**Digicel**
papua new guinea

**THIS ELECTunes LICENSE AGREEMENT** (the "**Agreement**") is entered into on the _____ day of _____ ("**Effective Date**") by and between:

|  |  | **Territory** |
|---|---|---|
| **Digicel** | **DIGICEL (PNG) LIMITED** whose principal place of business is Section 494, Allotments 1 & 2, Digicel Head Office, Kennedy Road, Hohola, National Capital District, Papua New Guinea | **Papua New Guinea** |
| **Client** | <NAME OF CANDIDATE>……………………………..…… *where address is at* …………………………………….... |  |

## Recitals

A      DIGICEL is an entity operating in the Territory and engaged in selling Caller Ring Back Tones and related products and services.

B      Client owns certain content that is suitable to be used as Caller Ring Back Tones and herewith to be referred to as ELECTunes.

Client Initials _____

Digicel Initials _____

C        Client wishes to grant DIGICEL a non-exclusive license to use or exploit the content on the terms of this Agreement.

## Details

These Details form part of this Agreement. The parties agree to give effect to these Details and the General Terms shall be construed accordingly.

| | | |
|---|---|---|
| 1. | **License** | See Schedule 1. |
| 2. | **License** | Non-exclusive license to use or exploit the Licensed Content as Caller Ring Back tones in perpetuity in digital or other formats. |
| 3. | **Licensor** | Client |
| 4. | **Licensee** | Digicel in the Territory |
| 5. | **Term (clause 3)** | From the Effective Date until June 20, 2017 (23:59:59 hrs).. |
| 6. | **Effective Date** | From the date of payment of the Consideration specified under Item 8 of these terms or ELECTunes will be available during the official campaign period which start on April 20, 2017 (00:00:00hrs), whichever is later. |
| 7. | **Survival** | The License granted under this Agreement survives its termination or expiry provided that Digicel<br>    (a) cease selling Caller Ring Back Tones using any Licensed Content:<br>    (b) delate all of the Content stored in the memory of its computer equipment (e.g. platform, server) for Caller Ring Back Tones. |
| 8. | **Consideration** | The Licensor / Client will pay Digicel K11,000 (VAT inclusive) to get access to the Caller Ring Back Tone platform and opportunity to offer their ELECTunes to Digicel's end users.<br><br>The Licensor will waive their rights to claim any royalties for their ELECTunes and any revenues from such charged for the operation of the Caller Ring Back Tone, charged at any rate as determined by Digicel may be kept by Digicel. |
| 9. | **Payment** | See Clause 4 |
| 10. | **Jurisdiction** | Papua New Guinea |
| 11. | **Notice (clause 7)** | **To Digicel:**<br>**Addressee:** David Mba<br>**Address:** Digicel Office, Kennedy Road, Gordon's Industrial, Port Moresby, PNG<br>**Telephone:** 72222222<br>**Fax:**<br>**Email:** david.mba@digicelgroup.com<br><br>**To Client:**<br>**Addressee:** _____<br>**Address:** _____<br>**Telephone:** _____<br>**Fax:** _____<br>**Email:** _____ |

Client Initials _____

Digicel Initials _____

## General Terms

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties agree as follows:

**1.    DEFINITIONS**

1.1    In this Agreement, words and expressions shall have the meaning ascribed to them below:

1.1.1    "**Affiliate**" means in relation to a party ("**first person**"), means a person ("**second person**") who directly or indirectly

(A)    controls the first person;

(B)    is controlled by the first person: or

(C)    is together with the first person under the common control of a third person.

1.1.2    "**Electoral Candidate Content**" means (i) the musical works (i.e., songs, lyrics) embodied in the

Licensed Content and (ii) artist's name(s), trademarks, trade names, likenesses, photographs, biographical materials, artwork, liner notes, and other graphical or textual material;

1.1.3    "**Business Day**" in relation to a place means a day when a bank is open for business in that place;

1.1.4    "**Client**" means the person described as such in the table setting out the parties to this Agreement at the top of this document.

