

PR115-2 Tenderer's Deed of Confidentiality



Government of South Australia
Department for Infrastructure
and Transport

Only use this confidentiality deed for tenderers / proponents when genuinely confidential information is to be provided to them (e.g. information that could affect future investment strategy, property values or information about or from third parties). Note that this deed will not affect a Freedom of Information Act inquiry.

Modify blue text to suit project, delete comments, delete this box and replace footer with new KNet number. If this is forwarded to the Receiving Party electronically, complete the details then save as a pdf file to ensure that the deed is not modified.

For very high risk projects, the DIT "Authorised Persons" (officers opening and scheduling tenders) may be required to sign an additional deed of confidentiality (PR115-3) which binds them as individuals.

This Deed Poll is made on the day of 2017

PROJECT: [DIT xxCxxx ... *Insert name of project*]

PARTIES:

This Deed Poll is made by: [... *Insert Receiving Party*] of [... *Insert address*]
("Receiving Party")

in favour of and legally enforceable by:

MINISTER FOR INFRASTRUCTURE AND TRANSPORT, a body corporate established pursuant to the Administrative Arrangements Act, 1994 (SA) / **COMMISSIONER OF HIGHWAYS**, a body corporate pursuant to the Highways Act 1926 of 136 North Terrace, Adelaide, South Australia
("Disclosing Party")

Commented [DIT1]: Delete whichever is not applicable

RECITALS:

- A. The Disclosing Party possesses Confidential Information which it wishes to disclose to the Receiving Party in relation to the Project.
- B. The Receiving Party agrees to receive the Confidential Information on the terms and conditions of this Deed Poll.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS

"Authorised Person" means any of the Receiving Party's employees, advisers, consultants, agents and subcontractors that are nominated in Schedule 1.

ISSUE DATE: 19 August 2020
REVIEW DATE: 19 August 2023
RESPONSIBLE OFFICER: Team Leader – Procurement Policy
CONTACT OFFICER: Policy Manager
FILE: 2008/05970/01
DOCUMENT: 2219526

DIT DEED OF CONFIDENTIALITY

“Authorised Purpose” means [e.g. preparation of a tender for DIT Contract No. xxCxxx] and any other purpose as the Disclosing Party notifies from time to time in respect of any item of Confidential Information.

Commented [DIT2]: Insert any other specific purpose here, or leave existing words

“Confidential Documents” means any embodiment of Confidential Information however recorded.

“Confidential Information” means information disclosed to the Receiving Party by or on behalf of the Disclosing Party in relation to the Authorised Purpose that:

- (a) is by its nature confidential or by the nature in which it is disclosed is confidential;
- (b) is designated by the Disclosing Party as confidential or identified in terms connoting its confidentiality; or
- (c) the Receiving Party knows or ought to know is confidential,

but does not include:

- (a) information that is or becomes public knowledge, other than by a breach of this Agreement; or
- (b) is required by law, or any requirement of any court, tribunal, authority, regulatory body or stock exchange to be disclosed.

“Intellectual Property Rights” means any patent, copyright, trade mark, trade name, design, semi conductor or circuit layout rights, trade secret, know how or other form of intellectual property right whether arising before or after the execution of this Agreement and the right to registration of these rights.

2 DISCLOSURE OF CONFIDENTIAL INFORMATION

2.1 The Disclosing Party may disclose Confidential Information to the Receiving Party.

2.2 In consideration of the disclosure of the Confidential Information by the Disclosing Party the Receiving Party undertakes the following obligations:

- (a) The Receiving Party must only use Confidential Information for the Authorised Purpose and in accordance with any conditions of use notified to the Receiving Party by the Disclosing Party.
- (b) The Receiving Party must take all reasonable steps to ensure that the confidentiality of the Confidential Information is preserved.
- (c) The Receiving Party must promptly notify the Disclosing Party if it is aware of any unauthorised disclosure of any of the Confidential Information.

3 AUTHORISED DISCLOSURE

3.1 The Receiving Party may disclose Confidential Information to an Authorised Person, but only:

- (a) to the extent that, and for so long as, is necessary for the Authorised Purpose;
- (b) if prior to disclosure, the Receiving Party has informed the Authorised Person that the Confidential Information is confidential and has required the Authorised Person to treat it confidentially;
- (c) if the Receiving Party has, before disclosure to the Authorised Person, given the Disclosing Party notification of the name, position and status (for example, employee or consultant) of the Authorised Person (for the purposes of this sub-clause, the Disclosing Party has been notified of the individual Authorised Persons detailed in full in the Schedule); and
- (d) if prior to disclosure, the Authorised Person has executed a deed of confidentiality in the form prescribed by the Disclosing Party relating to the non-disclosure of Confidential Information and the deed has been delivered to the Disclosing Party.

Commented [DIT3]: Only include this clause if the company's employees must each individually sign a deed of confidentiality

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3.2 The Receiving Party may only disclose Confidential Information if it is permitted to be disclosed by this Agreement or it is required by operation of law.

4 RETURN OF CONFIDENTIAL DOCUMENTS

4.1 The Disclosing Party may at any time:

- (a) deny the Receiving Party access to Confidential information and/or
- (b) require the Receiving Party to deny an Authorised Person access to Confidential Information; and/or
- (c) require the Receiving Party to destroy or deliver the Confidential Documents to the Disclosing Party forthwith.

4.2 Notwithstanding clause 4.1, the Receiving Party and its Authorised Persons may retain any of the Confidential Information it is required to retain by law or for corporate governance purposes.

4.3 If an Authorised Person ceases to be a person within the category of Authorised Persons or it is no longer necessary for the person to have access to the Confidential Information for the Authorised Purpose, the Receiving Party must immediately retrieve all Confidential Documents held by that person.

4.4 If the Receiving Party:

- (a) receives a notice from the Disclosing Party requiring it to cease using the Confidential Information; or it
 - (b) no longer requires the Confidential Information for the Authorised Purpose;
- the Receiving Party must retrieve the Confidential Documents and return them to the Disclosing Party by the date reasonably required by the Disclosing Party.

5 INTELLECTUAL PROPERTY RIGHTS

Any Intellectual Property Rights of the Disclosing Party in the Confidential Information are retained by the Disclosing Party despite any disclosure to the Receiving Party.

6 INDEMNITY

The Receiving Party indemnifies the Disclosing Party against any loss or damage of third parties for which the Disclosing Party may become liable as a result of:

- (a) any disclosure or use of Confidential Information in breach of this Agreement by the Receiving Party; or
- (b) any unauthorised disclosure or use by an Authorised Person of Confidential Information.

7 WARRANTY

The Disclosing Party warrants that the use of the Confidential Information for the Authorised Purpose will not infringe the Intellectual Property Rights of any third party.

8 RIGHTS ARE CUMULATIVE

The rights of the Disclosing Party under this Agreement are in addition to and to not derogate from, any rights in law or equity of the Disclosing Party.

9 PROPER LAW

The laws in force in South Australia, including law with respect to capacity to contract and manner of performance, apply to this Agreement.

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10 JURISDICTION OF COURTS

- 10.1 The parties agree that the courts of South Australia will have exclusive jurisdiction to determine any proceeding in relation to this Agreement.
- 10.2 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.
- 10.3 The Receiving Party undertakes not to apply to transfer any proceedings to another registry of the Federal Court.

11 NOTICES

- 11.1 A "notice" means:
 - (a) a notice in writing; or
 - (b) a consent, approval or other communication required to be in writing under this Agreement.
- 11.2 A notice must be signed by or on behalf of the sender addressed to the recipient and:
 - (a) delivered to the recipient's address;
 - (b) sent by pre-paid mail to the recipient's address; or
 - (c) transmitted by facsimile to the recipient's address.

12 LIABILITY

The Receiving Party acknowledges and agrees that:

- (a) monetary damages may be an insufficient remedy for the Disclosing Party if the Receiving Party breaches this Deed; and
- (b) in addition to any other remedy to which the Disclosing Party may be entitled in law or equity, the Disclosing Party may seek injunctive relief to prevent any actual or threatened breach of this Deed and to compel specific performance of this Deed.

EXECUTED AS A DEED BY THE RECEIVING PARTY

SIGNED for and on behalf of

.....

in accordance with section 127 of the Corporations Act 2001 by

.....

a director, and by (signature)

.....

a director / the secretary (signature)

.....
(date)

SIGNED, SEALED AND DELIVERED on behalf of

.....

Commented [DIT4]: USE THE FOLLOWING SIGNATURE BLOCK IF SIGNING IN ACCORDANCE WITH THE CORPORATIONS ACT.

Check with Receiving Party to confirm appropriate block if required.

Commented [DIT5]: Insert name of the Receiving Party

Commented [DIT6]: Insert name of the company's director

Commented [DIT7]: insert name of the director / secretary

Commented [DIT8]: USE THE FOLLOWING SIGNATURE BLOCK FOR ALL OTHER PURPOSES

Commented [DIT9]: Insert name of the Receiving Party

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.....
name (signature)

who warrants that he or she is authorised to execute this document on behalf of the Receiving Party, its officers and members (if any), in the presence of

Commented [DIT10]: Insert name

.....
witness (signature)

Commented [DIT11]: Insert full name of witness

.....
(date)

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DIT DEED OF CONFIDENTIALITY

SCHEDULE 1

1. RECEIVING PARTY

Legal name:
.....
(Insert full legal name)

Address:
.....
.....

ACN:
.....

2. ADDRESS FOR NOTICES

Disclosing Party

Address: Department for Infrastructure and Transport
Attention: xxxxx
Level xx, 77 Grenfell Street
Adelaide SA 5000
xxxxx@yyyyy.zzz

Commented [DIT12]: Insert relevant details

Receiving Party

Address:
.....
.....
(Insert address for notices to your company above)

Email:
(Insert the appropriate email address for your company above)

3. AUTHORISED PERSONS (Refer Clause 3)

Commented [DIT13]: Receiving Party to add additional authorised persons as required

Name:
.....

Position:
.....

Status
(Contact 1, employee, consultant,
subcontractor or agent)
.....
.....

Name:
.....

Position:
.....

Status
(Contact 2, employee, consultant,
subcontractor or agent)
.....
.....

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