

Confidentiality Deed Poll



Transport
for NSW

Corporate Confidentiality Deed Poll (One way)

Key Details

Corporate Confidentiality Deed Poll made on:

By:

Recipient Name:

ABN:

Address:

Attention:

Email address:

In favour of:

Transport for NSW (ABN 18 804 239 602) ("TfNSW")

Address:

Attention:

Email address:

Project

Grade Separating Road Interfaces

Authorised Purpose:

(see clause 2)

Solely for the purposes of the Recipient participating in the market interactive process for the Project including:

1. Participating in any meetings or briefings that Transport for NSW provides;
2. Receiving and reviewing any Information Documents provided or made available by or on behalf of Transport for NSW.

Continuing obligation

(see clause 11)

12 years after the date of this deed poll.

Representations or warranties

(see clause 10)

Clause 10 applies.

SIGNED, SEALED and DELIVERED as a deed poll by the Recipient in accordance with section 127 of the Corporations Act

Signature of Director: _____

Name: _____

Signature of
2nd Director or
Company
Secretary: _____

Name: _____

OFFICIAL
OFFICIAL

Background

- A. TfNSW intends to provide certain Confidential Information to the Recipient during the course of discussions and negotiations in relation to the Project.
- B. The parties have agreed that any Confidential Information that is disclosed by TfNSW to the Recipient will be disclosed on the terms of this deed poll.

Terms

1 Dictionary and Interpretation

1.1 Definitions

In this deed poll, except where the context otherwise requires:

Authorised Purpose has the meaning in the Key Details.

Confidential Information is any information (whether in written, oral or electronic form) given to the Recipient or its Representatives by TfNSW or anyone on TfNSW's behalf, (whether or not owned by TfNSW). It includes:

- (a) information acquired by the Recipient or its Representatives in the course of discussions prior to the date of this deed poll in relation to the Project; and
- (b) any information directly or indirectly derived or produced partly or wholly from the Confidential Information including any notes, calculation, conclusion, summary and computer modelling, or other document produced by the Recipient,

whether or not marked as "Commercial in Confidence", "Proprietary" or "Confidential" but does not include Excluded Information.

Excluded Information means:

- (a) any information which the Recipient can prove is in the public domain other than through a breach of this deed poll or an obligation of confidence owed to TfNSW;
- (b) was already lawfully known to the Recipient on a non-confidential basis at the time of disclosure;
- (c) is provided to the Recipient by another person who is in possession of it lawfully and can lawfully disclose it to the Recipient on a non-confidential basis; or
- (d) any information independently developed by the Recipient without access to the Confidential Information.

Key Details means the section of this deed poll titled Key Details.

Law means any statute, law, order of a court, tribunal, governmental or regulatory body or the listing rules of ASX Limited.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW).

Project has the meaning in the Key Details.

Recipient means the party so identified in the Key Details.

Representative includes, in relation to the Recipient, an employee, officer, agent, adviser, director, partner, auditor, contractor or consultant of the Recipient who is authorised to know Confidential Information of TfNSW under clause 3.

1.2 Interpretation

The following apply in the interpretation of this deed poll, unless the context requires otherwise.

- (a) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (b) A reference to the singular includes the plural number and vice versa.
- (c) A reference to a party means a person who is named as a party to this deed poll.
- (d) Person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (e) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this deed poll, their substitutes and assigns.
- (f) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally.
- (g) In this deed poll "includes" or "including" is not a word of limitation.
- (h) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (i) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (j) A reference to a clause, schedule or attachment is a reference to a clause of, or a schedule or an attachment to this deed poll.
- (k) A heading is for reference only. It does not affect the meaning or interpretation of this deed.

2 Use of Confidential Information

The Recipient and any Representatives must use the Confidential Information solely for the Authorised Purpose and not for any other purpose, and must not allow any other person to do so without TfNSW's written consent.

