



MUTUAL CONFIDENTIALITY AGREEMENT

BETWEEN: Pivotal Communications Pty Limited (ABN 17 102 274 411) trading as Vanilla Telecom of 75 Nerang Street, Southport Queensland 4215 ('Vanilla')

AND: Company Name:ABN
Address:

DATE:

1. The parties to this agreement intend to disclose to each other certain Confidential Information concerning their respective businesses and proposed activities for the purpose of discussing the possibility of entering into a formal agreement (or agreements) for the supply of telecommunications goods, services or information.
2. **"Confidential Information"** means all information in any form (including verbal) or media which is disclosed by or on behalf of any of the parties to another party relating to any proposed or existing network, products, services, business or affairs of the party disclosing the information, including but not limited to:
 - strategies, policies, projects and business plans;
 - inventions, discoveries, formulae, processes, plans, designs, specifications, software, object code, drawings, prototypes, products, samples, improvements, developments, applications, engineering and manufacturing data;
 - customer names and marketing data, concepts, plans and materials,
 - trademarks, trade names and trade secrets, whether or not the same are or may be patents, registered or otherwise publicly protected; and
 - any other commercial, financial or technical information, but excluding information which:
 - is generally available to the public (other than through a breach of this Agreement);
 - was known to the other party or its advisors on a non-confidential basis prior to disclosure to it pursuant to this Agreement; or
 - becomes available to the other party on a non-confidential basis from a person other than a party to this Agreement.
3. Any references to a party to this Agreement will be deemed to include any Related Body Corporate. Each of Vanilla's Related Bodies Corporate is a third party beneficiary of the terms of this Agreement. **"Related Body Corporate"** has the meaning given to this phrase in the Corporations Act 2001.
4. In consideration of a party (the **"Disclosing Party"**) disclosing Confidential Information to either of the other parties (the **"Recipient Party"**), the Recipient Party must, and must ensure that its directors, employees, subcontractors, advisors and Related Bodies Corporate:
 - (a) hold all Confidential Information disclosed to the Recipient Party in confidence at all times;
 - (b) unless otherwise required by law or with the prior written consent of the Disclosing Party, not directly or indirectly disclose nor permit the disclosure of any such Confidential Information other than pursuant to the terms of this Agreement;
 - (c) not use or attempt to use the Confidential Information except for the purpose for which it was provided;
 - (d) not do any act, thing or omission involving the use of the Confidential Information which may injure or cause loss to or be calculated to injure or cause loss to the Disclosing Party or which may affect the carrying on of the Disclosing Party's business;
 - (e) if required at any time by the Disclosing Party to do so, promptly return to the Disclosing Party all Confidential Information, or where return of certain information is impractical erase or destroy such information and confirm to the Disclosing Party erasure or destruction of same; and
 - (f) indemnify and keep indemnified and hold harmless the Disclosing Party against all losses, damages, costs or expenses which the Disclosing Party may incur as a result of any unauthorised disclosure or use of the Confidential Information.
5. The Recipient Party further agrees that:
 - (a) all Confidential Information remains the exclusive property of the Disclosing Party at all times. Nothing in this Agreement will be construed as compelling the Disclosing Party to disclose any particular Confidential Information to the Recipient Party;
 - (b) the Recipient Party must confine the distribution of the Confidential Information to those of its directors, employees, subcontractors, advisors or Related Bodies Corporate as shall be reasonably necessary for the purposes of the matters referred to in paragraph 1 of this Agreement. The Recipient Party is wholly responsible and liable for the acts and defaults of its directors, employees, subcontractors, advisors and Related Bodies Corporate in respect of any Confidential Information disclosed to them;
 - (c) the terms of this Agreement do not limit either party's right to independently develop or acquire products without use of the other party's Confidential Information. The Disclosing Party acknowledges that the Recipient Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Recipient Party will not develop or have developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the Recipient Party does not violate any of its obligations under this Agreement in connection with such development;

- (d) money damages may not be a sufficient remedy for any breach of this Agreement by the Recipient Party or its directors, employees, subcontractors, advisors or Related Bodies Corporate. In addition to all other remedies (including money damages) the Disclosing Party will be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach;
- (e) a party must not assign or otherwise transfer all or part of its rights or obligations under this Agreement without the prior written consent of the other parties;

- (f) the obligation under this Agreement will continue for a period of 3 years from receipt of the particular Confidential Information regardless of termination of this Agreement or any other agreement between the parties;
- (g) a failure of any of the parties to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of the particular act or omission or any other act or omission; and
- (h) this Agreement will be governed by and construed in accordance with the laws of New South Wales and the parties submit to the exclusive jurisdiction of the Courts of New South Wales.

EXECUTED AS AN AGREEMENT

For and on behalf of
(ABN)
by its authorised representative:

Signature

Name – print

Title

For and on behalf of **Pivotel Communications Pty Limited (ABN 17 102 274 411) trading as Vanilla Telecom** by its authorised representative:

Signature

Name – print

Title