

# NON DISCLOSURE AGREEMENT

THIS AGREEMENT is made on the \_\_\_\_\_

BETWEEN: -

- (1) **ZINGMOBILE Pte Ltd** (Company Registration No. 200005713G), a company incorporated in Singapore and having its registered address at 229 Mountbatten Road #02-03 Singapore 398007 ("Company"); and
- (2) \_\_\_\_\_ ([Company] Registration No. \_\_\_\_\_), a [company] incorporated in \_\_\_\_\_ and having its address at \_\_\_\_\_ ("XXX").

WHEREAS: -

- (A) The parties, for their mutual benefit, wish to exchange, disclose or make available for access to each other certain Confidential Information (as hereinafter defined) in relation to the parties' discussions, negotiations and/or the potential entering into business relationships for the **Purpose** of: (the "**Purpose**").
- (B) The parties have agreed to disclose and to receive such Confidential Information on a strictly confidential basis and wish to define their rights on the terms and conditions set out below.
- (C) The party disclosing Confidential Information shall hereinafter be referred to as the "**Disclosing Party**" and the party receiving Confidential Information shall be referred to as the "**Receiving Party**." For the purposes of this Agreement, references to "Disclosing Party" and "Receiving Party" shall include any Affiliates (as hereinafter defined) of that party.

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:-

## 1. CONFIDENTIAL INFORMATION

- 1.1 "**Affiliates**" in relation to any person ("first mentioned person") means any person ("second mentioned person") which is controlled, directly or indirectly, by or which controls, directly or indirectly, the first mentioned person and includes any other person which is controlled, directly or indirectly, by or which controls the second mentioned person. For the purposes of this definition, "control" means the ability, whether direct or indirect, to direct or influence the management and policies of a party in any way.
- 1.2 "**Confidential Information**" shall mean and include all non-public information, know-how, ideas, concepts, techniques, formulations, technology (including computer software and hardware products, source and object codes, computer records, data bases, data processing and communications networking systems), industrial, marketing and commercial knowledge of a confidential nature (whether disclosed before or after the date of this Agreement), that a Party designates as being confidential or that, under the circumstances surrounding disclosure, should reasonably be considered as confidential by a reasonable person acting in good faith. Confidential Information includes but is not limited to, business, commercial, legal, technical, factual, financial or tax information which contains or reveals amongst others, matters, trade secrets, know-how, patents, practices, processes and ancillary information and other proprietary or confidential information, regardless of form, format or media and whether or not owned by the Disclosing Party, including without limitation written, oral, or reduced to tangible product and also includes those communicated or obtained through meetings, documents, correspondence or inspection of tangible items, facilities or inspection at any site or place including without limitation:
  - (i) intellectual property rights, confidential and proprietary product, research, development or technical information, and documentation pertaining to and the source code, design, specifications and content of any proprietary product (including software);
  - (ii) business plans, strategies, projections, operations, systems or controls, financial and trading positions;
  - (iii) details of customers, suppliers, contractors, debtors or creditors and of agreements and arrangements with third parties;
  - (iv) information relating to officers, directors or employees of the Disclosing Party and/or its Affiliates;
  - (v) Personal Data (as defined herein);

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- (vi) contracts, marketing information, brochures, printed matter, advertising rates and rate tables; and
  - (vii) information relating to and matters arising from the existence or content of the parties' communications, discussions or evaluations in connection with or pursuant to the Purpose.
- 1.3 Subject to continued compliance with the Data Protection Legislation, the parties hereto acknowledge that Confidential Information shall not include any information that:
- (a) is or becomes publicly available without breach of this Agreement;
  - (b) was previously in the possession of the Receiving Party and which was not acquired directly or indirectly from the Disclosing Party as evidenced by written records;
  - (c) a party hereto lawfully receives without any obligation of confidentiality from a third party;
  - (d) is independently developed by or on behalf of the Receiving Party without using the Confidential Information, as evidenced by written records;
  - (e) the Receiving Party can demonstrate was known before the time of disclosure, without limitation on its use or disclosure;
  - (f) the Disclosing Party has expressly authorized unrestricted disclosure; and
  - (g) subject to Clause 4, is required to be disclosed by law.
- 1.4 **"Data Protection Legislation"** means all laws or regulations in any jurisdiction, as may be amended from time to time, which apply to the parties and relate to the collection, disclosure, use or processing of personal data, sensitive personal data, personally identifiable data, or privacy, including but not limited to the Personal Data Protection Act (No. 26 of 2012 of Singapore).
- 1.5 **"Personal Data"** shall mean data, or information (including, without limitation, any information in the form of text, images, video, audio, multimedia and electronic form) which is protected under applicable Data Protection Legislation, and at the minimum, mean any information in any form (whether true or not) that may be used to identify, or lead to the identification of, an individual natural person, whether living or deceased, in respect of which the Receiving Party first became aware, whether before or after the date of this Agreement, either through disclosure of any information by the Disclosing Party to the Receiving Party, or otherwise through the Receiving Party's involvement with the Disclosing Party;
- 1.6 **"Representatives"** mean the directors, officers, employees, representatives, agents, affiliates, contractors, suppliers, professional advisors or consultants of a Party.
- 1.7 References to a party include that party's respective successors and permitted assigns.

