

**UNDERTAKING TO THE AUSTRALIAN COMPETITION &  
CONSUMER COMMISSION  
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT  
1974  
BY  
AUSTAR ENTERTAINMENT LIMITED (AUSTAR)**

**1. Background**

- 1.1. These undertakings are given by Austar Entertainment Limited (ACN 068 104 530) (Austar).
- 1.2. Austar and its subsidiaries are in the business of supplying a Subscription Television Service and, for that purpose, is also in the business of acquiring subscription television channels, and acquiring and compiling subscription television programming to include as part of its Subscription Television Service.
- 1.3. FOXTEL and Optus entered into a Content Supply Agreement (the CSA) which is conditional on the Commission notifying the parties in writing that it does not intend to intervene in the transactions contemplated by the CSA.
- 1.4. Although not a party to the CSA, Austar and certain subsidiary companies have agreed to vary certain existing agreements to enable FOXTEL and Optus to effect the CSA. These agreements have resulted in consequential changes to existing channel supply agreements and related arrangements between Austar, FOXTEL and Optus
- 1.5. The Commission has expressed the view that Part IV of the Act is likely to be contravened should Foxtel and Optus give effect to the CSA.
- 1.6. Austar acknowledges that it giving these undertakings will promote consistency in the availability and acquisition of rights to broadcast certain programming as part of a Subscription Television Service, and as such would promote entry to some markets that are affected by the CSA. Austar has agreed to give these undertakings to further this purpose, and also to overcome other of the Commission's competition concerns in respect of the CSA, without making any acknowledgement as to the reasonableness of those other concerns.

## 2. Interpretations and Definitions

- 2.1. A reference to “these undertakings” is a reference to all the provisions of this document, the annexures and schedules.
- 2.2. In these undertakings, the singular includes the plural and vice versa.
- 2.3. In these undertakings, unless the context otherwise requires:

**Act** means the *Trade Practices Act 1974 (Cth)* as amended from time to time.

**ADSL Network** means a telecommunications network which uses, in part, Communications Wire which forms part of a Public Switched Telephone Network (PSTN) between the boundary of the relevant PSTN at an end-user’s premises and a point on the PSTN that is a potential point of interconnection located at, or associated with, a customer access module and located on the end-user side of the customer access module; and which Communications Wire is used, or immediately capable of being used, in the provision of broadband services.

**Austar Subscription Television Service** means the Subscription Television Service supplied by Austar to its subscribers from time to time, but (for the avoidance of doubt) does not include any video on demand or interactive services or enhancements.

**Australian Space Object** has the meaning given to it under section 5 of the *Radiocommunications Act 1992*.

**BSA** means the Broadcasting Services Act of 1992

**Business Day** means a day on which banks are open for general banking business in Sydney and Melbourne (not being a Saturday, Sunday or public holiday in those places).

**Cable Access Network** means a broadband telecommunications network for carrying communications to infrastructure Set Top Units (which infrastructure Set Top Units form part of the network) and having either optical fibre as the delivery mechanism to the kerb (and either fibre, co-axial cable or copper to the customer premises), or a hybrid of optical fibre and co-axial cable to customer premises, and which network is capable of connection to at least 8,000 premises in Australia excluding any part or parts of any Cable Access Network owned, controlled or operated by Telstra or Optus or their Related Parties or respective assigns.

**Commission** means the Australian Competition & Consumer Commission.

**Communications Wire** means a copper or aluminium based wire forming part of a Public Switched Telephone Network

**CSA** means the Content Supply Agreement executed by FOXTEL and Optus on 5 March 2002.

**Facility** has the same meaning as in the Telecommunications Act.

**Force Majeure** means an event or cause beyond the reasonable control of the party claiming force majeure including, without limitation:

- (a) an act of God,
- (b) acts or omissions by any governmental authority;
- (c) terrorism, war, revolution or any other act against public order or authority;
- (d) industrial action or trade disputes of whatever nature;
- (e) the requirements of any law;
- (f) any act or omission of a third person other than Austar, a Related Party of Austar or a person with whom Austar is in a contractual relationship in relation to the matter giving rise to that event or cause except where that event or cause is beyond the reasonable control of that person.
- (g) Any act or omission of either Optus or Foxtel in relation to the supply to Austar of satellite or related services where that act or omission also affects Austar Subscription Television Services;

**Foreign Space Object** has the meaning given to it under s5 of the *Radiocommunications Act 1992*.

**FOXTEL Undertakings** means undertakings dated on or about the date of this document agreed between Foxtel and the Commission.

