

# **Developer Agreement**

Developer and MTel desire that Developer grants to MTel the right to reformat publish and distribute software products including contents of Developer in and together with the MTel products outside the Launched Markets specified in Exhibit A.

NOW IT IS HEREBY AGREED:

## **DEFINITIONS**

For the purposes of this Agreement the following definitions shall govern (and where the context so admits the singular shall include the plural and vice versa):

“Application Developer”

Shall mean a company, that provides in business relation application services to operator or any third parties, with Developer’s Deliverables or not. MTel functions as an Application Developer in this agreement.

"Acceptance"

shall mean, with respect to each Deliverable, that the Deliverable has been accepted by MTel.

“Acceptance Criteria”

Shall mean, with respect to each Deliverable, that the Deliverable meets the Quality Requirements.

“Affiliates”

Shall mean subsidiaries, associate, joint venture of the company.

"Appendix"

Shall mean a document which the Parties shall, by mutual agreement, sign and attach to this Agreement on the effective date or at any time during the term of this Agreement. All Appendices shall be subject to the terms and conditions of this Agreement. In the event of a conflict between the terms of an Appendix and the terms of this Agreement, the terms of this Agreement shall prevail.

"Date of Delivery"

Shall mean the date, when MTel has accepted the Deliverable to be installed and it is functioning according to its technical and functional specifications meeting its quality requirements.

"Deliverable"

Shall mean the contents, concepts, media products, documents or products in other forms procured or prepared by Developer for distribution of MTel under this Agreement.

“Designated Application Stores”

Shall mean the Application store offered by various handset manufacturers which allows users to browse and download applications from the Application Store for distribution of Licensed Products in accordance with this Agreement.

"End-user"

Shall mean any third party who uses the Deliverables either in or in connection with Products.

"Intellectual Property Rights"

shall mean patents (including utility models), design patents, and designs (whether or not capable of registration) and other like protection, copyright, trademark and any other form of statutory protection of any kind and applications for any of the foregoing respectively as well as any trade secrets.

"Licensed Product"

Shall mean the Product which is developed or modified, where necessary, from Deliverables of Developer by MTel during the term of and in accordance with this Agreement for the publishing and distributing purposes.

"License Fee"

Shall mean the fee that MTel will possibly make as a lump sum revenue, from its clients for using specifically the Licensed Products. This fee is strictly the only payment for use of the Licensed Products which are in connection with the Developer's Deliverables.

"Developer"

Shall mean Developer

"Net Margin Income"

shall mean any income, which MTel or its subsidiaries receives in the form of License Fee from Designated Application Stores with respect to Licensed Products less Designated Application Stores, and any third parties' revenue share and possible content costs.

"Party" and "Parties"

Refer to Developer and/or MTel.

"Reseller"

Shall mean MTel

"Product"

Shall mean a combination of content, technology, concepts and consultation to portals, TV-houses, TV-publishers, and mobile operators.

"Quality Requirements"

Are the requirements for Developer's Deliverables. The Deliverable must meet Quality Requirements as set by MTel.

"Working Day"

Shall mean a normal eight (8) hour per each working day in Hong Kong where services are to be performed.

## **GRANT OF LICENSES**

Subject to the terms and conditions hereunder, the Parties have agreed that Developer shall grant a license to MTel and its current and future subsidiaries to the Deliverable for the purpose of this agreement.

MTel's license to use the Deliverable contains the right to:

- a. use the Deliverable within the territory in the development of the Licensed Product as specified in the Appendix and in co-operation (directly or indirectly) with the Designated Application Stores to provide application service to operators perusal (ASP) Deliverable;

