

DEED OF ACKNOWLEDGEMENT AND ASSIGNMENT OF INTELLECTUAL PROPERTY

CJ Burke Nominees Pty Ltd ACN 622 158 454

Microlatch Pty Ltd (In Liquidation) ACN 059 640 747

Christopher John Burke

matthewsfolbigg
LAWYERS

Matthews Folbigg Pty Ltd

"The Barrington" Level 7, 10-14 Smith Street Parramatta NSW 2150

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DEED OF ASSIGNMENT OF INTELLECTUAL PROPERTY

Deed dated

13 December

2019

PARTIES

CJ BURKE NOMINEES PTY LTD (ACN 622 158 454)
Unit 53, 139-151 Gooding Drive, MERRIMAC QLD 4226

(Assignor)

and

MICROLATCH PTY LTD (IN LIQUIDATION) (ACN 059 640 747)
c/- Chifley Advisory, Suite 19.03, Level 19, 31 Market Street, Sydney NSW 2000

(Assignee)

and

CHRISTOPHER JOHN BURKE
Unit 53, 139-151 Gooding Drive, MERRIMAC QLD 4226

(Burke)

BACKGROUND

- A. On or about 27 September 2016, the Assignee entered into a Share Purchase Agreement ("**SPA**") with Charter Pacific Corporation Limited ("**CPC**"), Mr Christopher John Burke ("**Burke**"), Microlatch Limited and Securicom (NSW) Pty Ltd, which identified intellectual property owned by the Assignee ("**Intellectual Property**").
- B. Burke caused the Assignee to assign to the Assignor the Intellectual Property pursuant to deed of assignment dated 18 November 2017 ("**the Deed of Assignment**").
- C. In or about December 2017, Mr Burke lodged the 2017 Deed of Assignment with IP Australia and caused three patents (2009200408, 2008316289 and 2014240323) registered to the Assignee in Australia to be transferred from the Assignee to the Assignor ("**the Australian Patents**").
- D. On or about 20 February 2018, CPC commenced the Proceedings against Burke, the Assignor and the Assignee in the Supreme Court of New South Wales (proceedings number 2018/00056845).
- E. On or about 4 September 2018, the Supreme Court of New South Wales made orders, including that Burke:
 - (a) "do everything necessary to restore to each of [Securicom (NSW) Pty Ltd], [the Assignee] and [Microlatch Limited] respectively the Business Intellectual Property (as that term is defined in paragraph 1.1 of the SPA)."
- F. Only the Australian Patents were assigned and restored to the Assignee, and this was only done on or about 11 October 2018.
- G. On 7 May 2019, the Assignee's members appointed Mr Gavin Moss as administrator to the Assignee pursuant to section 436A of the Act.

- H. On or about 16 May 2019, Burke and the Assignor (by instructions given to Spruson & Ferguson, who subsequently instructed McDonnell Boehnen Hilbert & Berghoff) caused to be lodged with the US Patent and Trademark Office the 2017 Deed of Assignment in respect of Items 5 and 7 of Schedule 1 to this Deed, thereby causing the registration of those items to be recorded as having been transferred from the Assignee to the Assignor at the US Patent and Trademark Office.
- I. On 26 June 2019, the Assignee's creditors resolved at a meeting convened pursuant to section 439A of the Act that the Assignee be wound up and that Mr Moss be appointed liquidator of the Assignee.
- J. On or about 5 August 2019, Burke and the Assignor (by instructions given to Spruson & Ferguson, who subsequently instructed A.A. Thornton & Co.), caused to be lodged with the European Patent Office the 2017 Deed of Assignment in respect of Item 1 of Schedule 1 to this Deed, thereby causing the registration of those items to be recorded as having been transferred from the Assignee to the Assignor, at the European Patent Office.
- K. Mr Moss, as administrator and subsequently as liquidator, did not consent, authorise or instruct Mr Burke to assign, transfer or otherwise deal with the Assignee's Intellectual Property. Neither Mr Burke nor the Assignor had any right or authority to cause the assignment or transfer of the Intellectual Property to the Assignor, or from the Assignee, either in 2017 or in 2019, pursuant to the 2017 Deed of Assignment.
- L. The Assignor acknowledges that it was never entitled to the transfer of the Intellectual Property and has agreed to assign and transmit all such Right, title and interest as it may have in the Intellectual Property, in all jurisdictions worldwide, to the Assignee, and the Assignee has agreed to accept such assignment, on the terms of this Deed.

