



Treasury

The Crown in right of the State of New South Wales, acting through
The Treasury
(Principal)

AND

(Recipient)

**Confidentiality and Conflict of Interest Declaration Deed Poll in
relation to RFT-10021341:**

**Request for Proposals for Facilities Management Services for
52 Martin Place, Sydney**

This Deed Poll is made:

By:

of

(**"Recipient"**)

In favour of the **Crown in right of the State of New South Wales**, acting through The Treasury of 52 Martin Place, Sydney NSW 2000 (**"Principal"**)

DEED DETAILS

Commencement Date

Recipient's Details

ABN:

Address:

Telephone:

Email:

Project

RFT-10021341: Request for Proposals for Facilities Management Services for 52 Martin Place, Sydney

Approved Purpose

For the purpose of responding to RFP RFT-10021341: Facilities Management Services for 52 Martin Place, Sydney

Confidential Information (Specific Inclusions)

The items included in the RFP Documents:

1. Request for Proposals
2. Response Schedule
3. Scope of Work
4. Contract Agreement

Permitted Recipients

BACKGROUND

- A. In the course of its dealings with the Principal, the Recipient may become aware of, or have disclosed to it, Confidential Information. Improper use or disclosure by the Recipient of Confidential Information may be detrimental to the Principal, may damage the Principal's ability to perform its functions, or may be a breach of law.
- B. The Principal considers, and the Recipient agrees, that it is necessary to take all reasonable steps to ensure the Confidential Information is kept confidential and that all applicable NSW Privacy Legislation is complied with.
- C. The Recipient agrees to declare any Conflict of Interest that may impact on the Project.

OPERATIVE PROVISIONS

1. DEFINITIONS

1.1. In this Deed Poll, unless the context otherwise requires:

Approved Purpose means the purpose specified in the Deed Details.

Business Day means any day that is not a Saturday, Sunday or gazetted public holiday in the State of New South Wales.

Commencement Date means the date of commencement of this Deed Poll as provided in the Deed Details.

Confidential Information means any information disclosed (whether in writing or orally) by or on behalf of the Principal to the Recipient, or acquired by the Recipient in connection with the Project and/or the Approved Purpose that is:

- (a) by its nature confidential;
- (b) designated as confidential; or
- (c) the Recipient knows or ought to know is confidential;

and includes without limitation:

- (d) Personal Information;
- (e) Health Information; and
- (f) any information listed as Confidential Information in the Deed Details,

but does not include the Excluded Information.

Conflict of Interest means a situation where the exercise of a person's duty or decision making is influenced, potentially influenced, or may appear to be influenced, by a secondary interest, including (but not limited to) a private or business interest.

Conflict of Interest Declaration means the declaration completed by the Recipient and annexed to this Deed Poll as Annexure A or a declaration completed electronically through a system provided by the Principal.

Deed Poll means this Deed Poll and includes these Operative Provisions, the Deed Details and any other schedules or annexures to this Deed Poll included by reference.

Excluded Information means any information which:

- (a) is or becomes public knowledge other than by breach of this Deed Poll or by reason of a Permitted Recipient breaching its obligation of confidentiality;
- (b) is in the lawful possession of the Recipient without restriction in relation to disclosure before the date of receipt or acquisition of the information; or
- (c) has been developed or acquired by the Recipient independently of this Deed Poll.

Health Information has the meaning provided in the *Health Records and Information Privacy Act 2002* (NSW).

NSW Privacy Legislation means the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW) and all regulations, directions, guidelines and other statutory instruments made under those Acts.

Party means the Principal or the Recipient as the context dictates and Parties means both of them.

Permitted Recipient means a person to whom the Recipient is permitted to disclose the Confidential Information, either because:

- (a) the person is identified as a Permitted Recipient in the Deed Details; or

- (b) the Principal has given its written consent to the Recipient to disclose the Confidential Information to that person (which may be given on conditions at the absolute discretion of the Principal).

Personal Information has the meaning provided in the *Privacy and Personal Information Protection Act (1998)* (NSW).

Project means the project specified in the Deed Details.

