

## MOVILIZER PRODUCTS AND SERVICES TERMS AND CONDITIONS (Rev. 020915)

These Movilizer Products and Services Terms and Conditions ("Agreement") are between **Movilitas Consulting LLC** ("Movilitas") and Customer ("Customer"). By downloading, installing, accessing or using the Products and/or Services as described herein, Customer will be bound by the terms of this Agreement.

This Agreement and its Exhibits and the attachments thereto (if any), and the related statement of work ("SOW"), set forth the terms and conditions applicable to the following services and products to be provided by Movilitas to Customer:

**Movilizer Standard Applications**, subject to the Movilizer Standard Applications Order(s) agreed upon (if any); and/or

**Movilizer Service (SaaS)**, subject to Movilizer SaaS Order(s) agreed upon (if any).

(the Movilizer Standard Applications and the Movilizer Service may be referred to as the "**Products**" and "**Services**" respectively and collectively referred to as the "**Products and Services**").

### **PART A. Movilizer Standard Applications**

#### **1. Definitions**

The following capitalized terms, and any defined terms in the Agreement, shall apply to the Agreement and its Exhibits:

**Affiliate** means a corporation, partnership, or other entity, either directly or indirectly controlling or controlled by a Party.

**Documentation** means the documentation of the Movilizer Standard Applications delivered electronically (e.g. online download), including (a) a description of the Movilizer Service under normal circumstances, and (b) a technical description of such Mobile Apps.

**Mobile Device** means specific mobile phones, smart phones and personal digital assistants using a SIM card and a mobile phone number.

**Movilizer** means Movilizer GmbH.

**Movilizer Standard Applications** means mobile apps as defined in Section 2 of this Agreement.

**Movilizer Standard Applications Order** means an SOW mutually agreed upon between the Parties as defined in Section 2 of this Agreement.

#### **2. Movilizer Standard Applications**

This Agreement sets forth the terms and conditions applicable to the supply of mobile apps which are offered by Movilitas as Movilizer Standard Applications ("**Movilizer Standard Applications**") and to be provided by Movilitas to Customer, as defined and set forth in the SOW.

#### **3. Fees and Payment**

A. **Fees.** Customer will pay to Movilitas the fees in accordance with the SOW.

- B. **Invoices.** Movilitas will invoice Customer for the delivery of the Movilizer Standard Applications. Invoices will indicate the Movilizer Standard Applications delivered.

#### 4. ***Intellectual Property***

The Movilizer Standard Applications are licensed to Customer, not sold. Movilitas hereby grants to Customer a perpetual and worldwide non-exclusive license to use and copy the Movilizer Standard Applications. Customer will be free to make, have made, use, copy, modify, and translate the Movilizer Standard Applications.

#### 5. ***Warranties***

- A. **Performance.** Movilitas represents and warrants to Customer that, Movilitas will make commercially reasonable efforts to ensure that the Movilizer Standard Applications will conform and operate substantially in accordance with the Documentation issued by Movilitas, and be free from defects and any Malicious Code to the best of its knowledge; provided, that (i) the Movilizer Standard Applications are implemented and operated in accordance with all instructions supplied by Movilitas; (ii) Customer notifies Movilitas in writing of any defect within ten (10) business days after the appearance thereof; (iii) Customer has installed all updates, new versions, and new releases made available by Movilitas with respect to the Movilizer Standard Applications, and all updates recommended by Movilitas with respect to any third party software products that may materially affect the performance of the Movilizer Service on the Mobile Device; (iv) Customer has maintained all associated equipment, software and environmental conditions in accordance with applicable specifications and industry standards; (v) Customer has not introduced other equipment or software creating an adverse impact on the Movilizer Standard Applications; (vi) Customer has paid all undisputed amounts due hereunder and is not in default of any provision of this Agreement; and (vii) Customer has made no changes (nor permitted any changes to be made other than by or with the express approval of Movilitas) to the software delivered by Movilitas.

In the event of breach of the foregoing warranties with respect to any Movilizer Standard Applications, Movilitas will in a timely manner, repair or replace the affected Movilizer Standard Applications, and, if necessary, re-develop and re-supply the Movilizer Standard Applications, provided that Movilitas receives a written notice from Customer providing reasonable documentation to support the conclusion of the event of breach reasonably.

