

TEA MODEL ACCESS UNDERTAKING

**CONFIDENTIALITY UNDERTAKING
BY EXTERNAL ADVISOR OR CONSULTANT**

IN FAVOUR OF

TELSTRA CORPORATION LIMITED

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

- 1 I have been engaged by [**name of access seeker**] (“**my client**”) for an Approved Purpose (as defined below).
- 2 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**”).
- 3 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.
- 4 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 [] is a party, notified to the ACCC in accordance with Division 8 of Part XIC of the *Trade Practices Act 1974* (Cth) (“**TPA**”) and in which Telstra relies on the TEA Model and/or a redacted 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 a redacted 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 [] as permitted by this Undertaking and which contains any Telstra confidential information, that submission or document will be clearly marked as a confidential submission or confidential document containing Telstra confidential information and that is subject to this Undertaking;

- (b) comply with any reasonable request or direction from Telstra regarding the Telstra confidential information;
- (c) without limiting the generality of paragraph (b), I acknowledge that:
 - (i) I may review the code, worksheets, datafiles, user interfaces and structure of the TEA Model, and vary the assumptions or variables used in the TEA Model in order to obtain various outputs from the TEA Model, provided in each case that this is done solely for the Approved Purposes; and
 - (ii) to the extent that any changes are made to the TEA Model itself, or the inputs to the model, by anyone other than Telstra, when referring to the model in that altered form or the outputs from the model in that altered form for the Approved Purposes, I must acknowledge that the model has been altered, and not represent explicitly or implicitly that the model in that altered form is the version of the model created by Telstra, or that the

outputs from the model in that altered form are outputs from the version of the model created by Telstra.

- 5 Subject to paragraph 6 below, I will not disclose any of the Telstra confidential information to any other person without the prior written consent of Telstra.
- 6 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; and
 - (c) 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 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.

Note: For the purpose of paragraph 6(c) above, an employee, officer, member or consultant of [] is not a person approved by Telstra and may not be given that part of the Telstra confidential information described in Appendix 2

However, notwithstanding the above, I acknowledge that:

- (A) my client and/or its employees, agents, officers, members, consultants or representatives has been or may be provided with a redacted version of the TEA Model, excluding the information described in Attachment 2: and
- (B) I will not disclose the information described in Attachment 2 to my client or any of its employees, agents, consultants, representatives, officers or members - except that I may disclose the formulae contained within the

files identified in paragraph 2 of Attachment 2 to my client for any of the purposes identified in paragraph 4(a) above.

I will not disclose the specific numeric result generated by any of those formulae to my client and/or its employees, agents, officers, members, consultants or representatives or any other person other than another external adviser retained by my client who has signed a confidentiality undertaking in substantially the same terms as this undertaking, in which case I may disclose the information only for the purposes identified at paragraph 4(a) above.

7 I may disclose:

- (a) the assumptions or variables used by me in the TEA Model; and
- (b) the resultant outputs produced by the TEA Model,

to any person. However, I acknowledge that nothing in this clause permits me to do so in a way that discloses or identifies any Telstra confidential information.

8 I will establish and maintain security measures to safeguard the Telstra confidential information 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 would use to protect that person's confidential information.

9 Except as required by law and subject to paragraph 12 below, within 14 days 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 []; or
- (d) my ceasing to work for or represent [] in respect of the Approved Purposes; or
- (e) my commencing employment with any telecommunications carrier or service provider,

I will destroy or deliver 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 9(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 9(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)*.

10 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) another person who has signed a confidentiality undertaking; or
 - (iii) 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.

11 I acknowledge that damages are not a sufficient remedy for any breach of this Undertaking and that Telstra 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 Telstra at law or in equity.

12 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to Telstra of the Telstra confidential information pursuant to paragraph 9 above.

13 I acknowledge and agree that:

(a) when Telstra provides a revised version of the TEA Model, that version of the model supercedes all previous versions and I will refer to each version of the model by its proper version name; and

(b) I will bring any suggested changes to the TEA Model to Telstra's attention in a timely manner so that they can be considered, in the course of any process relating to an Access Dispute or an Access Undertaking or otherwise, for future versions of the TEA Model.

14 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.

15 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

“**TEA Model**” has the meaning assigned to it in Attachment 1.

Signed: _____

Dated: _____

ATTACHMENT 1

- 1 The following information of Telstra:
 - (a) the network dimensioning and costing model called the Telstra Efficient Access Model, including any revised versions of that model which are subsequently made available to you (“**the TEA Model**”), including (but not limited to) the software code, data queries, table structures, report definitions and user interfaces used in the TEA Model; and
 - (b) all information contained in the TEA Model, including (but not limited to):
 - (i) all information contained in the data tables;
 - (ii) all assumptions and variables used in the TEA Model;
 - (iii) the information contained in the worksheets titled “Inputs Cost and Rules”, “Cost Calculator Main”, “Cost Calculator Distribution”, “Results Main Costs”, and “Results Distribution Costs” contained in the file Telstra/Telstra Cost Model/Model/Calc-Engine.xls (including the same or similar information included in any re-named worksheet(s) in subsequent versions of the TEA Model);
 - (iv) the file titled Telstra/Telstra Cost Model/Data/XML/Costing/Default_Main.xml (including the same or similar information included in any re-named worksheet(s) in subsequent versions of the TEA Model); and
 - (v) the base data file.

ATTACHMENT 2

Redacted Information

- 1 The base data file
- 2 The information from the base data file contained in the Engineering Distribution Model and the Engineering Main Model (including the same or similar information included in any re-named worksheet(s) or models in subsequent versions of the TEA Model)
- 3 The prices for network cables, plant and equipment and construction and installation work