

/DRAFT SUBJECT TO MTLT'S CHANGE AND FINAL APPROVAL/

AGREEMENT FOR AWARD OF .MOBI DOMAIN NAME

This AGREEMENT FOR AWARD OF A .MOBI DOMAIN NAME (the "Agreement") is entered into by and between Mobile Top Level Domain, Ltd, an Irish Limited Liability Company ("mTLD") and _____("Company").

WHEREAS mTLD is the global registry for the .mobi top level domain (the "Registry"); and

WHEREAS mTLD desires to allocate certain .mobi domain names, including the Premium Name, to parties committed to serving the mobile Internet community, developing mobile content, creating new features, services, and product offerings formatted to deliver a predictable, consistent user experience, and strengthen user loyalty and goodwill toward the .mobi top level domain; and

WHEREAS mTLD issued an RFP for the Premium Name, to identify parties that would meet mTLD's stated goals above; and

WHEREAS Company submitted the Proposal to register the Premium Name and operate the Website in response to the RFP; and

WHEREAS mTLD elected to enter into discussions with Company regarding its Proposal; and

WHEREAS Company desires to register the Premium Name and create, launch, and operate the Premium Name in accordance with the Proposal and this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby enter into the Agreement to read in its entirety as follows:

DEFINITIONS

In this Agreement, the following terms have the respective meanings ascribed to them below:

"Agreement" means this Agreement for Award of the Premium Name, including all appendices, attachments, schedules, and exhibits hereto.

"dotMobi Site" means the website operated by mTLD with the URL address: <http://dotmobi.mobi>.

"mTLD" means mobile Top Level Domain, Ltd, an Irish Limited Liability Company.

"Premium Name" means "____.mobi", the .mobi domain name that is the subject of the Company's Proposal and this Agreement.

"Proposal" means the proposal submitted by Company in response to the RFP to Register the Premium Name and create, launch, and operate the Website.

/DRAFT SUBJECT TO MTLTLD'S CHANGE AND FINAL APPROVAL/

“Registrar” means an entity accredited by ICANN and authorized by mTLD to provide domain name registration services in the .mobi TLD. dotMobi accredited Registrars are listed on the dotMobi Site.

“Registration” means the registration of the Premium Name by Company, using a Registrar, pursuant to this Agreement.

“Registration Code” means the unique code issued by mTLD evidencing Company's authorization to register the Premium Name.

“RFP” means the Request for Proposals issued by mTLD to register the Premium Name and create, launch, and operate the Website.

“Website” means a live website using the Premium Name with the URL address http://____.mobi, and any website to which Internet users seeking http://____.mobi are automatically redirected.

ARTICLE 1 *Effective Date and Term*

Section 1.1 Effective Date. This Agreement shall be deemed effective upon signing by both parties.

Section 1.2 Initial Registration Period. Subject to the terms and conditions set forth in this Agreement, mTLD grants Company the right to register the Premium Name for a Registration period of two (2) years (the “Initial Registration Period”), for the purpose of operating the Website on the terms set forth in Schedule 1.2.

Section 1.3 Renewal. Subject to its continued compliance with the terms and conditions of this Agreement, and fulfillment of its material obligations hereunder, after the Initial Registration Period (and after each renewal term thereafter) Company shall have the right (but not the obligation) to renew its Registration of the Premium Name for successive periods of time determined by Company in its discretion, subject to any time limitations imposed by the applicable Registrar (“Automatic Renewal Right”), on the terms set forth in Schedule 1.3. In the event Company chooses not to exercise its Automatic Renewal Right, Company must notify mTLD in writing of its intention not to exercise its right to renew its Registration of the Premium Name no less than sixty (60) days prior to the renewal date.

Section 1.4 Term of the Agreement. Unless terminated, this Agreement shall remain in effect for the longer of thirteen (13) months or the term of Company's Registration of the Premium Name through a Registrar. Each renewal of Company's Registration in accordance with and as permitted by Section 1.3 above shall be deemed a renewal of this Agreement.

Section 1.5 Rights Following Termination of Agreement. Upon the termination or expiration of this Agreement: (i) any and all rights of Company to the Registration of the Premium Name and/or to the Registration Code shall be terminated, and all rights to the Registration of the Premium Name and/or to the Registration Code shall revert to mTLD; and (ii) mTLD may grant Registration rights to the Premium Name and/or rights to the Registration Code to any entity or person in its sole discretion, and Company shall have no rights or recourse against mTLD relating to the promotion or use of the Premium Name and/or Registration Code by any other such entity or person; provided, however, that in no event shall the termination or

/DRAFT SUBJECT TO MTL D'S CHANGE AND FINAL APPROVAL/

expiration of this Agreement, or Company's loss of Registration rights with respect to the Premium Name hereunder, affect or impair (or be deemed to affect or impair) Company's rights to assert trademark and other intellectual property rights in and to the Premium Name, if any, against a third party in connection with said party's use and/or registration of the Premium Name. .

ARTICLE 2 *Covenants*

Section 2.1 Company. Company covenants and agrees with mTLD as follows:

2.1.1 Company agrees to be bound by the terms and conditions set forth in the RFP, all representations, commitments made by Company with respect to its creation, launch, and operation of the Website, the Proposal, and any supplemental written material submitted by Company in connection with the RFP and expressly agreed to by mTLD, including, but not limited to any business terms specified in the Proposal pursuant to Section 3.3 of the RFP and any technical or substantive terms regarding the creation and/or operation of a .mobi website specified in the Proposal pursuant to Section 4 of the RFP (collectively, the "Supplemental Materials"). The Supplemental Materials are hereby expressly incorporated as part of this Agreement.

2.1.2 Company will comply with all applicable laws, statutes, ordinances, and regulations relating to its Registration of the Premium Name and its creation, launch, and operation of the Website.

2.1.3 Company will comply with applicable ICANN requirements, standards, policies, procedures, and practices relating to its Registration of the Premium Name and its creation, launch, and operation of the Website.

2.1.4 Company will comply with all standards, policies, procedures and practices specified by mTLD relating to its Registration of the Premium Name and its creation, launch, and operation of the Website, including without limitation all standards, policies, procedures, and practices set forth in the dotMobi Style Guide [http://pc.mtld.mobi/mobilenet/dotmobi_guides.html] (the "Style Guide") and any modifications thereto in accordance with Section 2.1.5.

2.1.5 Company consents to the monitoring of the Website as described in the dotMobi Style Guide monitoring guidelines. Furthermore, Company acknowledges and agrees that this Style Guide is subject to modification by mTLD, and agrees to comply with any such changes posted on the dotMobi website in the time allotted; provided, mTLD agrees that the time allotted shall be a commercially reasonable amount of time.

Section 2.2 mTLD. mTLD covenants and agrees with Company that mTLD will comply with all applicable laws, statutes, ordinances and regulations, and with all applicable ICANN requirements, standards, policies, procedures and practices, relating to the performance of mTLD's obligations under this Agreement.

ARTICLE 3 *Registration, Development and Promotion of Premium Name*

Section 3.1 **Registration of Premium Domain Name.**

3.1.1 Subject to Schedule 1.2, mTLD will transfer the Registration Code for the Premium Name to Company on the Effective Date of this Agreement. Without limiting the foregoing, (a) mTLD represents and warrants that it has not transferred, and shall not transfer during the term of this Agreement, the Registration Code for the Premium Name to any person or entity other than Company, and (b) mTLD covenants and agrees that if at any time during the term of this Agreement mTLD transfers the Registration Code and/or the Registration for the Premium Name to any person or entity other than Company, or change the Registration Code, in either case other than in compliance with a court order or decision of an ICANN-recognized dispute resolution process, mTLD shall promptly and at its sole expense use best efforts to reclaim the Registration Code and/or the Registration for the Premium Name for Company's continued use hereunder. Except for cases involving gross negligence or willful misconduct, mTLD's liability under this Section 3.1.1 shall be limited to expenses related to its use of best efforts to reclaim the Registration Code and/or Registration and, in the event mTLD is unable to do so, the Initial Award Fee Company paid to mTLD.

3.1.2 Company may choose any Registrar (as defined above) for registration of the Premium Name. Company shall promptly register the Premium Name by presenting the Registration Code to the Registrar of its choosing and following the Registrar's registration process. Company is solely responsible for registering the Premium Name.

3.1.3 Company will provide current, accurate and complete information in connection with its Registration of the Premium Name and its creation, launch, and operation of the Website, including but not limited to information required for the purposes of the Whois records.

3.1.4 This Agreement and Company's rights hereunder shall terminate automatically if Company fails to register the Premium Name within ten (10) days of the Effective Date of this Agreement, provided that mTLD: (a) in its sole discretion, may waive such automatic termination for any reason; and (b) shall waive such automatic termination in the event Company's failure to register the Premium Name within such period is caused by mTLD, delay on the part of the Registrar or any other factors beyond Company's control, provided that if Company fails for any reason, other than for the reasons set forth in 3.1.4(b), to register the Premium Name within 90 days of the Effective Date of this Agreement, mTLD, in its sole discretion, may terminate this Agreement.

3.1.5 Registration of the Premium Name by Company, and Company's creation, launch, and operation of the Website is the result of, and is subject to, all of the conditions, limitations, and restrictions contained in the end-user agreement with the Registrar (the "End-User Registration Agreement"), the domain name registration agreement between mTLD and a Registrar (the "RAA"), a copy of which has been provided to Company, including the Registrant Agreement as posted from time to time on the dotMobi Site (whether or not the End-User Registration Agreement contains such conditions, limitations, and restrictions), and all applicable policies promulgated by ICANN now or in the future.

/DRAFT SUBJECT TO MTLTLD'S CHANGE AND FINAL APPROVAL/

3.1.6 Nothing in this Agreement shall be construed to imply that Company possesses any rights to the Premium Name beyond those specified in this Agreement and the RAA, including the Registrant Agreement, the End User Registration Agreement, and all applicable ICANN policies. Company must enter into an End-User Registration Agreement with a Registrar to register the Premium Name. By registering the Premium Name, Company agrees and acknowledges that mTLD is an intended third party beneficiary of any such End-User Registration Agreement between Company and the Registrar. In the event of a conflict between this Agreement and the End User Registration Agreement, this Agreement controls the rights and obligations of the parties hereto.

3.1.7 Company is solely responsible for exercising its Automatic Renewal Right to renew its Registration of the Premium Name with a Registrar prior to the expiration date listed in mTLD's Whois database or in the End-User Registration Agreement, as applicable.

Section 3.2 Company's Development of Website.

3.2.1 Company will make best efforts to launch the Website within thirty (30) days of the effective date of this Agreement, and to achieve the development milestones listed, on the timeline set forth in Schedule 3.2.1.

3.2.2 Company's creation, launch, and operation of the Website will comply in all material respects with this Agreement and the Supplemental Materials.

3.2.3 During the term of this Agreement, Company will make commercially reasonable efforts to operate the Website in accordance with this Agreement and the Supplemental Materials.

3.2.4 Company will use commercially reasonable efforts to create, launch, and operate the Website so as to achieve mTLD's stated goals of: (a) optimizing the mobile experience by providing a predictable, consistent user experience; (b) providing the mobile community with new features and services; and (c) strengthening user loyalty and goodwill toward the .mobi top level domain.

3.2.5 Company's unexcused failure to create, launch, or operate the Website in accordance with material terms of this Agreement, including without limitation, Schedule 3.2.1 and Schedule 3.3.1, shall constitute a material breach of its obligations hereunder.

Section 3.3 Promotion of Website Developed Using Premium Name.

3.3.1 Company agrees to use commercially reasonable efforts to promote the Premium Name and the Website in accordance with Schedule 3.3.1 hereto.

3.3.2 Company and mTLD shall cooperate in good faith and on reasonable commercial terms to design and implement joint marketing initiatives to promote the Premium Name, the Website, and the .mobi TLD.

ARTICLE 4 *Representations and Disclaimer of Warranties*

Section 4.1 Authority to Contract. mTLD and Company both represent to the other that it has full authority to enter into this Agreement and perform its terms.

Section 4.2 Disclaimer of Warranties by mTLD.

4.2.1 WITH RESPECT TO THE SUBJECT MATTER HEREOF, MTL D EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. MTL D MAKES NO WARRANTY THAT THE PREMIUM NAME, WEBSITE, THIS AGREEMENT, AND/OR SERVICE(S) REFERENCED HEREIN, WHETHER OR NOT COMPANY REGISTERS THE PREMIUM NAME, WILL MEET COMPANY'S REQUIREMENTS, OR THAT THE SERVICE(S) AND/OR ACCESS TO AND USE OF THE PREMIUM NAME OR WEBSITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES MTL D MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE(S), THE WEBSITE, AND/OR THE PREMIUM NAME OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE DOTMOBI SITE. COMPANY UNDERSTANDS AND AGREES THAT ANY MATERIAL AND/OR DATA OBTAINED THROUGH THE USE OF THE DOTMOBI SITE IS DONE AT COMPANY'S SOLE DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA.

4.2.2 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY COMPANY FROM MTL D OR THROUGH THE DOTMOBI SITE SHALL CREATE ANY WARRANTY BY MTL D NOT EXPRESSLY MADE HEREIN.

4.2.3 TO THE EXTENT JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO COMPANY.

Section 4.3 Notice of Potential Violation of Third Party Rights.

4.3.1 Company acknowledges and agrees that mTLD makes no representations or warranties of any kind in connection with the RFP, this Agreement, the Supplemental Materials, the Premium Name, and/or the Website and specifically makes no guarantee to Company against the possibility of: (i) Objection to, or challenge of, the Registration or use of the Premium Name or operation of the Website by third parties; (ii) selection and/or Registration of a similar domain name by another applicant in the RFP process or a third party in any other context; and/or (iii) Registration and/or use of a similar domain name by another applicant in the RFP process or a third party in any other context in a manner that might compete with or cause confusion with respect to Company's Registration and/or use of the Premium Name, or its creation, launch, or operation of the Website.

4.3.2 mTLD cannot and does not check to see whether the Premium Name (or any use Company may make of the Premium Name) infringes the legal rights of others nor can it or does it check to see whether another domain name (or the use of another domain name by another applicant or a third party in any context) infringes the legal rights of Company.

/DRAFT SUBJECT TO MTL D'S CHANGE AND FINAL APPROVAL/

4.3.3 Company acknowledges that it is Company's responsibility to investigate its legal rights and the legal rights of others with respect to the Premium Name and the Website. Company acknowledges and agrees that it is exclusively liable for any infringement resulting from its Registration or use of the Premium name and/or relating to the Premium Name, the Website, and any content on the Website.

4.3.4 Company acknowledges and agrees that it is exclusively liable for any claims of infringement arising out of or relating to the Registration or use of the Premium Name and/or the creation, launch or operation of the Website.

Section 4.4 Disclaimer of Warranties by Company. WITH RESPECT TO THE SUBJECT MATTER HEREOF, EXCEPT AS SET FORTH IN THIS AGREEMENT, COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNLESS OTHERWISE SET FORTH IN THIS AGREEMENT (IF AT ALL), COMPANY MAKES NO WARRANTY THAT THE WEBSITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE.

ARTICLE 5 *Liability Disclaimer*

Section 5.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES RESULTING FROM OR RELATING TO THIS AGREEMENT OR RESULTING FROM ANY DATA, INFORMATION, OR SERVICES OBTAINED OR TRANSACTIONS ENTERED INTO THROUGH OR ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA, OR OTHER INTANGIBLES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOR SHALL mTLD BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES.

Section 5.2 WITHOUT LIMITING THE FOREGOING, mTLD EXPRESSLY DISCLAIMS ANY LIABILITY RESULTING FROM: THE CONDUCT OF OR PARTICIPATION IN THE RFP PROCESS; ITS CONSIDERATION OF PROPOSALS AND/OR SELECTION OR FAILURE TO SELECT ANY APPLICATION FOR A PREMIUM NAME, DATA NON-DELIVERY OR MIS-DELIVERY BETWEEN COMPANY AND mTLD; UNLESS EXPRESSLY OTHERWISE SET FORTH IN THIS AGREEMENT (IF ANY), PROCESSING, REGISTRATION, AND/OR LOSS OF REGISTRATION OF A PREMIUM NAME USE OF THE PREMIUM NAME AND/OR THE WEBSITE; DISPUTES OVER DOMAIN NAME REGISTRATIONS, INCLUDING THE DECISION OF ANY DISPUTE RESOLUTION PROCEEDING; EXCEPT AS SET FORTH IN SECTION 3.1.1. ABOVE, ERRORS, OMISSIONS, OR MISSTATEMENTS NOT MADE IN BAD FAITH; AND/OR EVENTS BEYOND mTLD'S CONTROL (*I.E.*, ACTS OF GOD).

