

Transport for NSW

Parramatta Light Rail Stage 2 - Enabling Works Confidentiality Deed Poll

Contract: IPD-22-12894

December 2022



transport.nsw.gov.au

OFFICIAL: Sensitive – NSW Government

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Confidentiality Deed Poll for Parramatta Light Rail Stage 2 - Enabling Works

Owner/discloser of Confidential Information	<p>Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted under section 3C of the <i>Transport Administration Act 1988 (NSW)</i> (Transport for NSW)</p> <p>7 Harvest St, Macquarie Park NSW 2113 [TfNSW Legal note : assume project team has nominated Mac Park address]</p> <p>Attention: Jeremy Lonergan</p>
Recipient	<p>Recipient name: <i>[insert Interested Party's name]</i></p> <p>ABN & ACN: <i>[insert ABN and ACN as relevant]</i></p> <p>Address: <i>[insert Interested Party's office address]</i></p> <p>Attention: <i>[insert Interested Party's representative's name]</i></p>
Approved Purpose (refer clause 2.1)	<p>Solely for the purposes of the Recipient participating in the procurement process for the delivery of Parramatta Light Rail Stage 2 - Enabling Works (Project) (Contract No. IPD-22-12894), including:</p> <ol style="list-style-type: none"> 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; and 3. if applicable, preparing its response to the Invitation to submit a Registration of Interest issued by Transport for NSW and any other response or submission for or in respect of the procurement process for the Project.
Date	Executed as a Deed Poll on the _____ day of _____ 202X

Executed by the Recipient in accordance with section 127 of the <i>Corporations Act 2001 (Cth)</i>	
<p>Signature of Director:</p> <p>Name of Director:</p>	<p>Signature of 2nd Director or the Company Secretary:</p> <p>Name of 2nd Director or the Company Secretary:</p>
[Use if recipient is executing under s127]	

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Signed, sealed and delivered as a deed poll for and on behalf of the Recipient by its Attorney under Power of Attorney dated _____ (insert date)

and the Attorney declares that the Attorney has not received any notice of revocation of such Power of Attorney in the presence of

Signature of Witness:

Signature of Attorney:

Name:

Name:

[Use if an attorney is executing and provide a copy of the relevant Power of Attorney]

[Note: If another method of execution is proposed, consult Legal. Also, the attorney may only electronically execute this document if their witness is present in the same room and at the same time to witness the affixing by the attorney of their electronic signature].

Confidentiality Deed Poll

You enter into this Confidentiality Deed Poll (**deed poll**) in consideration for us allowing you access to Confidential Information.

1. What is Confidential Information?

- 1.1. The Confidential Information governed by this deed poll is information which you obtain from us, or which is given to you on our behalf, in connection with the Approved Purpose (irrespective of form and whether or not given before or after the date of this deed poll). It also includes:
 - 1.1.1. all information relating to our business policies, plans, projects, strategies, financial details, proposals, systems, ideas, methods, know-how and intellectual property; and
 - 1.1.2. all information directly or indirectly derived from that information, including any registration of interest, expression of interest, tender or other submission or document (in any format) that you produce, complete or amend in connection with the Approved Purpose.
- 1.2. It does not include information which:
 - 1.2.1. is or becomes part of the public domain (unless information is in or becomes part of the public domain because it has been disclosed without our consent or in breach of any confidentiality obligation owed to any other person);
 - 1.2.2. was already lawfully known to you on a non-confidential basis;
 - 1.2.3. is provided to you by another person who is in possession of it lawfully and can disclose it to you on a non-confidential basis; or
 - 1.2.4. is independently developed by you without access to the Confidential Information.
- 1.3. You acknowledge and agree that:
 - 1.3.1. the Confidential Information constitutes valuable and proprietary information of us or persons acting on our behalf and that this deed poll does not give you any right, title or interest in or to any Confidential Information;
 - 1.3.2. this deed poll does not grant to you any licence or other right in relation to the Confidential Information or any Information Document, except as expressly provided in this deed poll; and
 - 1.3.3. nothing in this deed poll obliges us, or any person acting on our behalf, to disclose any particular information to you. We have an absolute discretion as to which (if any) information is disclosed to you.