## 2. OBLIGATIONS OF CONFIDENTIALITY

- 2.1 In consideration of the disclosure and release of the Confidential Information by or on behalf of the Disclosing Party to the Receiving Party, and/or the Disclosing Party otherwise enabling the Receiving Party to have access to the Confidential Information, the Receiving Party hereby agrees to hold and keep in strictest confidence any and all such Confidential Information. The Receiving Party must not directly or indirectly disclose or permit to be disclosed in any manner whatsoever all or any part of the Confidential Information other than as expressly permitted by this Agreement.
- 2.2 The Receiving Party undertakes that it and its Representatives shall make use of the Confidential Information solely for the Purpose.
- 2.3 The Receiving Party shall take all steps and measures to minimise the risk of disclosure of the Confidential Information, and ensure that only such Representatives who are directly involved in the Purpose and whose duties require them to possess the Confidential Information shall have access to the Confidential Information on a need-to-know basis. The Receiving Party undertakes to procure that each of the Receiving Party's Representatives shall comply with the confidentiality obligations as set out in this Agreement. In any event, the Receiving Party shall be responsible for any breach of the terms of this Agreement by any of its Representatives and shall take all measures (including but not limited to court proceedings) to restrain such Representatives from prohibited or unauthorised disclosure or use of the Confidential Information.
- 2.4 The Receiving Party shall ensure that, except as may be necessary strictly for the Purpose, the Confidential Information will not be copied or reproduced in any form whatsoever by the Receiving Party, its Representatives or any other third parties without the express written permission of the Disclosing Party.
- 2.5 The Receiving Party shall store all Confidential Information in a manner which does not permit unauthorized access and exercise no lesser security or degree of care to guard against disclosure or use than it applies to its own Confidential Information of an equivalent nature, but in any event not less than the degree of care which a reasonable person with knowledge of the confidential nature of the information would exercise.
- 2.6 The Receiving Party shall, upon request or notice by the Disclosing Party at any time, promptly return to the Disclosing Party or destroy any or all such Confidential Information, and provide a written certification of the same. Notwithstanding the foregoing, the Receiving Party may (i) keep any electronic copies of the Confidential Information residing in its computer backup systems provided that it is not used for any purpose after receipt of such notice, or (ii) retain such copy(ies) of any Confidential Information which it is required to retain by any applicable law, provided always that the information retained in (i) and (ii) shall be kept

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confidential in accordance with the terms of this Agreement. Notwithstanding the return or destruction of such Confidential Information, the Receiving Party shall continue to be bound by its confidentiality and other obligations in this Agreement.

- 2.7 In the event that a party withdraws from discussions, both the withdrawing party and the remaining party shall keep any Confidential Information that has been received confidential in accordance with terms and conditions of this Agreement.
- 2.8 The Receiving Party undertakes that at all times it shall not reverse engineer, decompile, disassemble or use in contravention to this Agreement any software, hardware or tangible objects which embody the Disclosing Party's Confidential Information. This Clause 2.8 shall survive any expiry of termination of this Agreement without limit in time.
- 2.9 The Receiving Party will not and will procure that the Receiving Party's Representatives will not, use the Confidential Information to secure a competitive advantage over the Disclosing Party or cause, suffer or permit to be done any of the foregoing acts.
- 2.10 All information, notes, analyses, compilations, studies, specifications, designs, drawings, plans, reports, registers, summaries, memoranda or other documents produced, developed, derived or compiled by the Receiving Party and/or its Representatives from the Confidential Information disclosed by the Disclosing Party (the "**Derivatives**") shall also constitute Confidential Information (to the extent that the Disclosing Party's Confidential Information is contained in such Derivatives), and accordingly, the obligations in this Agreement pertaining to Confidential Information shall in all respects apply to the Receiving Party vis-a-vis the Derivatives.
- 2.11 The Receiving Party shall not and shall procure that its Representatives shall not, publish any news releases or make any announcements or denial or confirmation in any medium concerning all or any part of the Purpose, including without limitation, the existence of this Agreement, unless with the prior written consent of the Disclosing Party.