- b. Make and maintain no more than one backup/archival copy of each item of the Deliverable provided that each copy shall contain all the same legends and copyright notices as the original and will be subject to the same conditions and restrictions as the original. MTel shall collect and return all Deliverables upon the expiration or cancellation of the Agreement;
- c. sub-license the right to use the Deliverable to the MTel subsidiary, Designated Application Stores referred to in (a) above provided that the sub-license agreement includes provisions same as to the provisions of this Agreement and that the sub-licenses expires at the latest at the same time as MTel's respective license to use the Deliverable. MTel shall have the sole responsibility for the acts of its Designated Application Stores shall impose on them the same duties and obligations as MTel has towards Developer. Any failure of any of its Designated Application Stores to meet these standards or perform these obligations will be a material breach of this Agreement by MTel. Any contracts between MTel and a Designated Application Stores shall not be inconsistent with this Agreement and shall be made subject to immediate termination by MTel if this Agreement is terminated, cancelled or expires; and

Developer will furnish the Deliverable to MTel for the purposes of this Agreement in the manner and at the time stipulated in this Agreement.

All Intellectual Property Rights, excluding rights expressly granted to MTel pursuant to this Agreement, remain with Developer except Intellectual Property Rights on programs translated / adapted to local use by MTel is belonged to MTel.

## **DELIVERY AND ACCEPTANCE**

MTel shall have thirty (30) days from the Delivery Date ("Acceptance Period") to evaluate the functional and performance capabilities relevant to such Deliverable. MTel may provide Developer with written Acceptance certificate of such Deliverable during the Acceptance Period if the Deliverable is capable for the development of the Licensed Product.

If the Deliverable does not meet with the Quality Requirement of MTel, MTel shall have the right to request for replacement of the Deliverable. In any event that the Deliverable does not meet the Acceptance criteria of MTel within two (2) months from the first statement of rejection of MTel, MTel shall have the right to terminate this Agreement.

## **PAYMENTS**

MTel shall pay a License Fee to Developer if any

The License Fee shall be calculated on net receipts basis from MTel.

During the term of this Agreement, MTel shall settle payments by remittance in Hong Kong Dollars to Developer after the accumulated amount due to Developer exceed HKD5, 000.

Developer shall be responsible for any applicable consumption tax, value-added tax, withholding tax, or any other tax or tariff chargeable and bank charges for telegraphic transfer to any overseas account in any transaction conducted through the service provided by MTel or

otherwise arising from this Agreement (other than taxes paid by MTel based on income) by any applicable government under any applicable jurisdiction.

MTel shall after giving notice to the Developer have the right to deduct from any payment due to Developer. MTel may suspend the payment of any sums due or falling due to Developer where Developer is in material breach of its obligation(s) to MTel under this Agreement and such payment or sums relate to the obligation(s) in respect of which Developer is in breach.

## **WARRANTY**

Developer warrants that Developer has full right and power to grant to MTel the rights described above of this Agreement and to enter into this Agreement.

Developer warrants that (i) the Deliverables are validly acquired by Developer, and (ii) Developer has not received notice of or otherwise is aware of any claim or threat of claim that the Deliverables infringe any patent, trade secret, copyright or any other Intellectual Property Rights of any third party.

The Developer represents warrants and undertakes at the date of this Agreement and throughout the Term of this Agreement, that:-

- (a) it has obtained and shall continue to maintain all the necessary consents and licences for performing its obligations under this Agreement (including but not limited to those in relation to copyright, public performance right and publishing right from the relevant collecting societies), and that the use of the Contents contemplated under this Agreement will not infringe any intellectual property or similar rights of any third party;
- (b) it has obtained and shall continue to maintain all necessary consents, licenses and approvals (if any) from any competent authority which will be necessary for trading, operating and carrying on its business through the service;
- (c) everything contained in the Contents will be accurate, complete and that the Contents will not be illegal or unlawful and will not be in breach of any applicable law, regulation, directive, statement or code;
- (d) it grants to MTel license to reproduce, adapt and/or modify any information provided by the Developer to MTel for the purpose of enabling MTel to perform its obligations under this Agreement; and
- (e) Nothing contained within the Contents is misleading, deceiving, obscene, indecent, vulgar, offensive or defamatory against any person or would give rise to any claim (whether in contract, tort or otherwise) by any person.