1.1.5    "**Confidential Information**" means information that:

(A)    is by its nature confidential;

(B)    is treated by each party as confidential; or

(C)    each party knows or ought to know is confidential,

except information that:

(D)    is or becomes public knowledge otherwise than by breach of this Agreement; or

(E)    has been independently acquired or developed by a party to this Agreement.

1.1.6    "**Content**" means the Poltical Candidate Content and Licensed Content;

1.1.7    "**Licensed Content**" refers to all pieces of music from Poltical Candidates in the Schedule 1 (as may be added from time to time by mutual written agreement of the parties);

1.1.8    "**Licensee**" – see Item  4 of the Details.

1.1.9    "**Licensor**" – see Item  3 of the Details.

1.1.10    "**DIGICEL** " means each of the entities described as a DIGICEL entity in the table setting

out the parties to this Agreement at the top of this document.

1.1.11 "**Territory**" in relation to a DIGICEL entity, is the country specified next to that DIGICEL entity in the table setting out the parties to this Agreement at the top of this document.

1.2 Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

**2. LICENSE**

2.1 Client grants DIGICEL a right to use or exploit (including by sub-licensing the use or exploitation of) the Licensed Content including any portion thereof to be replayed as Caller Ring Back Tones – all of which must be approved by Digicel and may at Digicel's discretion be denied.

2.2 Client grants DIGICEL and Operators a right to prepare and encode the Content including any portion thereof, in any format (e.g., wav, MP3, etc.) and by any means, now known or hereafter devised.

2.3 Client understands that this Caller Ring Back Tone can only be utilized by Digicel's customers on Digicel's network and cannot be reproduced on any other network by the Client.

2.4 Client agrees that all Content or any portion thereof is downloadable by mobile phone users in the network and other platform integration operation area lawfully owned and operated by DIGICEL.

2.5 Client grants DIGICEL and Operators a right to use the Content, including any portion thereof for promoting the Caller Ring Back Tones business by any means, now known or hereafter devised.

2.6 Digicel will not promote any ELECTunes to its customer base. The Candidate will be responsible for promoting their own ELECTunes to his/her supporters/constituents.

2.7 Client agrees not to assert any privacy, publicity, moral or similar rights held by Client in the Content (and any other person(s) whose rights are embodied in the Content) under the laws of any Territory in connection with the exploitation of such materials by DIGICEL in that Territory.

2.8 Client shall at all times retain all right, title and interest in and to the Content provided hereunder, including, without limitation, the copyrights therein and thereto.

2.9 Parties agree that all rights granted hereunder are exclusive to Digicel for the entirety of the Campaign period / Term.

2.10 Parties agree that the rights granted hereunder are granted throughout the world.

**3. TERM**

3.1 The term of this Agreement is as stated in Item 5 of the Details.

3.2

**4. PAYMENT**

4.1 Initial payment of PGK11, 000(GST inclusive) must be made in advance of any launch of ELECTunes.

Client Initials _____

Digicel Initials _____

## 5. Tax

5.1 A party making a **taxable supply** (being a supply of goods or services that is subject to consumption or value added tax) under this Agreement shall be entitled to bill the recipient of the taxable supply for any consumption or value added tax correctly chargeable in respect of the taxable supply. The supplier will provide a valid tax invoice to support any consumption tax or value added tax chargeable.

5.2 All sums to be paid under this Agreement shall be paid after deducting applicable withholding tax, if any, as required by any applicable legislation or regulation. To the extent withholding tax is deducted by a party, a receipt from the tax authority to whom the tax was paid confirming the amount and date of payment of the withholding tax must be provided to the party receiving payment at the earliest opportunity.

## 6. TERMINATION AND SUSPENSION

6.1 Any party may terminate this Agreement at its own discretion during the term of this Agreement if the other party dissolves, closes, becomes bankrupt, reorganizes or, is liquidated.

6.2 Any party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to remedy the breach within five (5) calendar days after receipt of a written notice requesting it to do so.