Project Team Member means:

- (a) an officer or employee of Treasury assisting on the Project;
- (b) a member of the Steering Committee for the Project; and
- (c) any contractor, consultants or advisers engaged by the Principal to provide services in connection with the Project and who are subject to confidentiality obligations in favour of the Principal with respect to the Confidential Information.

2. COVENANTS AS TO CONFIDENTIAL INFORMATION

Non-disclosure and use of Confidential Information

- 2.1. The Recipient undertakes to keep the Confidential Information in confidence and not disclose the Confidential Information to any person except in accordance with this Deed Poll.
- 2.2. The Recipient undertakes to:
 - (a) not use, copy or reproduce the Confidential Information except for the Approved Purpose;
 - (b) take all necessary precautions to prevent loss, unauthorised access to, unauthorised copying, misuse or disclosure of the Confidential Information; and
 - (c) comply with any reasonable directions given by the Principal with respect to the safekeeping, storage and destruction of the Confidential Information.

Authorised disclosure

- 2.3. The Recipient undertakes to only disclose Confidential Information:
 - (a) to a Permitted Recipient for the Approved Purpose;
 - (b) to a Project Team Member;
 - (c) to the Treasurer, any other NSW Government Minister and any person employed in their office; or
 - (d) if, and to the extent, required by law or the rules of a stock exchange, provided that the Recipient immediately (and, wherever possible, prior to disclosure) notifies the Principal that the disclosure of the information is or may be required unless such notification is prohibited by law or the rules of a stock exchange.

Security of Confidential Information

- 2.4. The Recipient must:
 - (a) when disclosing Confidential Information to a Permitted Recipient under clause 2.3(a), ensure that the Permitted Recipient:
 - (i) is aware of the confidential nature of the Confidential Information;
 - (ii) complies with the confidentiality requirements under this Deed Poll;
 - (iii) has an obligation of confidentiality enforceable by the Recipient and on request of the Principal the Recipient must immediately take all steps necessary to enforce that obligation.
 - (b) if requested by the Principal, ensure that Permitted Recipients execute a confidentiality and conflict of interest declaration deed relating to the Confidential Information in the form reasonably required by the Principal;

- (c) not store, send, or permit access from, outside Australia any Confidential Information without the Principal's prior written approval;
- (d) immediately notify the Principal of any breach of this clause 2.4 or any unauthorised access to the Confidential Information and provide all assistance requested by the Principal in connection with such breach or unauthorised access.

Compliance with Privacy Legislation

- 2.5. If Personal Information or Health Information is provided or disclosed to the Recipient in connection with the Project and/or for the Approved Purpose, the Recipient must comply, and ensure that its Permitted Recipients comply, with:
 - (a) the *Privacy Act 1988* (Cth) and any directions, regulations, codes of practice and principles made under that Act;
 - (b) any obligations imposed by NSW Privacy Legislation on the Principal as if those obligations were imposed directly on the Recipient rather than the Principal; and
 - (c) such reasonable directions as to privacy measures as notified by the Principal from time to time.

Return or Destruction of Confidential Information

- 2.6. Subject to clause 2.7, within 5 Business Days of a written request from the Principal to do so, the Recipient must, except to the extent approved by the Principal in writing, return to the Principal or destroy (at the discretion of the Principal), all Confidential Information which is in the Recipient's or Permitted Recipient's power, possession or control. The Recipient must provide the Principal with written confirmation that the provisions of this clause 2.6 have been fully complied with within 10 Business Days of written request from the Principal.
- 2.7. Clause 2.6 does not prevent the Recipient from keeping a bona fide copy of the Confidential Information as required by law, professional standards or as part of its archiving and backup policies, subject to the confidentiality and privacy requirements contained in this Deed Poll.

3. CONFLICT OF INTEREST

- 3.1. The Recipient represents and warrants that:
 - (a) the statements and declarations contained in the Conflict of Interest Declaration are true, correct and complete, as at the date of this Deed Poll; and
 - (b) with the exception of any related interest identified in the Conflict of Interest Declaration, no Conflict of Interest exists or, so far as it is aware, is likely to arise, for the Recipient in connection with the Project or the Approved Purpose.
- 3.2. The Recipient undertakes to notify the Principal in writing, immediately upon becoming aware of the existence of a Conflict of Interest.
- 3.3. The Recipient undertakes to comply with any reasonable direction of the Principal to appropriately manage the Conflict of Interest, including any related interest identified in the Conflict of Interest Declaration.