The Developer shall indemnify and keep MTel and its directors, employees, agents and contractors of any of them (collectively the "Indemnified Persons") indemnified against any action, liability, cost, claim (including any third party claims), loss, damage, proceedings, expense (including legal costs on solicitor and own client basis) suffered or incurred by any Indemnified Person in any way arising from:-

- (a) Any breach by the Developer of any of its obligations, representations or warranties under this Agreement;

- (b) the provision of the service in accordance with this Agreement or the performance by MTel of its obligations hereunder, or in any way arising out of the Contents, including any third party claiming any interest in the Contents, any claims arising from any act alleged to be illegal, claims for defamation, infringement of intellectual property rights, damage to computer database, loss of data or distribution of obscene or offensive material;
- (c) any disputes or lawsuits related to any copyrights, trademarks and all other intellectual property rights relating to the Content or have licensed the Content from a third party in equal terms to this Agreement and as such give MTel permission to use such rights in accordance with and for the sole purpose of this Agreement; or

Developer warrants that they are responsible for any reasonable legal expenses arising out of any disputes or lawsuits related to copyrights, trademarks and all other intellectual property rights relating to the Content or have licensed the Content from a third party in equal terms to this Agreement and as such give MTel permission to use such rights in accordance with and for the sole purpose of this Agreement.

## **INTELLECTUAL PROPERTY RIGHTS**

Subject to the terms of this Agreement, Developer shall continue to own all rights including the Intellectual Property Rights in and to the Licensed Product. This clause remains in effect even after termination of this Agreement.

Developer represents and warrants that the Deliverables do not infringe any patent, copyright, trademark or other Intellectual Property Right of any third party.

Developer will settle and/or defend at its own expense and indemnify MTel against any cost, loss or damage arising out of any claim, demand, suit or action against MTel to the extent such claim, demand, suit or action alleges that the Deliverables, or the use of such Deliverables in or in connection with MTel Product, infringes any Intellectual Property Right of any third party, provided that (1) MTel promptly informs Developer in writing of any such claim, demand, action or suit, (2) Developer is given control over the defense thereof and MTel cooperates in the defense at Developer' expense, and (3)MTel will not agree to the settlement of any such claim, demand, action or suit prior to a final judgment thereon without the prior written consent of Developer, which consent will not be unreasonably withheld.

If a claim, demand, suit or action alleging infringement is brought or Developer believes one may be brought, Developer shall have the option at its expense to (1) modify the Deliverables to avoid the allegation of infringement, or (2) obtain for MTel at no cost to MTel a license to continue using and exploiting the Deliverables in or in connection with the MTel Product in accordance with this Agreement free of any liability or restriction.

## **CONFIDENTIALITY**

Developer shall not disclose to third parties nor use for any purpose other than for the proper fulfillment of the purpose of this Agreement any technical or commercial information ("Information") received from MTel in whatever form under or in connection with this Agreement without the prior written permission of MTel save for Information which

- (a) Was in the possession of the Receiving Party prior to disclosure hereunder; or

- (b) was in the public domain at the time of disclosure or later became part of the public domain without breach of the confidentiality obligations herein contained; or
- (c) Was disclosed by a third party without breach of any obligation of confidentiality owed to the Disclosing Party; or
- (d) Was independently developed by personnel of the Receiving Party having no access to the Information.

Affiliates of a Party hereto engaged in the performance of this Agreement shall not be deemed to be third parties for the purposes of this Clause on condition that disclosure of Information may only occur on need to know basis and that the respective Party ensures full compliance by such Affiliates of all of the provisions of this Clause.

The provisions of this Clause shall bind the Parties for a period of one (1) years from the date of termination of this Agreement or, in respect of every item of Information later disclosed hereunder, a period of one (1) year from disclosure, whichever period is longer regardless of any earlier termination, cancellation or completion of this Agreement.

## **RIGHT OF REFERENCE**

MTel may grant Designated Application store's reference to Developer, when the Deliverable is seen performing as expected and MTel's or Designated Application store's business climate is seen fit to publicly announce information about the usage of the Deliverable. MTel will in this case provide written permission for Developer to use and publicly distribute such Developer reference of Designated Application store. MTel and Designated Application store have the right to verify the wording and the content of the announcements towards public media without unreasonable delay.