6.3 DIGICEL may suspend this Agreement immediately by email notice ("**Suspension Notice**") if DIGICEL reasonably believes that Client is in breach of this Agreement (including any warranty); that the Content may be in breach of any law, regulation, policy or direction in the Territory; or is not likely to perform its obligations under this Agreement (including but not limited to payment).

## 7. NOTICE

7.1 Any notice, demand, consent or other communication ("**Notice**") given under this Agreement:

7.1.1 must be in writing and signed by a person duly authorised by the sender;

7.1.2 must be delivered to the intended recipient by any of:

(A) hand deliver;

(B) registered or certified mail, postage prepaid;

(C) national courier service; and

(D) email or fax followed by confirmation of receipt by telephone;

to the address, email address, telephone number or fax number:

(E) last notified by the intended recipient to the sender; or

(F) in Item 11 of the Details;

7.1.3 will be taken to be duly given or made:

(A) when delivered in person;

(B) five (5) Business Days following dispatch by registered or certified mail, postage prepaid;

(C) one (1) Business Day following dispatch by overnight delivery via a national

Client Initials _____

Digicel Initials _____

courier service; or

(D)     on confirmation by telephone that the Notice has been received by its intended recipient by email or fax.

7.2     If the result under clause  7.1 is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time), it is taken as given or made at the start of business on the next Business Day in that place.

**8.     CONFIDENTIALITY**

8.1     The obligations under this clause  8 continue indefinitely.

8.2     Confidential Information belongs to a party ("**owner**") if that information is:

8.2.1     received from the owner in confidence or in circumstances indicating it is confidential; or

8.2.2     about or otherwise concerns the owner and is received from another source:

8.2.3     in confidence or in circumstances indicating it is confidential; or

8.2.4     in breach of confidentiality obligations (not necessarily a breach of this Agreement).

8.3     Confidential Information may belong to two or more parties. If so, nothing in this Agreement prevents owner from using that Confidential Information for its own legitimate purposes provided the information remains confidential.

8.4     **Prohibition on disclosure**:

8.4.1     A party must not disclose the other party's Confidential Information to any person except:

(A)     to its employees, legal and financial advisers, and subcontractors who have a genuine need to receive such Confidential Information, and provided those persons first agree to observe the confidentiality of the information;

(B)     with the other party's prior written consent;

(C)     to the extent required by Law, any stock exchange or any regulatory authority; or

(D)     if the information is in the public domain.

8.4.2     Each recipient of Confidential Information must:

(A)     ensure at all times that each employee, legal and financial adviser, and subcontractor to whom the Confidential Information has been disclosed under this clause keeps that Confidential Information secure;

(B)     establish and maintain rigorous security measures to safeguard the Confidential Information disclosed to it; and

(C)     Promptly notify the other party of a suspected or actual unauthorized use, copying or disclosure of the Confidential Information.

8.5     **Restriction on use**: A party receiving or obtaining Confidential Information may use it only for the purposes contemplated in this Agreement or authorised by the owner.

**9.** **ASSIGNMENT**

9.1     Neither party shall transfer, assign (including via any direct or indirect change of control), or dispose of a part or the whole of this Agreement without the prior written consent of the other party, which must not be unreasonably withheld.

**10.** **DISPUTE RESOLUTION**

10.1     The parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Therefore, except for an action seeking a temporary restraining order or an injunction relating to the subject matter of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use these dispute resolution procedures as the sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach ("**Dispute**").

10.2     The party invoking these dispute resolution procedures ("**disputing party**") shall send written notice of the Dispute to each other party (each a "**receiving party**"). The notice shall contain all relevant details including the nature and extent of the Dispute. Upon receipt of the notice, each party must appoint at least one senior representative, who must, within five (5) Business Days from the date the receiving party received the notice of the dispute, meet with each other, and attempt to resolve the Dispute.

10.3     Following notice under clause  10.2, the parties shall consult in good faith to try to resolve the Dispute. If agreement is not reached within 14 days from the date of the meeting, the Dispute may be escalated by either party under clause  10.4.

10.4     If the Dispute is not resolved under clause  10.3, the Dispute will be escalated to each of the parties' respective Chief Executive Officers or the Chief Executive Officer's nominee, who must then meet and attempt to resolve the Dispute within 7 days.

/

10.5     Any information or documents disclosed by a party under this clause  10:

10.5.1   must be kept confidential;

10.5.2   may only be used to attempt to resolve the Dispute; and

10.5.3   must not be used as evidence in court proceedings arising out of this Agreement.

10.6     In any Dispute, both parties must:

10.6.1   unless otherwise provided herein, continue to perform their respective obligations under this Agreement; and

10.6.2   not, whether by act or omission, impede or otherwise interfere with a party's endeavors to remedy any event which gave rise to the Dispute.

10.7     The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this Agreement. Each party is free to apply to the court for urgent interlocutory relief.

**11.** **MISCELLANEOUS**

11.1     Client's sole remedy for a breach of this Agreement by DIGICEL shall be an action at law for money damages, if any. Client hereby waive any right to, or to seek, injunctive or other equitable relief in connection with any breach or alleged breach of this Agreement.

Client Initials _____

Digicel Initials _____

11.2    Client represents that it has carefully read this Agreement and its Schedules, that Client understand its contents, and that Client has had an opportunity to seek independent legal advice with respect to the review and advisability of entering into this Agreement.

11.3    This Agreement is subject to the provisions set out is Schedule 2.

11.4    **Counterpart**

This Agreement may be executed in any number of counterparts (including facsimile copies or image) and any/all such counterparts shall constitute the one and same binding and enforceable Agreement between the parties provided that this Agreement will be of no force and effect until the counterparts are exchanged

11.5    **Further action**

Each party must use reasonable efforts to do all things necessary or desirable to give full effect to this Agreement and its subject matter.

11.6    **Continuing performance**

The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performing this Agreement.

11.7    Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.

11.8    **Continuing indemnity**

Any indemnity agreed by any party under this Agreement:

11.8.1    constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and

11.8.2    survives and continues after performance of this Agreement.

11.9    **Entire agreement**

This Agreement replaces any existing arrangement between the parties in respect of its subject matter and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

11.10    **Alteration**

This Agreement may only be altered in writing signed by the authorised signatories of each party.

11.11    **Severability**

Part or all of any provisions of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement remain in force.

11.12    **Waiver**

Waiver of any provision of or right under this Agreement must be in writing signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver. A failure to enforce a right under this Agreement is not a waiver of that right.

11.13    **Governing law**

This Agreement is governed by the law applicable in the Territory excluding its conflict

provisions and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

11.14 **Warranties of a corporate entity**

If a party is a corporate entity, the party warrants that it:

11.14.1 is duly incorporated and validly exists under the Law of its place of incorporation;

11.14.2 has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform or cause to be performed its obligations under this Agreement and each transaction contemplated by this Agreement to be performed by that party;

11.14.3 is not insolvent and no receiver has been appointed over any part of its assets and no such appointment has been threatened; and

11.14.4 is not in liquidation and no proceedings have been brought or threatened for the purpose of winding up that party.

11.15 **Costs**

Each party is responsible for its own legal and other costs incurred in relation to the negotiation and signing of this Agreement.

11.16 **Relationship as independent contractors**

The relationship between the parties is solely that of independent contractors. Neither party, nor their respective employees, agents or representatives, has any right, power or authority to create any obligation, express or implied, on behalf of the other party.

11.17 This Agreement binds each party's legal personal representatives, successors and assigns.

| | |
|---|---|
| **THE COMMON SEAL** of **DIGICEL** | ) |
| **(PNG) LIMITED** is affixed in accordance | ) |
| with its Constitution before its authorized | ) |
| signatories | ) |

……………………………………              ……………………………………
**Shivan Bhargava**                          **Andrew Kidu**
**Managing Director**                        **Legal & Regulatory Senior Counsel**

| | |
|---|---|
| …………………………………………………… | ) |
| **Signed by the client** in my presence and I | ) |
| verily believe the signatory understood the | ) |
| contents and effect of this Agreement. | ) |
| | ) |
| | ) |

