| **Protecting the Department’s Information** | |
| --- | --- |
|  | |
| **Agency/Division** | Regional Precincts Group |
| **Recipient Party** | Click here to enter text. |
| Light blue waratah motif on a dark blue background |  |

Details

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Department** | | Name | The Crown in right of the State of New South Wales acting through Regional NSW  (ABN 19 948 325 463). | |
|  | | Agency/ Division | Regional Precincts Group | |
|  | | Address | 1 Monaro Street, Queanbeyan NSW 2620 | |
| **Recipient Party** (‘You’) | | Name | Click here to enter text. | |
| Address | Click here to enter text. | |
| ABN | Click here to enter text. | |
| **Department’s Authorised Officer** | |  |  | | --- | --- | | Name | Peter Adams | | Position | Director, Regional Digital Connectivity | | Address | 1 Monaro St, Queanbeyan NSW 2620 | | Telephone | 0437 292 260 | | Email | Peter.adams@regional.nsw.gov.au | | | |
| **Your Authorised Officer** | |  |  | | --- | --- | | Name | Click here to enter text. | | Position | Click here to enter text. | | Address | Click here to enter text. | | Telephone | Click here to enter text. | | Email | Click here to enter text. | | | |
| **Department’s Confidential Information** | As defined in **clause 1.2** and includes without limitation any specific information listed below:  Geographical locations of limited or no coverage in certain areas of NSW including;   * latitude and longitude coordinates; * address details; * coverage map boundaries; and * any other identifying information related to coverage areas provided by the Department to you. | | |
| **Approved Purpose** | The sole purpose for which the Department’s Confidential Information is provided, being to support an application for Grant funding from the Department as part of the Regional Digital Connectivity program’s Active Sharing Partnership grant opportunity.  The Active Sharing Partnership grant opportunity aims to fund collaborative partnerships between grantees to design and deliver improved mobile coverage using active sharing technology in certain regional locations (the **Project**).]  The Department’s Confidential Information is provided solely to assist the Recipient to submit a grant application in respect of the Project. | | |
| **Term**  *(refer to clause 2 -Term)* | 5 years from the date the Recipient executes this Deed poll. | | |
| **Dated** | Click here to enter text. | | |
| **Special Conditions** | In the event that you do not make an application for a grant in respect of the Project, you must immediately delete and destroy the Department’s Confidential Information in accordance with **clause 9.1(a)**. | | |

# Terms of Deed

1. Interpretation and definitions
   1. Interpretation

Unless the context requires otherwise, in this Deed:

* + 1. the terms set out in the left hand column of the Details have the meaning ascribed to them in the right hand column of the Details;
    2. headings are for convenience only and do not affect the interpretation of this Deed;
    3. the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
    4. references to the parties include references to respective directors, officers, employees and agents of the parties; and
    5. where an expression is defined, any other grammatical form of that expression has a corresponding meaning.
  1. Definitions

**Business Day** means any day that is not a Saturday, Sunday or public holiday in NSW.

**Deed** means this deed poll.

**Department’s Confidential Information** means all know-how, prototypes, data, trade secrets, complied databases, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

* + 1. is by its nature confidential;
    2. has been designated as confidential;
    3. is capable of protection at common law or equity as confidential information; or
    4. is derived or produced partly from the information described in paragraph (a), (b) or (c) above,

but does not include information that:

* + 1. is in the public domain; or
    2. you independently knew or developed other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

**Intellectual Property** or **IP** includes:

* + 1. all rights in relation to copyright, inventions, plant varieties, trademarks, designs and patents; and
    2. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include moral rights as defined in the *Copyright Act 1968* (Cth).

**Notice** means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one party gives to another party in writing under this Deed.

1. Term
   1. This Deed will continue in force for the Term specified in the Details.
2. Department’s Confidential Information
   1. You bear the onus of showing that information is not the Department’s Confidential Information.
   2. A combination of information will not be taken to be in the public domain merely because it contains some information which is in the public domain.
3. Permitted use
   1. During the Term you must:
      1. keep the Department’s Confidential Information confidential; and
      2. use the Department’s Confidential Information only for the Approved Purpose.
   2. You must not copy the Department’s Confidential Information or any part of it other than as strictly necessary for the Approved Purpose and must mark any such copy ‘Confidential – Department of Regional NSW’.
4. Permitted disclosures
   1. You may disclose the Department’s Confidential Information to:
      1. those of your employees, directors, officers, subcontractors, agents and legal, financial or other professional advisers; and
      2. those of your related bodies corporate and their employees, directors, officers and legal, financial or other professional advisers,

who have a need to know the information solely for the Approved Purpose or to advise on the lawfulness of a disclosure under **clause 5.3**.

* 1. Prior to disclosure to any person under **clause 5.1**, you must make those persons aware of the confidential nature of the Department’s Confidential Information and obtain a written assurance that it will be kept confidential.
  2. You may disclose the Department’s Confidential Information to the extent that it is required to be disclosed by law, provided that you:
     1. must, to the extent reasonably practicable, give the Department prior notice of the proposed disclosure with full details of the circumstances and the information to be disclosed; and
     2. must postpone any disclosure required by law for as long as you are able, without prejudicing your own position; and
     3. acknowledge that the Department, at its cost and expense, is entitled to make representation to the relevant court, tribunal or other body seeking or ordering disclosure as to whether the Department’s Confidential Information should be disclosed.

1. Security practices
   1. You must:
      1. implement security practices against unauthorised copying, use and disclosure of any of the Department’s Confidential Information;
      2. immediately notify the Department if you become aware of any unauthorised copying, use or disclosure in any form, or any disclosure required by law;
      3. promptly comply with any request by the Department to return or destroy any or all copies of the Department’s Confidential Information, unless required by law to be retained; and
      4. cooperate with the Department in any reasonable action it takes to protect the Department’s Confidential Information.
2. Intellectual property
   1. Nothing in this Deed changes the ownership of Intellectual Property in any of the Department’s Confidential Information.
   2. This Deed does not give you any right, title or interest in the Department’s Confidential Information.
3. Exclusion of warranties
   1. You acknowledge that, to the extent permitted by law, the Department:
      1. has not made and makes no representation or warranty, express or implied, as to the accuracy, content, legality or completeness of the Department’s Confidential Information;
      2. is not under any obligation to notify you or provide any further information to you or if it becomes aware of any inaccuracy, incompleteness or change in the Department’s Confidential Information; and
      3. has not made and makes no representation or warranty, express or implied, that the Department’s Confidential Information does not infringe the Intellectual Property or any other right of any person.
4. Expiry
   1. You will:
      1. upon expiry of the Term, or in the event you do not participate in applying for a grant in respect of the Project (as specified in the Details), delete or destroy any record of any part of the Department’s Confidential Information (including information in computer records and electronic storage devices) in your possession or control; or
      2. within 30 days of receiving written Notice from the Department requesting destruction of the Department’s Confidential Information, delete or destroy any record of any part of the Department’s Confidential Information (including information in computer records and electronic storage devices) specified in the Notice.
5. Injunctive relief and indemnity
   1. You acknowledge that a breach of this Deed may cause the Department irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, without prejudice to any other rights or remedies that may be available, the Department may seek injunctive relief against such a breach or threatened breach without proving any actual damage has been sustained or is likely to be sustained.
   2. You must indemnify the Department and keep it indemnified from and against all costs, expenses, losses, damages, claims, actions, proceedings or other liabilities (whether in contract, tort or otherwise) (**Claims**), arising out of any unauthorised use or unauthorised disclosure of any of the Department’s Confidential Information by:
      1. you;
      2. any of your employees, directors, officers, subcontractors, agents or legal, financial or other professional advisers;
      3. any person in respect of whom the Department consents to you making a disclosure of the Department’s Confidential Information; or
      4. any person whose awareness of the Department’s Confidential Information originates with you.
   3. Your liability to indemnify the Department under this **clause 10**:
      1. will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department contributed to the relevant Claim; and
      2. does not exclude or reduce the liability of, or benefit to, the Department that may arise by operation of the common law, statute or the other terms of this Deed.

# Other Legal Matters

1. Notices
   1. Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered or emailed to the Authorised Officer specified in the Details.
   2. The receiving party will be deemed to have received a Notice as follows:
      1. if hand delivered, on the day on which it is delivered or left at the relevant address;
      2. if sent by email before 5.00pm on a Business Day, the first of the following occurring:
2. when the sender receives an automated message confirming delivery; or
3. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered; or
   * 1. if sent by email after 5pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
   1. Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.
4. General
   1. **Waiver**:
      1. If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect.
      2. Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
   2. **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.
   3. **Assignment:** The Recipient may not assign, novate or transfer any right or obligation under this Deed.
   4. **Governing law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

Executed as a deed poll and delivered on the date shown on the first page.

| **Recipient Party (Company)** |  | |
| --- | --- | --- |
| Signed, sealed and delivered by the Recipient in accordance with section 127 of the *Corporations Act 2001* (NSW) by: | | |
| Name of Director(1) |  | Name of Director (2)/Secretary | |
|  |  |  | |
| Position of Director(1) |  | Position of Director(2)/Secretary | |
| Signature of Director(1) |  | Signature of Director(2)/Secretary | |
| Date |  | Date | |