2. Your use of Confidential Information

- 2.1. You must use the Confidential Information solely for the Approved Purpose. You must not use it for any other purpose or allow any other person to do so without our prior written consent (which may be withheld by us or given by us subject to conditions, in our absolute discretion).
- 2.2. Subject to clauses 2.3 and 2.5, you must not disclose the Confidential Information to any other person without our prior written consent (which may be withheld by us or given by us subject to conditions, in our absolute discretion). If we consent, then you must ensure that other person signs

a confidentiality deed poll on the same terms as this deed poll and you remain responsible for that person's acts and omissions (including breach of confidence).

- 2.3. You may disclose the Confidential Information to your officers, directors, employees, contractors, advisors and agents on a strict need-to-know basis for the Approved Purpose, provided that you expressly inform them that it is confidential, and you ensure that they owe you legally enforceable confidentiality obligations in respect of the Confidential Information on terms equivalent to this deed poll (each an "**Authorised Person**").
- 2.4. You will be responsible and liable to us for the acts and omissions of your Authorised Persons at all times, and you must ensure that your Authorised Persons comply with your obligations under this deed poll as if they were you. At any time, we may require that you obtain and deliver to us a confidentiality undertaking or deed poll on our terms from an Authorised Person in our favour.
- 2.5. You may disclose the Confidential Information as strictly required by law, but you must inform us first and seek to limit the terms of that disclosure in any manner we reasonably request.
- 2.6. You must take reasonable steps to protect the Confidential Information and keep it secure from unauthorised access.
- 2.7. You must inform us as soon as possible if:
 - 2.7.1. you become aware or suspect that there has been any unauthorised disclosure or use of the Confidential Information; or
 - 2.7.2. you are required to disclose the Confidential Information by law.
- 2.8. You must return or destroy, or in respect of machine-readable records erase, (at our option) the Confidential Information and all copies of it when you no longer require it for the Approved Purpose or on our earlier request.
- 2.9. The return or destruction of Confidential Information under clause 2.8 does not in any way release you from your obligations under this deed poll.

3. Access to Data Room

- 3.1. You acknowledge and agree that you will be given access to the Data Room in accordance with, and subject to, this deed poll and the Data Room Guidelines during the period set out in the Data Room Guidelines or as otherwise deemed by us.
- 3.2. We may, in our absolute discretion, revoke or limit access to the Data Room at any time and for any reason, including where you fail to comply with an obligation under this deed poll or any other document issued by us or on our behalf to you as part of the procurement process for the Project. Access to the Data Room will otherwise automatically cease if you are not selected by us to submit an expression of interest or tender for the Project.
- 3.3. You acknowledge and agree that access to the Data Room for you and any person working with you in relation to the Approved Purpose (such as a consortium or joint venture member) will be restricted to the number of individuals permitted by us to be "**Data Room Representatives**", as stated in the Data Room Guidelines. A Data Room Representative is an Authorised Person for the purposes of this deed poll.
- 3.4. Your initial Data Room Representatives are specified in Annexure 1 to this deed poll. You may replace a Data Room Representative at any time in accordance with the Data Room Guidelines.

- 3.5. You must have each Data Room Representative execute an Individual Deed Poll and give us a scanned or electronic copy of each executed Individual Deed Poll. Notwithstanding any other provision of this deed poll, a Data Room Representative will not be given access to the Data Room until we have received a scanned or electronic copy of the Individual Deed Poll duly executed by them and a scanned or electronic copy of this deed poll duly executed by you.
- 3.6. You must ensure that each Data Room Representative complies with the Individual Deed Poll executed by them and, without relieving you of any responsibility or liability, you must immediately notify us if:
 - 3.6.1. you become aware or suspect that a person other than a Data Room Representative has access to the Data Room;
 - 3.6.2. you become aware or suspect that a Data Room Representative's username and password are known to any other person; or
 - 3.6.3. a Data Room Representative ceases to be involved in the Approved Purpose.

