

COMMERCIAL-IN-CONFIDENCE

IBM-CCNGIS-Ex25-Confidentiality Deed for Subcontractors-V1.0.docx

TRANSPORT



EXHIBIT 25

CONFIDENTIALITY DEED FOR SUBCONTRACTORS

26 SEPTEMBER 2014

VERSION 1.0

This document contains confidential and proprietary information of Transport. Except with the express prior written permission of Transport, this document and the information contained herein may not be published, disclosed, or used for any other purpose.

COMMERCIAL-IN-CONFIDENCE

COMMERCIAL-IN-CONFIDENCE

IBM-CCNGIS-Ex25-Confidentiality Deed for Subcontractors-V1.0.docx

Exhibit 25: Deed of Confidentiality

Deed of Agreement dated the day of 20

Between Transport for New South Wales ABN 18 804 239 602 (**Transport**)

And (**Subcontractor**)

RECITALS

- (A) In the course of the Subcontractor assisting in the supply by the Supplier of certain Deliverables for Transport under a subcontract agreement between the Subcontractor and the Supplier, the Subcontractor will have access to, and may become aware of, Confidential Information belonging to, or in the possession of, Transport.
- (B) Improper use or disclosure of the Confidential Information would severely damage Transport’s ability to perform its governmental/statutory functions and would severely damage the commercial interests of Transport.
- (C) Transport requires, and the Subcontractor agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that Transport’s Confidential Information is kept confidential.
- (D) This Deed sets out the terms on which the Subcontractor will have access to the Confidential Information.

WHAT IS AGREED

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

2. Interpretation

DEFINITIONS

2.1 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 entered into by the Supplier and Transport.

COMMERCIAL-IN-CONFIDENCE

COMMERCIAL-IN-CONFIDENCE

IBM-CCNGIS-Ex25-Confidentiality Deed for Subcontractors-V1.0.docx

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

Confidential Information means information that:

- (a) is by its nature confidential; or
- (b) is communicated by Transport to the Subcontractor as confidential; or
- (c) the Subcontractor knows or ought to know is confidential; or
- (d) relates to:
 - (i) the Deliverables;
 - (ii) the financial, the corporate and the commercial information of Transport;
 - (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 Subcontractor's possession relating to the State public service,

but excludes any information which the Subcontractor can establish was:

- (i) in the public domain, unless it came into the public domain due to a breach of confidentiality by the Subcontractor or another person;
- (ii) independently developed by the Subcontractor; or
- (iii) in the possession of the Subcontractor without breach of confidentiality by the confidant or other person.

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

Express Purpose means the Subcontractor performing the obligations under its subcontract agreement with the Supplier.

Intellectual Property Rights means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a),

but does not include the right to keep confidential information confidential, moral rights, business names, company names or domain names.

Notice means notice in writing given in accordance with this Deed.

COMMERCIAL-IN-CONFIDENCE

COMMERCIAL-IN-CONFIDENCE

IBM-CCNGIS-Ex25-Confidentiality Deed for Subcontractors-V1.0.docx

Supplier means [insert name of Supplier].

State means the State of New South Wales.

GENERAL

2.2 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.

2.3 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.

2.4 If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.

2.5 A singular word includes the plural, and vice versa.

2.6 A word which suggests one gender includes the other gender.

2.7 The words “include(s)” and “including” are not words of limitation.

2.8 If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non disclosure

3.1 The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of Transport.

3.2 Transport may grant or withhold its consent in its discretion.

3.3 If Transport grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.

3.4 If Transport grants consent subject to conditions, the Subcontractor must comply with those conditions.

3.5 Despite clause 3.1, the Subcontractor may disclose the Confidential Information:

COMMERCIAL-IN-CONFIDENCE

COMMERCIAL-IN-CONFIDENCE

IBM-CCNGIS-Ex25-Confidentiality Deed for Subcontractors-V1.0.docx

- (a) to its directors, officers, employees and contractors;
- (b) to the Supplier and its directors, officers, employees and the Supplier's other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,

each referred to as **permitted recipients**, where such disclosure is essential to carrying out their duties in respect of the Express Purpose.

3.6 Despite clause 3.1, the Subcontractor may disclose the Confidential Information:

- (a) to its lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the performance under this Deed; or
- (b) if the Subcontractor is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.

