



Confidentiality Deed Poll and Conflict of Interest Declaration

THIS DEED POLL is made on the date, by the individual of the address entered in the SWDelivery Portal digital registration form fields.

IN FAVOUR OF:

Sydney Water Corporation, ABN 49 776 225 038, of 1 Smith Street, Parramatta, NSW, 2150, a statutory State owned corporation constituted under the *Sydney Water Act 1994* (NSW) (**Sydney Water**)

RECITALS

- A. Sydney Water is the owner of certain confidential information relating to its business and operations.
- B. The Individual has requested to register for access on the SWDelivery Portal to enable them in performing works for Sydney Water. (Purpose).**
- C. The Individual acknowledges that in connection with the Purpose, confidential information belonging to Sydney Water will be disclosed to the Individual. The Individual agrees to keep such information confidential in accordance with the terms of this deed poll.

OPERATIVE PROVISIONS

In consideration of Sydney Water disclosing its confidential information to the Individual, the Individual agrees, with effect from the Commencement Date:

1. Definitions and interpretation

In this deed poll:

Definitions

Confidential Information means:

- (i) any information or document (whether oral, electronic or otherwise) provided by or on behalf of Sydney Water to the Individual relating to or in connection with Sydney Water's business, all copies of such information or documents (however made or stored) and all documents and records prepared by Sydney Water or the Individual based on or incorporating such information (including trade secrets, designs, drawings, know-how, techniques, processes, procedures, technology or equipment used or proposed to be used or developed by Sydney Water or other commercially valuable information, whether in the past, present or future); and
- (ii) all other proposals, requests, technical, commercial, financial or other information disclosed (whether orally, in writing or by any other means) by or on behalf of Sydney Water to the Individual which is marked as being confidential or which could reasonably be regarded as confidential (including marketing and financial information, customer lists, customer information, supplier information, marketing plans, business plans, costing information, pricing policies, price lists and reporting procedures) whether relating to Sydney Water's past, present or future operations,

but Confidential Information does not include information which:

- (iii) is in the public domain other than as a result of a breach of this deed poll or an obligation of confidence owed to Sydney Water;
- (iv) the Individual can prove by contemporaneous written documentation was:
 - A. already known to the Individual at the time of disclosure by Sydney Water (unless such knowledge arose from a disclosure of information in breach of an obligation of confidentiality); or
 - B. independently developed by the Individual without reference to the Confidential Information of Sydney Water; or
- (v) the Individual acquires from a source other than Sydney Water where such source is entitled to disclose it on a non-confidential basis.

Intellectual Property Rights means all present and future rights throughout the world conferred by statute, common law or equity in or in relation to copyright (excluding moral rights), trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable.

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

Interpretation

- (a) Headings are for convenience only and do not affect the interpretation of this deed poll.
- (b) The singular includes the plural and vice versa.

2. Individual's acknowledgements

The Individual agrees and acknowledges that:

- (a) the Confidential Information is secret, confidential and valuable to Sydney Water;
- (b) the Individual owes an obligation of confidence to Sydney Water in relation to the Confidential Information, on the terms of this deed poll;
- (c) all rights and interests (including intellectual property rights) in the Confidential Information belong solely to Sydney Water;
- (d) the Individual has no right or interest in the Confidential Information other than the right to use and disclose it on the terms of this deed poll; and
- (e) Sydney Water has not made any representation or warranty, whether express or implied, as to the accuracy, completeness or fitness for a particular purpose of any Confidential Information.

3. Prohibition on use and disclosure

Subject to clause 4, the Individual must:

- (a) maintain the confidential nature of the Confidential Information;
- (b) use the Confidential Information solely for the Purpose;
- (c) not disclose the Confidential Information to any person, except as expressly permitted by this deed poll;
- (d) not copy or reproduce any Confidential Information for any reason other than the Purpose;

- (e) not apply for, or assist any other person, directly or indirectly, to apply for any patents, designs or other registered intellectual property based on or using any part of the Confidential Information;
- (f) not contest or seek to invalidate any patents, designs or other registered intellectual property or applications for intellectual property that are based on or that use any part of the Confidential Information;
- (g) not use the Confidential Information to develop technology the same as or similar to the Confidential Information or to compete against Sydney Water; and
- (h) not directly or indirectly use or disclose the Confidential Information in any way for the commercial benefit, profit or advantage of the Individual or any other person (other than Sydney Water in relation to the Purpose) except with the express written permission of Sydney Water or as expressly permitted by this deed poll.

4. Permitted Disclosures

- (a) Subject to paragraph (b), the Individual may disclose Confidential Information:
 - (i) to any third parties who reasonably require access to the Confidential Information for the Purpose and who are obliged to treat the Confidential Information as confidential in the same manner and to the same extent as is provided under this deed poll;
 - (ii) to any third parties which Sydney Water approves in writing as persons to whom disclosure may be made, in its absolute discretion.
 - (iii) if the Individual is required to do so by law or a governmental or regulatory body; or
 - (iv) if the Individual is required to do so in connection with legal proceedings relating to this deed poll.
- (b) The Individual acknowledges that:
 - (i) Sydney Water may impose conditions on any disclosure under clause 4(a)(i) or (ii), including Sydney Water may require that the Individual procure the person to whom the Individual proposes to disclose the Confidential Information to provide a deed poll substantially in these terms; and
 - (ii) if Sydney Water imposes conditions on any disclosure under clause 4(a)(i) or (ii), the Individual must comply with those conditions.

5. Security and Control

The Individual must:

- (a) ensure that proper and secure storage is provided for the Confidential Information; and
- (b) take all precautions necessary to prevent any disclosure (whether accidental or otherwise) of the Confidential Information.

6. Breach of confidentiality

- (a) The Individual must:
 - (i) immediately give Sydney Water notice of any suspected or actual breach of this deed poll;
 - (ii) immediately take steps to prevent or stop any suspected or actual breach; and
 - (iii) comply with Sydney Water's directions regarding the enforcement of this deed poll (including, starting, conducting and settling enforcement proceedings).
- (b) The Individual acknowledges that:
 - (i) any breach or threatened breach of this deed poll may cause Sydney Water immediate and irreparable harm for which damages alone may not be an adequate remedy; and

- (ii) Sydney Water may commence proceedings to restrain any breach or threatened breach of this deed poll or any other unauthorised access to, or use of, any of its Confidential Information, or to compel specific performance of this deed poll.

7. Return of Confidential Information

At the request of Sydney Water, on completion or termination of the Purpose, the Individual must, where practicable, promptly return to Sydney Water all the Confidential Information in the power, possession or control of the Individual and any third parties approved under clause 4(a) (ii).

8. Continuing Obligation

The obligations of confidentiality under this deed poll continue to apply to the Individual even if:

- (a) the Purpose is completed, suspended or terminated; and
- (b) the Individual has returned the Confidential Information in accordance with clause 7.

9. Privacy

Notwithstanding any other provision of this deed poll, the Individual must ensure that any Confidential Information which is Personal Information is protected, used or disclosed only in accordance with the requirements of the *Privacy and Personal Information Protection Act 1998* (NSW).

10. Non-waiver

The failure of Sydney Water to enforce any of the provisions of this deed poll is not to be construed as a waiver of that provision or of the right of Sydney Water to enforce that or any other provision at a later date.

11. Conflict of Interest and Intellectual Property Rights

- (a) Except as may otherwise be notified to Sydney Water in writing before the Commencement Date, the Individual warrants that, as at the Commencement Date, to the best of the Individual's knowledge, no actual, potential or perceived Conflict of Interest exists or is likely to arise by the Individual providing goods and/or services (if any) to Sydney Water for the Purpose (**Services**).
- (b) The Individual undertakes to notify Sydney Water in writing immediately if the Individual becomes aware of any actual, potential or perceived Conflict of Interest that may arise in relation to the provision of the Services.
- (c) The parties will each use their reasonable endeavours to avoid any Conflict of Interest arising or continuing.
- (d) For the purposes of this clause 11, a **Conflict of Interest** means:
 - (i) any matter or thing which could adversely affect or is likely to adversely affect the Individual's ability to fairly, honestly, objectively and properly perform the Individual's obligations under this deed poll and/or in relation to the provision of the Services; and/or
 - (ii) any shareholdings or other financial interests which may adversely impact on the Individual's ability to provide the Services.
- (e) The Individual agrees that in the performance of this deed poll or in relation to the provision of the Services by the Individual, the Individual will not knowingly cause Sydney Water to breach the Intellectual Property Rights or moral rights of any third party.

12. General

- (a) This deed poll contains the entire understanding between the parties regarding their rights and obligations as to the subject matter of this document.

- (b) Nothing in this deed poll creates the relationship of employer and employee between Sydney Water and the Individual.
- (c) The Individual receiving Confidential Information is responsible for any cost of complying with obligations in connection with this deed poll.
- (d) The Individual must not assign his or her rights or obligations under this deed poll without Sydney Water's prior written consent.
- (e) This deed poll must not be revoked or otherwise modified without the prior consent of Sydney Water.
- (f) The Individual acknowledges that, in relation to this deed poll, the Individual has received legal advice or has had the opportunity to obtain legal advice.
- (g) The laws of New South Wales govern this deed poll. The parties submit to the non-exclusive jurisdiction of the courts of NSW and any courts competent to hear appeals from those courts.

Executed as a deed

SIGNED by the Individual and their Witness on the respective SWDelivery Portal digital registration form fields.