4. Conditions of Data Room access

- 4.1. You acknowledge and agree that each Data Room Representative's access to the Data Room will be subject to your, and their, compliance with (at all times):
 - 4.1.1. the terms of this deed poll and their Individual Deed Poll; and
 - 4.1.2. the Data Room Guidelines (as amended by us from time to time) and any other terms for the access to and use of the Data Room notified by us (or on our behalf) from time to time (including where provided through the Data Room). You agree to check the Data Room for any amendments to such terms or new terms each time you access the Data Room.
- 4.2. You acknowledge and agree that:
 - 4.2.1. access to the Data Room may not be available from time to time, including because we decide to revoke or limit access, or due to software, hardware, equipment or communication system maintenance, error, malfunction or failure;
 - 4.2.2. we are not responsible for the operation of any software, hardware, equipment or communication system that is used to access the Data Room, including the cost, compatibility and functionality of the software, hardware, equipment or communication system; and
 - 4.2.3. your access and use of the Data Room is at your own risk, and we are not liable or responsible to you for any cost, loss, damage or other liability incurred or suffered by you or any other person as a result of any delay in accessing or inability to access the Data Room (including because the Data Room is not available), or any computer virus or malicious software transmitted as a result of accessing the Data Room.
- 4.3. You acknowledge and agree that we, and others authorised by us, may collect, use and disclose information about the access to and use of the Data Room by you and the Data Room Representatives, and you consent, and must ensure that each Data Room Representative consents, to such collection, use and disclosure.

5. Special provisions relating to Critical Infrastructure Assets

- 5.1. To the extent any Confidential Information includes information relating to a Critical Infrastructure Asset (**CIA Confidential Information**), you must:
 - 5.1.1. comply with such additional security policies, procedures or directions that may be notified to you by us, or on our behalf, from time to time regarding any aspect of the security of, or access to, the CIA Confidential Information, including in respect of any premises, systems or equipment where the CIA Confidential Information is stored; and
 - 5.1.2. comply with any direction given by us for the purposes of our compliance with the *Security of Critical Infrastructure Act 2018* (Cth) and any rules or regulations enacted in connection with that Act.
- 5.2. Notwithstanding any other provision of this deed poll, you will have no claim against us, howsoever arising and whether under contract, at law or in equity, in connection with your compliance with this clause 5.
- 5.3. In this clause 5, "**Critical Infrastructure Asset**" means an asset (including a system) owned or operated by, or the responsibility of, TfNSW:
 - 5.3.1. which is a designated "critical public transport asset" or "critical freight infrastructure asset", as defined in the *Security of Critical Infrastructure Act 2018* (Cth); and/or
 - 5.3.2. where the business impact of a data breach, loss of availability, fraud or failure due to a cyber incident or breach would constitute a 'catastrophic consequence' (as determined by us).

6. Non-reliance on any information we provide

- 6.1. You agree that:
 - 6.1.1. you will prepare any submission, registration of interest, expression of interest or tender in respect of the Project based on your own investigations, interpretations, deductions, information and determinations including (without limitation) your own independent evaluation of the accuracy, adequacy, suitability and completeness of any Information Documents; and
 - 6.1.2. you will not in any way rely upon the accuracy, adequacy, suitability or completeness of any Information Documents for the purposes of preparing any submission, registration of interest, expression of interest or tender in respect of the Project.
- 6.2. You acknowledge and agree that:
 - 6.2.1. we have no obligation to check or ensure the Information Documents remain current or to keep the Information Documents updated; and
 - 6.2.2. any forecasts or projections contained in the Information Documents relate to unknown future matters and we do not warrant they will be achieved.
- 6.3. As between you and us, the Information Documents, and all copyright and other intellectual property rights in the Information Documents, are and always remain our property. This deed poll does not give you any right, title or interest in or to any Information Document.

7. Our reliance on this deed poll

- 7.1. You acknowledge and agree that if we accept any submission, registration of interest, expression of interest or tender from you in connection with the Project:
 - 7.1.1. we will be doing so in reliance upon the acknowledgments and warranties contained in this deed poll; and
 - 7.1.2. to the extent permitted by law, we will not be liable to you for any claims arising out of or any way in connection with:
 - 7.1.2.1. the provision of, or the purported reliance upon, or use of, Information Documents by you, any Authorised Person or any other person to whom the Information Documents are disclosed by you; or
 - 7.1.2.2. a failure by us to provide any information to you.

8. Release and indemnity

- 8.1. To the extent permitted by law, you irrevocably release and indemnify us (and will keep us indemnified) from and against:
 - 8.1.1. any claim against us by, or liability of us to, any person; and
 - 8.1.2. (without being limited by clause 8.1.1.) any costs, charges, expenses, damages, losses or other liabilities suffered or incurred by us,

arising out of or in connection with the provision of, or the purported reliance upon, or use of, Information Documents by you, any Authorised Person or any other person to whom Information Documents are disclosed by you or any Authorised Person.
- 8.2. To the extent permitted by law, you irrevocably release and indemnify us (and will keep us indemnified) from and against any and all claims, costs, charges, expenses, damages, losses or other liabilities arising directly or indirectly out of or in connection with any:
 - 8.2.1. breach by you of this deed poll;
 - 8.2.2. breach by the relevant individual of an Individual Deed Poll; or
 - 8.2.3. act or omission by any Authorised Person which, if done or omitted to be done by you, would be a breach of any of your obligations under this deed poll.

9. General

- 9.1. This deed poll supersedes all other discussions, representations and statements about its subject matter.
- 9.2. This deed poll may be varied or waived only if we both agree in writing.
- 9.3. You must not assign your rights under or novate this deed poll to any other person without our prior written consent (which may be withheld by us or given by us subject to conditions, in our absolute discretion).
- 9.4. If we do not exercise a right at any time in connection with a default under this deed poll, this does not mean that we have waived the right or cannot exercise it later.
- 9.5. You agree that, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising out of or in

connection with this deed poll, whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or on the basis of quantum meruit, quasi contract or of any other principle of law or equity.

- 9.6. This deed poll may be executed by you electronically or in handwriting (including, a print-out of the electronic form). If the signatures on your behalf are on more than one copy of this deed poll, this shall be deemed the same as, and have the same effect as, if the signatures were on a single copy of this deed poll.
- 9.7. You agree to bear your own costs of negotiating and performing your obligations under and in connection with this deed poll.

10. Records

- 10.1. You must maintain complete and accurate records of all use and copying of the Confidential Information, including the names of those persons to whom the Confidential Information has been disclosed as permitted by this deed poll, and immediately produce those records to us upon request.

11. Privacy

- 11.1. If any Personal Information is disclosed to you by us or on our behalf, in addition to any other obligations you may have in respect of that information under this deed poll or at law, you must:
- 11.1.1. not use or disclose it, except for the Approved Purpose;
 - 11.1.2. take all necessary measures to ensure that Personal Information is protected against loss and unauthorised access, use, modification and disclosure;
 - 11.1.3. promptly notify us of any request for access to that Personal Information;
 - 11.1.4. comply with the Privacy Law as though you are a “public sector agency”, as defined in the Privacy Law; and
 - 11.1.5. without limiting clause 11.1.4., comply with any reasonable direction which we give you relating to our obligations under the Privacy Law.

12. Governing law

- 12.1. The laws of the State of New South Wales, Australia, govern this deed poll and you agree to submit to the non-exclusive jurisdiction of the courts of that place and any courts competent to hear appeals therefrom in respect of any matters relating to or arising out of the subject matter of this deed poll.

13. Damages not a sufficient remedy

- 13.1. You agree that damages are not a sufficient remedy for us for any breach of this deed poll and that in addition, and without prejudice, to any other remedy we may have, we are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this deed poll.

14. Period of enforceability

- 14.1. This deed poll ends when:
- 14.1.1. we notify you in writing it ends; or

- 14.1.2. it is replaced by a later deed poll which protects the Confidential Information to the same or similar degree; or
- 14.1.3. the Confidential Information is no longer confidential (but not through a breach by you or anyone you have disclosed it to).

15. Definitions

In this deed poll, unless the context otherwise requires:

Approved Purpose means the purpose described on the front page of this deed poll.

Authorised Person has the meaning given in clause 2.3.

Confidential Information has the meaning as described in clause 1 of this deed poll.

Data Room means the electronic data room, portal for submissions and question and answer facility arranged by us for the Project, which will contain documents, data, requests for clarification, questions, answers and other information (including Information Documents) relevant to the Project.

Data Room Guidelines means any document(s) containing the rules, terms of use and guidelines relating to the access and use of the Data Room, as provided by us or on our behalf from time to time and whether or not entitled 'Data Room Guidelines' or something else.

Data Room Representative has the meaning as described in clauses 3.3 and 3.4 of this deed poll.

Individual Deed Poll means a deed poll substantially in the form set out in Annexure 2 of this deed poll.

Information Document means any information or data of any kind provided or made available by us or on our behalf (including, but not limited to, Confidential Information) in connection with the Approved Purpose or the Project (including where made available through the Data Room and regardless of the medium in which the information is provided or made available).