- B. **Non-infringement.** Movilitas represents and warrants to the best of its knowledge and belief that the Movilizer Standard Applications, when properly used as contemplated herein and in the applicable Movilizer Standard Applications Order, will not infringe or misappropriate any Intellectual Property Rights of third parties. Upon being notified of such a claim, Movilitas shall at its option: (i) defend through litigation or obtain through negotiation the right of Customer to continue using the Movilizer Standard Applications; (ii) rework the Movilizer Standard Applications so as to make it non-infringing while preserving the original functionality, or (iii) replace the Movilizer Standard Applications with functionally equivalent apps; or (iv) terminate the Agreement or the applicable order and Customer's access to the Movilizer Standard Applications and provide Customer with a refund of any pre-paid and unused fees as of the date of termination.

## **PART B. Movilizer Service (SaaS)**

### 1. ***Definitions***

The following capitalized terms, and any defined terms in the Agreement, shall apply to the Agreement and its exhibits:

**Affiliate** means a corporation, partnership, or other entity, either directly or indirectly controlling or controlled

by a Party.

**API** means application programming interface.

**Customer Data** means any data that Customer loads or enters into the Movilizer Service and all results from processing such data, including reply data, compilations and derivative works thereof.

**Documentation** means the documentation of the Movilizer Service delivered electronically (e.g. online download), including (a) a description of the Movilizer Service under normal circumstances, (b) the User Guide, and (c) a technical description of the API of the Movilizer WebService Connector.

**Force Majeure** means force majeure as defined in Section 3 (C) (ii) of this Part B of the Agreement.

**Generally Available** means that an upgrade, including an update, a new version and a new release, is released generally to commercial customers; limited beta and pre-release versions are not Generally Available.

**Intellectual Property** means all works, including literary works, pictorial, graphic and sculptural works, architectural works, works of visual art, and any other work that may be the subject matter of copyright protection; advertising and marketing concepts; information; data; formulas; designs; models; drawings; computer programs, including all documentation, related listings, design specifications, and flowcharts; trade secrets; and any inventions, including all processes, machines, manufactures and compositions of matter and any other invention that may be the subject matter of patent protection; and all statutory protection obtained or obtainable thereon.

**Malicious Code** means any cancelbots, back doors, easter eggs, time bombs, trap doors, trojan horses viruses, worms and other harmful or malicious code, files, scripts, agents or programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

**Mobile Device** means specific mobile phones, smart phones and personal digital assistants using a SIM card and a mobile phone number.

**Movilizer Client** means a Movilizer owned software package, which is installed by the Customer on the Mobile Devices; such software package is delivered as part of the Movilizer SaaS Service.

**Movilizer Cloud** means the Movilizer middleware, consistent of both, the Movilizer Software owned by Movilizer and the Movilizer Hardware, on which the Movilizer Software is installed, providing a mobile gateway operated by Movilizer.

**Movilizer Hardware** means one or more servers on which the Movilizer Software as part of the Movilizer Service is implemented and executed; such servers are operated by Movilizer and/or a third party.

**Movilizer Integrated Service** means a Movilizer Service as defined in Section 5 of this Part B of the Agreement.

**Movilizer SaaS Order** means an SOW mutually agreed upon between the Parties as defined in Section 2 (A) of this Part B of the Agreement.

**Movilizer Service** means all services defined and set forth in one or more Movilizer SaaS Order(s).

**Movilizer Standalone Service** means a Movilizer Service as defined in Section 4 of this Part B of the Agreement.

**Movilizer WebService Connector** means a Movilizer owned software package, which is installed by Customer in its backend system; such software package is delivered as part of the Movilizer Service, providing an API to execute a call to the Movilizer Cloud in order to send Customer Data to a mobile device.

**Subscription Period** means the period during which Customer may use the Movilizer Service in accordance with an agreed upon Movilizer SaaS Order, commencing with the start date and expiring on the end date specified in such order.

**WebService Call** means a web service call defined by the Movilizer Webservice Connector, and executed by the Customer and used to send Customer Data to the Movilizer Cloud as well as to collect the reply Customer Data from the Movilizer Cloud.

## **2. *Movilizer Service and Movilizer Service Level Agreement***

A. This Agreement sets forth the terms and conditions applicable to the supply of Movilizer Service defined and set forth in the SOW. Unless agreed upon otherwise in the Movilizer SaaS Order, the Movilizer Service provided to Customer may be used by Customer and its Affiliates only.

B.