### **2A COMPLIANCE WITH DATA PROTECTION LEGISLATION**

- 2A.1 Each of the parties agrees to comply with all applicable Data Protection Legislation in the performance of their obligations under this Agreement, and further undertakes not to use, collect or disclose any Personal Data except for the purpose of performing its obligations under this Agreement. In the event that the Receiving Party breaches any of the provisions of applicable Data Protection Legislation or its undertaking herein, it shall indemnify and hold harmless the Disclosing Party from any expense, loss or damage (including without limitation penalties and/or fines imposed pursuant to applicable Data Protection Legislation, and legal expenses) that the Disclosing Party may incur or suffer in connection with such breach.
- 2A.2 Without prejudice to the generality of Clause 2A.1 and the other obligations in this Agreement with respect to Confidential Information, the Receiving Party shall, where required and in the manner required by Data Protection Legislation:
- (a) provide individuals to whom any Personal Data relates with access to their Personal Data and the ability to correct such Personal Data upon request;
  - (b) use reasonable efforts to ensure the accuracy of any Personal Data;
  - (c) securely destroy any Personal Data on the earlier of termination of this Agreement or the Disclosing Party's request;
  - (d) subject to such transfer being necessary for the Purpose, transfer any Personal Data outside Singapore only as prescribed by the relevant Data Protection Legislation (whether or not such Data Protection Legislation is applicable to the Receiving Party) and only after the written consent of the Disclosing Party, as to the manner and form of such transfer, has been obtained;
  - (e) notify the Disclosing Party immediately of any unauthorised or inadvertent disclosure of Personal Data; and
  - (f) promptly comply with any requests, directions or guidelines which the Disclosing Party may provide the Receiving Party from time to time on any Personal Data collected, used, disclosed, accessed and/or processed by the Receiving Party in connection with the Purpose and this Agreement (including without limitation requests to correct an error or omission in the Personal Data about the individual that is in the possession or under the control of the Receiving Party).
- 2A.3 This Clause 2A shall survive any expiry of termination of this Agreement.

### **3. PROPERTY OF THE PARTIES**

- 3.1 The disclosure of Confidential Information shall not be construed as conferring on or granting to the Receiving Party any rights in any Confidential Information, other than the limited right to use the Confidential Information only as permitted by this Agreement.
- 3.2 Subject to Clause 3.1, nothing in this Agreement shall be construed as granting expressly or by implication during the duration of this Agreement or thereafter, any transfer, assignment, license or any other rights in respect of any license, patent, copyright or any other industrial or intellectual property right in force and belonging to the Disclosing Party which rights shall remain vested in and the absolute property of the Disclosing Party. The Receiving Party shall not under any circumstances file any trade mark, copyright, design, patent or other applications or registrations of ownership on any of the Disclosing Party's Confidential Information, nor shall it procure any other party to do so. In the event the Receiving Party does so in breach of this Agreement, without prejudice to the rights of the Disclosing Party under this Agreement, the Receiving Party shall forthwith assign absolutely to the Disclosing Party such applications or registrations without any cost to the Disclosing Party. This Clause 3.2 shall survive any expiry of termination of this Agreement without limit in time.

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## 4. DISCLOSURE DUE TO COURT ORDER/GOVERNMENTAL ACTION

In the event that the Receiving Party or any of its Representatives are obligated to disclose any Confidential Information as a result of a court order or tribunal order, or pursuant to any governmental, regulatory or stock exchange action, the Receiving Party shall to the extent legally permitted, promptly inform the Disclosing Party so that the Disclosing Party is given an opportunity to object to such disclosure, obtain a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, the Receiving Party or its Representative(s) so obliged to disclose Confidential Information may disclose only such Confidential Information to the extent required by the relevant court or tribunal order, or governmental, regulatory or stock exchange action.

## 5. REPORTING UNAUTHORISED DISCLOSURE, MISAPPROPRIATION OR MISUSE OF CONFIDENTIAL INFORMATION

The Receiving Party shall immediately notify the Disclosing Party of any unauthorised disclosure, misappropriation or misuse by any person of any Confidential Information, upon the Receiving Party having knowledge of the same.

## 6. DURATION

6.1 This Agreement shall be effective upon its execution, and shall, unless otherwise agreed between the parties in writing, continue for a period of 24 months from the date this Agreement is executed. Provided always that the obligations undertaken herein with respect to Confidential Information received prior to the termination of this Agreement shall survive and continue after any expiration or termination of this Agreement for a period of 5 years thereafter, and the obligations undertaken herein with respect to trade secrets shall survive and continue after any expiration or termination of this Agreement without limit in time.

