

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made on Wednesday 11th July, 2007

BETWEEN: **MOBILE MESSENGER AUSTRALIA PTY LTD ACN 113 948 959** of Level 1/225 Miller Street, North Sydney, New South Wales, 2060 ("**Company**")

AND: **John Raciti of 27 Hughes Ave, Mascot NSW 2020** ("**Employee**")

RECITALS

- A. The Company operates the Business.
- B. The Company has agreed to employ the Employee, and the Employee has agreed to serve the Company in the Position on the terms and conditions set out in this document.

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this document, unless contrary to or inconsistent with the context:

"**Body Corporate**" means a body corporate as defined in Division 1 of Part 1.2 of the Corporations Act, 2001.

"**Business**" means the Company's business of providing billing software, billing services and/or the delivery of mobile device content and related advertising and web page design to anyone (either wholesale or retail) utilising, facilitating or promoting the delivery of mobile device content to a mobile device;

"**Business Day**" means the day on which trading banks are open for business in Sydney, but does not include a Saturday, Sunday or public holiday.

"**Business Hours**" means 8.30 am until 5.30 pm on a Business Day.

"**Commencement Date**" means the date set out in item 2 of the Schedule.

"**Company**" includes a Related Body Corporate and a Subsidiary.

"**Confidential Information**" means all the information, whether original or copy in electronic or material form including documentary technical information, know how, ideas, concepts, technology, processes, industrial knowledge, statements, formula, trade secrets, drawings and data concerning the business operations, intellectual property, finance, customers, markets, suppliers and transactions of the Company or a Subsidiary but does not include information which:

- (a) is in or comes into the public domain otherwise than through a breach of obligation of confidentiality by the person to whom it is disclosed; or
- (b) was already in the possession of the person to whom it is disclosed before the commencement of that person's employment with the Company.

"**Duties**" mean the duties set out in clause 5 or other duties that the Company may assign from time to time.

"Intellectual Property" means all present and future copyright, registered and unregistered trademark, patent, design or circuit layout rights and other intellectual or industrial property rights arising from statute, under common law or in equity, affecting, relating to or capable of being used or adapted for use in the Business.

"Inventions" means a discovery, invention, secret process or improvement in procedure, affecting, relating to or capable of being used or adapted for use in the Business.

"Position" means the position in which the Employee is engaged by the Company under this document and set out in item 1 of the Schedule.

"Related Body Corporate" means a related body corporate as defined in Division 1 of Part 1.2 of the Corporations Act, 2001.

"Remuneration Package" means the annual cost to the Company of all benefits paid to the Employee that are related to the employment of the Employee under this document. This will include, unless otherwise agreed in writing:

- (a) gross salary paid to the Employee; and
- (b) superannuation contributions by the Company required by statute;

"Schedule" means the schedules to this document.

"Subsidiary" means a subsidiary as defined in Division 1 of Part 1.2 of the Corporations Act 2001.

1.2 Interpretation

In this document, the following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes every other gender;
- (c) a reference to a party or person includes a reference to that party or person, its successors, substitutes (including, but not limited to, a party or person taking by novation), executors, administrators and assigns;
- (d) a reference to a thing or matter is a reference to the whole and a part of it;
- (e) the word "person" includes a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (f) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a government agency;
- (g) a reference to a group of persons or parties is a reference to two or more of them jointly and to each of them individually;
- (h) a covenant, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (i) a covenant, representation or warranty on the part of two or more persons binds them jointly and severally;
- (j) a reference to this document or another document includes a variation, novation or replacement of or supplement to them from time to time;

- (k) a reference to a part, clause, annexure, exhibit, appendix or schedule is a reference to a part of, clause of, an annexure, exhibit, appendix or schedule to this document and a reference to this document includes an annexure, exhibit, appendix and schedule;
- (l) where a clause contains sub-clauses, paragraphs or sub-paragraphs, each sub-clause, paragraph and sub-paragraph however called will be read and construed separately and independently of each other;
- (m) a reference to a document includes, without limitation, a deed or agreement in writing, certificate, or notice;
- (n) "writing" and related expressions include all means of reproducing words in a tangible and permanently visible form;
- (o) headings are for guidance only and do not affect interpretation;
- (p) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws made or issued under that statute;
- (q) any agreement, undertaking, acknowledgment, condition or other term made or given by the Employee is deemed to be a covenant by the Employee in favour of and for the benefit of the Company;
- (r) a reference to a "month" or "monthly" means a calendar month or calendar monthly respectively; and
- (s) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document.

2. EMPLOYMENT OF THE EMPLOYEE

2.1 Appointment

Subject to earlier termination in accordance with this document, the Company agrees to employ the Employee and the Employee agrees to serve the Company in the Position from the Commencement Date.

2.2 Continuity

The parties accept that the nature of the Employee's role and levels of responsibility may be varied by the Company throughout the Employee's appointment. It is agreed that regardless of a variation, by negotiation or otherwise, the terms of this document will continue to apply to the Employee, unless otherwise agreed in writing.

3. PROBATION PERIOD

- (a) The probation period detailed in item 3 of the Schedule outlines the Employee's initial employment probation term.
- (b) At or before the end of the probation period, the Company must review the Employee's performance and the Company must advise the Employee if the Employee's employment is confirmed. Upon confirmation such future employment will be governed by the terms of this agreement, as amended from time to time.

- (c) During the probation period both the Company and the Employee may terminate this agreement by the giving of 1 weeks notice to the other party.

4. EMPLOYEE'S RESPONSIBILITIES

4.1 The Employee will:

- (a) assume and exercise the powers and perform the duties from time to time vested in or assigned to the Employee by the Company and will in all respects comply with the directions and regulations given or made by the Company; and
- (b) well and faithfully serve the Company and use the Employee's best endeavours to promote the interests and welfare of the Company.

4.2 Unless absent or on leave as provided in this document or through illness or involuntary injury, the Employee will devote the whole of the Employee's time and attention during Business Hours and at other times as may be reasonably necessary, to the Business.

4.3 Except where the Employee owns shares in publicly listed companies or has interests in organisations which are not in competition with the Company and do not prevent the Employee from properly performing the Duties under this Document, the Employee will not be engaged or concerned or interested in another business or occupation whatever without the prior written consent of the Company.

4.4 The Employee must not accept payment or other benefit in money or kind from a person as an inducement or reward for an act or omission, or in connection with a matter or business transacted by or on behalf of the Company.

5. DUTIES OF EMPLOYEE

5.1 Specific Duties

The Employee must perform the duties specified in item 4 of the Schedule.

5.2 General Duties

In addition to the specific duties detailed in item 4 of the Schedule, the Employee must perform duties the Company requires the Employee to perform from time to time. In the performance of the Duties under this document the Employee must:

- (a) act with professional skill with a view to promoting, advancing and improving the Business;
- (b) observe directions as the Company may, from time to time, give the Employee;
- (c) serve the Company faithfully and diligently exercising all due care;
- (d) act at all times in the Company's best interests;
- (e) refrain from acting, or being seen to act, in conflict with the Company's best interests;
- (f) use his/hers best endeavours to protect and promote the Company's reputation;
- (g) to the best of his/hers abilities and knowledge, perform the duties assigned to him/her from time to time;
- (h) act in accordance with a professional standard of ethics;

- (i) comply with all legislation impacting upon the Employee's employment with the Company;
- (j) at all times (during and subsequent to the employment) comply with the Company's:
 - (i) policy and guidelines; and
 - (ii) code of conduct,as varied from time to time; and
- (k) subject to the policies and directions of the Company, act on his/hers own responsibility and initiative and exercise the powers as may be granted to him/her by the Company.

6. REMUNERATION PACKAGE

6.1 Remuneration Package

- (a) In consideration of the Duties to be performed by the Employee under this document, and subject to the Employee at all times being ready, willing and able to perform all of the Duties provided by this document the Company will make available to the Employee:
 - (i) the Remuneration Package detailed in item 5 of the Schedule; and
 - (ii) any other benefits appearing in this document.
- (b) The Company and the Employee agree that the components of the Remuneration Package are as detailed in item 6 of the Schedule.
- (c) Remuneration payments are fortnightly - being one week in arrears and one week in advance. The Company must give at least one months notice should payment procedures change.
- (d) In addition to the Remuneration Package, the Employee may, in the discretion of the Company, be issued with options to acquire shares in the Company on the terms set out in the Company's employee option scheme (if any). The number of options (if any) will be determined by the Company and communicated to the Employee within the period ending 12 months after the Commencement Date.

6.2 Superannuation

The Company will pay the superannuation contributions relating to the Employee into the superannuation scheme appearing in item 7 of the Schedule unless an alternative fund is nominated. The superannuation contributions in item 6 of the Schedule include the compulsory superannuation contributions in accordance with the applicable legislation.

7. EXPENSES

- 7.1 The Company agrees to reimburse the Employee for all pre-approved expenses reasonably and necessarily incurred by the Employee in the performance of the Duties provided that these expenses meet the company's agreed policy.
- 7.2 It is a condition precedent to the entitlement of the Employee to reimbursement of expenses that the Employee provides the Company with evidence of the payment and incurring of the expenses as the Company reasonably requires.

8. PERFORMANCE REVIEWS

The performance of the Employee will be subject to formal to 2 performance reviews by the Company each year. The Company will set the performance criteria and make an assessment of the performance of the Employee based on the performance criteria.

9. LEAVE ENTITLEMENTS

9.1 Annual Leave

- (a) The Employee is entitled to take 20 days paid annual leave in respect of each completed year of service, such leave accruing throughout the Employee's employment.
- (b) The period or periods of annual leave must be approved by the Company and leave that remains untaken will accrue from one year to the next up to a maximum period of 8 weeks.
- (c) The Company may require the Employee to take accrued annual leave (or leave without pay if the Employee does not have any accrued annual leave) at any time, particularly but not limited to, during the Christmas period.

9.2 Personal Leave

- (a) The Employee is entitled to 10 days personal leave per year where the Employee, or a person for whom the Employee is a carer, is incapacitated by virtue of personal illness, accident or injury and cannot work.
- (b) Personal leave not taken in a year will accrue and be carried over to the following year.
- (c) The Employee is not entitled to payment for unused personal leave on termination or expiration of this document.
- (d) The Employee must produce a medical certificate from a qualified medical practitioner evidencing the incapacity of the Employee, or the person for whom the Employee was a carer, in respect of each day's personal leave for the employee to be paid during periods of personal leave.

9.3 Long Service Leave

The Company must allow the Employee to take long service leave in accordance with the Long Service Leave Act 1955.

10. CONFIDENTIALITY

- 10.1 Any Confidential Information of the Company or a Related Body Corporate gained by the Employee whether during or before this document, must be kept secret and confidential and must not be used directly or indirectly otherwise than for the purposes of the Business.
- 10.2 Without the consent of the Company, the Employee must not infringe a restriction or obligation of non-disclosure relating to trade secrets or other Confidential Information contained in an agreement between the Company or Related Body Corporate and a third party.

11. NOTES AND MEMORANDA

- 11.1 The Employee agrees not to use or permit to be used, notes or memoranda relating to a matter within the scope of the Business or concerning the Company's dealings or affairs, otherwise than for the benefit of the Company.

11.2 The Employee acknowledges that notes or memoranda of the type referred to in clause 11.1 are the absolute property of the Company and must be left at the Company's offices, or at whatever place the Company may direct, upon the termination of the Employee's employment under this document.

12. INVENTIONS AND INTELLECTUAL PROPERTY

12.1 The Employee agrees to immediately disclose to the Company Inventions or Intellectual Property made or discovered by the Employee during the term of this document which are connected with or affect, relate to or are capable of being used or adapted for use in or in connection with the Business or the business of a Related Body Corporate.

12.2 The Employee acknowledges that:

- (a) the Inventions and Intellectual Property referred to in clause 12.1 are the absolute property of the Company or a person nominated by it for that purpose;
- (b) the Employee must assign absolutely all rights in those Inventions and Intellectual Property to the Company or its nominee; and
- (c) at the expense of the Company, the Employee must do an act or thing which the Company may require, either during the term of this document or after its termination, to protect the Company or its nominee's rights in those Inventions and Intellectual Property, throughout the world.

12.3 The Employee irrevocably appoints the Company to be the Employee's attorney and to sign a document or do any thing and generally to use the Employee's name to give to the Company or to its nominee the full benefit of this clause. The Employee acknowledges that a certificate in writing, signed by a director or secretary of the Company that a document or act falls within the authority conferred by this clause, will be conclusive evidence of that fact.