3 Permitted Disclosure of Confidential Information

3.1 Permitted Disclosure of Confidential Information

The Recipient may disclose Confidential Information:

- (a) to its Representatives, to the extent that each has a need-to know the information for the purpose of the Authorised Purpose; and
- (b) to the extent required by Law, subject to complying with clause 3.3.

3.2 Recipient's Representatives

- (a) Prior to the Recipient disclosing Confidential Information to its Representative, the Recipient must ensure that each Representative is fully aware of the confidentiality obligations imposed on the Recipient under this deed poll.
- (b) The Recipient is responsible for its Representatives (whether

or not still employed or engaged by the Recipient) and must ensure that its Representatives comply with the obligations under this deed poll as if they were the Recipient. A breach of the provisions of this deed poll caused by an act or omission of a Representative of the Recipient will be deemed to be a breach of this deed poll by the Recipient.

(c) not do any act or thing (or omit to do any act or thing) involving the use or disclosure of the Confidential Information which may cause loss or damage to TfNSW;

(d) not use or permit the use of the Confidential Information for any purpose other than the Authorised Purpose unless authorised by a separate agreement between the parties and then only to the extent permitted by that agreement;

3.3 Disclosure required by Law

If the Recipient is required by Law to disclose any Confidential Information, the Recipient must:

- (a) provide TfNSW with sufficient notice to enable it to seek a protective order or other remedy to protect the confidentiality of the Confidential Information; and
- (b) provide all assistance and cooperation which TfNSW considers necessary to prevent or minimise the disclosure of the Confidential Information.

(e) not introduce any Confidential Information into any computer system or other device operated, controlled or which may be accessed to any extent by a person other than the Recipient and its Representatives;

(f) not copy or reproduce the Confidential Information (or any part of it) except to the extent necessary for the Authorised Purpose; and

(g) notify TfNSW promptly if any of its Representatives who have had access to the Confidential Information leave the employment or engagement of the Recipient.

4 Protection of Confidential Information

4.1 Recipient to maintain confidence

The Recipient must:

- (a) do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information;
- (b) establish and maintain comprehensive security measures to ensure that any Confidential Information in its possession, custody or control is secure at all times;

4.2 Inspections

The Recipient consents, and must procure the necessary consents from its Representatives, to such inspections and audits as may be reasonably required by TfNSW for the purpose of auditing compliance by the Recipient and its Representatives with the terms of this deed poll.

5 Acknowledgements

5.1 Confidential Information belongs to TfNSW

The Recipient acknowledges and agrees that:

- (a) the Confidential Information constitutes valuable and proprietary information of TfNSW, or persons acting on its behalf and that it has no right, title or interest in or to the Confidential Information; and
- (b) this deed poll does not grant to the Recipient any licence or other right in relation to the Confidential Information except as expressly provided in this deed poll.

5.2 Injunctive relief

The Recipient acknowledges that damages are not a sufficient remedy for TfNSW for any breach of this deed poll and that in addition to, and without prejudice to, any other remedy that TfNSW may have, TfNSW is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Recipient.

5.3 No obligation to disclose information

Nothing in this deed poll obliges TfNSW, or any person acting on its behalf to disclose any particular information to the Recipient or its Representatives. TfNSW has an absolute discretion as to which information is disclosed.

6 Return of Confidential Information

6.1 Return of Confidential Information

If requested by TfNSW, the Recipient must:

- (a) return to TfNSW all copies of Confidential Information (in tangible form) in the possession, custody or control of the Recipient and its Representatives;
- (b) securely and appropriately, destroy and erase all copies of the Confidential Information (whether in tangible or intangible form) from any computer system or other device operated, controlled or which may be accessed by the Recipient and its Representatives; and
- (c) provide a statutory declaration to TfNSW that this clause 6.1 has been complied with in all respects.

6.2 No release from obligations

The return, destruction or erasure of the Confidential Information referred to in clauses (a) and (b) does not release the Recipient or its Representatives from their obligations under this deed poll.

7 Breach of confidentiality obligations

7.1 When breach occurs

The Recipient must immediately notify TfNSW of, and take all steps necessary to prevent, any actual, threatened or suspected breach of this deed poll by the Recipient or its Representatives and comply with any directions issued by a duly authorised representative of TfNSW regarding any unauthorised use or disclosure of the Confidential Information by the Recipient.

7.2 Provide assistance

The Recipient must provide such assistance as may be reasonably requested by TfNSW in relation to any claim or proceedings that TfNSW may take against any third party for

unauthorised use or disclosure of the Confidential Information.

8 Notices

8.1 Notice Requirements

Any notice given in connection with this deed poll must be in writing, marked to the attention of the person identified on the front page of this deed poll and must either be:

- (a) hand delivered to the relevant address set out in the Key Details; or,
- (b) sent by email to the relevant email address set out in the Key Details.

However, if a party is notified of a changed address or email address, then the notice must be sent to that address or email address.

8.2 When given

A notice is taken to have been given:

- (a) in the case of being hand delivered, on the date on which it is delivered; and
- (b) in the case of delivery by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

9 Personal Information

The Confidential Information may include Personal Information. In addition to any other obligations the Recipient may have under any Law or under this deed poll, the Recipient agrees to:

- (a) take all necessary measures to ensure that Personal Information in its possession or control in connection with this deed poll is protected against

loss and unauthorised access, use, modification and disclosure; and

- (b) comply with the *Privacy and Personal Information Protection Act 1988 (NSW)* as though the Recipient were a “public sector agency” as defined in that Act.

10 No representation or warranties given

Clause 10 only applies if stated in the Key Details:

10.1 No representation or warranties given

The Recipient acknowledges that neither TfNSW nor any person acting for or on TfNSW’s behalf:

- (a) has made nor makes any representation or warranty, express or implied, as to the accuracy, content, legality or completeness of the Confidential Information;
- (b) is under any obligation to notify the Recipient or provide any further information to the Recipient if it becomes aware of any inaccuracy, incompleteness or change in the Confidential Information; or
- (c) has made or makes any representation or warranty, express or implied that the Confidential Information does not infringe the intellectual property rights or any other right of any person.

10.2 Disclaimer by TfNSW

To the maximum extent permitted by Law, TfNSW and all persons acting on TfNSW’s behalf disclaim all liability for any loss or damage (whether foreseeable or not) suffered by any person using, disclosing or

acting on any Confidential Information disclosed by TfNSW or any person acting on TfNSW's behalf.

11 Continuing obligation

This deed poll ends after the period stated in the Key Details unless:

- (a) TfNSW notifies the Recipient in writing that it ends;
- (b) it is replaced by a later deed poll or agreement which protects the Confidential Information to the same or similar degree; or
- (c) the Confidential Information is no longer confidential (but not through a breach of this deed poll).

12 General

12.1 Further assurance

Each party must do everything necessary, or reasonably required, by another party, to give effect to this deed poll and the transactions contemplated by this deed poll.

12.2 Assignment

Without limiting or otherwise restricting any Law, the Recipient must not assign its rights or obligations under this deed poll without the prior written consent of a duly authorised representative of TfNSW.

12.3 Entire Agreement

This deed poll contains the entire agreement between TfNSW and the Recipient in relation to the Confidential Information and supersedes all other discussions, representations and statements about the Confidential Information.

12.4 Amendments

This deed poll may only be varied by a document signed by or on behalf of each party.

12.5 No waiver

Failure by TfNSW to enforce or compel performance of any term or condition of this deed poll does not constitute a waiver of that term or condition and does not impair the right of TfNSW to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term and condition.

12.6 Waiver

A waiver is effective only if in writing and signed by or on behalf of the party to be bound and is effective to the extent that the party giving it expressly states in writing.

12.7 Cost of compliance

Each party is responsible for any cost of complying with its obligations in connection with this deed poll.

12.8 Governing Law and Jurisdiction

This deed poll is governed by the laws in force in New South Wales. Each party submits to the exclusive jurisdiction of the courts of New South Wales.