

## 1 Defined terms & interpretation

### 1.1 Defined terms

In this document:

**Approved Purpose** means for the purpose of:

- (a) receiving and reviewing the Confidential Information relating to the project to which the Confidential Information relates to; and
- (b) preparing a response with respect to the market process for that project.

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

**Claim** means a claim, action, proceeding, judgment or demand made or brought by or against a party, however arising and whether present, unascertained, future or contingent.

**Confidential Information** includes:

- (a) the terms of this document and its subject matter, including Information submitted or disclosed by Landcom during negotiations, discussions and meetings relating to this document;
- (b) Information that is identified to the Receiving Party as being confidential;
- (c) all Information treated as confidential by Landcom disclosed to or acquired by the Receiving Party before or after the date of the document, whether orally, in writing or in electronic or machine-readable form; and
- (d) all other Information belonging or relating to Landcom, that is not generally available to the public at the time of disclosure other than by reason of a breach of this document or which the Receiving Party knows, or ought reasonably to be expected to know, is confidential to Landcom;

but excludes Information that was legally and properly obtained by the Receiving Party from any other source without restriction on further disclosure.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department commission, authority, tribunal, agency or entity in any jurisdiction.

**Information** means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data, financial model, structures, investors, contact details;
- (b) copies and extracts made of or from that information and data, whether translated from the original form,

recompiled, partially copied, modified, updated or otherwise altered;

- (c) the Approved Purpose and any evaluations, discussions or negotiations regarding the Approved Purpose; and
- (d) the existence or the terms of this document.

**Loss** means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment, however arising and whether present, unascertained, future or contingent.

### 1.2 Interpretation

In this document, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) other grammatical forms of defined words or expressions have corresponding meanings;
- (c) a reference to a document includes the document as modified from time to time and any document replacing it;
- (d) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (e) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and anybody or entity whether incorporated or not; and
- (f) another grammatical form of a defined word or expression has a corresponding meaning.

## 2 Disclosure of Confidential Information

Landcom hereby permits the Receiving Party to use the Confidential Information disclosed to the Receiving Party by Landcom for the Approved Purpose on the basis that the Receiving Party:

- (a) acknowledges and agrees that nothing in this document obliges Landcom to disclose any particular Information to the Receiving Party;
- (b) will not treat the supply of Confidential Information to it as an offer or invitation by Landcom nor as a basis of any agreement or representation;
- (c) acknowledges that the Confidential Information is valuable to Landcom;
- (d) acknowledges that the Receiving Party will be given access to certain Confidential Information solely for the Approved Purpose; and
- (e) undertakes to deal with the Confidential Information in accordance with the terms of this document.

## 3 Confidentiality

### 3.1 Obligations of confidentiality

- (a) The Receiving Party promises and undertakes to Landcom as an ongoing separate promise and undertaking that it will:
  - (i) not use the other party's Confidential Information for any purpose other than the Approved Purpose;

- (ii) not disclose the other party's Confidential Information to any other person or permit any other person to have access to or view any of the other party's Confidential Information without the prior written consent of the other party; and
- (iii) take all reasonable steps required in order to keep Landcom's Confidential Information secure and inaccessible to third parties except where such access is reasonably required for the Approved Purpose under clause 4.

- (b) The Receiving Party indemnifies Landcom and promises to keep Landcom indemnified against any loss or damage of whatsoever kind or nature and howsoever arising that Landcom might suffer as a result of any failure by the Receiving Party to properly secure the Confidential Information or any misuse or wrongful disclosure.
- (c) This is an essential term of this document and binds the Receiving Party.

#### **4 Authorised disclosure**

Nothing in the document prevents the Receiving Party from disclosing Confidential Information:

- (a) if disclosure of that Confidential Information is required to be made by any court order, law, the rules of any Government Authority or the applicable rules of any financial market (as defined in the Corporations Act);
- (b) to the extent permissible under law or any court order, the Receiving Party must first notify Landcom, and take all steps reasonably required by Landcom to prevent or restrict the disclosure of the Confidential Information; and
- (c) to any person for the sole purpose of the carrying out the Approved Purpose, provided those parties are directed to keep the Confidential Information confidential.

#### **5 Notice of Breach**

The Receiving Party must immediately notify Landcom of any potential, suspected or actual unauthorised access, disclosure, copying or use or breach of this document.

#### **6 Return or destruction of Confidential Information**

##### **6.1 Return and destruction**

Subject to clause 6.2, immediately on the written request of Landcom or on the termination of this document for any reason, the Receiving Party must, at its expense:

- (a) cease the use of all Confidential Information of or relating to Landcom;
- (b) deliver to Landcom all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of Landcom, destroy, and certify to Landcom that it has destroyed, those documents and materials;
- (c) for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored; and
- (d) provide to Landcom a statutory declaration duly executed by the Receiving Party confirming that the Receiving Party has complied with all of its obligations under this clause 6.1.

##### **6.2 Exception**

Clause 6.1 does not apply to any Confidential Information to the extent that:

- (a) the Confidential Information forms part of the minutes of the board of directors, a committee of the

board of directors of the Receiving Party or in accordance with the normal practices of the Receiving Party; or

- (b) the Receiving Party holding Confidential Information is required by law or the rules of any applicable regulatory authority to retain a copy of the Confidential Information.

#### **6.3 No release**

Return or destruction of the material referred to in clause 6.1 does not release the Receiving Party from its obligations under this document.

#### **7 Ownership of the Confidential Information**

The Receiving Party acknowledges that:

- (a) the Confidential Information is and remains the property of Landcom;
- (b) this document does not give the Receiving Party any right or interest, including any intellectual property rights, in the Confidential Information other than the right to use it strictly in accordance with this document;
- (c) all right and interest in any copies or reproductions of the Confidential Information vest exclusively in Landcom at the time they are created; and
- (d) all rights and interest in any information or other product derived from or arising out of the use of the Confidential Information in the exercise or undertaking of the Approved Purpose by the Receiving Party will be and remain always vested in Landcom and will be deemed to be Confidential Information subject to the provisions of this document.

#### **8 Breach**

The Receiving Party acknowledges and agrees that:

- (a) the Confidential Information constitutes valuable and proprietary information of Landcom;
- (b) any breach of this document will diminish the value of Landcom's business or assets;
- (c) any Loss suffered by Landcom as a result of any breach of this document may not be adequately compensated for by damages; and
- (d) in addition to any other remedies available at law or in equity, Landcom may be entitled to specific performance or an injunction, as appropriate, against the Receiving Party as a remedy for any potential, suspected or actual breach of this document and, if necessary, to require it to return the material referred to in clause 6.1 to Landcom.

#### **9 Disclaimer**

The Receiving Party:

- (a) acknowledges that neither Landcom nor any person on its behalf has made or makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information;
- (b) agrees that it must make its own assessment of the Confidential Information and satisfy itself as to the accuracy and completeness of that Confidential Information; and
- (c) will not hold Landcom, its employees, contractors, agents and the author of the Confidential Information accountable or liable for any loss or damage that the Receiving Party may suffer as a result of utilising or relying on any part of the Confidential Information.

## 10 Liability

### 10.1 Indemnity from Receiving Party

The Receiving Party indemnifies and must keep indemnified Landcom against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Landcom or which Landcom may pay, sustain or incur as a direct or indirect result of:

- (a) any breach of this document by the Receiving Party; or
- (b) any failure by any third party under clause 4(c) to keep the Confidential Information confidential.

### 10.2 Civil Liability Act

To the maximum extent permitted by law, the Receiving Party agrees that:

- (a) Part 4 of the *Civil Liability Act 2002* (NSW) (CL Act) will not have any application to the document or any of the obligations of any party under the document or at law;
- (b) any agreement of sole responsibility and the indemnity contained in the document shall apply despite the provisions of Part 4 of CL Act; and
- (c) their rights, obligations and liabilities will be those which would exist if Part 4 of CL Act did not apply.

## 11 Duration

Despite clause 6, the obligations imposed under this document continue to apply to and must be observed by the Receiving Party until the Receiving Party receives written notification from Landcom that the market process with respect to the project has completed.

## 12 Notices and other communications

### 12.1 Service of notices

A notice, demand, consent, approval or communication under this document (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) sent by email or post to the recipient's address for Notices specified at the beginning of this document, as varied by any Notice given by the recipient to the sender.

### 12.2 Effective on receipt

A Notice given in accordance with clause 12.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email at the time shown in the delivery communication report generated by the sender's email system,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## 13 Government Information (Public Access)

- (a) The Receiving Party acknowledge and agrees that this document and any other information provided received by Landcom under the document may be subject to the requirements of the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act). The GIPA Act requires all government entities to release certain information on their website or

pursuant to applications made under the GIPA Act. The GIPA Act provides appropriate protection for individuals' privacy and includes certain exceptions.

- (b) When applicable, the Receiving Party acknowledges and agrees that:
  - (i) the Receiving Party understands Landcom's obligations in relation to the disclosure and publication of information under the GIPA Act;
  - (ii) neither Landcom, Landcom's Personnel nor the NSW Government will be liable to the Receiving Party upon any claim arising out of, or in any way connected with, the disclosure of any information by Landcom; and
  - (iii) it will assist Landcom to comply with its obligations under the GIPA Act.

## 14 General

### 14.1 Nature of obligations

- (a) Any provision in this document which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on the Receiving Party by this document in favour of Landcom is a separate obligation.

### 14.2 Entire understanding

This document contains the entire understanding concerning the subject matter of the agreement and supersedes terminates and replaces all prior agreements and communications between the parties.

### 14.3 No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on Landcom by this document does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this document.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### 14.4 Severability

Any provision of the document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability but that shall not invalidate the remaining provisions of the document or affect such provision in any other jurisdiction.

### 14.5 No assignment

The Receiving Party cannot assign or otherwise transfer the benefit of this document without the prior written consent of Landcom.

### 14.6 No variation

This document cannot be amended or varied except in writing signed by all parties.

### 14.7 Costs

The Receiving must bear its own legal costs of and incidental to this document.

### 14.8 Governing law and jurisdiction

- (a) This document is governed by and must be construed in accordance with the laws of New South Wales.
- (b) All parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this document, its performance or subject matter.

#### **14.9 Operation of indemnities**

Any indemnity and all obligations of confidence under the document are independent and survive termination of the document.

#### **14.10 Relationship**

Unless this document expressly provides otherwise, nothing in this document may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

#### **14.11 Counterparts**

This document may be signed in any number of counterparts. All counterparts executed separately when

taken together constitute one deed and counterparts executed separately may be consolidated into a single document.

#### **14.12 Additional obligations**

The covenants in this document are in addition to and will in no way detract from the obligations of the Receiving Party in respect of secret and confidential information at law or in equity or under any trade, professional custom or usage.

#### **14.13 Time of the essence**

Time is of the essence in this document.