OPERATIVE PART

1. DICTIONARY

1.1 Definitions

In this Deed unless the context otherwise requires, the following words have these meanings:

2017 Deed of Assignment means the deed of assignment entered into between the Assignee and Assignor dated 18 November 2017

Assignee means Microlatch Pty Ltd (In Liquidation) (ACN 059 640 747)

Assignor means CJ Burke Nominees Pty Ltd (ACN 622 158 454)

Burke and Mr Burke means Christopher John Burke, the director of the Assignor and the Assignee

Claim includes actions, claims, demands, suits, causes of action, potential causes of action, legal proceedings, any Right, any Obligation, responsibilities, costs (whether or not the subject of a court orders), debts due, expenses or liabilities whatsoever, whether at law or in equity, whether know or unknown and whether present, future or contingent

CPC means Charter Pacific Corporation Limited

Intellectual Property means all such rights, title and interest of the Assignor in the patents listed in Schedule 1, including all patent applications (including divisional and continuation patent applications) claiming benefit from patent applications listed in Schedule 1

Liquidator means Gavin Moss

Madrid Protocol means the system created under the *Madrid Agreement Concerning the International Registration of Marks* (1891), and the *Protocol Relating to the Madrid Agreement* (1989) treaties

Obligation means any legal, equitable, contractual, statutory or other obligation, commitment, duty, undertaking or liability

Orders means the orders made on 4 September 2019 by Stevenson J in the Proceedings

Proceedings means proceedings number SC 2018/56845 brought by CPC against the Assignee in the Equity Division of the Supreme Court of NSW, and heard by Stevenson J and in which judgment was delivered on 10 August 2018 in *Charter Pacific Corporation Ltd v Securicom (NSW) Pty Ltd* [2018] NSWSC 1246)

Right means any legal right, equitable, contractual, statutory or other right, power, authority, benefit, privilege, immunity, remedy, discretion or cause of action

SPA means the Share Purchase Agreement between the Assignee and CPC, Mr Burke, Microlatch Limited and Securicom (NSW) Pty Ltd, entered into on or about 27 September 2016

WIPO means the World Intellectual Property Organization

1.2 Interpretation Aids

Other interpretation aids appear in clause 8 of this document.

2. ASSIGNMENT

2.1 Upon execution of this Deed and in accordance with the Orders, the Assignor hereby assigns, transfers and sets over to the Assignee:

- (a) All its Right, title and interest (if any) in and to the Intellectual Property (including any and all modifications and/or improvements), including, but not limited to, the exclusive rights given to the Assignor in all jurisdictions worldwide; and
- (b) All common law and intellectual property rights (if any) which the Assignor has in the Intellectual Property (together with any goodwill associated with the Intellectual Property).

2.2 The 2017 Deed of Assignment is hereby rescinded, and is of no force or effect whatsoever. So far as the Assignee and Assignor are concerned all rights to the

Intellectual Property are to belong to the Assignee and be treated as if the 2017 Deed of Assignment had never been entered.

- 2.3 Notwithstanding clause 2.2 and to the extent that clause 2.2 is incapable of restoring any and all Right or interest in the Intellectual Property to the Assignee, or to the extent that the Intellectual Property includes any Right or interest accruing by reason of the 2017 Deed of Assignment, the effect of this Deed is to transfer and assign any and all Right and interest to the Intellectual Property to the Assignee.

3. RIGHTS OF ASSIGNEE

3.1 Upon execution of this Deed:

- (a) The Assignor grants to the Assignee the Right, sole power and authority to lodge and prosecute all applications that it deems necessary or appropriate to apply for and obtain entry of the Assignee's name as the registered owner of the Intellectual Property by virtue of the assignment;
- (b) The Assignor agrees to execute all documents to enable the Assignee to apply for and be recorded as the registered proprietor of the Intellectual Property, including but not limited to a Form MM5: Request for the recording of a Change in Ownership with WIPO in respect of the international registrations of the Intellectual Property that were registered under the Madrid Protocol;
- (c) The Assignor agrees that the Right assigned to the Assignee under this agreement includes the Right, sole power and authority to institute and maintain any action or proceedings against any person for infringement of the Intellectual Property whether or not such infringement took place prior to the date of this Deed; and
- (d) The Assignor agrees that the Right assigned to the Assignee under this agreement includes the Right to assign, in part or in whole, the Intellectual Property to any third party to whom it chooses.

- 3.2 The Assignor agrees to provide to the Assignee, immediately upon receipt, any correspondence or documentation received relating to the Intellectual Property, before or after change of ownership details have been lodged with the relevant intellectual property organisation/s in accordance with clause 3.1 of this Deed.

4. WARRANTIES AND ACKNOWLEDGEMENTS

4.1 The Assignor and Burke acknowledge that:

- (a) at all times, the Intellectual Property is, has been and continues to be owned by the Assignee, including after the Deeds of Assignment dated 18 November 2017;
- (b) they were not authorised or otherwise entitled to deal with or transfer the Intellectual Property to the Assignor;
- (c) they are entering into this Deed in order to give effect to the Orders and restore to the Assignee the Intellectual Property which was improperly assigned and transferred to the Assignor; and

- (d) so far as possible the effect of this Deed is intended to be to restore the Intellectual Property to the Assignee as if it had never been transferred to the Assignor.

4.2 The Assignor and Burke warrant to the Assignee and the Liquidator that:

- (a) they have not assigned any interest in the Intellectual Property to any other party;
- (b) the Assignee has not entered into any other deed or agreement to assign the Intellectual Property other than the 2017 Deed of Assignment;
- (c) the Intellectual Property is unencumbered;
- (d) the Assignor has not received notice claiming that the use of the Intellectual Property in the places and manner in which it is currently used infringes the rights of any other party and as far as they are aware, such use does not infringe the rights of any other party.

4.3 The Assignor and Burke agree that to the fullest extent permitted by law they:

- (a) are not entitled to any payment from the Liquidator or the Assignee in respect of the assignment under this Deed; and
- (b) will make no Claim against the Liquidator or the Assignee in respect of the assignment under this Deed.

4.4 The Assignor and Burke acknowledge that they have not relied on any representations from the Liquidator or the Assignee other than those contained in this Deed.

4.5 Each party warrants and represents to each other party that they have had the opportunity to obtain independent legal advice in relation to their rights and obligations pursuant to this Deed, and enter into this Deed freely and without any obligation imposed by any other party to this Deed.

5. NOTICES

5.1 General

Any notice, request, consent, approval, demand, certification, process or other communication relating to this agreement must be in writing in English and may be given by an agent of the sender (including its lawyers).

5.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;

- (d) emailed to the email address last notified by the addressee; or
- (e) sent by fax to the party's current fax number for notices.

5.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

Assignor and Burke:

Address: Unit 53, 139-151 Gooding Drive, MERRIMAC QLD 4226

Phone: +852 6160 2582

Email: c.burke@microlatch.com

Attention: Christopher Burke

Assignee:

Address: Matthews Folbigg Lawyers, Level 7, 10-14 Smith Street, PARRAMATTA NSW 2150

Phone: (02) 9635 7966

Email: stephenm@matthewsfolbigg.com.au

Attention: Stephen Mullette

Each party may change its particulars for delivery of notices by notice to each other party.

5.4 Communications by post

Subject to clause 5.6, a communication is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

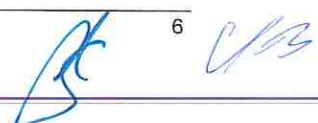
5.5 Communications by fax

Subject to clause 5.6, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

5.6 After hours communications

If a communication is given:

- (a) after 5:00 pm in the place of receipt; or



- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

6. MISCELLANEOUS PROVISIONS

6.1 Interpretation

In this Deed, unless the context otherwise requires:

- (a) headings and underlines are for convenience only and do not affect the interpretation of this Deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, Trust, corporation or other owners corporation;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, schedule or annexure is a reference to a part, clause, party, schedule or annexure to this Deed;
- (g) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued after that statute;
- (h) a reference to a document or an agreement includes an amendment or supplement to, or replacement or novation of that document or agreement;
- (i) a reference to a party to this Deed or in any other document or agreement includes that party's permitted successors and permitted assigns;
- (j) where the day on which any thing is to be done is not a business day, that thing must be done on the next business day;
- (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it;
- (l) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.

6.2 Governing Law

This Deed shall be governed by and construed in accordance with the laws of the State of New South Wales.

6.3 Jurisdiction

Any legal action or proceedings with respect to this Deed against any party or any of its property and assets may be brought in the Courts of the State of New South Wales and, by execution and delivery of this Deed that party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State.

6.4 Variations

Any amendments, variation or modification to or of, or consent to departure by any party from the terms of this Deed shall have no force or effect unless effected by a document executed by the parties.

6.5 Third Parties

This Deed shall confer rights and benefits only upon a person expressed to be a party and not upon any other person, except Gavin Moss in respect of the Deed of Indemnity.

6.6 Assignment

A party shall not transfer or assign its rights or obligations under this Deed without the prior consent in writing of the other party.

6.7 Waivers

The failure to exercise or delay in exercising by any party of any right conferred by this Deed shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party.

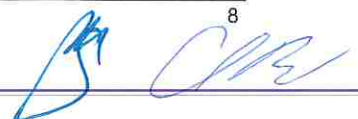
6.8 Remedies

The rights of a party conferred by this Deed are cumulative and are not exclusive of any rights provided by law.

6.9 Pre-Contractual Negotiation

This Deed expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement.

Neither party shall, after execution of this Deed, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by this Deed.



6.10 Further Assurance

Each party shall execute all documents and perform all acts necessary to give full effect to this Deed, however nothing in this clause shall require the Assignor to incur any expense or cost.

6.11 Severability

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

6.12 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same document.

6.13 Power of Attorney

Each party who grants a power of attorney by this Deed hereby declares that the power of attorney so granted is irrevocable, has been given for valuable consideration, may be exercised during any subsequent legal incapacity on the donor's part and may be exercised notwithstanding any conflict of interest

6.14 Confidentiality

- (a) The contents of this Agreement shall be kept confidential and shall not be disclosed to any other person without the written consent of the parties.
- (b) This clause, 7.14, shall not apply in the following circumstances:
 - (A) any disclosure required by law, or any disclosure pursuant to the Liquidator's obligations under the *Corporations Act 2001* or *Corporations Regulations 2001* (including reporting to creditors);
 - (B) any disclosure required by any applicable listing rules of National Stock Exchange of Australia Limited or any other stock exchange.

SCHEDULE 1

Intellectual Property				
	Official No.	Title	Status	Country of Registration
1.	8800125	A transmitter for transmitting a secure access signal	Refusal of application	Europe
2.	17189130.2	A transmitter for transmitting a secure access signal	Request for examination was made	Europe
3.	10107118	A transmitter for transmitting a secure access signal	Application deemed withdrawn	Hong Kong
4.	03623/DELNP/10	A transmitter for transmitting a secure access signal	Application deemed abandoned	India
5.	8458484	Password generator	Registered	United States of America
6.	14/308019	A transmitter for transmitting a secure access signal	Under examination	United States of America
7.	15/213661	A transmitter for transmitting a secure access signal	New App Lodged	United States of America



SCHEDULE 2

Form 43
UCPR 36,11



Issued: 16 May 2019 10:27 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00056845

TITLE OF PROCEEDINGS

First Plaintiff	CHARTER PACIFIC CORPORATION LIMITED ACN 003344287
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First Defendant	SECURICOM (NSW) PTY. LIMITED, ACN 053674089
Second Defendant	Christopher John Burke
Number of Defendants	5

DATE OF JUDGMENT/ORDER

Date made or given	4 September 2018
Date entered	4 September 2018

TERMS OF JUDGMENT/ORDER

1. A declaration that the Share Purchase Agreement signed on 27 September 2016 (SPA) is valid and enforceable, and may be specifically performed.
2. A declaration that the second defendant was not entitled to terminate the SPA on 31 August 2017, on 1 September 2017, or at any time thereafter.
3. An order that until 18 April 2019 the second defendant be restrained from terminating the SPA pursuant to:
 - (a) cl 2.5(a); and
 - (b) cl 2.5(b) until such time as the Conditions in cl 2.1 of the SPA become incapable of being fulfilled.
4. An order that by 18 April 2019 the second defendant specifically performs his obligations under the SPA.
5. An order that the second defendant use his best endeavours to procure audited accounts for each of the first, third and fourth defendants as at 30 June 2017 and 30 June 2018 by no later than 4 weeks from the date of these orders.
6. An order that the second defendant is to do everything necessary to procure the reinstatement of the fourth defendant as a company under UK law as soon as reasonably practicable.
7. An order that, by no later than 2 weeks from the date of these orders, the second defendant do everything necessary to restore to each of the first defendant, the third defendant and the fourth

dmccard001

defendant respectively the Business Intellectual Property (as that term is defined in paragraph 1.1 of the SPA).

8. An order that until the 18 April 2019 the second defendant use his best endeavours to preserve and maintain the current Business Intellectual Property (as that term is defined in paragraph 1.1 of the SPA).

9. An order that, within one week of the date of these orders, the second defendant cause the following articles or posts to be removed from publication on the website, "www.microlatch.com":

(a) "Microlatch - Charter Pacific, Termination Notice" dated September 2017 (at <http://www.microlatch.com/newsview.asp?id=16>);

(b) "Microlatch - Charter Pacific, Termination Clarification" dated September 2017 (at <http://www.microlatch.com/newsview.asp?id=17>);

(c) "Microlatch" dated September 2017 (at <http://www.microlatch.com/newsview.asp?id=18>).

10. An order that the first, second, third and fifth defendants pay the plaintiff's costs of the proceedings as agreed or assessed.

SEAL AND SIGNATURE



Signature Chris D'Aeth
Capacity Principal Registrar
Date 18 May 2019

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Plaintiff(s)

First Plaintiff

Name

CHARTER PACIFIC CORPORATION LIMITED

Address

ACN 003344287
Platinum Finance Office 50 Floor 9
50 Cavill Avenue
SURFERS PARADISE QLD 4217
9469 1806

Telephone

Fax

E-mail

Client reference

david.yates@coirs.com.au

Legal representative for plaintiffs

Name

David Yates

Practising certificate number

1603746

Address

Brookfield Place - Tower 2 Level 6
123 St Georges Terrace
GPO Box 9925
PERTH WA 6001

zmicen001

Page 2 of 3

A handwritten signature in blue ink, appearing to be "David Yates", written over a horizontal line.

DX address
Telephone 08 9460 1806
Fax 08 9460 1667
Email david.yates@corrs.com.au
Electronic service address david.yates@corrs.com.au

FURTHER DETAILS ABOUT Defendant(s)

First Defendant
Name SECURICOM (NSW) PTY. LIMITED
Address ACN 053874089
Office 53 Floor 1
139 - 151 Gooding Drive
MERRIMAC QLD 4226

Second Defendant
Name Christopher John Burke
Address Unit 53 Office 53 Floor 1
139 - 151 Gooding Drive
MERRIMAC QLD 4226

Third Defendant
Name MICROLATCH PTY LTD
Address ACN 069640747
unit 53 Office 53 Floor 1
139 - 151 Gooding Drive
MERRIMAC QLD 4226


Fourth Defendant
Name Microlath Limited (Company Number 08625097)
Address Unit 5 Alpha Park
Bevan Way Dartmouth
West Midlands Smethwick B66 1BZ
United Kingdom

Fifth Defendant
Name C J Burke Nominees Pty Ltd
Address ACN 622168464
Unit 53 Office 53 Floor 1
139 - 151 Gooding Drive
MERRIMAC QLD 4226


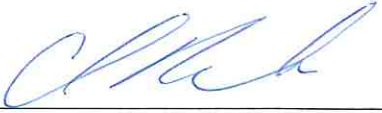
EXECUTION

Executed as Deed




Executed by **CJ BURKE NOMINEES PTY LTD ACN 622 158 454** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

 _____ Director/Secretary	_____ Director
<u>CHRIS BURKE</u> Name [BLOCK LETTERS]	_____ Name [BLOCK LETTERS]

Signed, sealed and delivered by **CHRISTOPHER JOHN BURKE** in the presence of:

 _____ Signature of Witness	 _____ Signature
<u>Stephanie Chow</u> Name of Witness [BLOCK LETTERS]	<u>Christopher John Burke</u> Name [BLOCK LETTERS]
<u>Hong Kong</u> _____ Address of Witness	

Executed by **MICROLATCH PTY LTD (IN LIQUIDATION) ACN 059 640 747** by its Liquidator in the presence of:

 _____ Signature of Witness	 _____ Signature	 _____ Signature
<u>Stephanie Chow</u> Name of Witness [BLOCK LETTERS]	<u>SUSAN HARRIS</u> Name [BLOCK LETTERS]	<u>Gavin Moss as Liquidator</u> Name [BLOCK LETTERS]
<u>Hong Kong</u> _____ Address of Witness		
<u>62 DONALD BAIN CIRCUIT ROSEMEADOW NSW 2560.</u>		