13. RESTRAINT

- (a) The Employee acknowledges that he/she has been placed in a position with the Company whereby he/she will have personal contact and establish relationships with suppliers, customers, clients and persons in the habit of dealing with the Company, and that these contacts and relationships form part of the goodwill of the Company which is of great value to the Company.
- (b) The Employee warrants and covenants that during his/hers employment with the Company except as contemplated in this document, he/she will not solicit or exploit or engage in business with, or prepare for soliciting or exploiting or engaging in business in the future, with competitors, suppliers, customers or clients of the Company or persons otherwise who have dealt with or who are in the habit of dealing with the Company.
- (c) For the periods set out in item 8 of the Schedule from the date of the termination of the Employee's employment and within the areas set out in item 9 of the Schedule, the Employee must not, either directly or indirectly as principal, agent, employee, contractor, officer or shareholder, in competition with the Business:
 - (i) without prior written consent of the Company, canvass, solicit or compete for the custom of or exploit or engage in business with a person, firm or corporation who or which at any time during the 12 months preceding the termination of the Employee's employment with the Company, was a customer (other than a retail customer) or client of the Company or who purchased or supplied goods or services from or to the Company;

- (ii) without the written consent of the Company either directly or indirectly in any capacity carry on, be associated with, consult to, or be employed, engaged or interested in or with a person, firm or corporation which competes with the Company in connection with the Company's Business.
- (d) For clause 13(c), the periods in item 8 of the Schedule and the regions in item 9 of the Schedule will be construed and have effect as if they are a number of separate paragraphs which result from combining clause 13(c) of this clause with each subparagraph of item 8 of the Schedule and combining each combination with each subparagraph of item 9 of the Schedule. Each resulting paragraph is severable from each other resulting paragraph. The Employee acknowledges that he/she intends that each paragraph be binding upon him/her.
- (e) Each restraint, covenant and combination of restraint and covenant contained in this clause is regarded by the parties as separate, distinct and severable so that the unenforceability of a restraint or covenant or combination of a restraint or covenant will in no way affect the enforceability of the other restraints or covenants.
- (f) The Employee acknowledges that:
 - (i) he/she has had the opportunity to seek legal advice regarding this clause and the effect of the non-competition covenants in this clause;
 - (ii) he/she believes that the covenants in respect of restraint of trade contained in this clause are fair and reasonable;
 - (iii) he/she has sufficient business skills and experience to obtain employment after ceasing employment with the Company which employment would not breach the non-competition covenants in this clause; and
 - (iv) the Company is relying upon these acknowledgments in entering into this document.

14. COMMON LAW DUTIES

Nothing in this document will be construed to limit the Employee's duties to the Company implied at common law or duties imposed on the Employee under the Corporations Act, 2001.

15. TERMINATION OF EMPLOYMENT

15.1 Notice

Subject to clauses 3 and 15.2, either party may terminate the employment of the Employee under this document by giving 4 weeks notice in writing, or payment in lieu of notice or a combination of both or a lesser period as agreed in writing by the parties.

15.2 Termination without Notice

The Company may terminate the employment of the Employee forthwith without notice on the happening of any of the following events:

- (a) if the Employee becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) if the Employee is declared bankrupt or enters into a composition or arrangement with or for the benefit of his/hers creditors or institutes proceedings for liquidation of his/hers affairs;
- (c) if the Employee commits a material breach of this document;

- (d) if the Employee is convicted of a criminal offence in a court of law during this document and if in the opinion of the Company the offence impairs the Employee's ability to effectively discharge his/hers duties under this document;
- (e) if the Employee is guilty of:
 - (i) any wilful breach or continued neglect of the terms of this document;
 - (ii) misconduct involving the dishonesty or the lack of good faith on the part of the Employee;
 - (iii) intoxication, theft, sexual harassment, racial discrimination;
 - (iv) defamation of the Company; or
 - (v) gross incompetence.
- (f) if the Company become aware that anything you have told the Company before employment commenced regarding previous employment or work experience is untrue.

15.3 Payment on Termination

Where the Company terminates the employment of the Employee in accordance with clause 15.2, no further payments of salary, benefits or bonuses will be paid by the Company except for:

- (a) unpaid salary accrued to the date of termination;
- (b) accrued annual leave;
- (c) bonuses which are due and payable to the Employee as at the date of termination.

15.4 No Compensation

In the event of termination of employment or the expiry of the term of this document, the Employee will not be entitled to compensation other than as specifically provided for in this document.

15.5 Payments to the Company

Without prejudice to the Company's rights at law to recover a debt owing to it by the Employee, in the event of termination of employment the Company may offset from the Employee's final pay all debts owing to the Company by the Employee.

16. RECONSTRUCTION OF COMPANY

If, before the termination of this document, the employment of the Employee under this document ceases because of the liquidation of the Company for reconstruction or amalgamation and the Employee is offered employment with another company or concern resulting from that reconstruction or amalgamation on terms and conditions as favourable as this document, then the Employee will have no claim against the Company in respect of a failure to fulfil this document.

17. SURVIVAL OF OBLIGATIONS

The obligations of the Employee contained in this document which are intended to survive its termination, will continue in force for the benefit of the Company.

18. NOTICES

18.1 Any notice to be given to one party by the other under this document:

- (a) must be in legible writing and in English addressed as follows:
 - (i) if to the Company:
Address: Level 1, 225 Miller Street, North Sydney NSW 2060
Attention: Human Resources Manager
Facsimile: +61 2 9900 3602
 - (ii) if to the Employee, to the address and facsimile number described in item 10 of the Schedule,or as specified to the sender by a party by notice;
- (b) must be sent to the recipient by personal or courier hand delivery, by prepaid ordinary post or by facsimile;
- (c) is regarded as being given by the sender and received by the recipient:
 - (i) if by delivery in person, when delivered to the recipient;
 - (ii) if by post, three Business Days from and including the date of postage; or
 - (iii) if by facsimile transmission, whether or not legibly received, when the machine from which the facsimile is sent generates a transmission report confirming that all pages of the notice have been sent to the recipient's facsimile number; and
- (d) may be relied upon by the recipient and the recipient is not liable to the other party for consequences of that reliance if the recipient reasonably believes the notice to be genuine, correct and authorised by the sender.

18.2 A facsimile transmission is regarded as legible unless the recipient telephones the sender within two hours after the transmission is received or taken to be received and informs the sender that it is not legible.

18.3 If a notice is received by facsimile on a day which is not a Business Day or after 5.00 pm on a Business Day, that notice is regarded as received at 9.00 am on the following Business Day.

19. RELATIONSHIP OF THE PARTIES

The parties acknowledge that this document is intended as a contract of service and to create the relationship of employer and employee and not another relationship and, in particular, not the relationship of principal and contractor or the relationship of partnership.

20. VARIATION

Any variation of this document must be in writing signed by the parties.

21. GOVERNING LAW AND JURISDICTION

This document is governed by the laws of New South Wales and both parties submit to the exclusive jurisdiction of the courts of that State.

22. PROHIBITION AND ENFORCEABILITY

- 22.1 Any provision, or the application of a provision, of this document that is prohibited in a jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 22.2 Any provision, or the application of a provision, of this document which is void, illegal or unenforceable in a jurisdiction does not affect the validity, legality or enforceability of that provision in another jurisdiction or of the remaining provisions in that or another jurisdiction.

23. WAIVERS

- 23.1 Waiver of a breach or of a right of election arising from a breach of this document must be in writing and signed by the party granting the waiver.
- 23.2 A breach or a right of election arising from a breach of this document is not waived by a failure to or delay in the exercise, or partial exercise, of that right of election or another right.

24. ENTIRE AGREEMENT

This document contains the entire agreement and is in substitution of all previous agreements of service between the Company and the Employee which are deemed to have been terminated by mutual consent from the date on which this document commences.

SCHEDULE

John Raciti

1. Position: User Interface Designer
2. Commencement Date: Monday 16th July, 2007
3. Probation Period: 3 months
4. Duties: Refer to Position Description
5. Remuneration Package: \$70,850.00
6. Components of the Remuneration Package:
 - Base Salary: \$65,000.00
 - Superannuation: \$ 5,850.00
7. Name of Superannuation Fund: Asgard Employee Superannuation (default)
8. Period of Restraint:
 - (1) 12 months
 - (2) 6 months
 - (3) 3 months
9. Geography of Restraint:
 - (1) Australia
 - (2) New South Wales
 - (3) Sydney
10. Notices to Employee:
 - Address: 27 Hughes Ave, Mascot NSW 2020

EMPLOYEE AGREEMENT

DATED: Wednesday 11th July, 2007

BETWEEN

MOBILE MESSENGER AUSTRALIA PTY LTD
ACN 113 948 959
(Company)

AND

John Raciti
(Employee)

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