Section 5.3 IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER OR ANY THIRD PARTY IN CONNECTION WITH OR ARISING FROM THIS AGREEMENT EXCEED THE AMOUNT OF FEES COMPANY HAS PAID TO MTL D PURSUANT TO THIS AGREEMENT.

/DRAFT SUBJECT TO MTLTLD'S CHANGE AND FINAL APPROVAL/

Section 5.4 IF ANY STATE OR JURISDICTION DOES NOT PERMIT THE ELIMINATION OR LIMITATION OF CERTAIN TYPES OF LIABILITY, THE APPLICABLE PARTY'S LIABILITY SHALL BE LIMITED TO THE SMALLEST AMOUNT PERMITTED BY LAW.

ARTICLE 6 *Indemnification*

Section 6.1 Company shall release, defend, indemnify, and hold harmless to the maximum extent permitted by law mTLD, and its directors, officers, employees, affiliates, contractors, and agents from and against any and all third party claims, and all damages, liabilities, costs and expenses, including reasonable legal fees and expenses, incurred in connection with such third party claims, arising out of or relating to (i) Company's breach of this Agreement, and/or Company's Registration and/or use of the Premium Name and/or the Website, other than disputes arising from the RFP process (except to the extent such disputes arise in connection claims regarding Company's rights in the Premium Name and/or the Website), and (ii) any dispute concerning Company's rights in and/or use of the Premium Name and/or the Website, other than disputes arising from the RFP process (except to the extent such disputes arise in connection claims regarding Company's rights in the Premium Name and/or the Website). This indemnification obligation shall survive the termination or expiration of this Agreement and the End-User Registration Agreement between Company and a Registrar for the Premium Name. This indemnification is in addition to any indemnification required under the UDRP.

Section 6.2 Company agrees that if mTLD is notified that a complaint has been filed with a governmental, administrative, or judicial body regarding the Premium Name, mTLD, in its sole discretion, may take whatever action it deems necessary regarding further modification, assignment of and/or control of the Premium Name deemed necessary to comply with the actions or requirements of the governmental, administrative, or judicial body until such time as the dispute is settled. In this event, Company agrees to hold mTLD harmless for any action taken by mTLD.

ARTICLE 7 *Termination and Modification*

Section 7.1 **Premium Name Registration.**

7.1.1 To the extent that it deems necessary, in its reasonable discretion, mTLD immediately upon written notice to Company may suspend Company's Registration of the Premium Name or operation of the Website: (i) to protect the integrity and stability of the Registry, the domain name system, and/or the Internet, such as in the case where the failure to suspend Company's Registration of the Premium Name or the operation of the Website is reasonably likely to cause the malfunction of, or other material adverse effect with respect to, the Registry, the domain name system and/or the Internet; (ii) to comply with all applicable laws, regulations, government rules or requirements, any requests of law enforcement, and/or to take any actions in compliance with any dispute resolution process; (iii) to avoid any liability, civil or criminal, on the part of the Registry as well as its affiliates, subsidiaries, officers, directors, representatives, employees, and stockholders; or (iv) to comply with the terms of its agreement with ICANN, any ICANN policy or procedure, or any Registrar or registry procedure not inconsistent with an ICANN-adopted policy; or (v) subject to the limitations in Section 3.1 above, to correct mistakes made by the Registry or any Registrar in connection with a Premium

/DRAFT SUBJECT TO MTL D'S CHANGE AND FINAL APPROVAL/

Name Registration such as registration of the incorrect domain name. In the event mTLD suspends Company's Registration of the Premium Name or operation of the Website pursuant to this Section 7.1.1, mTLD shall thereafter negotiate in good faith with Company to modify this Agreement to resolve the issues giving rise to the suspension. If the Parties are unable to negotiate within ninety (90) days a modification that resolves these issues in a manner that is reasonably acceptable to mTLD, mTLD may cancel, transfer, or modify Company's Registration of the Premium Name or operation of the Website immediately upon written notice to Company. In the event mTLD suspends, cancels, transfers, or modifies Company's Registration of the Premium Name pursuant to this section, Company agrees that, unless expressly stated otherwise herein, mTLD is not obligated to refund any fees previously paid by Company.