Personal Information has the same meaning it has in the Privacy Law.

Privacy Law means the *Privacy and Personal Information Protection Act 1998 (NSW)*.

Project means the project identified on the front page of this deed poll.

we and **us** and **our** and **TfNSW** means Transport for NSW, as identified on the front page of this deed poll.

you and **your** means the person named on the front page of this deed poll as the 'Recipient'.

16. Interpretation

- 16.1. The following rules apply in the interpretation of this deed poll, unless the context otherwise requires:
 - 16.1.1. A reference to a document is to that document as varied, amended, supplemented or replaced from time to time.
 - 16.1.2. A reference to any statute includes any consolidations, amendments or re-enactments of it, any replacements of it, and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that statute.
 - 16.1.3. A reference to the singular includes the plural number and vice versa.

- 16.1.4. A 'person' includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- 16.1.5. 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.
- 16.1.6. An agreement on the part of, or in favour of, two or more persons binds and is for the benefit of them jointly and severally.
- 16.1.7. The words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- 16.1.8. Headings are for convenience and do not affect the interpretation of this deed poll.

Annexure 1 – Initial Data Room Representatives

[Note: Not required for ROI Stage, to be completed at EOI Stage]

The Recipient is required to nominate, as a minimum, a 'Primary Data Room Contact' and 'Alternative Primary Data Room Contact' by completing the table below. The Recipient may also nominate up to three (3) 'General Users' in addition to the Primary Data Room Contact and Alternative Primary Data Room Contact. TfNSW Legal note: We raised the following query previously and does not look to be addressed? Are the terms used herein, e.g. 'General User', defined in the Data Room Guidelines? If so, this needs to be stated here. If not, un-capitalise]

No.	Role	Full Name	Company	Email	Daytime Contact Number	Mobile Phone Number
1	Primary Data Room Contact					
2	Alternative Primary Data Room Contact					
3	General User					
4	General User					
5	General User					

The Recipient's nominated Alternative Primary Data Room Contact will be provided with the same access as a General User while not acting as the Alternative Primary Data Room Contact. If a Recipient requires alternative arrangements, it must make this request to TfNSW in writing. TfNSW may, in its absolute discretion, but without any obligation to do so, grant any such request by responding in writing in the affirmative. [same comment as above]

Annexure 2 – Individual Deed Poll

[Note: Not required for ROI Stage, to be completed at EOI Stage]

Owner/discloser of Confidential Information	<p>Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted under section 3C of the <i>Transport Administration Act 1988 (NSW)</i> (“Transport for NSW”)</p> <p>[insert relevant TfNSW office address]</p> <p>Attention: [insert TfNSW representative responsible for this ROI process]</p>
Individual	<p>Individual name: [insert individual’s name]</p> <p>Address: [insert individual’s address]</p>
Recipient	<p>Recipient name: [insert Recipient’s name]</p> <p>ABN & ACN: [insert ABN and ACN as relevant]</p> <p>Address: [insert Recipient’s office address]</p>
Approved Purpose (refer clause 2.1)	<p>Solely for the purposes of the Recipient participating in the procurement process for the delivery of [insert Project name] (Project) (Contract No. [insert contract number]), including:</p> <ol style="list-style-type: none"> 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; and 3. if applicable, preparing its response to the Invitation to submit a Registration of Interest issued by Transport for NSW and any other response or submission for or in respect of the procurement process for the Project.
Date	<p>Executed as a Deed Poll on the _____ day of _____ 202X</p>

Signed, sealed and delivered as a deed poll by the Individual in the presence of:	
<p>Signature of Witness:</p> <p>Name of Witness:</p>	<p>Signature of Individual:</p> <p>Name of Individual:</p>

Individual Deed Poll

You solemnly promise that by entering into this Deed Poll (“**deed poll**”) you will:

- a) do, or ensure they are done, the things you agree and must do; and
- b) not do, or permit to be done, the things you agree not to, and must not, do,

under this deed poll.

1. What is Confidential Information?

1.1. The Confidential Information governed by this deed poll is information which you obtain from us, or which is given to you on our behalf (including by the Recipient), in connection with the Approved Purpose (irrespective of form and whether or not given before or after the date of this deed poll). It also includes:

- 1.1.1. all information relating to our business policies, plans, projects, strategies, financial details, proposals, systems, ideas, methods, know-how and intellectual property; and
- 1.1.2. all information directly or indirectly derived from that information, including any registration of interest, expression of interest, tender or other submission or document that you produce, complete or amend in connection with the Approved Purpose.

