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IBM-CCNGIS-Ex27-Supplier Confidentiality Deed-V1.0.docx

TRANSPORT



Exhibit 27

SUPPLIER CONFIDENTIALITY DEED

26 SEPTEMBER 2014

VERSION 1.0

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Exhibit 27: Auditor and Benchmarker Confidentiality Deed

Deed of Agreement dated the [] day of [] 20 []

Between [insert name and address of Supplier] (Supplier)
[]

And [insert name and address of Recipient] (Recipient)
[]

RECITALS

- (A) Transport for New South Wales ABN 18 804 239 602 (**Transport**) has requested that the Supplier provide, and/or wishes to itself provide, Confidential Information to the Recipient for the Approved Purpose.
- (B) The Supplier is willing to provide and/or to permit Transport to provide the Confidential Information to the Recipient in accordance with this Deed.

WHAT IS AGREED

1. Interpretation

DEFINITIONS

1.1 In the interpretation of this Deed unless a contrary intention appears the following expressions will have the following meanings:

Agreement means the IT Managed Services Agreement dated [insert date] entered into by the Supplier and Transport.

Approved Purpose means solely for the purpose of [in the case of disclosure under clause 19 of the Agreement insert the following]: conducting a benchmarking exercise in accordance with clause 19 of the Agreement and to anonymously reuse all benchmarking data on other benchmarking studies it performs [in the case of disclosure under clause 28.6 of the Agreement, insert the following]: conducting an audit under clause 28 of the Agreement [in the case of disclosure under clause 36.5 of the Agreement, insert the following]: receiving relevant knowledge from the Supplier under clause 36.5 of the Agreement and carrying out any tasks directly related to acting as the potential successor to the Supplier for the provision of one or more of the services under the Agreement [in the case of disclosure under clause 37.1 of the Agreement, insert the following]: providing some or all of the services over which Transport has elected to take control under clause 37.1(a) of the Agreement.

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Business Day means any day on which trading banks are generally open for business in Sydney, Australia.

Confidential Information includes all information:

- (a) that is by its nature confidential;
- (b) communicated by Transport or the Supplier to the Recipient as confidential;
- (c) that the Recipient knows or ought to know is confidential; or
- (d) which relates to:
 - (i) the Deliverables;
 - (ii) the financial, the corporate and the commercial information of the Supplier;
 - (iii) the affairs of a third party (provided the information is non-public); and
 - (iv) the strategies, practices and procedures of the State and any information in the Recipient's possession relating to the State public service,

Deliverables means any product or service and any associated material offered for supply or provided by the Supplier in accordance with the Agreement.

GENERAL

- 1.2 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.
- 1.3 A reference to:
 - (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 1.4 If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 1.5 A singular word includes the plural, and vice versa.
- 1.6 A word which suggests one gender includes the other gender.

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- 1.7 The words “include(s)” and “including” are not words of limitation.
- 1.8 If a word is defined, another part of speech of that word has a corresponding meaning.

2. Non-Disclosure

2.1 The Recipient must not:

- (a) use, disclose or publish the Confidential Information; or
- (b) permit the use of the Confidential Information by, or disclosure or publication of the Confidential Information to, any person,

except in accordance with the terms of this Deed.

2.2 The Recipient agrees:

- (a) to keep the Confidential Information confidential;
- (b) to use the Confidential Information solely for the Approved Purpose;
- (c) not to disclose the Confidential Information to any other person without the prior written consent of the Supplier (and then only to the extent required for the Approved Purpose); and
- (d) to prepare documents incorporating the Confidential Information only for the Approved Purpose.

2.3 These terms continue without limitation, but do not apply to any part of the Confidential Information that:

- (a) is required to be disclosed by any law, order of a court or tribunal of competent jurisdiction or as a result of the operation of the rules of any stock exchange (but only to the extent that such disclosure is required);
- (b) becomes publicly available subsequent to the date of the Deed without breach by the Recipient;
- (c) was provided to the Recipient by a third party who to the best of the Recipient’s knowledge and belief after undertaking reasonable enquiries is legally entitled to possess the relevant Confidential Information and provide it to the Recipient, or
- (d) was independently created or developed by the Recipient without reference to any Confidential Information.

2.4 The Recipient must immediately return to the Supplier, or destroy as directed by the Supplier, all original documents containing any Confidential Information and copies of those documents, upon receipt by the Recipient of a request to do so by the Supplier.

2.5 The Recipient acknowledges that these terms do not convey any interest of a proprietary or any other nature in the Confidential Information to the Recipient.

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3. General

- 3.1 This Deed will survive the termination or expiry of the Agreement for a period of 6 years.
- 3.2 This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.
- 3.3 No waiver by the Supplier of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 3.4 None of the provisions of this Deed will be taken to have been varied, waived, discharged or released by the Supplier unless by its express consent in writing.
- 3.5 The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.
- 3.6 Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other Deed or agreement to which they are parties.
- 3.7 No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.
- 3.8 This Deed will be governed and construed in accordance with the laws of New South Wales.

4. Notices

- 4.1 Notices must be sent to the other party at the address set out below, or the address last notified to the other party in writing:
 - (a) Supplier: [insert address and contact details]
 - (b) Recipient: [insert address and contact details]
- 4.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 4.3 If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.

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EXECUTED AS A DEED

Signed, sealed and delivered by [insert name and ACN/ABN of Supplier]

[Redacted signature area]

By [insert name of Supplier Representative] but not so as to incur personal liability

In the presence of: [insert name of witness]

[Redacted signature area]

[Redacted signature area]

Signature of Supplier Representative

[Redacted signature area]

Signature of Witness

[Redacted signature area]

Print name

[Redacted signature area]

Print name

[Redacted signature area]

Date

[Redacted signature area]

Date

Signed, sealed and delivered by [insert name and ACN/ABN of Recipient]

[Redacted signature area]

By [insert name of Recipient Representative] but not so as to incur personal liability

In the presence of: [insert name of witness]

[Redacted signature area]

[Redacted signature area]

Signature of Recipient Representative

[Redacted signature area]

Signature of Witness

[Redacted signature area]

Print name

[Redacted signature area]

Print name

[Redacted signature area]

Date

[Redacted signature area]

Date

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