**FOXTEL** means FOXTEL Management Pty Ltd (ACN 068 671 938) for and on behalf of the FOXTEL Partnership (which is the partnership established between Telstra Media and Sky Cable), and FOXTEL Cable Television Pty Limited (ACN 069 008 797).

**Infrastructure Operator** means:

- (a) an owner, controller or operator of a Cable Access Network who is also the owner or controller of all Set Top Units to which the Infrastructure Operator's Subscription Television Services are carried by that Cable Access Network; or
- (b) an owner or controller of a Satellite Network (excluding the Australian Space Object or Foreign Space Object included in that network) who is also both the owner, controller or user (under a licence, lease or services agreement) of satellite capacity on the Australian Space Object or Foreign Space Object included in that network who is also the owner or controller of all Set Top Units to which the Infrastructure Operator's Subscription Television Services are carried by that Satellite Network; or
- (c) an owner, controller or operator of an MDS System who is also the owner or controller of all Set Top Units to which the Infrastructure Operator's Subscription Television Services are carried by that MDS System.

but does not include FOXTEL, Telstra, Optus or a Related Party of any of them or a person in which any of them has, directly or indirectly, an interest of more than 25%, or who is controlled (as that term is defined in s50AA of the *Corporations Act*) by any of them.

**MDS System** means a system for carrying communications on a frequency or frequencies within the frequency band from 2300 Megahertz up to and including 2400 Megahertz to Set Top Units (which Set Top Units are part of the system) and which system is capable of connection to at least 8,000 premises in Australia (excluding any part or parts of any MDS System owned, controlled or operated by Austar, its related parties or its assigns).

**Optus** means Optus Vision Pty Limited (ACN 066 518 821), Optus Vision Media Pty Limited and any Related Party of either.

**Related Party** means in relation to the first party:

- (a) any person, company or entity that exercises or has the ability to exercise, practical control of the affairs of the first party, or is controlled by the first party, where '*control*' means:
  - (i) control of the composition of the Board of Directors;
  - (ii) being in a position to cast or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting; or
  - (iii) holding more than one half of the allotted share capital;

- (b) all holding companies, subsidiary companies and subsidiaries of holding companies of the first party (where the first party is a company) in the meaning of s4A of the Act; or
- (c) all directors (but not shareholders) of the first party where the first party is a company or partners or trustees or other office holders however described of the first party (where the first party is unincorporated);

**Satellite Network** means a space satellite telecommunications network including an uplink to an Australian Space Object or Foreign Space object as the case may be and downlinks to satellite dishes, for carrying communications to Set Top Units (which Set Top Units form part of the network) (excluding any part or parts of any Satellite Network owned, controlled or operated by FOXTEL, its Related Parties or its assigns or used by Austar to provide the Austar Subscription Television Service)

**Set Top Units (STU)** means conditional access customer equipment (as defined in Part XIC of the Act) owned or controlled by the Infrastructure Operator and used for receiving a Subscription Television Service.

**Sky Cable** means Sky Cable Pty Limited (ACN 069 799 640).

**Subscriber** means a person who receives the Austar Subscription Television Service

**Subscription Television Service** means a content service that provides television programs to consumers where the service is:

- (a) a subscription broadcasting service; or
- (b) a subscription narrowcasting service.

**Subscription broadcasting service, subscription narrowcasting service** and **television programs** have the meanings given by the BSA from time to time.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth).

**Telstra** means Telstra Corporation Limited or any Related Party including Telstra Media Pty Limited (ACN 069 279 027) and Telstra Multimedia Pty Limited (ACN 669 279 072).

### **3. Supply of Austar Subscription Television Service**

- 3.1. Austar will enter into an agreement with any Infrastructure Operator who requests to be supplied with the Austar Subscription Television Service on the terms set out in Annexure C subject to this clause 3 and to Austar having the rights itself to supply all of the Austar Subscription Television Service in the area(s) where the Infrastructure Operator wishes to supply the Austar Subscription Television Service.

- 3.2. The process that will be followed in entering into agreements with Infrastructure Operators pursuant to clause 3.1 is set out in Annexure A to these undertakings.
- 3.3. The Infrastructure Operator may only supply the Austar Subscription Television Service over the Cable Access Network, Satellite Network or MDS System and to the Set Top Units, in both cases, by which the Infrastructure Operator satisfies the definition of Infrastructure Operator.
- 3.4. If any Infrastructure Operator operates in both an area in which Austar has the rights itself to supply all of the Austar Subscription Television Service (**the Austar Area**) and an area in which FOXTEL has the rights itself to supply all of the FOXTEL Subscription Television Service (**the FOXTEL Area**), then Austar undertakes to enter into good faith negotiations with FOXTEL to ensure that the Infrastructure Operator receives a sub-licence of the Austar Subscription Television Services (in Austar Areas) and the FOXTEL Subscription Television Service (in FOXTEL Areas) to ensure that the Infrastructure Operator can provide a Subscription Television Service to its subscribers in all areas serviced by the Infrastructure Operator.
- 3.5. If Austar commences supplying a commercial retail Subscription Television Service to subscribers using a point-to-multipoint ADSL network which is capable of connection to at least 8,000 premises in Australia, Austar will supply that Austar Subscription Television Service to any owner, controller or operator of a point-to-multipoint ADSL network (which excludes any parts of an ADSL network owned, controlled or operated by Telstra, Optus or FOXTEL or any of their respective Related Parties or assigns or any parts of an ADSL network used by Austar) in the same manner and on equivalent terms (having regard to such things as differences in technologies) as it undertakes to supply Infrastructure Operators pursuant to these undertakings.

#### **4. Effective Date**

These undertakings come into effect when:

- (a) these undertakings are executed by Austar; and
- (b) are accepted by the Commission,

#### **5. Duration of Undertakings**

The undertakings in clause 3 will terminate on the earlier of:

- (a) 31 December 2010, or
- (b) Foxtel ceasing to supply programming to Austar on an exclusive basis such exclusive supply currently being provided pursuant to amendments made to programming agreements as a result of the Channel Sub-licensing Agreement.

## **6. Variation or Review of Undertakings**

If Austar is unable to comply with its obligations in these undertakings, or believes it is necessary to seek some modification due to changed circumstances, then Austar and the Commission agree that they will review these undertakings and negotiate in good faith the variation or revocation of all or any of the undertakings pursuant to s87B(2) of the Act.

## **7. Provision of Information**

- 7.1. To assist the Commission in monitoring compliance with these undertakings, Austar will advise the Commission in writing within 10 Business Days of Austar entering into an agreement with an Infrastructure Operator pursuant to these undertakings or within 10 Business Days of any variation or termination of the channel sub-licensing agreement;
- 7.2. The Commission will not, save for the purposes of enforcement action under section 87B of the Act, or any other legal obligation, publish or disclose confidential information provided to it by Austar pursuant to Clause 7.1 or of any event resulting in termination of these Undertakings under clause 5.
- 7.3. The Commission may at any time during the undertaking period request information from Austar that the Commission reasonably requires for the purpose of monitoring these undertakings. Austar will use its reasonable endeavours to comply with any such request within 10 Business Days of receipt or such other period of time as may be agreed to by the Commission.

## **8. Force Majeure**

- 8.1. Austar will not be liable for any failure to perform any obligation under these undertakings if the failure is due to Force Majeure.
- 8.2. If Austar is, by reason of Force Majeure, unable to perform an obligation under these undertakings, Austar will:
  - (a) as soon as practicable, and in any event within 10 days, notify the Commission of the cause and extent of non-performance and the date of commencement of Force Majeure; and
  - (b) negotiate in good faith with the Commission a means to satisfy Austar obligations under these undertakings.

## **9. Acknowledgments**

- 9.1. Subject to clause 10, Austar acknowledges that the Commission will make these undertakings available for public inspection.

- 9.2. Austar acknowledges that the Commission may issue a media release about these undertakings and may from time to time publicly refer to these undertakings, subject to Clause 10.

## 10. Confidentiality

- 10.1. The Commission will only make paragraph 6(i) of Annexure A to these undertakings or Attachment 2 of the draft Infrastructure Operator Agreement attached to Annexure C of these undertakings or any other confidential information provided to it by Austar in connection with these undertakings, available for public inspection by persons who Austar has approved in writing and who have signed a confidentiality deed in the form of Annexure B.
- 10.2. The Commission will not, save for the purposes of enforcement action under section 87B of the Act or any legal obligation, publish or disclose paragraph 6(i) of Annexure A to these undertakings or any other confidential information provided to it by Austar in connection with these undertakings.
- 10.3 For the avoidance of doubt, where the Commission publishes or discloses, pursuant to Clause 10.2, paragraph 6(i) of Annexure A to these undertakings or any other confidential information provided to it by Austar, it is not intended that the Commission would be required to first obtain undertakings pursuant to Clause 10.1.

## 11. Enforcement

For the avoidance of doubt, the Commission may take enforcement action at any time during the limitation period whether:

- (a) during the period of these undertakings; or
- (b) after the period of these undertakings,

in respect of any breach by Austar of a term of these undertakings or the Act.

## 12. Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under these undertakings:

- (a) must be in writing or by electronic mail;
- (b) must be signed by a person duly authorised by the sender, which signature may be digital if the digital signature complies with any guidelines for the use of digital signature which may be agreed by the parties;
- (c) must refer to these undertakings and state the clause under which the notice is given;
- (d) must be delivered to the intended recipient by prepaid post, by hand or fax or by email to the address, fax number or email address below or the address, fax number or email address last notified by the intended recipient to the sender:



- (i) to Austar: Group Director, Corporate Development & Legal Affairs  
Attention: Deanne Weir  
Fax No: 02 9251 3149  
Email: dweir@austar.com.au

and

- (ii) to the Commission: General Manager, Telecommunications  
Address: GPO BOX 520J  
MELBOURNE VIC 3001  
Fax No: 03 9663 3699

(e) will be taken to be duly given or made:

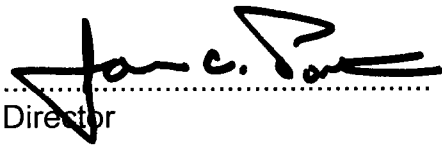
- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
- (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error; and
- (iv) in the case of electronic mail, on receipt by the sender of an electronic acknowledgement that the electronic mail has been read by the intended recipient,

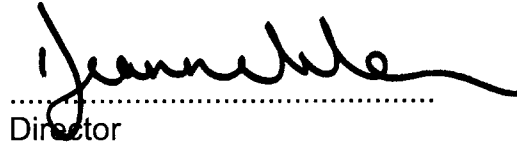
but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

### **13. Procurement**

Austar is required to do all things incidental or reasonably necessary to give effect to the undertakings, including procuring any Related Party to do such incidental or reasonably necessary things.

EXECUTED on  
by  
Austar Entertainment Limited

  
.....  
Director

  
.....  
Director

John C. Porter  
.....  
Name (please print)

DEANNE WEIR  
.....  
Name (please print)

Date: 20/11/02.....

Date: 20/11/02.....

Accepted by the Australian Competition & Consumer Commission

  
.....  
Professor Allan Fels  
Chairman  
Australian Competition & Consumer Commission

Dated: 21 november 2002

## Annexure A

### 1. **Austar Officer**

Austar will nominate a person to be the initial contact point for Infrastructure Operators (***the Austar officer***) and Austar will notify the ACCC of the Austar officer's identity and contact details.

### 2. **Application**

An Infrastructure Operator may make an application to Austar for a licence of the Austar Subscription Television Service. An application must be accompanied by a deposit of A\$50,000.00. The deposit:

- (a) will be applied towards the Infrastructure Operator's licence fees once it commences supplying the Austar Subscription Television Service; or
- (b) if the Infrastructure Operator does not commence supplying the Austar Subscription Television Service and asks Austar to terminate negotiations, the deposit will be refundable to the Infrastructure Operator with interest after Austar deducts any costs reasonably incurred by Austar

### 3. **Commencement of Negotiation**

- 3.1. Within 14 days of Austar receiving the deposit from an Infrastructure Operator, but subject to paragraph 4, Austar will meet with the Infrastructure Operator to negotiate the licence fee referred to in clause 10.1, a fair commercial rate for any package or tier which has services excluded from it due to lack of consent referred to in clause 3.5, the transfer fee referred to in clause 9, the terms on which the Austar Magazine are to be provided under clause 22 and other limitations referred to in clause 27 of the Infrastructure Operator Agreement in Annexure C.
- 3.2. Austar is obliged to negotiate with potential applicants pursuant to the provisions of Annexure A unless there are reasonable grounds to believe that the supply of the Austar Subscription Television Service by the applicant will not commence within 12 months of the commencement of negotiations.

### 4. **Confidentiality Deed**

Prior to commencing negotiations, the Infrastructure Operator will be required to execute a confidentiality deed in the form of Annexure B. Austar will also execute a confidentiality deed in the form of Annexure B.

### 5. **Negotiation on Licence Fee and Terms and Conditions**

Austar will negotiate the licence fee, being the fees payable pursuant to clause 10 of the Annexure C Infrastructure Operator agreement, and other matters referred to in paragraph 3.1 in good faith with the Infrastructure Operator.

## 6. Dispute Resolution Mechanism

If any dispute arises in the course of the negotiation of the licence fee or other matters referred to in paragraph 3.1, the dispute must be resolved as follows:

- (a) If there is still a dispute 21 days after negotiations have commenced, either party may give to the other party notice in writing specifying the dispute and requiring it to be dealt with in the manner set out in this clause (the **Dispute Notice**).
- (b) A mediator is to be appointed by agreement of the parties or, if they fail to agree within 7 days, a mediator is to be appointed by the Australian Commercial Disputes Centre (**ACDC**) acting on the request of either party. The mediation is to commence within 14 days of the mediator being appointed.
- (c) Unless the parties otherwise agree:
  - (i) each party may appoint a person, including a legally qualified person, to represent it or assist it in the mediation;
  - (ii) each party will bear their own costs relating to the preparation for and attendance at the mediation;
  - (iii) the costs of the mediator will be borne equally by both the parties; and
  - (iv) otherwise, the mediation shall be conducted by the mediator under the ACDC Mediation Guidelines.
- (d) At any time after the appointment of the mediator under this clause, either party or the mediator may, by notice in writing to the parties, terminate the mediation and notify the parties that the first party or the mediator believe the dispute in relation to the licence fee should be determined by Expert Determination (the **Expert Determination Notice**).
- (e) If any party or the mediator gives an Expert Determination Notice:
  - (i) the parties will, within 14 days of giving or receiving the Expert Determination Notice, appoint an independent expert to determine the licence fee; or
  - (ii) if the parties cannot agree on an independent expert within 14 days, an expert must be appointed by the ACDC, (the **expert**).
- (f) The Expert Determination is to be administered by the ACDC and the following procedures apply:
  - (i) each party may appoint a person, including a legally qualified person, to represent it or assist it in the Expert Determination;

- (ii) each party will bear their own costs relating to the preparation for and attendance at the Expert Determination;
  - (iii) the costs of the expert will be borne equally by both the parties; and
  - (iv) otherwise, the Expert Determination shall be conducted in accordance with ACDC Expert Determination Guidelines.
- (g) The expert must have the following skills or expertise:
- (i) a well-developed professional understanding of the subscription television industry in Australia or, if not available, in the United Kingdom or the United States; and
  - (ii) business, accounting or economics qualifications or substantial operational experience.
- (h) The parties will agree to be bound by the determination of the expert.
- (i) The expert must determine the licence fee under clause 10.1 in accordance with the following principles:-
- (i) **CONFIDENTIALITY GRANTED**

(ii) CONFIDENTIALITY GRANTED

**ANNEXURE B**

**NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT** is made on \_\_\_\_\_ 2002

**BETWEEN:**

**AUSTAR ENTERTAINMENT LIMITED (ACN 068 104 530) ) of Level 29, AAP Centre, 259 George Street, Sydney, NSW (“AUSTAR”)**

**AND**

**[ ] (ACN [ ] ) of [ ], Australia (“Recipient”)**

**RECITALS**

- A. AUSTAR and Recipient wish to consider the Proposal and each party proposes to disclose confidential information to the other for the purpose of pursuing their discussions in relation to the Proposal.
- B. This agreement is required so that information made available by a providing party to a receiving party can be kept confidential and in order that the basis of the supply of the information be recorded (all “the Providing Party” or “the Receiving Party”, as appropriate).

**NOW IT IS AGREED AS FOLLOWS:**

**1. Definitions**

- (a) **“Information”** shall mean:
  - (i) all documents, licences, letters, memoranda, papers, reports, charts and graphs supplied in relation to the Proposal; and
  - (ii) the Information content of all discussions in relation to the Proposal and business conducted in relation to the Proposal, held between the officers, employees, agents, associates or representatives of each of AUSTAR and the Recipient;
  - (iii) any data or information in recorded or tangible form; and
  - (iv) any other data or information in intangible or computer readable form; in the possession, custody or control of any party (which for the purposes of this definition includes its officers, employees, agents, associates or representatives) which information has been provided by one party to the other.
- (b) **“Confidential Information”** is all Information except that Information which:
  - (i) at the time of its receipt was lawfully known to a Receiving Party; or
  - (ii) at the time of its receipt was in the public domain; or

- (iii) subsequently comes into the public domain other than as a result of a breach by a Receiving Party of its duties under this agreement or as a result of disclosure by any other person receiving the Information from a Receiving Party; or
  - (iv) is received from a third party (other than the Providing Party or any employee, officer, agent or advisor of the Providing Party) legally entitled to possess that information and provide it to the Receiving Party.
- (c) **“AUSTAR Group”** means AUSTAR and its Related Bodies Corporate.
  - (e) **“Proposal”** means the consideration and negotiation of an Infrastructure Operator Content Supply Agreement between Austar and Recipient (or their respective Related Bodies Corporate) pursuant to the Undertaking by Austar to the Australian Competition and Consumer Commission pursuant to s87B of the *Trade Practices Act, 1974* dated [            ].
  - (f) **“Related Bodies Corporate”** has the same meaning as in Section 50 of the Corporations Law.

## 2. Confidential Information

- (a) In consideration of the provision of the Confidential Information, a Receiving Party shall keep all Confidential Information confidential and must ensure that its officers, employees, agents, associates and representatives keep all Confidential Information confidential as required by the terms of this Agreement.
- (b) Except as provided in clause 4 of this Agreement:
  - (i) a Receiving Party will not disclose to any third party any of the Confidential Information nor the fact of its existence nor the possibility of the Proposal nor will it make use of or turn to account any of the Confidential Information otherwise than for the purposes of this Agreement;
  - (ii) Confidential Information disclosed to a Receiving Party pursuant to this Agreement is and is deemed to be disclosed on terms of strict confidence. A Receiving Party's obligations under this Agreement shall survive until such time as a Receiving Party is notified by a Providing Party that the Information is in the public domain, but this Agreement, excepting the provisions of clause 4, will not otherwise be limited as to time;
  - (iii) any disclosure of Confidential Information to any third parties, other than:
    - (A) legal, technical and financial advisers, including agents, associates or representatives; or
    - (B) as required by law, the requirement of any stock exchange or regulator, in which case the wording of such disclosure, to the extent that it concerns the Proposal, shall be approved by the other party in accordance with clause 4(b)(ii) of this Agreement,shall be prohibited unless any such third party enters into an agreement in substantially the same form as this Agreement and their identity is approved in writing by a Providing Party;



- (iv) the Confidential Information shall at all times be dealt with in such a manner as is appropriate provided confidential and restricted information which is commercially sensitive shall be kept in a safe place, access to which is restricted;
- (v) no copies of the Confidential Information, except:
  - (A) for use by advisers and employees of the AUSTAR Group and of the Recipient and their Related Bodies Corporate; or
  - (B) as required by law, the requirements of any stock exchange or regulator, in which case such copies must have been pre-approved by the other party in accordance with clauses 2(b)(iii)(B) and 4(b)(ii) of this Agreement,shall be made without the prior consent of a Providing Party;
- (vi) any documentation and data provided to a Receiving Party will at all times remain the property of a Providing Party and must be re-delivered to a Providing Party immediately upon request by a Providing Party together with any copies taken by or on behalf of a Receiving Party; and
- (vii) a Receiving Party will not use and must ensure that none of its officers, employees, agents, associates or representatives use the Confidential Information other than for the purposes of the Proposal.

### **3. Conditions of Supply**

- (a) The Information is supplied only to identify a possible business opportunity and is not an exhaustive analysis, audit or review of the Proposal or any associated businesses. Each party agrees that it is responsible for making its own enquiries and obtaining its own verifications of all Information disclosed to it by the other party and neither party makes any warranties as to the accuracy or truth of any of its Information.
- (b) If the parties decide to pursue the Proposal the rights and obligations of the parties will be exclusively and exhaustively recorded in further documentation.
- (c) Except as provided in clause 4, neither a Providing Party nor a Receiving Party may disclose to any third parties, excluding its agents, associates or representatives, without the prior consent of the other party that the parties are considering, discussing and evaluating the Proposal.

#### **4. Operation of this Agreement**

- (a) This Agreement continues without limitation in time but, subject to clause 4(b), does not apply to any Confidential Information that the Receiving Party is required to disclose by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator.
- (b) If the Receiving Party must make a disclosure referred to in clause 4(a):
  - (i) the Receiving Party must disclose only the minimum Confidential Information required to comply with the applicable law, order or requirement;
  - (ii) before making such disclosure, the Receiving Party must notify the Providing Party of the form of the disclosure; and
  - (iii) allow the Providing Party to approve the wording of such disclosure, provided that the suggested wording of the Providing Party allows the Receiving Party to comply with the relevant law, order or requirement.

#### **5. General**

- (a) A Providing Party will be, subject to the application of normal legal rules, entitled to temporary injunctive relief upon any breach or threatened breach by a Receiving Party of any of the undertakings given in this Agreement in whatever jurisdiction such breach occurs, pending final determination on its merits of any controversy arising in regard to such breach.
- (b) A Providing Party shall not be deemed to have waived its rights under this Agreement by virtue of the fact that it fails to take steps to enforce such right or by virtue of any indulgence granted to a Receiving Party.
- (c) The provisions of this Agreement may be amended or waived by a Providing Party, but no such waiver or amendment shall be effective unless such waiver or amendment is in writing and signed by the Parties hereto.
- (d) No party may assign this Agreement, and attempted assignment shall be void.
- (e) If any portions of this Agreement are found to be void or unenforceable for any reason the remaining portions shall be binding on a Receiving Party and will be enforced with the same effect as though the void and unenforceable portions were deleted.
- (f) The provisions of this Agreement form the entire agreement between the Parties, and any previous agreement covering the matters dealt with in this Agreement between a Receiving Party and a Providing Party is superseded by this Agreement.
- (g) This Agreement is governed by the law of New South Wales.

Executed as an agreement.

Signed for and behalf of **AUSTAR  
ENTERTAINMENT LIMITED**

by its authorised representative  
in the presence of:

.....  
Director

.....  
Director

.....  
Name (please print)

.....  
Name (please print)

Date: .....

Date: .....

Signed for and on behalf of  
**RECIPIENT**  
by its authorised representative  
in the presence of:

.....  
Witness

.....  
Authorised Representative

.....  
Name (please print)

.....  
Name (please print)

Date: .....