6.2 Nothing in this Agreement shall affect the obligations of the Receiving Party to comply with the provisions of the Data Protection Legislation in so far as they relate to Personal Data; and any other parts of this Agreement that, by their nature, are intended to survive termination will do so.

## 7. NO WARRANTY

The parties hereto shall not be obliged to pay any remuneration for disclosure of any Confidential Information under this Agreement. The parties agree that Confidential Information is provided "as is" and exclusive of any warranty, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, non-infringement of third parties' intellectual property rights, accuracy, or any other warranty expressed or implied.

## 8. REASONABLENESS OF PROVISIONS

The parties agree and acknowledge that the Confidential Information constitutes valuable proprietary information and that the provisions of this Agreement are fair and reasonable to protect the interests of the Disclosing Party.

## 9. REMEDIES

The Receiving Party acknowledges that a breach of this Agreement by the Receiving Party may cause the Disclosing Party and/or its Affiliates irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in the event of a breach or threatened breach, the Disclosing Party and/or its Affiliates shall be entitled to seek injunctive relief or specific performance and to reimbursement of any costs, claims, demands or liabilities, arising in connection with the breach or threatened breach, in addition to other remedies that may be available. No party shall plead as a defence to an injunction action hereunder that the plaintiff has an adequate remedy at law.

## 10. RIGHTS CUMULATIVE

The rights and remedies of each of the parties provided herein are cumulative and not exclusive of any rights and remedies provided by law to such party.

## 11. GOVERNING LAW AND JURISDICTION

11.1 This Agreement shall be governed by and construed in accordance with the laws of Singapore.

11.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Singapore.

## 12. SEVERABILITY

Each provision (or part thereof) of this Agreement shall be construed separately and independently from each other. Accordingly, if any provision of this Agreement is found to be invalid, illegal or unenforceable, such provision shall be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting the remaining provisions of this Agreement.

## 13. WAIVER

13.1 No failure to exercise, nor any delay in exercising, on the part of either party, any right or remedy under this Agreement 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.

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13.2 Nothing in this Agreement, whether relating or incidental to, the disclosure of Confidential Information under this Agreement, is intended, nor shall it be deemed, to be a waiver or abandonment of any legal privilege that may be asserted against subsequent disclosure or discovery in any proceeding or investigation.

**14. COUNTERPARTS**

This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the Agreement where a duly authorised representative of each party has signed a counterpart. Should the parties intend to sign and deliver this Agreement by facsimile transmission or scanned copy sent via electronic transmission, each party shall agree that the delivery of the Agreement by facsimile or electronic transmission shall have the same force and effect as delivery of original signatures, and that each party may use such facsimile signatures or scanned signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent that an original signature could be used.

**15. GENERAL**

- 15.1 Notwithstanding any other provision in this Agreement to the contrary, whether express or implied, neither party shall be liable to the other for loss of actual or anticipated profit, loss of revenue, loss of production, loss of opportunity or goodwill, cost of capital, financing cost, or for any special, indirect, incidental or consequential loss, damage or expense whatsoever suffered by that other party.
- 15.2 No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and signed on behalf of each of the parties by its authorised officer or representative.
- 15.3 No party shall assign, transfer or subcontract, in whole or in part, any of its rights, obligations or duties under this Agreement, unless with the prior written consent of the other party.
- 15.4 A person who is not a Party to this Agreement has no right to under the Contract (Rights of Third Parties) Act (Cap 53B) to enforce or enjoy the benefit of any term under this Agreement.
- 15.5 Each of the parties agrees that it shall not solicit for employment (whether directly or indirectly) any executive or employee of the other party or its Affiliates, without the prior written consent of the other party. For the avoidance of doubt, any general recruitment advertisement placed by or on behalf of either party shall not be deemed to be solicitation for the purposes of this Clause 15.5.

**IN WITNESS WHEREOF**, the parties hereto have caused their respective duly authorized representatives to execute this Agreement the day and year first above written.

SIGNED BY (*Name & Designation*): )  
)  
)  
For and On Behalf of )  
)  
**ZINGMOBILE Pte Ltd** )  
) \_\_\_\_\_  
) (Signature of signatory)  
In the presence of (*Name of witness*): )  
)  
)  
)  
)  
\_\_\_\_\_  
(*Signature of witness*)

SIGNED BY (*Name & Designation*): )  
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For and On Behalf of )  
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)  
\_\_\_\_\_  
) (Signature of signatory)  
**[ • Company ]**  
In the presence of (*Name of witness*): )  
)  
)  
)  
\_\_\_\_\_  
(*Signature of witness*)