## **3. *Movilizer Service – Software as a Service***

A. The Movilizer Service is provided by Movilitas to Customer on a “Software as a Service” basis only, and not sold to Customer. Customer may use the Movilizer Service provided by Movilitas in accordance with the terms and subject to the conditions of this Agreement and the applicable Movilizer SaaS Order only.

B. The Movilizer Service is defined, among other things, by the following functions:

- (i) Administrating and monitoring of Mobile Users by Customer.
- (ii) Sending and assigning Business Scenarios to Mobile Users through the Movilizer Cloud by Customer.
- (iii) Completing Business Scenarios by Mobile Users and re-sending the completed Business Scenarios to the Movilizer Cloud.
- (iv) Receiving Business Scenarios completed by Mobile Users, either by (i) assessing and/or downloading the completed Business Scenarios from the Movilizer Cloud through the Mobile App Admin Portal by Customer, or (ii) assessing and/or downloading the completed Business Scenarios from the Movilizer Cloud through the Webservice Call defined by the Movilizer Webservice Connector on a high frequency basis by Customer.

C. The Movilizer Service is defined, among other things, by the functional scope of the following components provided by Movilitas:

- (i) **The Movilizer Client.** The Movilizer Client is a frontend client, a software package to be installed by Customer on Mobile User’s Mobile Devices. Movilitas shall use commercially reasonable efforts to provide the Movilizer Client to Customer. Movilitas is not responsible for any set-up and implementation of the Movilizer Client, unless agreed upon otherwise.
- (ii) **The Movilizer Cloud.** The Movilizer Cloud provides a mobile gateway operated by Movilizer and accessible through both, the Movilizer Client and the Movilizer Portal. Movilitas shall use commercially reasonable efforts to make the Movilizer Cloud available and accessible 24 hours a day, 7 days a week, except for: (i) scheduled downtime, or (ii) any unavailability caused by circumstances beyond Movilitas' direct fault and reasonable control (“**Force Majeure**”), including without limitation, acts of God, acts of government, strikes, lockouts, riots, war, terrorism or other civil disturbance or unrest, earthquakes, weather, fires, flood, explosions, disruptions of communications and other essential services, labour stoppages or other labour

problems (other than those involving Movilitas' employees), computer viruses and malicious attacks or internet service provider failures or delays.

Movilitas will provide the Movilizer Cloud, i.e. the Movilizer middleware, consisting of both, the Movilizer Software owned by Movilitas and the Movilizer Hardware, on which the Movilizer Software is installed, providing a mobile gateway operated by Movilitas. Notwithstanding the foregoing, the Parties may agree on the provision of

- a Virtual Private Movilizer Cloud; and/or
- a Customer Inhouse Movilizer Cloud;

provided that any such agreement, to have any force or effect, first must be explicitly and conspicuously agreed upon and noted in the applicable Movilizer SaaS Order.

(iii) The **Movilizer Portal**. There are two (2) categories of Movilizer service access, as follows:

- **Mobile App Admin Portal**, in which case the Movilizer Services are considered as Movilizer standalone services ("**Movilizer Standalone Service**"), and
- (ii) **Customer's Backend Integration**, in which case the Movilizer Services are considered as Movilizer integrated services ("**Movilizer Integrated Service**").

D. Movilitas will issue two (2) types UserIDs:

- (i) the Administrative UserIDs means an identification issued by Movilitas to the Customer to access the Movilizer Cloud through the Movilizer Portal, and
- (ii) the UserIDs means an identification issued by Movilitas to the Customer to use the Movilizer Service in connection with Mobile Devices. The UserID may be issued automatically by sending an initial request out of Customer's Backend Portal to the Movilizer Cloud.

Each UserID will be linked to a defined mobile phone number. New UserIDs are issued automatically by sending out Customer Data to a Mobile Device for the very first time. The following mapping and 1:1 relation applies: One UserID = One mobile phone number.

The Customer is responsible for all activities occurring under all UserIDs issued.

E. The current technical features of the Movilizer Service are described in the **SOW**.

Customer acknowledges that

- (i) the Movilizer Service is:
  - neither a hosting service nor a hosted environment for Customer Data;
  - not designed and operated to store Customer Data; it is designed and operated as a mobility gateway only;
- (ii) the following services are not part of the Movilizer Service, unless agreed upon otherwise:
  - the data transfer between (a) the Customer's backend system and the Movilizer Cloud (if any), and (b) the Mobile Devices and the Movilizer Cloud,
  - any set-up and/or implementation of the Movilizer Client and/or the Movilizer Webservice Connector.

F. **Not Fault Tolerant.** The Movilizer Service is not fault tolerant and is not designed, manufactured or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of

nuclear facilities, aircraft navigation or communications systems, air traffic control, direct life support machines, or weapon systems, in which the failure of the service could lead to death, personal injury or physical or environmental damage. To the extent Customer uses the Movilizer Service in such environment, it expressly assumes all risk therefore.

#### **4. *Movilizer Standalone Service***

- A. The Movilizer Standalone Service is characterized by the use of the Mobile App Admin Portal, which is accessible through the internet (www.movilizer.com). Movilizer shall use commercially reasonable efforts to make the Mobile App Admin Portal available and accessible 24 hours a day, 7 days a week, except for: (i) scheduled downtime, or (ii) any unavailability caused by Force Majeure.
- B. The Mobile App Admin Portal may be used by Customer to:
- create Business Scenarios by using and adapting the available templates;
  - access and/or download reply data completed by Mobile Users (e.g. into Microsoft Excel).

#### **5. *Movilizer Integrated Service***

- A. The Movilizer Integrated Service is characterized by a connection of the Movilizer Cloud to the backend system of the Customer through WebService by a WebService Connector, a software package to be installed by Customer in Customer's backend system, unless otherwise agreed upon. The WebService includes APIs for:
- Sending and assigning Business Scenarios to the Mobile Users;
  - Receiving Business Scenarios completed by the Mobile Users; and
  - Monitoring the mobile landscape.
- B. The WebService Connector will either be provided by Movilizer or created by Customer:
- (i) Movilizer WebService Connectors provided by Movilizer. Customer may download from the Mobile App Admin Portal all of the available connectors (if any) and find the exact documentation for the installation. Each Movilizer WebService Connector always includes a generic connector that will allow the Customer's system to call the Movilizer Cloud and optionally a business connector which contains the Customer's scenario business logic.
- (ii) WebService Connectors created by Customer. Customer may create its own connectors by using the documentation on connectors provided by Movilizer through the Mobile App Admin Portal, provided that Customer's backend system is capable of doing WebService Calls.

#### **6. *Customer's Duties and Obligations***

- A. Customer shall use the Movilizer Service only in accordance with the Documentation and applicable laws and government regulations.
- B. Customer shall be responsible for Mobile Users' compliance with this Agreement, for the accuracy, quality, integrity and legality of Customer Data, and the transfer of data between (i) the Customer's backend system and the Movilizer Cloud (if any), and (ii) the Mobile Devices and the Movilizer Cloud.
- C. Customer shall ensure that Customer Data is in a proper format, as specified by the Documentation of the APIs of the Movilizer WebService Connector.

- D. Customer shall use commercially reasonable efforts to prevent any unauthorized access to or use of the Movilizer Service, and notify Movilitas promptly of any such unauthorized access or use.
- E. Customer shall not (i) use the Movilizer Service to store data, to store or transmit infringing, libellous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third-party privacy rights; (ii) use the Movilizer Services to store or transmit Malicious Code; (iii) intentionally interfere with or disrupt the integrity or performance of the Movilizer Service or third party data contained therein, and shall make reasonable efforts to ensure that no other software, data or equipment having an adverse impact on the Movilizer Service has been introduced in its backend systems; or (iv) attempt to gain unauthorized access to the Movilizer Service or to related systems or networks operated by Movilitas.

7. ***Movilizer Support Services***

- A. The Movilizer Support Service as provided by Movilitas as part of the Movilizer Service is defined as follows, and the following rights and obligations and responsibilities apply in respect of the Movilizer Support Service if the Movilizer Support Service is ordered by the Customer:

- (i) **Web & Hotline Support.** During the term of the applicable Movilizer SaaS Order, Customer's designated representative shall have access to Movilitas' technical support web site and may access call-in technical support as specified in the Service Level Agreement attached to the Movilizer SaaS Order.

If on-site support is not agreed upon explicitly in the Movilizer SaaS Order, on-site support will not be provided by Movilitas to Customer.