3.7 Before disclosing the Confidential Information to a permitted recipient, the Subcontractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.

3.8 The Confidential Information must not be copied or reproduced by the Subcontractor or the permitted recipients without the express prior written permission of Transport, except as may be reasonably required for the Express Purpose.

3.9 If any person, being any director, officer, contractor or employee of the Subcontractor, who has had access to the Confidential Information in accordance with this clause 3 leaves the service or employ of the Subcontractor then the Subcontractor will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Subcontractor, would be a breach of the obligations of the Subcontractor under this Deed.

4. Restriction on use

4.1 The Subcontractor must use the Confidential Information only for the Express Purpose and must not without the prior written consent of Transport use the Confidential Information for any purpose other than the Express Purpose.

4.2 The Subcontractor must, unless otherwise authorised by the prior written consent of Transport:

- (a) treat as confidential and secret all of the Confidential Information which the Subcontractor has already acquired or will acquire from Transport;
- (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary

COMMERCIAL-IN-CONFIDENCE

COMMERCIAL-IN-CONFIDENCE

IBM-CCNGIS-Ex25-Confidentiality Deed for Subcontractors-V1.0.docx

action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;

- (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
- (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
- (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5. Survival

- 5.1 This Deed will survive the termination or expiry of the Agreement for a period of 6 years.

6. Rights of Transport

PRODUCTION OF DOCUMENTS

- 6.1 Transport may demand the delivery up to Transport of all documents in the possession or control of the Subcontractor containing the Confidential Information.
- 6.2 The Subcontractor must immediately comply with a demand under this clause 6.
- 6.3 If Transport makes a demand under this clause 6, and documents containing the Confidential Information are beyond the Subcontractor's possession or control, then the Subcontractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.
- 6.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

LEGAL PROCEEDINGS

- 6.5 Transport may take legal proceedings against the Subcontractor or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Indemnity and release

- 7.1 The Subcontractor is liable for, and agrees to indemnify and keep indemnified Transport in respect of, any claim, damage, loss, liability, cost, expense, or payment which Transport suffers or incurs as a result of:

COMMERCIAL-IN-CONFIDENCE

COMMERCIAL-IN-CONFIDENCE

IBM-CCNGIS-Ex25-Confidentiality Deed for Subcontractors-V1.0.docx

- (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
- (b) the disclosure or use of the Confidential Information by the Subcontractor or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

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.

9. Waiver

- 9.1** No waiver by Transport 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.
- 9.2** None of the provisions of this Deed will be taken to have been varied, waived, discharged or released by Transport unless by its express consent in writing.

10. Remedies cumulative

CUMULATIVE

- 10.1** The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

OTHER INSTRUMENTS

- 10.2** 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.

11. Variations and amendments

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.

12. Applicable law

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

13. Notices

COMMERCIAL-IN-CONFIDENCE

COMMERCIAL-IN-CONFIDENCE

IBM-CCNGIS-Ex25-Confidentiality Deed for Subcontractors-V1.0.docx

- 13.1** Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Subcontractor, at the Subcontractor's registered office.
- 13.2** All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 13.3** 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.

COMMERCIAL-IN-CONFIDENCE

COMMERCIAL-IN-CONFIDENCE

IBM-CCNGIS-Ex25-Confidentiality Deed for Subcontractors-V1.0.docx

EXECUTED AS A DEED

Signed, sealed and delivered by Transport for New South Wales ABN 18 804 239 602

[Redacted signature line]

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

[Redacted signature line]

In the presence of: [insert name of witness]

[Redacted signature line]

[Redacted signature line]

Signature of Transport Representative

[Redacted signature line]

Signature of Witness

[Redacted signature line]

Print name

[Redacted signature line]

Print name

[Redacted signature line]

Date

[Redacted signature line]

Date

Signed, sealed and delivered by [insert Subcontractor's name and ACN/ABN]

[Redacted signature line]

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

[Redacted signature line]

Signature of Director

[Redacted signature line]

Signature of Director/Secretary

[Redacted signature line]

Print name

[Redacted signature line]

Print name

[Redacted signature line]

Date

[Redacted signature line]

Date

COMMERCIAL-IN-CONFIDENCE