1.2. It does not include information which:

- 1.2.1. is or becomes part of the public domain (unless information is in or becomes part of the public domain because it has been disclosed without our consent or in breach of any confidentiality obligation owed to any other person);
- 1.2.2. was already lawfully known to you on a non-confidential basis;
- 1.2.3. is provided to you by another person who is in possession of it lawfully and can disclose it to you on a non-confidential basis; or
- 1.2.4. is independently developed by you without access to the Confidential Information.

1.3. As between you and us, the Confidential Information is and always remains our property. This deed poll does not give you any right, title or interest in or to any Confidential Information.

2. Your use of Confidential Information

2.1. You must use the Confidential Information solely for the Approved Purpose. You must not use it for any other purpose.

2.2. Subject to clauses 2.3, you must not disclose the Confidential Information to any other person except:

- 2.2.1. with our prior written consent (which may be withheld by us in our absolute discretion); or
- 2.2.2. if the Recipient is permitted under the Confidentiality Deed Poll to disclose that Confidential Information to that other person.

- 2.3. You may disclose the Confidential Information as strictly required by law, but you must inform us first and seek to limit the terms of that disclosure in any manner we reasonably request.
- 2.4. You must take reasonable steps to protect the Confidential Information and keep it secure from unauthorised access.
- 2.5. You must inform us as soon as possible if:
 - 2.5.1. you become aware or suspect that there has been any unauthorised disclosure or use of the Confidential Information; or
 - 2.5.2. you are required to disclose the Confidential Information by law.
- 2.6. You must return or destroy, or in respect of machine-readable records erase, (at our option) the Confidential Information and all copies of it when you no longer require it for the Approved Purpose or on our earlier request.
- 2.7. The return or destruction of Confidential Information under clause 2.6 does not release you from your obligations under this deed poll.

3. Access to Data Room

- 3.1. This clause 3 only applies where we give you access to the Data Room.
- 3.2. You acknowledge and agree that you will be given access to the Data Room in accordance with, and subject to, this deed poll during the period set out in the Data Room Guidelines or as otherwise deemed by us.
- 3.3. We may, in our absolute discretion, revoke or limit access to the Data Room at any time and for any reason, including where you fail to comply with an obligation under this deed poll or any other document issued by us or on our behalf to you or the Recipient as part of the procurement process for the Project. Your access to the Data Room will otherwise automatically cease if the Recipient is not selected by us to submit an expression of interest or tender for the Project.
- 3.4. Notwithstanding any other provision of this deed poll, you will not be given access to the Data Room until we have received a scanned or electronic copy of this deed poll executed by you and a scanned or electronic copy of the Confidentiality Deed Poll executed by the Recipient.
- 3.5. You agree to:
 - 3.5.1. ensure your username and password are not disclosed to or known to any other person;
 - 3.5.2. immediately notify us if you become aware or suspect that your username and password are known to any other person; and
 - 3.5.3. immediately notify us if you cease to be involved in the Approved Purpose.
- 3.6. You acknowledge and agree that your access to the Data Room will be subject to your compliance with (at all times):
 - 3.6.1. the terms of this deed poll and the Confidentiality Deed Poll; and
 - 3.6.2. the Data Room Guidelines (as amended by us from time to time) any other terms for the access to and use of the Data Room notified by us (or on our behalf) from time to time (including where provided through the Data Room). You agree to check the Data Room for any amendments to such terms or new terms each time you access the Data Room.

- 3.7. You acknowledge and agree that:
- 3.7.1. access to the Data Room may not be available from time to time, including because we decide to revoke or limit access, or due to software, hardware, equipment or communication system maintenance, error, malfunction or failure;
 - 3.7.2. we are not responsible for the operation of any software, hardware, equipment or communication system that is used to access the Data Room, including the cost, compatibility and functionality of the software, hardware, equipment or communication system; and
 - 3.7.3. your access and use of the Data Room is at your own risk, and we are not liable or responsible to you for any cost, loss, damage or other liability incurred or suffered by you or any other person as a result of any delay in accessing or inability to access the Data Room (including because the Data Room is not available), or any computer virus or malicious software transmitted as a result of accessing the Data Room.
- 3.8. You acknowledge and agree that we, and others authorised by us, may collect, use and disclose information about the access to and use of the Data Room by you, and you consent to such collection, use and disclosure.

4. Non-reliance on any information we provide

- 4.1. You agree that:
- 4.1.1. you will carry out work relating to the Approved Purpose (including preparing any submission, registration of interest, expression of interest or tender of the Recipient) based on your own investigations, interpretations, deductions, information and determinations including (without limitation) your own independent evaluation of the accuracy, adequacy, suitability and completeness of any Information Documents; and
 - 4.1.2. you will not in any way rely upon the accuracy, adequacy, suitability or completeness of any Information Documents for the purposes of carrying out work relating to the Approved Purpose (including preparing any submission, registration of interest, expression of interest or tender of the Recipient).
- 4.2. You acknowledge and agree that:
- 4.2.1. we have no obligation to check or ensure the Information Documents remain current or to keep the Information Documents updated; and
 - 4.2.2. any forecasts or projections contained in the Information Documents relate to unknown future matters and we do not warrant they will be achieved.
- 4.3. As between you and us, the Information Documents, and all copyright and other intellectual property rights in the Information Documents, are and always remain our property. This deed poll does not give you any right, title or interest in or to any Information Document.

5. General

- 5.1. This deed poll supersedes all other discussions, representations and statements about its subject matter.
- 5.2. This deed poll may be varied or waived only if we both agree in writing.

- 5.3. You agree not to assign your rights under or novate this deed poll to any other person without our prior written consent (which may be withheld by us in our absolute discretion).
- 5.4. If we do not exercise a right at any time in connection with a default under this deed poll, this does not mean that we have waived the right or cannot exercise it later.

6. Privacy

- 6.1. If you receive any Personal Information disclosed to the Recipient by us or on our behalf, you agree not to use or disclose it except for the Approved Purpose, and that you will promptly notify us of any request for access to that information. You also agree to comply with any reasonable direction which we give you relating to our obligations under the Privacy Law.

7. Governing Law

- 7.1. The laws of the State of New South Wales, Australia, govern this deed poll and you agree to submit to the non-exclusive jurisdiction of the courts of that place and any courts competent to hear appeals therefrom in respect of any matters relating to or arising out of the subject matter of this deed poll.

8. Damages not a sufficient remedy

- 8.1. You agree that damages are not a sufficient remedy for us for any breach of this deed poll and that in addition, and without prejudice, to any other remedy we may have, we are entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this deed poll.

9. End of this Deed Poll

- 9.1. This deed poll ends when:
 - 9.1.1. we notify you in writing it ends; or
 - 9.1.2. it is replaced by a later deed poll which protects the Confidential Information to the same or similar degree; or
 - 9.1.3. the Confidential Information is no longer confidential (but not through a breach by you or anyone you have disclosed it to).

10. Definitions

In this deed poll, unless the context otherwise requires:

Approved Purpose means the purpose described on the front page of this deed poll.

Confidential Information has the meaning as described in clause 1 of this deed poll.

Confidentiality Deed Poll means the deed poll entitled 'Confidentiality Deed Poll' executed by the Recipient in favour of us in relation to the procurement process for the Project.

Information Document means any information or data of any kind provided or made available by us or on our behalf (including, but not limited to, Confidential Information) in connection with the Approved Purpose or the Project (including where made available through the Data Room and regardless of the medium in which the information is provided or made available).

Personal Information has the same meaning it has in the Privacy Law.

Privacy Law means the *Privacy and Personal Information Protection Act 1998* (NSW).

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Project means the project identified on the front page of this deed poll.

Recipient means the person named on the front page of this deed poll as the 'Recipient'.

we and **us** and **our** means Transport for NSW, as identified on the front page of this deed poll.

you and **your** means the person named on the front page of this deed poll as the 'Individual'.

11. Interpretation

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

11.1.1. A reference to a document is to that document as varied, amended, supplemented or replaced from time to time.

11.1.2. A reference to any statute includes any consolidations, amendments or re-enactments of it, any replacements of it, and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that statute.

11.1.3. A reference to the singular includes the plural number and vice versa.

11.1.4. The words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

11.1.5. Headings are for convenience and do not affect the interpretation of this deed poll.