

TELSTRA ULLS CONFIDENTIAL MATERIAL

**CONFIDENTIALITY UNDERTAKING
BY ACCESS SEEKER EMPLOYEES**

IN FAVOUR OF

TELSTRA CORPORATION LIMITED

I, _____, of [*Access Seeker*] (“[*Access Seeker*]”) undertake to Telstra Corporation Limited (“**Telstra**”) that:

- 1 Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in Attachment 1 to this Undertaking (“**the Telstra confidential information**” or “**the Telstra Category 1 confidential information**”).
- 2 I acknowledge that:
 - (a) this Undertaking is given by me to Telstra in consideration for Telstra making the Telstra confidential information available to me for the Approved Purposes (as defined below);
 - (b) all intellectual property in (or in any part of) the Telstra confidential information is and will remain owned by Telstra; and
 - (c) by reason of this Undertaking, no licence or right is granted to me, or any other employee, agent, representative, officer or member of [] in relation to the Telstra confidential information, except as expressly provided in this Undertaking.
- 3 I will:
 - (a) only use the Telstra confidential information for:
 - (i) the purposes of making submissions to the Australian Competition and Consumer Commission (“**ACCC**”) in the course of the conduct of an access dispute, to which [*Access Seeker*] is a party, notified to the ACCC

in accordance with Division 8 of Part XIC of the *Trade Practices Act 1974* (Cth) (“**TPA**”) (or any other proceedings or appeals related to the access dispute) and in which Telstra relies on the TEA Model and/or an unredacted version of it; or

- (ii) the purposes of making submissions to the ACCC during the course of the ACCC’s consideration of an ordinary access undertaking given to the ACCC by Telstra in accordance with Division 5 of Part XIC of the TPA where Telstra relies on the TEA Model and/or an unredacted version of it; or
- (iii) the purposes of any application made to the Australian Competition Tribunal (“**the Tribunal**”) under section 152CE of the TPA for review of a decision made by the ACCC in respect of an Access Undertaking; or
- (iv) any other purpose approved by Telstra in writing,

(“**the Approved Purposes**”), and, to the extent that any submission or other document is submitted to the ACCC, the Tribunal or given to any person by me or [*Access Seeker*] as permitted by this Undertaking and which contains any Telstra confidential information:

- (A) that submission or document will be clearly marked as a confidential submission or confidential document containing Telstra confidential information that is subject to this Undertaking;
 - (B) the Telstra confidential information will be clearly identified within the submission or document;
- (b) comply with any reasonable request or direction from Telstra regarding the Telstra confidential information.

4 Subject to paragraph 5 below, I will not disclose any of the Telstra confidential information to any other person without the prior written consent of Telstra.

5 I acknowledge that I may disclose the Telstra confidential information to which I have access to:

- (a) ACCC employees for the Approved Purposes;
- (b) any member of the Tribunal and their administrative assistants if the ACCC makes a decision to accept or reject an Access Undertaking and that decision is challenged in the Tribunal;
- (c) any employee, external legal adviser or independent expert of [*Access Seeker*] for the Approved Purposes provided that:
 - (i) the person to whom disclosure is proposed to be made (“**the person**”) has been identified to Telstra in writing and Telstra has approved the person as a person who may receive the Telstra confidential information;
 - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or another form acceptable to Telstra; and
 - (iii) the signed confidentiality undertaking of the person has been served on Telstra;
- (d) to any secretarial, administrative and support staff who perform purely administrative tasks and who assist me or any person referred to in paragraph 6(c) for the Approved Purposes; and
- (e) to other persons, if required to do so by law, but then only:
 - (i) if I notify Telstra of that request as soon as practicable;
 - (ii) to the person(s) to whom I am obliged to provide the Telstra confidential information;
 - (iii) to the extent necessary to comply with the legal requirement; and
 - (iv) if I notify the recipient of the Telstra confidential information that the information is confidential to Telstra.

6 I will establish and maintain security measures to safeguard the Telstra confidential information that is in my possession from unauthorised access, use, copying, reproduction or disclosure and will protect the Telstra confidential information using the same degree of care as a prudent person in my position would use to protect that person’s confidential information.

7 Except as required by law and subject to paragraph 10 below, within a reasonable time after whichever of the following first occurs:

- (a) if there is no Access Undertaking before the ACCC or the Tribunal for decision, the Access Dispute is resolved; or
- (b) if there is no Access Dispute before the ACCC for arbitration, a decision is made to accept or reject the Access Undertaking; or
- (c) my ceasing to be employed by, retained by, an officer, a member or a representative of [*Access Seeker*] (provided that I continue to have access to the Telstra confidential information at that time) ; or
- (d) my ceasing to work for or represent [*Access Seeker*] in respect of the Approved Purposes; or
- (e) my commencing employment with any other telecommunications carrier or service provider,

I will destroy or deliver, or cause to be destroyed or delivered, to Telstra the Telstra confidential information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Telstra confidential information in my possession, custody, power or control.

Note: For the purpose of paragraph 7(a) above, an Access Dispute is resolved where:

- (i) the ACCC makes a final determination in respect of it pursuant to section 152CP of the TPA; or
- (ii) it is withdrawn pursuant to section 152CN of the TPA; or
- (iii) it is otherwise terminated.

For the purpose of paragraph 7(b) above, a decision is made to accept or reject an Access Undertaking where:

- (i) the Access Undertaking is withdrawn;
- (ii) 21 days have expired after a decision has been made by the ACCC or the Tribunal to accept or reject the Access Undertaking and there are no outstanding applications, appeals or other legal proceedings in relation to the Access Undertaking or the decision; or
- (iii) a decision is made by the Tribunal to accept or reject the Access Undertaking pursuant to section 152CF of the *Trade Practices Act 1974 (Cth)*.

- 8 Nothing in this Undertaking shall impose an obligation upon me in respect of information:
- (a) that is in the public domain; or
 - (b) that has been obtained by me otherwise than from
 - (i) Telstra;
 - (ii) the ACCC;
 - (iii) another person who has signed a confidentiality undertaking; or
 - (iv) another person who has an obligation of confidence in relation to the Telstra confidential information (or any part of it), an Access Dispute or an Access Undertaking;

provided that the information is not in the public domain and/or has not been obtained by me by reason of, or in circumstances involving, any breach of a confidentiality undertaking or a breach of any other obligation of confidence in favour of Telstra or by any other unlawful means.

- 9 I acknowledge that damages may not be a sufficient remedy for any breach of this Undertaking and that Telstra may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to Telstra at law or in equity.
- 10 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to Telstra of the Telstra confidential information pursuant to paragraph 7 above.
- 11 I acknowledge that this Undertaking is governed by the law in force in the State of Victoria and I agree to submit to the non-exclusive jurisdiction of the court of that place.
- 12 In this Undertaking:

“**Access Dispute**” means an access dispute of the kind described in paragraph 3(a)(i) of this Undertaking;

“**Access Undertaking**” means an ordinary access undertaking of the kind described in paragraph 3(a)(ii) of this Undertaking; and

Signed: _____

Dated: _____

ATTACHMENT 1

- 1 Any document or information (whether or not within a document) provided to me which Telstra nominates as Telstra Category 1 confidential information for the purposes of this Undertaking.

Note: the intention is that the information nominated as Telstra Category 1 confidential information will equate to Telstra Category 1 information the subject of confidentiality undertakings executed by external advisers.