|  |  |
| --- | --- |
| CONFIDENTIALITY AGREEMENT |  |

**DETAILS**

[FIRST DISCLOSING PARTY DETAILS]

|  |  |  |
| --- | --- | --- |
| Name and ABN | Telstra Corporation Limited (ABN 33 051 775 556) | (First Party) |
| Address for Notices | [*insert address for notices*] | |
| Contact Person | [*insert name of signatory of the NDA*] | |
| Email Address | [*insert email address*] | |
| Phone Number | [*insert phone number*] | |

[SECOND DISCLOSING PARTY DETAILS]

|  |  |  |
| --- | --- | --- |
| Name and ABN | [*Insert name and ABN*] | (Second Party) |
| Address for Notices | [*insert address for notices*] | |
| Contact Person | [*insert name of signatory of the NDA*] | |
| Email Address | [*insert email address*] | |
| Phone Number | [*insert phone number*] | |

[THIRD DISCLOSING PARTY details]

|  |  |  |
| --- | --- | --- |
| Name | [*Insert name and ABN*] | (Third Party) |
| Address for Notices | [*insert address for notices*] | |
| Contact Person | [*insert name of signatory of the NDA*] | |
| Email Address | [*insert email address*] | |
| Phone Number | [*insert phone number*] | |
|  |  | |
| JURISDICTION | Options driven by drop down box are:  State of Victoria, Australia England and Wales Hong Kong Special Administrative Region Singapore Republic of Indonesia India Malaysia State of New York | |

RECITALS

The parties agree to keep confidential, certain information that they may provide to each other, on the terms of this agreement for the Permitted Purpose.

{$1}

The Permitted Purpose means the purpose of exploring a business opportunity between the parties relating to [*please insert relevant purpose of the discussions*] and conducting analyses, discussions and negotiations in relation to such matter.

agreed by TELSTRA

Signed for Telstra by its authorised representative:

|  |  |  |  |
| --- | --- | --- | --- |
| Signature |  | Date |  |
| Print Name |  | Position |  |

agreed by [THE SECOND PARTY]

Signed for the [THE SECOND PARTY by its authorised representative:

|  |  |  |  |
| --- | --- | --- | --- |
| Signature |  | Date |  |
| Print Name |  | Position |  |

agreed by [THE THIRD PARTY]

Signed for the [THE THIRD PARTY by its authorised representative:

|  |  |  |  |
| --- | --- | --- | --- |
| Signature |  | Date |  |
| Print Name |  | Position |  |

# Confidentiality obligations

## Each party must:

### keep each other party’s Confidential Information secret and confidential;

### not access, use or reproduce another party’s Confidential Information for any purpose other than the Permitted Purpose, nor assist or permit any other person to do so;

### not disclose another party’s Confidential Information except as permitted under this agreement; and

### take all steps reasonably necessary to safeguard each other party’s Confidential Information from unauthorised access, use or disclosure.

## A party may disclose another party’s Confidential Information:

### to its Representatives if they need to know the Confidential Information for the Permitted Purpose. A party is liable for any unauthorised access, use or disclosure by its Representatives of another party’s Confidential Information;

### if disclosure is required by law or the rules of any stock exchange, provided that it first notifies the other party of the required disclosure (where practicable); or

### with the prior written consent of the other party.

## For the avoidance of doubt, each party acknowledges that it must not disclose another party’s Confidential Information to the other party or parties to this agreement without the prior written consent of the second party.

## The obligations of confidentiality imposed by this agreement begin on the date when this agreement is signed by the last party and continue in force until the earlier of:

### all of the Confidential Information is readily available in the public domain; or

### agreement in writing by all parties; or

### the third anniversary from the date of execution.

## **Confidential Information** in relation to a party means:

### the existence and terms of this agreement;

### the fact that the parties are or have been in discussions concerning a possible transaction and any other fact with respect to such possible transaction; and

### all information which is provided by or on behalf of the party to another party of any nature and in any form for or in connection with the Permitted Purpose, but does not include information which:

#### is or becomes readily available in the public domain, other than as a result of a breach of this agreement;

#### is known to the other party before it received it and is not subject to an existing obligation of confidence between the parties;

#### is developed by the other party independently of the disclosure; or

#### is provided to the other party by a third party who is not under an obligation of confidence in respect of the information.