**Dated this _____ of _____,
20_____.**

……………………………………
**Commissioner for Oaths**

**SCHEDULE 1 – LICENSED CONTENT**

Welcome Greeting script which Digicel provides and which cannot be changed once provided. Such Greeting Script shall read somewhat akin to the following sample:

> *""Hello this is Joe Blow, I am a Candidate for Timbaktu!* **(Message 1)**. *Thank you for calling my friend…your call will be answered shortly….meanwhile, stay safe and please vote for me in the coming elections* **(message 2)**. *Thank you. Please continue to hold until my friend answers your call."*

The green highlighted areas are:-

| | |
|---|---|
| Campaign Message 1 | 3 second duration and will include the name and the position/area that is being aspired for |
| Campaign Message 2 | 3 second long and will only include the Candidate's call to Action e.g. "please vote for me" |

- The script highlighted in blue are to be strictly followed and must not be changed.
- Digicel will not promote any ELECTunes to its Customer base. The candidate will be responsible for promoting their own ELECTUNES to his or her supporters and constituents.
- The Licensor will waive their rights to claim any royalties for their ELECTunes.
- When a customer opts out of the ELECTunes, their Caller Ring Back Tone will revert back to what they had prior to Subscribing to ELECTunes.

**SCHEDULE 2 – WARRANTY AND LIMITATION OF LIABILITY**

**A.    LICENSE WARRANTY**

A1.    Client represent and warrant to Digicel that: (a) the Content is Client's own original work, and contains no sampled material; (b) Client has full right and power to enter into and perform this Agreement, and has secured all third party consents necessary to enter into this Agreement; (c) the Content does not and will not infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights, rights of publicity or privacy, or moral rights; (d) the Content does not and will not violate any law, statute, ordinance or regulation; (e) the Content is not and will not be defamatory, trade libelous, pornographic or obscene; (f) the Content does not and will not contain any viruses or other programming routines that detrimentally interfere with computer systems or data; and (g) all factual assertions that Client have made and will make to DIGICEL are true and complete.

A2.    Client shall be responsible for all licensing, reporting and payment obligations of any kind to third parties in connection with the Content, including but not limited to any applicable union and/or guild payments, "sample" or "replay" licenses or payments, and mechanical, synchronization or public performance royalties.

A3.    Client hereby warrants (if applicable) that it has the legal right to execute this Agreement on behalf of all members of the group and guarantee each member of the group's performance of the terms of this Agreement

A4.    Client agrees to indemnify and hold Digicel, Operators and their respective customers harmless from any and all damages and costs, including reasonable attorney's fees, arising out of or related to Client's breach of the representations and warranties described in this paragraph A. This indemnity survives termination or expiry of this Agreement.

Client Initials _____

Digicel Initials _____

**B.** **LIMITATION OF LIABILITY**

B1. To the maximum extent permitted by applicable law, in no event will DIGICEL and/or Operators be liable to Client or to any third party for any indirect, incidental, special, or consequential, exemplary or punitive loss or damage (including but not limited to, damages for lost profits, lost revenues, loss of goodwill, loss of data, loss of anticipated savings, loss of customers, interference with business or cost of purchasing replacement services) arising out of the performance or failure to perform under the terms of this agreement, whether or not caused by the acts or omissions or negligence of DIGICEL and/or Operators or their respective employees or agents, regardless of the foreseeability thereof and regardless of whether DIGICEL and/or Operators has been informed of the possibility or likelihood of such damages.

B2. Subject to paragraph B1, DIGICEL  maximum aggregate liability in any twelve (12) month period arising out of or in connection with this Agreement, or any collateral contract, whether in contract, tort or otherwise (including liability for negligence or breach of statutory duty), shall be limited to damages equal to twelve (12) times the aggregate amount paid by DIGICEL to Client under the terms of the Agreement during the month proceeding the claim or in the event that this is unascertainable five hundred USD dollars (US$500).

Client Initials _____

Digicel Initials _____

Client Initials _____

Digicel Initials _____