4. NOTIFICATION OF BREACH

- 4.1. The Recipient undertakes to immediately notify the Principal in writing upon becoming aware of any breach of this Deed Poll.

5. ENFORCEMENT AND REMEDIES

- 5.1. The Recipient acknowledges that:
 - (a) this Deed Poll may be relied on and enforced by the Principal even though the Principal is not a party to it; and
 - (b) damages may not be a sufficient remedy for any breach of this Deed Poll and that the Principal is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Recipient, in addition to any other remedies available at law.

6. FORMALITIES

6.1. The Recipient represents and warrants that:

- (a) if it is a corporate entity, that it has power to enter into this Deed Poll and comply with its undertakings given in it; and
- (b) its undertakings in this Deed Poll are legal, valid and binding and enforceable against it in accordance with its terms.

6.2. The Recipient acknowledges that:

- (c) the undertakings contained in this Deed Poll begin on the Commencement Date, are irrevocable and survive:
 - (i) expiry of this Deed Poll; and
 - (ii) completion, termination or non-continuance of the Project and/or the Approved Purpose.
- (d) a notice under this Deed Poll must be in writing and forwarded to the address or email address of the recipient specified in the Deed Details or the address last notified by the intended recipient to the sender;
- (e) all variations to this Deed Poll and all consents, approvals and waivers must be in writing and variations must be approved by the Principal, in which event the Recipient will enter into a further Deed Poll in favour of the Principal, giving effect to the amendment;
- (f) no waiver by the Principal of a breach of any provision of this Deed Poll will operate as a waiver of another breach of the same provision or of any other provision of this Deed Poll;
- (g) if any part of this Deed Poll is prohibited, void, illegal or unenforceable, then that part is severed from this Deed Poll but without affecting the continued operation of the remainder of the Deed Poll;
- (h) the rights, powers and remedies of the Principal pursuant to this Deed Poll are in addition to, and do not detract from or exclude, other rights, powers and remedies given by law; and
- (i) this Deed Poll is governed by, and is to be construed in accordance with, the laws in force in New South Wales.

Alternative 1: Where Recipient is an Australian corporation – execution by 1 or 2 directors/officers

Executed as a Deed Poll for and on behalf of
in accordance with section 127 of the *Corporations Act*
2001 (Cth)

ABN

By:

Signature

At:

Date:

In the presence of:

Name of Witness who is not a party to this Deed Poll

Signature

By:

Signature

At:

Date:

In the presence of:

Name of Witness who is not a party to this Deed Poll

Signature

Alternative 2: Where Recipient is an Australian corporation – execution by corporate seal

Executed as a Deed Poll in accordance with section 127 of the *Corporations Act 2001* (Cth) by duly affixing the common seal of

ABN

At:

Corporate Seal

On:

In the presence of:

Name and position of Director

Signature

and

Name and position of Director/Company Secretary

Signature

Alternative 3: Where Recipient is a natural person

Signed, Sealed and Delivered by

At:

Date:

In the presence of:

Signature

Name of Witness who is not a party to this Deed Poll

Signature

Alternative 4: Where Recipient is a partnership

Signed, Sealed and Delivered by

for and on behalf of
who is authorised to sign on behalf of the partnership

By:

Signature

At:

On:

In the presence of:

Name of Witness who is not a party to this Deed Poll

Signature

ANNEXURE A

Conflict of Interest Declaration: Please complete either Section 1 or 2

Project : Request for Proposals - Facilities Management Services for 52 Martin Place

Name:

Organisation:

Section 1: To the best of my knowledge and belief after due enquiry at the date of this deed, I do not have any related interest to declare that may create, or be perceived to create, a Conflict of Interest in relation to my role in the Project.

Tick here for NIL response ☐

Section 2: I have the following related interest/s to declare.

Description of related interest:

Description of possible conflict with role in the Project:

Action to avoid a Conflict of Interest: The following action will be taken in order to avoid a conflict of interest: