

DEED OF CONFIDENTIALITY

BETWEEN: of
.....

AND AUSTRALIAN POSTAL CORPORATION of
111 Bourke Street, Melbourne, Victoria, Australia ("AP")

RECITALS

WHEREAS

- A. AP has in its possession information including plans, analyses, systems, development manuals, data, ideas, concepts, formats, trade secrets, practices, procedures, know-how and other information of a confidential nature relating, directly or indirectly, to its business and affairs ("the Information").
- B. The Recipient is seeking certain Information belonging to AP to determine whether the Recipient wishes to negotiate with Australia Post to enter into a Licensed Post Office Agreement (which activity and Purpose is hereafter referred to as the "Permitted Purpose").
- C. The Recipient will use the Information solely for the Permitted Purpose, and not in any manner otherwise.
- D. The Recipient has agreed to enter into this Agreement so that AP is assured that the Recipient will not divulge or disclose to any Person any matter or thing in respect to or arising out of the Permitted Purpose or the Information acquired or obtained from AP.

INTERPRETATION

- 1. In this Agreement unless inconsistent with or excluded by the context :
 - (a) "Agreement" means this Deed of Confidentiality.
 - (b) "AP" means Australian Postal Corporation, its successors, subsidiaries and associates.
 - (c) "Consultant" means a financial, legal or other professional adviser retained by the Recipient, which owes a duty of confidentiality to the Recipient in respect of the Recipient's affairs and information, and includes an officer or employee of such a consultant.
 - (d) "Information" means confidential information that satisfies one or more of the following criteria:
 - (i) by its nature, it is confidential;

- (ii) it is designated as confidential by AP; or
- (iii) it is known, or ought to be known, by a person receiving it that it is confidential.
- (e) "Notes" means any recordings, copies, photocopies, or notes, including without limitation, in Written form which relate to, contain, or are extracts of the Information.
- (f) "Person" shall include a corporation, firm or body of persons.
- (g) "Permitted Purpose" means the purpose as defined in paragraph B of the Recitals.
- (h) "Recipient" includes, where the Recipient is a corporation, its directors and officers.
- (i) "Written form" includes any documentary, visual, machine retrievable or readable (including diskette or CD-ROM), computer based, electronic or other means by recording information.
- (j) Words importing any one gender shall be deemed and taken to include all genders, and the singular to include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided.
- (k) The Recitals form part of and are included in the operative provisions of this Agreement.

ACKNOWLEDGMENT OF CONFIDENTIALITY

2. The Recipient acknowledges and confirms that:

- (a) all Information, whether supplied in oral or Written form, given to or received by it from AP (including any Information given to it prior to the date of the Agreement) is highly confidential and has been disclosed to the Recipient in strict confidence and only for the Permitted Purpose;
- (b) the Recipient is under a duty of confidence to keep such Information secret and not to divulge or disclose any matter or thing in regard to the Information or the Permitted Purpose to any third Person other than as provided in clause 4 hereof and further the Recipient shall not make use of the Information for any other Person's benefit;
- (c) the Recipient is aware that any breach of confidence by it under this Agreement may result in significant loss and damage to AP;
- (d) monetary damages alone may not be a sufficient remedy for a breach of this Agreement; and
- (e) in addition to any other legal remedy which may be available, AP is entitled to apply for injunctive relief to prevent a breach of this Agreement and to compel specific performance of it.

MAINTENANCE OF CONFIDENTIALITY

3. The Recipient must:

- (a) maintain and take all steps necessary to maintain the Information in strictest confidence;
- (b) ensure that proper and secure storage is provided for the Information while in the possession or under the control of the Recipient;
- (c) take all precautions necessary to prevent accidental disclosure of the Information;
- (d) not disclose the Information to any Person except as permitted by clause 4;
- (e) use the Information solely for the Permitted Purpose; and
- (f) not make Notes or allow Notes to be made except as is necessary in connection with the Permitted Purpose and keep a record of what Notes have been made of the Information.

NON DISCLOSURE

4. The Recipient:

- (a) shall not disclose any aspect of the Information or the Permitted Purpose or disseminate the Information, to any Person other than an officer, employee or Consultant of the Recipient (in this clause called an "Authorised Person"), solely on a need to know basis and only in relation to the business affairs of AP that are the subject of the Permitted Purpose;
- (b) shall upon request provide the name(s) of Authorised Person(s) to whom information has been disclosed;
- (c) shall immediately advise AP upon becoming aware that Information has been disclosed to a Person who is not described in clause 4(a);
- (d) shall upon request inform AP of any recordings, notes, photocopies, or copies of any nature made whether electronically or otherwise which relate to or contain the Information (in this Agreement called the "Notes") and will at the written request of AP forthwith hand to AP all Notes and Information brought into existence or caused to be brought into existence by the Recipient or in the possession or control of the Recipient;
- (e) instead of returning Information (including Notes) which is stored on any computer, word processor or other device or in machine retrievable or readable form, at AP's election the Recipient may erase or expunge such Information so that it is irretrievable; and
- (f) acknowledges the return of the Information or any part of it or the destruction of any Information does not relieve the Recipient from any of its obligations under this Agreement,

INFORMATION WHICH CAN BE DISCLOSED

5. This Agreement shall not apply to information (which may be included in the Information) which:
- (a) is known to the Recipient prior to disclosure by AP;
 - (b) is or enters the public domain through no fault of the Recipient or any Authorised Person;
or
 - (c) is required to be disclosed by law.

NOTICE OF FORCED DISCLOSURE

6. If the Recipient is required, or anticipates or has cause to anticipate that it may be required, by law or court order to disclose Information pursuant to clause 5(c), the Recipient must immediately notify AP of the actual or anticipated requirement and shall, to the fullest extent consistent with law, withhold disclosure until AP has had a reasonable opportunity to enjoin the Recipient from making such disclosure.

INDEMNITY

7. The Recipient indemnifies AP against:
- (a) all losses suffered by AP;
 - (b) all liabilities incurred by AP; and
 - (b) the costs of all demands, actions and other proceedings by AP against the Recipient,
 - (c) arising directly or indirectly as a result of or in connection with any breach or non-performance of:
 - (d) the obligations of the Recipient under this Agreement; and
 - (e) the obligations of any officer, director and employee of the Recipient.

CONTINUING OBLIGATION

8. Subject to clause 5, the Recipient's obligations and undertakings to keep the Information confidential continue indefinitely.

DISCLAIMER

9. The Recipient:
 - (a) acknowledges that AP does not make any warranty or representation, express or implied, as to the accuracy or completeness of the Information; and
 - (b) agrees that it must make its own assessment of the Information and satisfy itself as to the accuracy and completeness of the Information.

NO LICENCE

10. Nothing contained in this Agreement may be construed as granting or conferring on the other Party any proprietary rights, licences or other rights in any Information.

WAIVER

11. Failure or delay by AP in exercising a right, power or remedy does not operate as a waiver of that right, power or remedy. A single or partial exercise of a right, power or remedy by AP does not prevent its exercise in the future nor prevent the exercise of any other right, power or remedy by AP.

VARIATION

12. No amendment or variation to this Agreement is effective unless it is in writing and signed by the parties.

FURTHER ASSURANCES

13. Each party will do all such things and sign and execute all such documents as may be necessary or desirable to give full effect to this Agreement and the rights and obligations of the party to it.

SEVERABILITY

14. Any provision of this Agreement which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability, without invalidating the remaining provisions of this Agreement.

GOOD FAITH

15. Each party shall at all times act with good faith in relation to the other.

AUSTRALIA POST'S REMEDIES CUMULATIVE

16. AP's rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

NOTICES

- 17.1 A notice of other communication under this Agreement must be in writing and:

- (a) delivered by hand at the address for service of the addressee with a signed receipt for delivery;
- (b) sent by registered post (with an acknowledgment of delivery) to the address for service of the addressee; or
- (c) sent by facsimile to the facsimile number of the addressee.

- 17.2 A notice or communication delivered or sent under clause 16.1 is deemed to have been given to and received by the party to which it is addressed:

- (a) if delivered, upon delivery; or
- (b) if sent by facsimile before 4.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt, providing the sender of the facsimile transmission receives a transmission report confirming successful receipt and the sender is not notified within twenty four hours by the recipient that the message was garbled or transmission was incomplete.

- 17.3 The parties addresses for service are:

- (a)

Attention:
Delivery Address:
Facsimile:

- (b) Australia Post

Attention: LPO Group
Delivery Address: 111 Bourke St. MELBOURNE VIC 3000
Postal Address: GPO Box 2568 MELBOURNE VIC 3001
Facsimile: (03) 9206 4122

17.4 A party may change its address for service or facsimile number by giving notice of that change to the other party.

GOVERNING LAW AND JURISDICTION

18.1 This Agreement is made at Melbourne and the law governing this Agreement is the law of Victoria.

18.2 The Recipient irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and Courts of Appeal from them for determining any dispute concerning this Agreement or the transaction contemplated by this Agreement. The Recipient waives any right it has to object to any action being brought in those courts including, but not limited to, claiming that the action has been brought in an inconvenient forum or that those Courts do not have jurisdiction.

Signed sealed and delivered by

.....

(print name of the Recipient)

this day of 20

in the presence of

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)
).....

Signed by and on behalf of AUSTRALIAN

POSTAL CORPORATION this day of

20 by

who warrants that he/she has the authority to

bind the corporation in the presence of:

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CLAUSE 4 – Names and Positions of Persons to whom the Recipient may disclose the information.