MTel will have entire and only customer ownership with full control over it concerning Designated Application store it chooses to work with.

## **TERM OF AGREEMENT AND TERMINATION**

The term of this Agreement shall be a period of one (1) year from the date of signing this Agreement and thereafter be automatically renewed.

Each Party shall have the right to terminate this Agreement upon sixty (60) days prior written notice if the other Party is in breach of any material obligation under this Agreement and the breaching Party fails to remedy such breach within such notice period.

MTel shall have the right to terminate this Agreement upon situation if Developer fails to provide the Deliverables at the Quality Standard as set by MTel. Developer shall have the right to terminate this Agreement upon situation if MTel fails to (1) develop an operational Licensed Product within two (2) months of the commencement of the Term of Agreement; or (2) publish or distribute the Licensed Product at a commercially viable level as deemed by Developer.

Each Party shall have the right to terminate this Agreement immediately upon written notice in the event that the other Party becomes insolvent, files for any form of bankruptcy, makes any assignment for the benefit of creditors, has a receiver, administrative receiver or officer

appointed over the whole or a substantial part of the assets, or ceases to conduct business or an equivalent act to any of the above occurs under the laws of the jurisdiction of each Party.

After the end of defined period and the term of this Agreement, MTel and its customers will immediately discontinue all publishing, copying and distribution of any additional copies of the Licensed Products.

## **LIABILITY**

Neither Party shall be liable in contract, tort or otherwise, whatever the cause thereof, for any indirect, special, punitive or consequential damage, including but not limited to loss of business or goodwill, loss of revenue or loss of profits, howsoever arising under or in connection with this Agreement, except in case the Parties are in breach of Clauses relating to Confidentiality and Intellectual Property Rights in this Agreement and in cases of intentional misconduct or gross negligence.

## **FORCE MAJEURE**

Neither Party shall be liable to the other for any delay or non-performance of its obligations hereunder in the event and to the extent that such delay or non-performance is due to an event of Force Majeure. Events of Force Majeure are events beyond the control of the Party which occur after the date of signing of this Agreement and which were not reasonably foreseeable at the time of signing of this Agreement and whose effects are not capable of being overcome without unreasonable expense and/or loss of time to the Party concerned. Events of Force Majeure shall include (without being limited to) war, civil unrest, acts of government, natural disasters, exceptional weather conditions, breakdown or general unavailability of transport facilities, accidents, fire, explosions, and general shortages of energy or communication facilities.

In the event that the delay or non-performance of either Party hereto continues for a period of four (4) months due to reasons of Force Majeure, or if the same reason of Force Majeure cumulatively exceeds a period of four months, then either Party shall have the right to terminate this Agreement with immediate effect without liability.

## **MISCELLANEOUS**

This Agreement and the Exhibit A hereto state the entire agreement between the Parties relating to the subject matter hereof and supersede all prior communications, written or oral, between the Parties.

Neither Party shall be entitled to assign nor transfer all or any of its rights, benefits and obligations under this Agreement without the prior written consent of the other Party.

No failure to exercise, nor any delay in exercising, on the part of either Party, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.

If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the

remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

This Agreement is governed by, and shall be construed in accordance with, laws of Hong Kong SAR, Peoples Republic of China.

Any and all disputes that may arise between the Parties under or in connection with this Agreement shall be finally settled in arbitration in accordance with the Rules of the court of law in Hong Kong SAR pursuant to the regulations in force. The arbitration shall be conducted in Hong Kong SAR, in the English or if found appropriate partly in Chinese language.

MTel reserve its right update this Agreement at any time in its sole discretion.

#### **EXHIBIT A**

<b>Launched Markets</b>
Australia
Austria
Belgium
Brazil
Canada
Denmark
Finland
France
Germany
Greece
Hong Kong
India
Ireland
Italy
Japan
Luxembourg
Mexico
Netherlands
New Zealand
Norway
Poland
Portugal
Russia
Singapore
Spain
Sweden
Switzerland
Taiwan, ROC
United Kingdom
United States