

CONFIDENTIALITY DEED

SCHEDULE B

THIS DEED dated 201

BETWEEN: STATE TRANSIT AUTHORITY OF NEW SOUTH WALES

of

Level 4, 15 Bourke Road, MASCOT NSW 2020

(‘the Discloser’)

AND of

.....
[Insert name and address of Tenderer’s organisation/Contractor]

(‘the Recipient’)

INTRODUCTION

- A.** The Discloser intends to issue to the **[tendering organisation/contractor]** details in relation to its business which contain Confidential Information in which the Discloser holds the Intellectual Property.
- B.** In order for the Recipient to respond to service requirements, the Discloser agrees to provide access to the Confidential Information.
- C.** The Discloser provides the Confidential Information to the Recipient subject to the terms of this Confidentiality Deed.

IT IS AGREED

INTERPRETATION

In this Deed unless the context otherwise dictates:

‘Confidential Information’ means: all information disclosed to the Recipient by the Discloser for the purposes of the services, including but not limited to:

- (a) all materials and documentation received by the Recipient from the Discloser including any information in electronic form;

- (b) all of the Discloser's materials and documentation in respect of the services, including any information in electronic form;
- (c) any document relating to the services and marked 'confidential'; or
- (d) all information given to the Recipient verbally regarding the Contract,

and, more particularly, but strictly without prejudice to the generality of the foregoing, shall include:-

- (e) any information in which the Discloser has a proprietary and/or confidential interest;
- (f) any confidential matters of the Discloser, (whether marked as confidential or not) including without limitation, technical and non-technical information, information regarding any development created by or on behalf of the Discloser, know-how, trade secrets, technical data, analyses, technical processes, specifications, inventions, proposals, techniques, drawings, photographs, models, processes, equipment, design details and specifications, engineering information, customer lists, pricing policies, operational methods, financial information, marketing information and other business affairs of the Discloser.

Headings to clauses are included for the sake of convenience only and shall not affect the interpretation of the clauses to which they relate.

When a party comprises two or more persons the rights and obligations of such persons pursuant to this Deed shall ensure for the benefit of and bind all of them jointly and each of them severally.

2. CONFIDENTIALITY

In consideration of the Discloser providing the Recipient with access to the Confidential Information, the Recipient covenants with the Discloser that, subject to Clause 3:

- (a) it will treat the Confidential Information as subject to a duty of confidence and will only use the Confidential Information for the purposes of responding to the Invitation to Tender/ Quote;
- (b) it will not use the Confidential Information for any other purpose including competing against the Discloser or acting on behalf of any person competing against the Discloser;

- (c) except as is permitted specifically under this Clause, it will not in any other way use the Confidential Information without the Discloser's prior written consent;
- (d) it will only disclose the Confidential Information on a 'need-to-know' basis to the officers and employees of the Recipient, and such consultants and subcontractors as necessary to respond to the services, and shall ensure that all officers and employees shall sign a copy of the Personal Confidentiality Acknowledgment, Attachment 1 to this Deed, and, in the case of consultants and subcontractors, that they become and acknowledge their being a party to and bound by this Deed, prior to being given access to any Confidential Information;
- (e) it will advise each person to whom the Confidential Information is disclosed that it is subject to a duty of confidence, and that the Confidential Information is not to be used for any purpose other than as set out in this Deed;
- (f) it will at its sole expense take whatever steps the Discloser may consider necessary to enforce the duty of confidence against any person to whom the Confidential Information has been disclosed by the Recipient and who is in breach of that duty;
- (g) it will keep all Confidential Information separate from all other documents and records in its possession and will not store any Confidential Information on an externally accessible computer or electronic system;
- (h) it will keep a list of all persons to whom any Confidential Information is disclosed and will provide a copy of the list to the Discloser, if requested to do so by the Discloser; and
- (i) it will clearly mark all Confidential Information as being subject to this Deed, such marking to state that it is contrary to this Deed to disclose or use the Confidential Information without the prior written consent of the Discloser unless such disclosure or use is in accordance with the terms of this Deed.

3. OBLIGATIONS NOT TO APPLY

The obligations of the Recipient under Clause 2 shall not apply to any of the Confidential Information which:

- (a) the Recipient is required by statute or law to disclose, reproduce, use or disseminate, provided that it will give prompt notice of such fact to the Discloser in writing prior to any such disclosure so that the Discloser may seek the appropriate remedy to prevent such disclosure or waive compliance with the

provisions of this Deed and the Recipient will take such steps as the Discloser may reasonably require for this purpose;

- (b) is in or enters the public domain, otherwise than as a result of a breach by the Recipient of its duty hereunder or disclosure by any person receiving the Confidential Information from the Recipient; or
- (c) is established by means of written records and otherwise to the satisfaction of the Discloser as already known to the Recipient prior to the date of this Deed.