7.1.2 mTLD may suspend, cancel, transfer, or modify Company's Registration of the Premium Name in the event this Agreement is suspended or terminated pursuant to Section 7.2 below. In the event mTLD suspends, cancels, transfers, or modifies Company's Registration of the Premium Name pursuant to this section, Company agrees that, unless expressly stated otherwise herein, mTLD is not obligated to refund any fees previously paid by Company.

7.1.3 mTLD reserves the right to suspend the Registration of a Premium Name and/or operation of the Website pending the resolution of any dispute between Company and a third party regarding the Premium Name or the Website, provided that such right shall not be exercised in an arbitrary or capricious manner and shall be exercised only in connection with a third party's claim with respect to the Premium Name or the Website.

Section 7.2 Termination of the Agreement.

7.2.1 Each Party shall have the right to terminate this Agreement upon written notice to the other Party in the event the other Party: (i) materially breaches this Agreement and does not cure such breach within thirty (30) days of written notice by the non-breaching Party; or (ii) materially breaches this Agreement five (5) or more separate times (irrespective of whether such material breaches were cured) during any period of twelve (12) consecutive months. Material breaches by Company shall include, but not be limited to, the failure of Company to develop and maintain the Website in all material respects in accordance with this Agreement and the Supplemental Materials. In the event mTLD terminates this Agreement pursuant to this section, Company agrees that mTLD is not obligated to refund any fees previously paid by Company. In the event Company terminates the Agreement pursuant to this Section 7.2.1 within thirteen (13) months of the Effective Date, mTLD shall refund the Initial Award Fee to Company.

7.2.2 This Agreement shall terminate immediately upon the permanent cancellation or expiration of Company's Registration of the Premium Name. Notwithstanding the foregoing this Agreement shall not terminate if: (a) the Parties agree otherwise in writing; (b) Company's Registration is temporarily suspended in accordance with the provisions of this Agreement; or (c) mTLD transfers the Registration Code and/or the Registration for the Premium Name to any person or entity other than Company, or changes the Registration Code, in either case other than in compliance with a court order or decision of an ICANN-recognized dispute resolution process. In the event this Agreement terminates pursuant to this section, Company agrees that mTLD is not obligated to refund any fees previously paid by Company.

/DRAFT SUBJECT TO MTL D'S CHANGE AND FINAL APPROVAL/

7.2.3 Notwithstanding the foregoing, each Party is not precluded from seeking any other remedy available to it under this Agreement or applicable law including seeking any available remedy from an arbitrator pursuant to Section 8.1 below.

Section 7.3 Modification of the Agreement.

7.3.1 Modification by mTLD.

7.3.1.1 Company acknowledges that the domain name system and the practice of registering and administering domain names are evolving, and therefore, Company agrees that mTLD shall have the right, in its reasonable discretion, to modify or amend the terms and conditions of this Agreement, including any incorporated documents or mTLD policies, from time to time, provided that (i) such modifications and amendments are required by ICANN, (ii) such modification and amendments are reasonably appropriate in connection with changes in the domain name system and/or the registration and administration of domain names and (iii) such right is exercised by mTLD in good faith. Company agrees that any modification or amendment to this Agreement by mTLD shall not require Company's or mTLD's signature or inclusion of a signature page to be deemed effective. Any modification or amendment shall be binding and effective immediately upon Company's receipt of written notification in accordance with the terms hereof that contains the entire text of such modification and amendment.

7.3.1.2 If Company does not agree to be bound by any such modification or amendment, Company's sole remedy is to terminate this Agreement and cancel Company's Registration of the Premium Name(s). If Company chooses to elect this remedy, it must provide mTLD with notice of Company's intention to terminate this Agreement within sixty (60) days after Company's receipt of written notice of such modification or amendment, and Company's termination shall be effective upon mTLD's receipt of such notice. Company hereby acknowledges and agrees that mTLD is not obligated to refund any fees paid by Company in the event Company terminates pursuant to this Section 7.3.1.2.

7.3.1.3 In the event notice of termination from Company is not received by mTLD within sixty (60) days of receipt of written notice from mTLD, Company will be deemed to have agreed to the modification or amendment.

7.3.2 Modification by Company. Company may request reasonable modifications or amendments to this Agreement, and mTLD agrees to negotiate in good faith any requested modifications or amendments. Notwithstanding the foregoing, mTLD is not bound to accept any such proposed modification or amendment.

