

BUSINESS DEVELOPMENT AGREEMENT

This Business Development Agreement ("**Agreement**") is effective on the date when signed by the last party ("**Commencement Date**") and is made between:

Openet Telecom Sales Limited, whose principal place of business is at 6 Beckett Way, Park West Business Park, Dublin 12, Ireland ("**Openet**")

- and -

[OTHER PARTY NAME], whose principal place of business is at **[Other Party Address]** ("**Partner**").

1. This Agreement is intended to define the scope of the cooperation between Openet and Partner solely with respect to a particular business opportunity. The details of those cooperative activities of each party ("**Activities**") and the details of the particular business opportunity(s) ("**Business Opportunity**") and of the relevant customer(s) ("**Customer**") are set out in Schedule A hereto.
2. Each party agrees to perform its respective Activities at its own cost unless otherwise agreed in writing by the parties hereto. Notwithstanding the aforesaid Openet shall where appropriate pay to Partner the Business Development Fee (as defined in Schedule A) in accordance with the provisions of Clause 3. Partner has no authority (whether continuing or otherwise) to negotiate or to negotiate and conclude terms for the supply of Openet's software or services.
3. Openet shall pay Partner the Business Development Fee if Partner has properly performed its Activities (as set out in Schedule A) and if the Customer has executed a software licence agreement and professional services agreement directly with Openet for the supply of Openet's software and relevant professional services. Openet shall make such payment in accordance with the Payment Terms and Protocol as set out in Schedule A. For the avoidance of doubt, if the licence or services agreements are terminated by the Customer, for reasons due to no fault of Openet, all payments shall be recoverable.
4. This Agreement shall immediately terminate upon the occurrence of any one of the following:
 - (a) either party is removed or otherwise excluded from the Business Opportunity by the Customer; or
 - (b) The Customer instructs either party not to work with the other party in respect of the Business Opportunity.
 - (c) If the Opportunity is not converted to a sale of Openet software and services after 4 months from the Commencement Date of this Agreement.

5. Either party ("the Initiating Party") may forthwith terminate this Agreement at any time:

- (a) on giving written notice to the other party if that other party commits any material breach of this Agreement other than to the extent that such breach is due to a material breach of this Agreement by the Initiating Party and, in the case of a breach that is reasonably capable of being remedied shall have failed, within thirty (30) days of such notice from the Initiating Party, to so remedy the breach to the reasonable satisfaction of the Initiating Party (such notice to contain a request to remedy the breach and to contain a warning of the Initiating Party's intention to terminate); or
- (b) if the other party shall have a receiver or administrative receiver appointed over it or any of its undertaking or assets or shall pass a resolution for winding up or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on its business.

6. Confidential Information

- (a) During the term of this Agreement each party may disclose certain Confidential Information to the other party. For the purpose of this Agreement the "Confidential Information" shall mean, in particular but without limitation, any of the following, whether disclosed orally or in writing, learned through observation or examination of any documents, licenses, contracts, books, records, data, software, source codes, specification, data-sheets, or products of Openet; or learned through observation or examination of Openet's offices, processes, procedures or technology, including, any Openet Software or otherwise learned in any manner except as set forth in Clause 7 hereof: any and all confidential matters, including, without limitation, technical know-how, software, drawings, diagrams, trade secrets, technical data, analyses, concepts, technical processes, formula, specifications, inventions, suppliers, customers, employees, consultants, corporate status, business activities, pricing policies, operational methods, customer information, financial information, sales information, marketing information and other business affairs, analyses, studies, software and other documents and deliverables and any other information, which ought reasonably be considered confidential to the disclosing party.
- (b) The parties will make reasonable efforts to identify orally or in writing, specific information or materials which they considers confidential. To the extent practical, the parties shall furnish Confidential Information in documentary or tangible form marked as "Confidential". If disclosure of Confidential Information is unmarked or in non-documentary form (e.g. disclosed orally or by visual inspection) the disclosing party shall have the right to confirm in writing the fact and the general nature of such disclosure within 30 days after such disclosure is made; nonetheless the failure to do so shall not relieve the receiving party of its obligation to protect the same where circumstances of the disclosure and the nature of the information or materials otherwise gave the receiving party reason to know of the confidential nature of such information or materials.
- (c) The parties undertakes that for a period of five years from the date of disclosure, notwithstanding the earlier expiry or termination of this Agreement it will treat the Confidential Information with the same degree of

care, but no less than a reasonable degree of care, as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices. All obligations regarding Confidential Information of whatsoever nature shall survive termination or expiration of Agreement for a period of five (5) years from Commencement Date. In case of any Confidential Information that constitutes a trade secret, all obligations shall remain in effect until such time as the information is no longer a trade secret. The parties shall disclose such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of this Agreement, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this clause.

7. The provisions of Clause 6 shall not apply to:

- (a) any information in the public domain otherwise than by breach of this Agreement;
- (b) information in the possession of the receiving party thereof before disclosure by the disclosing party, without wrongful act or breach of any legal obligation of the receiving party;
- (c) information obtained without restriction from a third party; and
- (d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority, provided that, to the extent allowed by law, the receiving party promptly notifies and consults with the disclosing party regarding such disclosure and takes all reasonable measures to minimize the extent of such disclosure.

8. Neither party may publicise its involvement with the other party under this Agreement unless the other party has given its prior written consent, such consent not to be unreasonably withheld or delayed, or unless it is required to do so by the law.

9. Warranties and Liability

- (a) Each party disclaims any and all representations and warranties, and excludes all warranties, representations or undertakings relating to performance including any other warranties that might otherwise be implied, such as those of satisfactory quality, merchantability, fitness for a particular or any purpose, or ability to achieve any particular result.
- (b) Each party will indemnify the other party for personal injury or death caused by the negligence of its employees in connection with the performance of their duties hereunder, or by defects in any product supplied pursuant to this Agreement.
- (c) In no event will either party be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of that party, whether such damages were reasonably foreseeable or actually foreseen.

- (d) Neither party shall be liable to the other for any losses whatsoever (whether lost future revenues, lost future profits, expenditure incurred to no benefit, or otherwise) suffered or incurred by the other party solely or substantially because this Agreement has been terminated.
 - (e) Openet hereby excludes all liability that it has not expressly assumed in this Agreement. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 9 Partner or Openet includes its employees, sub-contractors and suppliers.
 - (f) Except for Clause 9 (e) neither Openet nor Partner intends any third party to have the benefit of any provision of this Agreement.
10. Neither party shall have any right or authority to bind or obligate the other in any manner or make any representation or warranty on behalf of the other.
 11. Nothing in this Agreement shall be deemed to imply or create a partnership or joint venture between the parties or an agreement to share profits or losses arising out of work done in respect of the Activities and/or the Business Opportunity.
 12. This Agreement is under, and shall be construed according to the laws of the Republic of Ireland. Each party hereby irrevocably agrees that the courts of Republic of Ireland shall have exclusive jurisdiction to resolve any controversy or claim of whatever nature arising out of or relating to this Agreement or breach thereof, and that the laws of the Republic of Ireland shall govern such controversy or claim.
 13. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between the parties, both oral and written. The parties do not seek to avoid liability for fraudulent misrepresentation.
 14. The following clauses shall continue to be in effect after the termination or expiration of this Agreement: 6 - 15 inclusive.
 15. If any provision of this Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions of this Agreement shall not be affected thereby, and that the remainder of this Agreement shall remain valid and enforceable. The expiry of this Agreement or the termination thereof for whatever reasons shall be without prejudice to the respective rights and liabilities of either of the parties hereto accrued prior to such termination. This Agreement may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Openet and Partner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their duly authorised representatives on the dates set forth below:

Signed for and on behalf of **Openet**

Name: _____

Title: _____

Date: _____

Signed for and on behalf of **[OTHER
PARTY NAME]**

Name: _____

Title: _____

Date: _____

SCHEDULE A

Customer and Opportunity:

- (1) **Customer name:** [XXX TELCO]
Opportunity Project: [... *describe project and opportunity...*]
- (2) **Customer name:** [YYY TELCO]
Opportunity Project: [... *describe project and opportunity...*]

Activities:

Partner to assist Openet, at Openet's reasonable request, in Openet's sales and marketing activities in relation to the Business Opportunity with the Customer. These activities will include, but not be limited to:

- Engaging in the recommendation and promotion of Openet's software products to prospective customers
- Assist on arranging meetings and calls with customers
- Assisting and advising on bidding on customer opportunities
- Coordinating joint strategy, planning, and sales initiatives which are current and planned
- Conducting pre-analysis with the potential customer as part of the overall sales effort
- Engaging in joint marketing of Openet's software products to target markets and sales candidates.

Business Development Fee:

With respect to sales made within a 12 month period from the commencement date of this Agreement and only with respect to sales arising directly from commercial relationships enabled with the customer as a result of this Agreement, the fees shall be 5% of net receipts from invoices to Customer for Openet software licences. Payable in the currency marked on invoice to the Customer.

Payment Terms and Protocol:

Openet shall pay the Partner the fees due within seven (7) business days after receipt of payment from the Customer.