

**AGREEMENT ON NON-DISCLOSURE AND RESTRICTION OF USE OF MATERIAL**

**THIS AGREEMENT** made and entered into at Colombo on the dates hereinafter mentioned;

**by and between**

..... a company incorporated under the under the laws of ..... bearing registration No..... and, having its registered office at ..... (hereafter referred to as "**Counterparty**" which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include .....its successors and permitted assigns) of the ONE PART;

and

**MOBITEL (PRIVATE) LIMITED** a company duly incorporated under the laws of Sri Lanka bearing registration No. PV 9478 and, having its registered office at 109, Galle Road, Colombo 03, Sri Lanka (hereafter referred to as "**Mobitel**" which expression shall include, unless explicitly excluded, **MOBITEL (PRIVATE) LIMITED**, its successors and permitted assigns) of the OTHER PART.

Mobitel and Counterparty are hereinafter jointly referred to as "Parties" and individually as "Party".

WHEREAS Mobitel is carrying on the business of providing mobile telecommunication cellular services in Sri Lanka;

**WHEREAS** Counterparty is engaged in the business of .....

**AND WHEREAS** the Parties wish to protect and preserve the confidential and/or proprietary nature of information and materials to be disclosed or made available by either Party (hereinafter referred to as the "**Disclosing Party**") to the other Party (hereinafter referred to as the "**Receiving Party**") in connection with ..... including and not limited to certain discussions, negotiations or dealings between the Parties ("**Purpose**") in accordance with the terms and conditions set forth herein;

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:-

1. To facilitate discussions, meetings and the conduct of business, as may from time to time occur, between the parties in connection with the proposed business relationship between the two parties, it may be necessary for either party to disclose to the other technical, customer, personnel and/or business information in written, graphic, oral or other tangible or intangible forms, that comes to their attention in the course of performing this Agreement, which they know or reasonably be assumed to know is confidential based on the nature and the circumstance(s) of disclosure of such data and/or information, including, but not limited to specifications, records, data, computer programs, drawing, know-how, notes, model reports and samples, idea, invention (whether patentable or not), process, technique, algorithm, computer program (source and object code), design, schematic, drawing, formula, data, product development plan, strategy, forecast and other technical, engineering, manufacturing, product, marketing, servicing, financial, personnel, human resources, and other information and materials, such information may contain proprietary, private or confidential material, or material subject to applicable laws regarding secrecy of communications or trade secrets (hereinafter referred to as "**Confidential Information**").
2. Each party acknowledges and agrees:
  - a. That all Confidential Information acquired by the Receiving Party from the Disclosing Party shall be and shall remain the exclusive property of the Disclosing Party. Except as may be otherwise agreed to in writing, no warranties of any kind, whether express or implied, are given by Disclosing Party with respect to any Confidential Information or any use thereof;
  - b. To consider all the information exchanged between the parties as Confidential Information unless otherwise agreed between the Parties at the time of disclosure;

- c. That information that is disclosed orally between the Parties should be considered by the Receiving Party as Confidential Information;
  - d. To receive in confidence any Confidential Information;
  - e. To limit access to such Confidential Information to authorized employees on a need to know basis of the Confidential Information in order for the Receiving Party to participate in the matter of mutual interest described above; and not to disclose such Confidential Information to others which includes other entities and persons who are not full-time, regular employees of the Receiving Party, but excludes consultants and advisors provided that such person(s) have signed similar confidentiality agreements with the Receiving Party or authorize anyone else to discuss such Confidential Information to others without the prior written approval of the Disclosing Party;
  - f. To use such Confidential Information only for the Purpose or as specified by the Disclosing Party;
  - g. That all the Confidential Information in written, graphic or other tangible form furnished hereunder shall remain the property of the Disclosing Party and shall (i) be returned to the Disclosing Party at its written request, together with their Derivations (as defined below), including all copies made thereof by the Receiving Party, and (ii) the Receiving Party shall promptly erase or destroy all Confidential Information, Derivations, and copies thereof if recorded and stored in an electronic medium (as an example: computer discs, tapes, flash drives, etc). Upon written request by the Disclosing Party, an officer of the Receiving Party shall certify the following in writing: (a) the return of all tangible records containing Confidential Information, Derivations, and copies thereof; (b) the destruction or erasure thereof, if the Confidential Information and/or Derivations are stored in an electronic medium as provided above; (c) of the discontinued use and its intent not to continue to use the Confidential Information; and (d) its compliance with the requirements of this Section 2(f). Derivations are defined as documents or records, in intangible or tangible form, or on electronic media, describing, summarizing, reproducing, or re-disclosing the Confidential Information, whether in whole or in part, or any extracts thereof;
  - h. Notwithstanding the term hereof, to treat all Confidential Information as provided herein until such time as the Parties mutually agree in writing that such treatment is no longer warranted; and
  - i. Neither disclosure of Confidential Information nor this Agreement shall be construed as a license to make, use or sell the Confidential Information or any products or services derived therefrom.
  - j. Subject to Clause 3 below the release of any information, Confidential or otherwise, should be with the prior written approval of the Disclosing Party.
  - k. That the Receiving Party shall maintain all Confidential Information of the Disclosing Party in trust and strict confidence for the sole benefit of Disclosing Party and shall not disclose such Confidential Information to any third party without Disclosing Party's prior written consent.
  - l. That the Receiving Party shall take all reasonable measures, but in any event no less than the same degree of care that it uses to protect its own confidential and proprietary information of similar nature and importance, to protect the confidentiality and avoid the unauthorized use, disclosure, publication, or dissemination of Disclosing Party's Confidential Information.
  - m. That the Receiving Party shall not remove, overprint, or deface any notice of confidentiality, copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party.
3. These obligations do not apply to Confidential Information which:
- a. As shown by reasonably documented proof, was in the Receiving Party's possession prior to receipt thereof from the Disclosing Party; or
  - b. As shown by reasonably documented proof, was received by the Receiving Party in good faith from a third party not subject to a confidential obligation to the Disclosing Party; or

- c. Is or becomes publicly known through no breach of confidentiality obligation by the Receiving Party; or
  - d. Is disclosed to a third party by the Disclosing Party without a similar non-disclosure restriction; or
  - e. Is disclosed pursuant to a requirement imposed by a Government agency or is otherwise required to be disclosed by operation of law, except that prior to any disclosure pursuant to this sub-section, the Receiving Party receiving the request for the information shall notify the Disclosing Party in writing and shall give the Disclosing Party an opportunity to participate in objecting to production of the Confidential Information and shall cooperate fully with Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential information; or
  - f. Was developed by the Receiving Party independently without having access to any of the Confidential Information received from the Disclosing Party; or
  - g. Is authorized in writing by the source to be released or is designated in writing by the source as no longer being Confidential or proprietary.
- 4. Each Party acknowledges that the other Party's employees and contractors are valuable business assets. Each Party agrees that, during the period until the Purpose is completed and for one (1) year thereafter, it shall not (for itself or for any third party) divert or attempt to divert from the other Party any employee or contractor, through solicitation or otherwise.
  - 5. Nothing contained in this Agreement shall act to prevent any one or all of the Parties hereto from concurrently or otherwise discussing or planning similar projects with non-parties to this Agreement so long as the non-disclosure aspects of this Agreement are not violated. Neither Party shall discuss or disclose in writing or by any other means to any third party, any information knowingly allusive to any Confidential Information.
  - 6. Except as provided herein, no right or license whatsoever, either expressed or implied is granted to the Receiving Party pursuant to the Agreement under any trade secret, know-how, patent, patent application, trademark, copyright or other proprietary right now or hereafter owned or controlled by the Disclosing Party or its successors or permitted assigns.
  - 7. It is agreed that a violation of any of the provisions of this Agreement will cause irreparable harm and injury to the non-violating Party and that Party shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to an injunction enjoining and restraining the violating Party from doing or continuing to do any such act and any other violations or anticipatory violations of this Agreement. Except in showing of willful violation of this Agreement, neither Party shall be liable to the other, whether in contract or in tort or otherwise, for special, indirect, incidental or consequential damages.
  - 8. Neither this Agreement nor provision of Confidential Information pursuant to it shall be construed as an agreement, commitment, promise or representation by either Party to do business with the other or to do anything except as set out specifically in this Agreement.
  - 9. This Agreement shall be binding on agents, successors and permitted assigns of the Parties.
  - 10. This Agreement is the entire agreement between the Parties with respect to nondisclosure of Confidential Information pertaining to the matters stated above and suspends all prior agreements and understandings with respect to this subject. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party.
  - 11. Unless terminated earlier by written notice without prejudice to any rights and obligations of this Agreement, this Agreement shall remain in force for a period of **five years** from the date of signing hereof. Provided however the provisions relating to 'Confidentiality' shall survive any termination.

12. This Agreement shall be governed by and interpreted in accordance with the law of Sri Lanka and each of the parties submits to the exclusive jurisdiction of the Courts of Sri Lanka as regards any claim or matter arising under this Agreement.
13. If any dispute or difference whatsoever arises between the parties concerning matters relating to this Agreement or any provision thereof, the parties herein shall use their best endeavours to resolve the dispute or difference amicably.
14. Failing amicable resolution of such dispute or difference by the parties hereto within thirty (30) days, the dispute or difference shall then be finally resolved by competent court of Colombo, Sri Lanka.
15. The waiver by either Party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect, and such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed to the extent necessary to make such provision valid and enforceable.
16. The Parties are independent contractors, and neither Party shall have any authority of any kind to bind the other Party in any respect whatsoever.
17. This Agreement may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Agreement, all of which shall constitute one agreement to be valid as of the date of this Agreement. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement.

*The remainder of this page is intentionally left blank.*

**IN WITNESS WHEREOF** the parties have caused their respective Authorized Signatories to sign hereunto on the date month and year hereinafter mentioned.

Signed by the authorized  
signatory for and on behalf of  
**Mobitel (Private) Limited**

.....  
Name:  
Designation:

.....  
Name:  
Designation:

**Witnesses**

	<u>Signature</u>	<u>Name</u>
1.	.....	.....
2.	.....	.....

Signed by .....  
.....  
.....  
being the authorized signatory/signatories for and on  
behalf of .....

Date:

**Witnesses:**

	<u>Signature</u>	<u>Name</u>
1.	.....	.....
2.	.....	.....

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