

## **CONFIDENTIALITY AGREEMENT**

This Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BETWEEN

**China Mobile Hong Kong Company Limited**, whose registered office is at Levels 12, 19, 20 and 21, Tower 1, Kowloon Commerce Centre, 51 Kwai Cheong Road, Kwai Chung, New Territories, Hong Kong (hereinafter called “**CMHK**”);

AND

\_\_\_\_\_, whose registered office is at

(hereinafter called “\_\_\_\_\_”).

(CMHK and \_\_\_\_\_ shall be collectively referred to as “**Parties**” and, individually, a “**Party**”).

### **WHEREAS**

The Parties intend to explore the possibilities of establishing a business relationship in connection with \_\_\_\_\_ (the “**Project**”). In order to proceed with the Project, Parties agree to disclose and to receive Confidential Information and enter into this Agreement to assure the protection and preservation of the confidential and proprietary nature of the Confidential Information to be disclosed or made available to one another in connection with the Project.

### **NOW IT IS HEREBY AGREED AS FOLLOWS:**

#### **1. CONFIDENTIAL INFORMATION**

All information and/or data, in writing or in any readable form, disclosed by a Party (hereinafter called the “**disclosing party**”) whether in writing or orally by a Party to the receiving party (hereinafter called “**the receiving party**”) for the purpose of the Project shall be deemed to be confidential and proprietary (hereinafter referred to as the “**Confidential Information**”). For the purpose of this Agreement, Confidential Information shall include, but not limited to, financial information and situation, technical information, know-how, processes, trade secrets, technology, customer information, supplier information, sales statistics, pricing information, marketing information, business strategies and plans, research, intellectual property, research and any other business information, whether expressed in written form, software code or formulae or by electronic means and all other documentation and materials prepared or made available pursuant to the Project.

#### **2. RESTRICTIONS ON USE: NO GRANT OF RIGHTS**

Each Party agrees to use the Confidential Information received from the other Party only for the purpose of the Project. No other rights, and particularly no license and no assignment of any intellectual property rights including copyright, patent rights, design rights and trade marks are implied or granted under this Agreement.

Confidential Information supplied shall not be reproduced in any form except as required to give effect to the intentions of the Parties under this Agreement.

The receiving party shall not create, make, generate any further intellectual property using or which is based on the Confidential Information (“**New Intellectual Property**”). If any New Intellectual Property is created, made or generated, it shall belong to the disclosing party and the receiving party shall assign all rights in it to the disclosing party or its nominee.

### **3. SAFEKEEPING**

The receiving party shall not utilize any of the disclosing party’s Confidential Information directly or indirectly other than for the Project and for the performance of this Agreement. The receiving party shall use the same care to avoid disclosure or unauthorised use of the Confidential Information as it uses to protect its own confidential information, but in no event less than reasonable care. It is agreed that:

- (i) all Confidential Information shall be retained by the receiving party in a secure place with access limited only to such of the receiving party’s employees or agents who need to know such information for purposes of this Agreement;
- (ii) Confidential Information will be disclosed only to each Party’s respective directors, officers, employees, agents, supplier, sub-contractors, consultants, advisors and subsidiary and affiliated companies (or their directors, officers, agents, consultants, and advisors) (hereinafter called “**Representatives**”) who are involved in the Project and have a need to know, provided that (a) they are bound by the same obligation to keep the information confidential and (b) in the event of such disclosure to any person or entity not Representatives of the receiving party, the receiving party shall obtain the disclosing party’s written consent prior to any such disclosure and shall nonetheless remain liable for any unauthorised disclosure or use by such person or entity; and
- (iii) Each Party shall take all reasonably necessary measures to restrain its Representatives from the unauthorized disclosure or use of Confidential Information

### **4. PROPERTY OF DISCLOSING PARTY**

All Confidential Information, unless otherwise specified in writing, shall remain the property of the disclosing party and shall be used by the receiving party only for the purpose intended, and such Confidential Information, including all copies and reproductions thereof, shall be returned to the disclosing party or destroyed after the receiving party’s need for it has expired or within fifteen (15) days of written request of the disclosing party, and, in any event, upon termination of this Agreement. In case of destruction, the receiving party shall provide to the disclosing party written certification of compliance therewith within fifteen (15) days of such written request.