4. SAFE KEEPING AND RETURN OF CONFIDENTIAL INFORMATION

- 4.1 The Recipient will ensure that all written material provided by the Discloser to it is safely and securely stored when not in use, and the Recipient hereby acknowledges that such material including all copies thereof remains the absolute and exclusive property of the Discloser.
- 4.2 Upon written demand by the Discloser the Recipient shall, within 7 days of receipt of such demand return to the Discloser all Confidential Information received by it and any copies of the Confidential Information that the Recipient has made (whether the Discloser has authorised it to make such copies or not), together with the list referred to in Clause 2(h). The Discloser shall keep that list confidential and shall not use or disclose its contents without the prior written consent of the Recipient or unless it is established that such use or disclosure is necessary to enforce the Discloser's rights as a result of a breach of this Deed and/or the duty of confidence herein referred to.

5. RIGHTS NOT TO BE ASSIGNED

The Recipient shall not assign or transfer all or any part of its rights or obligations under this Deed.

6. WARRANTY

The Recipient warrants that it shall not use any of the Confidential Information provided by the Discloser for any purpose except for purposes explicitly agreed to in writing by the Discloser.

7. DAMAGES NOT AN ADEQUATE REMEDY

The Recipient acknowledges that any breach of this Deed could cause injury to the Discloser and that monetary damages would not be an adequate remedy. In the event of a breach or a threatened breach by the Recipient, the Discloser shall be entitled to injunctive relief in any court of competent jurisdiction and the Recipient shall reimburse the

Discloser for any and all costs, claims, demands or liabilities arising directly or indirectly out of a breach. Nothing contained in this Deed shall prevent the Discloser from pursuing any other remedies available to it for a breach or threatened breach.

8. INDEMNIFICATION

Without prejudice to clause 7, the Recipient hereby indemnifies and shall keep indemnified the Discloser against any loss, damage, cost (including legal costs on a solicitor-client or full indemnity basis whichever is the higher) or expense suffered or incurred by the Discloser directly or indirectly in connection with or arising out of or as a result of a breach by the Recipient or its directors, officers, agents, employees, subcontractors, consultants or professional advisers of the Recipient of any of the terms of this Deed.

9. FAILURE TO ENFORCE NOT TO AFFECT VALIDITY

The failure of the Discloser at any time to enforce any of the provisions of this Deed or any rights in respect hereto or to exercise any election herein provided shall not be a waiver of those provisions, rights or elections or affect the validity of this Deed.

10. PROPER LAW

This Deed shall be governed and construed in accordance with the laws in force in the State of New South Wales.

EXECUTION

This Deed must be executed as indicated below:

- (a) Where the Recipient is a corporation:
 - (i) under its Common Seal; or
 - (ii) where the Discloser consents, by signature of a person authorised by the corporation to bind it in contract. A copy of the authorisation duly executed under the Common Seal of the corporation must be submitted to the Discloser within 2 days of its request by the Discloser.
- (b) In the case of a partnership or an individual:
 - (i) by signature of each partner or the individual as the case may be (with the full name printed under the signature); or
 - (ii) where the Discloser consents, by signature of a person authorised by the partnership to bind it in contract. A copy

of the authorisation duly executed by the partnership must be submitted to the Discloser within 2 days of its request by the Discloser.

EXECUTED as a Deed on the date set out at the commencement of this deed.

SIGNED SEALED AND DELIVERED by:

Executed by

..... (Company name) (Affix Common Seal here)
(If applicable)

in accordance with Section 127 of the *Corporations Act 2001*.

.....
....
Director	*Director/Sole Director/Secretary (*delete as applicable)
.....
....
Name of signatory in block letters	Name of signatory in block letters

Dated:

.....

ATTACHMENT 1: PERSONAL CONFIDENTIALITY ACKNOWLEDGMENT

My name is

I am an officer or employee of the Recipient responding to State Transit's Request for Quotation (STA 201X/ XYZ) in relation to [insert the title of the services].

I have been shown and I understand the contents of the Confidentiality Deed ("Primary Confidentiality Deed") executed by the Recipient.

I agree to keep all materials and knowledge confidential in the same manner as the confidentiality obligations of the Recipient pursuant to the Primary Confidentiality Deed.

Signed:

Dated:

Signature of Witness:

Print Name of Witness: