting clause 6, the Participant irrevocably consents to Cancer Council and any Authorised Person doing anything that might be considered an infringement of the Participant's Moral Rights. For example, the Cancer Council and any Authorised Person may reproduce, disclose, publish, adapt or otherwise use any parts and adaptations of the Work, in any way they think fit and without naming or attributing the Participant as a creator or author.

8 Use of Cancer Council name

- 8.1 The Participant agrees that it will not use the name or any trademark, logo, business or company name relating to Cancer Council without obtaining Cancer Council's prior written consent.

9 Indemnity

- 9.1 The Participant indemnifies and holds harmless Cancer Council from and against all losses, damage, costs, expenses or liabilities, howsoever arising, that the Participant sustains or incurs directly or indirectly (whether in contract, tort (including negligence), breach of statutory duty or otherwise) in connection with the Participant's breach of the obligations set out in this Deed.

10 General provisions

- 10.1 To the extent that the Participant attends Cancer Council's premises in connection with their engagement, the Participant shall comply with all of Cancer Council's reasonable directions, together with any workplace policies or guidelines.
- 10.2 This Deed cannot be replaced or varied except as agreed in writing between Cancer Council and the Participant.
- 10.3 All obligations under this Deed will survive the cessation of the Participant arrangement.
- 10.4 This Deed will be construed according to and subject to the laws in force in New South Wales.
- 10.5 The Participant acknowledges and agrees that the vocational placement is principally for their benefit and in consideration of the obligations in this Deed.
- 10.6 Nothing in this Deed, or any arrangement between the Participant and Cancer Council pursuant to which the parties engage in an unpaid arrangement, may be construed



as:

- (a) granting or conferring on the Participant any proprietary rights, licences or other rights (including Intellectual Property Rights) in any of the Confidential Information, other than the rights to use, disclose or reproduce the Confidential Information expressly set out in clause 3; or
- (b) creating an employment relationship between the Participant and Cancer Council or entitlement to any compensation from Cancer Council in connection with the duties performed by the Participant.

Executed as a Deed Poll

Signed sealed and delivered
by **Participant**
in the presence of:

Signature of witness

Participant Signature

Name of witness (please print)