User note: All NGV Contemporary Design Competition Registrants must complete and attach the Confidentiality Deed Poll to the Registration Form.

Development Victoria
Confidentiality Deed Poll

The person whose name and address are set out in Item 1 of Schedule 1 (**Receiving Party**) grants this Deed Poll in favour of Development Victoriaof Level 9, 8 Exhibition St, Melbourne VIC 3000 (**DV**).

Background

1. DV possesses Confidential Information which it has agreed to disclose to the Receiving Party to be used for the Approved Purpose on the terms of this Deed Poll.
2. The Receiving Party has agreed to execute this Deed Poll and be bound by the annexed Confidentiality Terms and Conditions in consideration of being given access to the Confidential Information.
3. The Receiving Party acknowledges and agrees to the special requirements of confidentiality set out in sections 71 to 73 of the *Development Victoria Act 2003* which are set out in Annexure 1.

Schedule 1 – Details

|  |  |  |
| --- | --- | --- |
| **Item 1** | **Recipient** | **< name>**Click or tap here to enter text. |
| **ABN** | **<recipient’s ABN>** Click or tap here to enter text. |
| **Address** | **<recipient’s address>**Click or tap here to enter text. |
| **Email**  | **<recipient’s email>** Click or tap here to enter text. |
| **Item 2** | **Approved Purposes** | Participation in the NGV Contemporary design competition  |

**Executed as a Deed Poll**

***<select appropriate execution block>***

**Signed and sealed and delivered by *[insert name of
Receiving Party]*** by being executed in accordance with
Section 127 of the *Corporations Act 2001* (Cth)



Signature of Director/Secretary



Signature of Director/Secretary



Signature of Director/Secretary



Signature of Director/Secretary

OR

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed sealed and delivered** by ***[insert name of Receiving Party*** |  |  |  |
| Signature  |  | Witness |  |
| Name  |  | Name of witness |  |

Confidentiality Deed Poll - Terms and Conditions

1.
2. Definitions

In this Deed Poll:

* + 1. **Approved Purpose** means the purpose set out in Item 2 of the Schedule.
		2. **Confidential Information** means this Deed Poll and any information whether written, oral or otherwise relating to the past, present, or future business of DV of including, without limitation:
			1. the contents of any documentation reviewed by the Receiving Party;
			2. all investigations, data, reports, analyses, forms, memoranda, specifications, letters, processes, procedures, data, formulae, conclusions, methodologies, research plans, project descriptions, business plans and projections, profit and loss statements, management reports, arrangements and agreements with third parties, strategic planning details, business and other systems retained by DV;
			3. any financial information concerning the conduct, development, financing, managing or selling activities of DV, relating to DV's business or operation; and
			4. all information and data relating to the operations, dealings, property, assets, technology, activities and services of a party, including without limitation Intellectual Property Rights, software, source and object code, trade secrets, confidential know-how, client information and information proprietary to clients, client lists, concepts not reduced to material form, designs, drawings, plans and models;

excepting any such information which:

* + - * 1. prior to execution of this Deed Poll is in the public domain;
				2. becomes part of the public domain other than as a result of an unauthorised disclosure by the Receiving Party;
				3. is or becomes available to the Receiving Party from a third party lawfully in possession of such information and who has the lawful power to disclose such information to the Receiving Party on a non-confidential basis; and
				4. is rightfully known to the Receiving Party (as shown by written record) prior to the date of disclosure under this Deed Poll;
		1. **Deed Poll** means this deed poll including the recitals and any annexures; and
		2. **Intellectual Property Rights** or **IPR** means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:
			1. patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
			2. any application or right to apply for registration of any of these rights;
			3. any registration of any of those rights or any registration of any application referred to in paragraph (ii); and
			4. all renewals and extensions of these rights.
1. Confidentiality

The Receiving Party agrees to:

* + 1. only use Confidential Information for the Approved Purpose;
		2. keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of any other person without the prior written approval of DV;
		3. take all reasonable steps to secure and keep secure all Confidential Information in its possession or control;
		4. co‑operate with DV in any action DV may take to protect the confidentiality of the Confidential Information;
		5. not memorise, use, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than for the Approved Purpose;
		6. only disclose Confidential Information to any of the Receiving Party's employees or sub-contractors on a strictly need to know basis, provided that the Receiving Party's employees and sub-contractors are advised of the confidential nature of the Confidential Information and are bound by confidentiality obligations no less onerous than those imposed on the Receiving Party under this Deed Poll; and
		7. not apply for, register or attempt to register, or authorise or assist any third party to apply for or register, under any statute or otherwise in any country any form of IPR relating to or incorporating any Confidential Information.
1. Disclosure Required by Law

The Receiving Party may disclose Confidential Information where it is necessary for compliance with any applicable law or legally binding order of any court, government, semi-government authority or administrative or judicial body, provided that before any disclosure, the Receiving Party:

* + 1. notifies DV within a reasonable time of the circumstances and content of the proposed disclosure;
		2. endeavours to comply with any reasonable request by DV concerning the proposed disclosure; and
		3. gives DV a reasonable opportunity to challenge in a court or other appropriate body the legality of the Receiving Party's obligation to disclose the Confidential Information.
1. Return or Destruction of Confidential Information

Immediately on DV's written request, the Receiving Party must:

* + 1. cease the use of all Confidential Information;
		2. deliver to DV all documents and other materials in its possession, power or control containing, recording or constituting that Confidential Information or, at the option of DV, destroy, and certify to DV that it has destroyed, those documents and materials; and
		3. 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.
1. Rights and title to the Confidential Information

The Receiving Party acknowledges that:

* + 1. the Confidential Information is and remains the property of DV;
		2. this Deed Poll does not give the Receiving Party any right, title or interest, including any IPR, in the Confidential Information other than the right to use it strictly for the Approved Purpose and in accordance with this Deed Poll; and
		3. all rights and interest in any copies, adaptations or reproductions of the Confidential Information vest exclusively in DV at the time they are created.
1. Acknowledgments and Disclaimer

The Receiving Party:

* + 1. acknowledges that except to the extent required by law, neither DV 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;
		2. 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
		3. acknowledges that DV is under no obligation to update or revise any of the Confidential Information or any other information provided to the Receiving Party in connection with this Deed Poll.
1. Liability
	* 1. To the fullest extent permitted by law, DV and any of DV's officers, employees, subcontractors, agents and representatives exclude all liability, direct or indirect and whether or not arising from the negligence or default of DV or its officers, employees, subcontractors, agents or representatives or any other person, arising out of or in connection with any use or reliance on the Confidential Information by the Receiving Party.
		2. The Receiving Party acknowledges and agrees that:
			1. monetary damages may be an insufficient remedy for DV if the Receiving Party breaches this Deed Poll; and
			2. in addition to any other remedy to which DV may be entitled in law or equity, DV may seek injunctive relief to prevent any actual or threatened breach of this Deed Poll and to compel specific performance of this Deed Poll.
2. Duration of Obligation

The obligations imposed under this Deed Poll:

* + 1. commence on the date of this Deed Poll and will continue to apply and survive completion of the Approved Purpose and the return or destruction of Confidential Information; and
		2. continue to apply to and must be observed by the Receiving Party until either DV releases the Receiving Party, in writing, from this Deed Poll or one of the exceptions to Confidential Information apply as outlined in this Deed Poll.
1. General
	* 1. Nothing in this Deed Poll prevents a party from seeking injunctive relief.
		2. This Deed Poll is governed by the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts of that State.
		3. This Deed Poll may only be amended by the parties in writing.
		4. The Receiving Party acknowledges that this Deed Poll is not intended to create any agency or partnership relationship.
2. Reliance on Confidential Information

Except as otherwise agreed in writing, neither DV nor any Related Body Corporate of DV nor any of their officers, employees, agents, contractors or advisers (or officers, employees, agents, contractors or advisers of any of those agents, contractors or advisors):

* + 1. makes any representation, or give any warranty or assurance, as to the accuracy or completeness of the Confidential Information or that reasonable care was taken in its preparation;
		2. have made any representations, warranties, assurance or inducement that Confidential Information does not infringe the rights of other persons;
		3. are liable for loss of any kind including damages, costs, interest, loss of profits or special loss or damage arising from any infringements, inaccuracy or incompleteness in the Confidential Information; and

are responsible for any interpretation, opinion or conclusion that the Recipient forms as a result of examining the Confidential Information.

Annexure 1 - Confidentiality Acknowledgement

As a State Government development authority, much of the information which passes through Development Victoria is of a commercially and politically sensitive nature, and therefore confidential.

Your attention is drawn to the following sections of the *Development Victoria Act 2003 (Vic)*.

**71. Improper use of information**

A person connected with Development Victoria must not make improper use of information acquired because of that person's connection with Development Victoria:

1. to gain directly or indirectly any pecuniary advantage for himself or herself or anyone else
2. with intent to cause detriment to Development Victoria irrespective of whether detriment was caused.

Penalty: 50 units.

**72. Information to be confidential**

A person connected with Development Victoria must not make a record of, or divulge or communicate to any person, information, relating to Development Victoria or Development Victoria’s functions and powers, that was obtained by the person in confidence except:

1. in carrying out official duties
2. in carrying out duties or obligations under this Act or the Docklands Act 1991 or the agreement or arrangement or as a participant in relation to the undertaking
3. with the consent of the Minister
4. to a court, in proceedings under this Act or the Docklands Act 1991 or in relation to an agreement or arrangement made under this Act or the Docklands Act 1991
5. if the information is already in the public domain, other than as a result of a contravention of the Act.

Penalty: 50 units.

**73. Who is connected with Development Victoria?**

For the purpose of sections 71 and 72, a person is connected with Development Victoria if the person is or has been:

1. a director of Development Victoria or a member of its staff
2. a participant with Development Victoria in a body (corporate or unincorporated), trust, partnership, joint venture, or other joint undertaking
3. a party to an agreement or arrangement made with Development Victoria.