## **Representative of a party** means any director, officer, employee, agent, contractor or professional adviser of the party or of any of its Related Companies.

## **Related Company** means, in relation to a body corporate (first body), another body corporate (second body) that directly or indirectly:

### Controls the first body; or

### is Controlled by the first body.

## **Control** of a body corporate means**:**

### the holding (whether directly or indirectly, or whether alone or in concert with other parties) of 50% or more of the securities of that body corporate; or

### the ability to determine the outcome of financial policies and operating decisions of that body corporate.

# Acknowledgements and Disclaimers

## Each party acknowledges that monetary compensation may not be a sufficient remedy for any breach of this agreement and that a party may seek and obtain specific performance or injunctive relief as a remedy for any breach or threatened breach of this agreement, in addition to any other remedies available at law.

## No party represents or warrants that its Confidential Information is accurate, complete, up to date or fit for any particular purpose. Each party must make its own assessment of the other party’s Confidential Information and must satisfy itself as to its accuracy and completeness.

## No party is obliged to enter into any further agreement or discussion with the other party or to refrain from entering into an agreement or discussion with a third party as a result of the entry into this agreement.

## Nothing in this agreement may be construed as granting or conferring on a party any proprietary rights, licences or other rights in any of the other party’s Confidential Information, other than the rights expressly granted under this agreement.

# General

## This agreement is governed by the laws of the place specified in the Details of this agreement, or, if no place is specified there, of the State of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

## This agreement may only be varied by written agreement between the parties.

## A person who is not a party to this agreement has no right under any applicable legislation to enforce a term or condition of this agreement.

## This agreement constitutes the entire agreement between the parties about its subject matter and supersedes any previous understanding, agreement, representation or warranty relating to that subject matter.

## This agreement may be executed in any number of counterparts, in which case the start date for this agreement will be the date on which the last counterpart is signed. All counterparts will be taken together constitute one instrument.

# intellectual property

## All Intellectual Property Rights created during the course of the Discussions are owned by Telstra. To the extent that there are any Intellectual Property Rights created during the course of the Discussions that are not owned by Telstra, each party assigns all such Intellectual Property Rights to Telstra. Each party must sign all documents and do anything else reasonably necessary to give effect to this clause when asked.

## Subject to clause 4.5 and 1.1, each Party grants Telstra a non-exclusive licence to:

### use any of Your Background IP that you contribute to the Discussions; and

### sub-license the Your Background IP that you contribute to the Discussions, to third parties.

## The licence in clause 4.2 excludes Intellectual Property Rights in relation to registered patents, patent applications and trade marks that are in existence before the Start Date.

## Subject to clause 1.1, each Party irrevocably consents, and will procure any necessary consents from its employees, officers, agents and contractors, to Telstra, in our absolute discretion, reproducing, publishing, copying, adapting, communicating, materially distorting, destroying, mutilating, altering or in any other way changing or using the Discussions and any information Telstra obtains from the Discussions (or a substantial adaptation of it):

### with or without attribution of authorship;

### with or without any other materials comprised in the Discussions;

### with or without any other text, data, sounds or images (whether animated or not);

### with no title, the same title or any other title;

### in any medium;

### in any context; and

### in any way it sees fit,

for the Permitted Purpose.

## Each Party warrants to Telstra that Telstra’s exercise of the rights granted to it by such Party in accordance with this agreement will not infringe the Intellectual Property Rights of any other person or breach any law.

## Nothing in this agreement may be construed as granting or conferring on you any proprietary rights, licences or other rights in any of the Telstra Background IP or Telstra Information, other than the rights expressly granted under this agreement.

## **Discussions** means the disclosure of information and sharing of ideas by the Parties to each other concerning the Permitted Purpose by any means and in any form.

## **Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, designs, trade marks, get up, trade secrets, know-how, confidential information, patents, inventions and discoveries.

## **Our Background IP** means Intellectual Property Rights owned by Telstra before the date this agreement was signed by the last party.

## **Your Background IP** means Intellectual Property Rights owned by a Party other than Telstra before the date this agreement was signed by the last party.

# Privacy

## [Australia]

## Each party must comply with all Privacy Laws in relation to Personal Information, whether or not it is an organisation bound by the Privacy Act 1988 (Cth).

## For the purpose of this clause:

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

### whether the information or opinion is true or not; and

### whether the information or opinion is recorded in a material form or not.

which is received or learnt by a party from any source for or in connection with the Permitted Purpose.

**Privacy Laws** means the Privacy Act 1988 (Cth), the Spam Act 2003 (Cth), the Telecommunications Act 1997 (Cth) and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.

[Hong Kong]

Each party must comply with all Privacy Laws in relation to Personal Information, whether or not it is an organisation bound by the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong).

For the purpose of this clause:

**Personal Information** means:

### information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; or

### information or a document that relates to the affairs or personal particulars of another person (such as a company or a business),

which is received or learnt by a party from any source for or in connection with the Permitted Purpose.

**Privacy Laws** means the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong), and any other applicable legislation, regulations or industry codes relating to the handling of Personal Information.

[Sing]

## Each party must comply with all Privacy Laws in relation to Personal Information, whether or not it is an organisation bound by the Personal Data Protection Act 2012.

## We may, in connection with the Permitted Purposes, collect Personal Information in relation to you and your employees, directors and other officers, such as name and contact details, skills and qualifications.

## We may use and disclose the Personal Information for the Permitted Purposes and otherwise for the purposes of our legitimate business or as required by law. In particular, we may, for these purposes, transfer the Personal Information to any country outside Singapore in which we conduct business from time to time. For these purposes, the Personal Information may be accessed by our employees, agents and contractors, and our vendors or suppliers.

Insofar as information provided, or to be provided, by you includes (i) the Personal Information of individuals connected to you (such as your employees, staff members or guarantors) and/or (ii) the information of third parties (including individuals whose Personal Information are provided by you), you represent and warrant that you have obtained sufficient informed consent from the relevant individuals, in order for us to comply with applicable law and for the purpose of enabling us to collect, process, use, disclose, transfer (including internationally transfer) and store such information in the circumstances described in this clause, and will provide us with such consent as and when requested by us.

For the purpose of clauses x.1, x.2, and x.3:

**Personal Information** means data, information or an opinion, whether true or not, about an individual who can be identified from that data, information or opinion or that data, information or opinion and other data, information or opinions to which the relevant organisation has or is likely to have access or other information that is subject to the Privacy Law.

**Privacy Laws** means those laws that regulate the collection, use and disclosure of Personal Information in Singapore, including but not limited to the Personal Data Protection Act 2012 (No. 26 of 2012); as well as other applicable laws, statutes, codes, ordinances, decrees and regulations, published policies and directives issued by the Personal Data Protection Commission, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards applicable to the collection, use and disclosure of Personal Information in Singapore.

**[India]**

## Each party must comply with all Privacy Laws.

## In relation to Personal Information that a party in one jurisdiction (the first jurisdiction) transfers to a party (the recipient) in another jurisdiction, the recipient must comply with the Privacy Laws (as applicable) of the first jurisdiction in its dealings with that Personal Information.

For the purpose of clauses x.1 and x.2:

**Personal Information** means:

### information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

### information or a document that relates to the affairs or personal particulars of another person (such as a company or a business); or

### Sensitive Personal Information.

which is received or learnt by a party from any source for or in connection with the Permitted Purpose.

**Privacy Laws** means any legislation and codes binding on the applicable party relating to the protection of privacy or handling of Personal Information. [could we use this approach in all cases to avoid needing to address alternatives? May need to get local legal advice on Aus, Sing and HK?]

[Malaysia]

## Each party must comply with all Privacy Laws in relation to Personal Information.

For the purpose of this clause:

**Personal Information** means data (including sensitive personal data), information or an opinion, whether true or not, that relates directly or indirectly to an individual who can be identified or be identifiable from that data, information or opinion and other data, information or opinions to which the relevant organisation has or is likely to have access or other information that is subject to Privacy Laws.

## **Privacy Laws** means the Personal Data Protection Act 2010 (PDPA)and any other applicable legislation, regulations or industry codes relating to the handling of Personal Information in any jurisdiction where the Personal Information may be used or accessed.