ARTICLE 8 *Dispute Resolution*

Section 8.1 Arbitration. Any difference, controversy or claim (whether based on contract, tort, statute, or any other legal basis) arising out of or relating to this Agreement (including, without limitation, the formation, existence, validity, enforceability, performance, expiration, or termination of this Agreement or the arbitration provision herein) or the products and services supplied by either party to this Agreement including any application for provisional or protective relief shall be finally, confidentially, and individually resolved by arbitration by three (3) arbitrators in accordance with the Rules of Arbitration then in effect of the International Court of Arbitration of the International Chamber of Commerce, or its successor; provided that

/DRAFT SUBJECT TO MTLTD'S CHANGE AND FINAL APPROVAL/

this Agreement shall control if there is a conflict between it and the Rules. The seat of the arbitration shall be a mutually agreed location in the Commonwealth of Virginia, USA, or such other location mutually agreed upon by the parties. The language of the arbitration shall be English, and all documentation, testimony, or other materials submitted to the arbitrators shall be in the English language.

Section 8.2 UDRP. Company agrees to be bound by ICANN's Uniform Domain Dispute Resolution Policy ("UDRP"), as modified or amended from time to time, with respect to its Registration of the Premium Name and/or its creation, launch, or operation of the Website. The UDRP sets forth the terms and conditions in connection with a dispute between a domain name registrant and any other party other than the registry operator or registrar over the registration and use of a domain name registered by the registrant. The UDRP is incorporated herein and made part of this Agreement by reference. The current version of the UDRP may be found at ICANN's web site: www.ICANN.org.

ARTICLE 9 *Additional Terms*

Section 9.1 Choice of Law and Forum. This Agreement, its terms and conditions, and the relationship between Company and mTLD shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, USA, excluding its conflict of laws rules. Any action arising out of or related to this Agreement must be filed in the courts of the Commonwealth of Virginia. For any disputes arising under or related to this Agreement, the parties agree to the exclusive subject matter jurisdiction, personal jurisdiction, and venue of the courts of the Commonwealth of Virginia. **THE PARTIES AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING THAT TAKES PLACE RELATING TO OR ARISING OUT OF THIS AGREEMENT.**

Section 9.2 No Waiver. mTLD's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by mTLD in writing.

Section 9.3 Severability. The terms of this Agreement are severable. If any term or provision is declared invalid or unenforceable, that term or provision will be construed consistent with applicable law as nearly as possible to reflect the original intentions of the parties, and the remaining terms and provisions will remain in full force and effect.

Section 9.4 Notices. All notices to be given to either party under or in relation to this Agreement shall be given either (1) in writing at the address set forth below or (2) by facsimile or electronic mail as provided below.

mTLD Ltd [dotMobi]
11 Exchange Place
IFSC
Dublin 1
Ireland
Email: legal@mtld.mobi
Phone: + 353.1.854.1100
Fax: +353.1.791.8569
Attention: Caroline Greer

/DRAFT SUBJECT TO MTLTLD'S CHANGE AND FINAL APPROVAL/

Company:

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORIZED REPRESENTATIVES.

MOBILE TOP LEVEL DOMAIN LTD

BY: _____
[Name]
[Title]

Date: _____

Company:

BY: _____
[Name]
[Title]

Date: _____

Schedules to be attached:

Schedule 1.2: Initial Award Fee and related business terms

Schedule 1.3: Renewal Award Fee and related business terms

Schedule 3.2.1: Website Development Schedule

Schedule 3.3.1: Promotion Schedule

/DRAFT SUBJECT TO MTL D'S CHANGE AND FINAL APPROVAL/

SCHEDULE 1.2

Initial Award Fee and Related Business Terms

/DRAFT SUBJECT TO MTL D'S CHANGE AND FINAL APPROVAL/

SCHEDULE 1.3

Renewal Award Fee and Related Business Terms

/DRAFT SUBJECT TO MTL D'S CHANGE AND FINAL APPROVAL/

SCHEDULE 3.2.1

Website Development Schedule

/DRAFT SUBJECT TO MTL D'S CHANGE AND FINAL APPROVAL/

SCHEDULE 3.3.1

Promotion Schedule