

## CONFIDENTIALITY UNDERTAKING

### IN FAVOUR OF

**[INFORMATION PROVIDER]**

I, \_\_\_\_\_, of \_\_\_\_\_ (“[ ]”) undertake to  
**[information provider]** (“**[Information Provider]**”) 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 confidential information**”).
- 2 I acknowledge that:
  - (a) this Undertaking is given by me to **[Information Provider]** in consideration for the **confidential information** being made available to me for the Approved Purposes (as defined in paragraph 3(a) below);
  - (b) all intellectual property in (or in any part of) the **confidential information** is and will remain owned by **[Information Provider]**; 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 **[ ]**, or any person engaged by **[ ]** for the Approved Purposes in relation to the **confidential information**, except as expressly provided in this Undertaking.
- 3 I will:
  - (a) only use the **confidential information** for:
    - (i) the purposes of making submissions to the Australian Competition and Consumer Commission (ACCC) during the course of the ACCC’s public inquiry under Part 25 of the Telecommunications Act 1997 into varying the Final Access Determinations (FADs) for the WLR, LCS and PSTN OA services in respect of the exemption provisions in those FADs (“**the Variation Inquiry**”); or

(ii) any other purpose approved by [Information Provider] in writing;

(“the Approved Purposes”)

(b) to the extent that any submission or other document is submitted to the ACCC or given to any person by me or [ ] as permitted by this Undertaking and which contains any **confidential information**:

(i) clearly mark that document as a confidential submission or confidential document containing **confidential information** and that is subject to this Undertaking; and

(ii) clearly identify the **confidential information** within the submission or document;

(c) comply with any reasonable request or direction from [Information Provider] regarding the **confidential information**.

4 Subject to paragraph 5 below, I will not disclose any of the **confidential information** to any other person without the prior written consent of [Information Provider].

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

(a) any person for the Approved Purposes provided that:

(i) the person to whom disclosure is proposed to be made (“the person”) has been identified to [Information Provider] in writing and [Information Provider] has approved the person as a person who may receive the **confidential information**;

(ii) the person has signed a confidentiality undertaking in the form of this Undertaking or another form acceptable to [Information Provider] for the Approved Purposes; and

(iii) the signed confidentiality undertaking of the person has been served on [Information Provider].

(b) any secretarial, administrative and support staff who perform purely administrative tasks and who assist me or any person referred to in paragraph 5(a) for the Approved Purposes;

(c) other persons, if required to do so by law, but then only:

- (i) if I notify [Information Provider] of that request within 7 days of receiving the request;
- (ii) to the person(s) to whom I am obliged to provide the **confidential information**;
- (iii) to the extent necessary to comply with the legal requirement; and
- (iv) if I notify the recipient of the **confidential information** that the information is confidential and is the subject of this Undertaking to [Information Provider].

6 I will establish and maintain security measures to safeguard the **confidential information** from unauthorised access, use, copying, reproduction or disclosure and will protect the **confidential information** using the same degree of care as a prudent person would use to protect their own confidential information.

7 Except as required by law, within 14 days after whichever of the following first occurs:

- (a) the conclusion of the Variation Inquiry; or
- (b) my ceasing to be employed by, retained by, an officer, a member or a representative of [ ]; or
- (c) my ceasing to work for or represent [ ] in respect of the Approved Purposes,

I will destroy or deliver to [Information Provider] the **confidential information** and any documents or things (or parts of documents or things), constituting, recording or containing any of the **confidential information** in my possession, custody, power or control, other than electronic records stored in IT systems that cannot be destroyed or deleted.

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) [Information Provider];
  - (ii) another person who has signed a confidentiality undertaking; or

(iii) another person who has an obligation of confidence in relation to the **confidential information** (or any part of it);

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 this Undertaking, any other confidentiality undertaking in favour of [Information Provider] for the Approved Purposes, or by any other unlawful means.

- 9 I acknowledge that damages are not a sufficient remedy for any breach of this Undertaking and that [Information Provider] is 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 [Information Provider] at law or in equity.
- 10 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to [Information Provider] of the **confidential information** pursuant to paragraph 7 above.
- 11 I acknowledge that this Undertaking is governed by the law in force in [insert jurisdiction] and I agree to submit to the non-exclusive jurisdiction of the court of that place.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

## ATTACHMENT 1

- (a) All information marked as Commercial in Confidence (“**c-i-c**”) in the confidential version of a written submission made by [Information Provider] to the ACCC in relation to the Variation Inquiry’.
- (b) Any document or information (whether or not within a document) provided to me which [Information Provider] nominates as **confidential information** for the purposes of this, or any equivalent, confidentiality undertaking.