### **5. EXCEPTIONS TO SCOPE OF CONFIDENTIAL INFORMATION**

It is understood that the term Confidential Information does not include information which:

- (i) is published or is otherwise in the public domain through no fault of the Parties;
- (ii) prior to disclosure hereunder is within the legitimate possession of the receiving party, which fact can be proven by documentary evidence;

- (iii) subsequent to disclosure hereunder is lawfully received from a third party having rights therein without restriction of the third party's right to disseminate the information and without notice of any restriction against its further disclosure;
- (iv) is independently developed by the receiving party through parties who have not had, either directly or indirectly, access to or knowledge of or use of such Confidential Information;
- (v) is disclosed with the written approval of the other Party; or
- (vi) is obliged to be produced or disclosed under any law or order of a court with jurisdiction or the rules and regulations of any governing bodies or regulatory authorities (including any stock exchange) to which the receiving party and/or its affiliates are subject to; or
- (vii) is required to be disclosed to its holding company, its auditors, professional representatives, financiers, bankers or legal advisers (including external counsels) as part of its normal reporting or review procedure or for the purpose of seeking legal advice.

## 6. NOTICES

Any notice required to be given hereunder shall be sufficiently given if sent by facsimile or registered post at the address of the parties specified below. Any such notice shall be deemed to have been received and given at the time when in the ordinary course of transmission it should have been delivered at the address to which it was sent.

**CMHK :** China Mobile Hong Kong Company Limited  
Level 20, Tower 1, Kowloon Commerce Centre  
51 Kwai Cheong Road  
Kwai Chung, New Territories  
Hong Kong  
Attention:  
Facsimile no.:  
Telephone no.:

:

Attention:  
Facsimile no.:  
Telephone no.:

## 7. LIABILITY AND REMEDIES

- 7.1** Neither Party makes any warranty or representation, express or implied, in relation to the completeness, accuracy usefulness and reliability of the Confidential Information.
- 7.2** Each Party agrees that the Confidential Information of the other Party is owned exclusively by the disclosing party and that monetary damages would be inadequate to compensate the disclosing party for disclosure of Confidential Information or for any breach by either Party of its covenants and agreements set forth herein. Accordingly, each Party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the non-breaching party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the non-breaching party shall be entitled to obtain such injunctive relief as

may be deemed proper by a court of competent jurisdiction against the threatened breach of this agreement or the continuation of any such breach by a Party, without the necessity of proving actual damages.

## **8. INTERPRETATION**

**8.1** Words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa.

**8.2** Headings of clauses shall not affect their interpretation.

**8.3** This Agreement:

- (i) constitutes the entire agreement between the Parties with respect to the subject matter hereof. It excludes and supersedes everything else which has occurred between the parties whether oral or written, including all other communications with respect to the subject matter hereof;
- (ii) shall be interpreted (and all notices served and communications made) in accordance with the English language and the Gregorian Calendar; and
- (iii) may be executed concurrently in two or more counterparts, each of which shall be an original but together shall constitute one and the same instrument.

## **9. NO WAIVER**

No failure or delay by either Party in exercising or enforcing any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or enforcement of any right, remedy or power preclude any further exercise or enforcement thereof or the exercise or enforcement of any other right, remedy or power.

## **10. DURATION OF AGREEMENT**

This Agreement shall take effect from the Effective Date and each Party agrees to disclose information to the other Party under this Agreement from the Effective Date up to two (2) years therefrom (or such shorter period of time as the Parties may otherwise agree in writing) (the “**Disclosure Period**”). Expiry of the Disclosure Period shall not relieve the Parties of any confidentiality obligations set out herein (which shall remain in effect indefinitely) with respect to any and all Confidential Information disclosed hereunder prior to such expiry.

## **11. NO PUBLICITY**

Each Party agrees not to reveal the relationship with the other Party relating to the Project to any third party except as contemplated by Clause 3 and Clause 5 of this Agreement.

## **12. THIRD PARTIES**

A person who is not a Party has no right under the doctrine of privity of contract to enforce or to enjoy the benefit of any term of this Agreement. The provisions of the Contracts (Rights of Third Parties) Ordinance (Chapter 623, Laws of Hong Kong) shall not apply to this Agreement and, unless specifically herein provided, no person other than the Parties to this Agreement shall have any rights under it nor shall it be enforceable by any person other than the Parties to it.

**13. LAW**

This Agreement is governed by and construed in accordance with the laws of Hong Kong Special Administrative Region (“**Hong Kong**”). Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of Hong Kong.

**IN WITNESS WHEREOF** this Agreement has been executed the day and year first above written:

Signed by:  
For and on behalf of  
China Mobile Hong Kong Company Limited

.....  
Name:  
Title:

Signed by:  
For and on behalf of

.....  
Name:  
Title: