
Confidentiality Agreement

PARTIES

1. ACN of **(the Customer)**; and
2. AAPT Limited ACN 052 082 416 of Level 23, 680 George Street, Sydney, NSW 2000 (**AAPT**)

BACKGROUND

The parties have agreed to enter into this Confidentiality Agreement to record the terms on which each party's Group will keep confidential any information disclosed to that party's Group by or on behalf of the other party's Group prior to or from the date of this Confidentiality Agreement.

COVENANTS:

In consideration of each party agreeing to provide information to the other party, the parties agree:

1. INTERPRETATION

1.1 In this Confidentiality Agreement unless the context otherwise requires:

"Confidential Information" means all information relating to each member of the Provider Group and which is provided to any member of the Recipient Group or their advisers by or on behalf of the Provider (including information provided prior to the date of this Confidentiality Agreement), but does not include publicly available information. For the purposes of this definition, "Provider" and "Recipient" are used consistently with the context to which relevant clause referring to "Confidential Information" is being applied at the time.

"Customer Group" means the Customer and its subsidiaries and their respective directors, officers and employees.

"Governing Jurisdiction" means New South Wales, Australia.

"Governing Law" means the law of New South Wales, Australia.

"Group" means:

- (a) in relation to AAPT, the Telecom Group; and
- (b) in relation to the Customer, the Customer Group.

"Indemnified Person" means each member of the Provider Group and their respective directors, officers, employees, agents and consultants.

"Provider" means:

- (a) in the case of Confidential Information relating to the Telecom Group, AAPT; and
- (b) in the case of Confidential Information relating to the Customer Group, the Customer,

and "Provider Group" shall be construed accordingly.

"Purpose" means discussions regarding a possible business relationship between the parties.

"Recipient" means:

- (a) in the case of Confidential Information relating to the Telecom Group, the Customer; and
- (b) in the case of Confidential Information relating to the Customer Group, AAPT;

and "Recipient Group" shall be construed accordingly.

"Telecom Group" means Telecom Corporation of New Zealand Limited and its New Zealand and overseas subsidiaries (including AAPT and PowerTel Limited) and their respective directors, officers and employees.

2. CONFIDENTIALITY

- 2.1 **Confidentiality:** The Recipient agrees that it will preserve, and will procure that each other member of the Recipient Group and their advisers preserve, the confidentiality of the Confidential Information and take proper and adequate precautions at all times and enforce such precautions to preserve the secrecy and confidentiality of the Confidential Information.
- 2.2 **Property in Confidential Information:** All Confidential Information shall be, and remain, the property of the Provider or the relevant member of the Provider Group.

- 2.3 **Limitation on Use of Confidential Information:** The Recipient will not use the Confidential Information for any purpose other than the Purpose unless authorised in writing by the Provider.
- 2.4 **No Copies:** The Recipient will not copy the Confidential Information without the Provider's prior written permission other than for the Purpose, and will, upon the Provider's request, return to the Provider or destroy any Confidential Information which is in the possession of the Recipient or any other member of the Recipient Group, including any copies thereof. If requested by the Provider, the Recipient will provide the Provider with a statement signed by a responsible officer of the Recipient, certifying that the Recipient Group has complied with this clause 2.4.
- 2.5 **Limited Dissemination:** The Recipient may disclose the Confidential Information to those members of the Recipient Group and their advisers only to the extent that they need to know such Confidential Information for the Purpose and on terms as to confidentiality to the same effect as herein.
- 2.6 **Recipient to Control Recipient Group:** The Recipient will procure that no other member of the Recipient Group will do anything which, if done by the Recipient, would constitute a breach of this Confidentiality Agreement. Where any other member of the Recipient Group does any such thing, then the Recipient will be deemed to be in breach of this Confidentiality Agreement.
- 2.7 **Recipient Group:** The Recipient will advise each other member of the Recipient Group and their advisers that receive Confidential Information to hold and deal with that Confidential Information in accordance with this Confidentiality Agreement. The Provider may, as a condition of providing Confidential Information to another Recipient Group member or adviser, require that member of the Recipient Group or adviser to execute an agreement in favour of the Provider on similar terms to this Confidentiality Agreement.
- 2.8 **Mandatory Disclosure:** In the event that any member of the Recipient Group is required by law or court order or the listing rules of any stock exchange, to disclose any Confidential Information, such disclosure may be made only after the Provider has been notified and has had a reasonable opportunity to oppose such disclosure on reasonable grounds and/or consult with the relevant member of the Recipient Group as to the timing or content of such disclosure.
- 2.9 Notwithstanding this clause 2, this Confidentiality Agreement does not prohibit AAPT or the Customer from disclosing the Confidential Information to the Australian Competition and Consumer Commission, the Australian Communications and Media Authority, other regulatory authority or responsible Minister.

2.10 **Extent of Confidentiality:** This Confidentiality Agreement shall operate until such time as all of the Confidential Information has fallen into the public domain or until agreed otherwise in writing by the parties. Nevertheless, the indemnity in clause 3.1 will remain in full force and effect.

3. **LIABILITY AND EXCLUSIONS**

3.1 **Indemnity:** The Recipient shall indemnify each Indemnified Person fully and effectively from and against all demands, claims, suits, losses, liabilities, damages, costs and expenses which may be made or brought against that Indemnified Person, or which that Indemnified Person may suffer or incur, as a result of or arising from any breach, or deemed breach, by the Recipient of its obligations under this Confidentiality Agreement.

3.2 **No Representations:** The Recipient (for itself and on behalf of each other member of the Recipient Group) hereby acknowledges to the Provider that neither the Provider nor any other Indemnified Person is making or will make any representation as to the accuracy, validity or completeness of the Confidential Information, or as to whether there has been or will be no change in the business, affairs, position or business environment of the Provider or any other member of the Provider Group.

3.3 **No Liability:** Except insofar as and to the extent only that liability under any statute or other law cannot be excluded, neither the Provider nor any other Indemnified Person shall have any liability of any nature (including, but without limitation, in negligence), to any person whatsoever for or in respect of the Confidential Information or any failure to correct it.

3.4 **Renounce Cause of Action:** Without limiting the generality of clause 3.3, and to the maximum extent permitted by law, the Recipient (for itself and on behalf of each other member of the Recipient Group) renounces each cause of action (if any) it or such other member of the Recipient Group may have against the Provider and each other Indemnified Person in respect of the Confidential Information or its provision by the Provider or any other Indemnified Person.

4. **MISCELLANEOUS PROVISIONS**

4.1 **Inconsistency:** If there is any inconsistency between the terms of this Confidentiality Agreement and the terms of any other contract from time to time entered into between any member of the Recipient Group and any member of the Provider Group then the terms of this Confidentiality Agreement will prevail.

4.2 **Remedies:** Each party agrees that the other party shall be entitled to equitable relief, including an injunction and an order for specific performance, in the event of any breach of the provisions of this Confidentiality Agreement.

- 4.3 **Applicable Law:** This Confidentiality Agreement shall be construed in accordance with the Governing Law. Each party submits to the non-exclusive jurisdiction of the courts of the Governing Jurisdiction.
- 4.4 **Non-Waiver:** Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Confidentiality Agreement shall not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of that provision.
- 4.5 **Severability:** If any part of this Confidentiality Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Confidentiality Agreement.
- 4.6 **Counterparts:** This Confidentiality Agreement may be executed in any number of counterparts and by the parties on separate counterparts and each party consents to the other party executing a counterpart which is a facsimile copy of this Confidentiality Agreement. Each counterpart constitutes an original of this Confidentiality Agreement, all of which together constitute one agreement.

Executed as an Agreement

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

Witness Signature

Signature

Print Name

Print Name

Date: _____

Executed by the Customer:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Date: _____