- (ii) **Updates.** During the term of the applicable Movilizer SaaS Order, Customer shall receive Generally Available updates (x.x.(x)); updates may include corrections of defects and/or fixes of any minor software bugs (also known as patches) as well as minor new content.
- (iii) **New Versions (Upgrades) and New Releases.** Unless otherwise agreed upon explicitly in the Movilizer SaaS Order, new versions (upgrades, x.(x).x) and new releases ((x).x.x) for the Movilizer SaaS Service, as designated by Movilitas in its discretion, do not form part of the Movilizer Support Services; new versions and new releases usually provide new software features (e.g. new functionalities).

However, Customer may order new versions and/or new releases in accordance with the current price lists of Movilitas.

Customer may request new functions and features for future versions and releases, but Movilitas has sole discretion on which new functions and features it will implement.

- (iv) **Training Service.** If training service is not agreed upon explicitly in the Movilizer SaaS Order, training service will not be provided by Movilitas to Customer. If training service is agreed upon, the Movilizer training service provided by Movilitas as part of the Movilizer Support Service is defined as follows:

Customer may attend any available online Movilitas training sessions in the use and operation of the Movilizer SaaS Service. Training sessions will be offered when updates, new versions, and new releases for the Movilizer SaaS Service are Generally Available. Movilitas will also make additional training available for various topic-specific items, as determined by Movilitas in its sole discretion.

- B. Movilitas shall not be obligated to provide any Web & Hotline Support if any of the following occurs:

- (i) The error was caused by hardware problems with Customer's backend system, hardware or software problems with the Mobile Devices (except software problems with the Movilizer Client, provided that such problems are not caused by changes in its code made by Customer), or any changes made by Customer to Movilizer WebService Connector software code, or due to any communication problems arising from Customer's firewall and/or restrictions on the Mobile Devices.
- (ii) The error results from an operator error, errors in Customer Data, software not supplied by Movilintas, or use that is not in accordance with the Documentation.
- (iii) The error is corrected by an upgrade, a new version or release of the Movilizer WebService Connector or Movilizer Client that Customer has failed to implement, provided Movilintas advised Customer via a notification e-mail that such upgrade, version or release corrected an error.
- (iv) The error was caused by defects within the service and under the control of the wireless provider and/or any other provider in charge of the data transfer (a) between the Customer's backend system and the Movilizer Cloud, and/or (b) between the Movilizer Cloud and a Mobile Device.

## 8. *Fees and Payment*

- A. Unless otherwise agreed in the applicable Movilizer SaaS Order, Customer will pay a monthly fee per UserID for the Movilizer SaaS Service. The fees are payable and due in accordance with the SOW. Unless otherwise agreed, the Parties will agree on a minimum amount of UserIDs per month in the Movilizer SaaS Order.

If the Customer exceeds within a month the minimum amount of UserIDs agreed upon, the fees for the supplementary used UserIDs will be invoiced by the next possible invoice. If the Customer falls below the minimum amount of UserIDs agreed upon, the fees for the unused UserIDs will not be credited.

- B. Movilintas reserves the right to suspend Movilizer Services for which undisputed payments remain unpaid thirty (30) days following notice of nonpayment and until paid.

## 9. *Reservation of Rights and Intellectual Property Rights*

- A. **Reservation of Rights.** Movilintas expressly reserves all rights in the Movilizer Service and its other services and software not specifically granted to Customer herein. It is acknowledged that all right, title and interest in Movilintas' Movilizer Service and its other services and software will remain with Movilintas (or third party suppliers, if applicable) and that the Movilizer Service is licensed to Customer and the Affiliates on a "Software as a Service" basis only and not sold to Customer.
- B. **Rights of Use.** Movilintas hereby grants during the term of any applicable Movilizer SaaS Orders to Customer the revocable, worldwide non-exclusive right to use (i) the Movilizer Client and the WebService Connectors provided by Movilintas for the purpose of using the Movilintas Services, and (ii) the Movilizer Service, in particular the service of the Movilizer Cloud. For the avoidance of doubt, Movilintas does not grant to Customer any rights in and to the Movilizer Hardware and/or the Movilizer Software.

## 10. *Warranties*

- A. **Performance.** Movilintas represents and warrants that during the term of any applicable Movilizer SaaS Orders it will make commercially reasonable efforts to ensure that



- (i) the Movilizer Service will conform and operate substantially in accordance with the Documentation issued by Movilitas, and
- (ii) the Movilizer Service will be free from defects and any Malicious Code (to the best of its knowledge); provided, that (a) the Movilizer Service is implemented and operated in accordance with all instructions supplied by Movilitas; (b) Customer notifies Movilitas in writing of any defect within ten (10) calendar days after the appearance thereof; (c) Customer has installed all updates, new versions, and new releases made available by Movilitas with respect to the Movilizer Service, and all updates recommended by Movilitas with respect to any third party software products that may materially affect the performance of the Movilizer Service on the Mobile Device; (d) Customer has maintained all associated equipment, software and environmental conditions in accordance with applicable specifications and industry standards; (e) Customer has not introduced other equipment or software creating an adverse impact on the Movilizer Service; (f) Customer has paid all undisputed amounts due hereunder and is not in default of any provision of this Agreement; (g) any legacy software with respect to which the Movilizer Service is to operate contains clearly defined interfaces and correct integration code, and (h) Customer has made no changes (nor permitted any changes to be made other than by or with the express approval of Movilitas) to the software delivered by Movilitas.

- B. **Non-infringement.** Movilitas represents and warrants to the best of its knowledge and belief that the Movilizer Service, when properly used as contemplated herein and in the applicable Movilizer SaaS Order, will not infringe or misappropriate any Intellectual Property Rights. Upon being notified of such a claim, Movilitas shall at its option: (i) defend through litigation or obtain through negotiation the right of Customer to continue using the Movilizer Service; (ii) rework the Movilizer Service so as to make it non-infringing while preserving the original functionality, or (iii) replace the Movilizer Service with functionally equivalent service; or (iv) terminate the Agreement or the applicable order and Customer's access to the Movilizer Service and provide Customer with a refund of any pre-paid and unused fees as of the date of termination.
- C. **Customer Data.** Customer represents and warrants that it owns or has all requisite rights to use the Customer Data with the Movilizer Service, and to authorize Movilitas and Movilizer to transfer Customer Data as contemplated herein, and that such use will not infringe or misappropriate any applicable laws and government regulations on data protection.

## ***11. Term and Termination***

- A. The term of the Movilizer SaaS Order will begin on the effective date set forth in the respective Movilizer SaaS Order and continue until it is terminated as set forth in the respective Movilizer SaaS Order, or by mutual agreement between the Parties.
- B. Customer is entitled to terminate a Movilizer SaaS Order for convenience with a written notice of thirty (30) calendar days from the end of each calendar month. Movilitas is entitled to terminate a Movilizer SaaS Order for convenience with a written notice of one hundred eighty (180) calendar days from the end of each calendar quarter.
- C. Either Party may, in addition to other relief, terminate a Movilizer SaaS Order for cause, if the other Party breaches any material provision hereof and fails within thirty (30) days after receipt of notice of default to correct such default or to commence corrective action reasonably acceptable to the aggrieved Party and proceed with due diligence to completion. Either Party may terminate a Movilizer SaaS Order for cause, if the other party becomes insolvent, makes and/or a petition in bankruptcy is filed with respect to the Party and is not dismissed within thirty (30) days.
- D. Expiration or termination of one or more Movilizer SaaS Order(s) shall neither affect this Agreement nor any other separate agreement between the Parties.

- E. Upon expiration or termination of any Movilizer SaaS Order(s), Movilitas shall make a final backup of any Customer Data, if requested by Customer, and provide the backup media to Customer at current cost of duplication.

## **PART C. General Terms**

Unless otherwise agreed in writing, the following applies:

### **1. Notices**

All notices, requests, demands or other communications to or upon the respective Parties hereto provided under this Agreement will be in writing or by email. All such notices, requests, demands or other communications will be delivered or mailed in writing to Movilitas to: Movilitas Consulting LLC, Attn: Legal Department, 10330 Old Columbia Road, Columbia, Maryland 21046, USA and to Customer to the address in Customer's purchase order. Either Party may designate a different contact address by notice to the other given in accordance with this Agreement.

### **2. Relationship of the Parties**

Movilitas will be an independent contractor, and not an agent, representative or joint venture partner of Customer. Nothing in this Agreement will be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the Parties for any purposes. The partners, employees, officers and agents of one Party, in the performance of this Agreement, will act only in the capacity of representatives of that Party and not as employees, officers or agents of the other Party and will not be deemed for any purpose to be employees of the other. Neither party will commit, nor be authorized to commit or bind, the other party in any manner.

### **3. Reservation of Modification and Subcontractors**

- A. **Reservation of Modification.** Movilitas hereby reserves the right to modify the products and services agreed upon or deviate from them on the basis of technical reasons only, provided that the products and/or the services will meet all service level agreed upon; if the agreement of the modification or deviation can reasonably not be expected of the Customer taking its interests into account, the Customer is entitled to termination by written notice to the effective date of the modification or deviation.
- B. **Subcontractors.** Movilitas reserves the right to use third parties (e.g. subcontractors) for the providing of any Product or Service to be provided under this Agreement, and Customer hereby consents to such use.

### **4. Fees and Payment**

- A. All fees agreed upon, and all fees listed in the price lists of Movilitas are quoted and shall be paid in US dollars, and are understood to be exclusive of applicable taxes. Customer undertakes to pay any applicable taxes, in particular all applicable statutory value-added taxes, except for taxes based on Movilitas' income.
- B. Invoices are payable by Customer in accordance with the SOW.

5. ***Indemnification, Liability and Disclaimers***

A. **Indemnification By Movilitas.** Subject to the limitations set forth in this Section 5, Movilitas will indemnify, defend and hold harmless Customer, its officers, directors, employees, representatives and agents, from all costs and expenses (including reasonable attorneys' fees and court costs) arising from a third party claim against Customer based on an actual:

- (i) Act or omission constituting gross negligence or willful misconduct, committed by Movilitas;
- (ii) Infringement by Movilitas of any United States patent, United States copyright, United States trademark, United States trade secret or other United States intellectual property right of third party or parties; OR
- (iii) Damage to, injury to, or death to person or property caused solely by the Products or Services.

**Data Backup.** Notwithstanding the foregoing, Customer is responsible for ensuring the routine backup of its data.

B. **Infringement Indemnification.**

- (i) Notwithstanding anything in this Section 5 or this Agreement (including any and all sections of this Agreement regarding warranties of non-infringement), Movilitas has no obligation with respect to any infringement or misappropriation claim based upon: (a) use of any Products or Services in combination with software or equipment not supplied by Movilitas if such claim would have been avoided by not combining such use; (b) modification of the Products or Services if such claim would have been avoided by making no such modifications; (c) continued use of the Products or Services after Movilitas has notified Customer or the applicable third party in writing that such claim would have been avoided by ceasing such use; or (d) the use of the Products or Services in violation of this Agreement, or in a manner for which it was not designed or contemplated, where such claim would have been avoided without such use.
- (ii) Upon being notified of such a claim, Movilitas shall at its option: (i) defend through litigation or obtain through negotiation the right of Customer to continue using the Products or Services; (ii) rework the Products or Services so as to make it non-infringing; or (iii) terminate the Agreement or applicable order and Customer's access to the applicable Products or Services and provide Customer with a refund of any pre-paid and unused fees as of the date of termination. This Section 5 states Customer's and any applicable third party's sole and exclusive remedies, and Movilitas' entire liability, for any and all infringement and misappropriation claims and actions.

C. **Indemnification By Customer.** Subject to the limitations set forth in this Section 5, Customer will indemnify, defend and hold harmless Movilitas from all costs and expenses (including reasonable attorneys' fees and court costs) arising from a third party claim against Movilitas based on an actual or alleged:

- (i) Act or omission constituting gross negligence or willful misconduct, committed by Customer;
- (ii) Failure by Customer to comply with applicable governmental laws and regulations;
- (iii) Infringement by Customer (or any property or data provided by Customer or end customers or distribution partners with the Products or Services) of any patent, copyright, trademark, trade secret or other intellectual property right of a third party or parties; OR
- (iv) Damage to, injury to, or death to person or property solely caused by Customer or any products or services not provided by Movilitas;

- D. **Notice of Claims.** If a claim covered under this Section 5 appears likely or is made, the party against whom the claim is made will promptly provide the other party with written Notice of such claim. Each party's indemnification obligations under this Section 5 are further conditioned on (a) the indemnified party giving the indemnifying party sole and exclusive control of the defense of any action, including the choice and direction of any legal counsel, and all related settlement negotiations; and (b) the indemnified party providing the indemnifying party (at the indemnifying party's expense for reasonable out-of-pocket expenses) assistance, information and authority to perform the above.
- E. **Limitation on Liability.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY OR A PARTY'S SUBCONTRACTORS (INCLUDING A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 5) BE LIABLE TO ANOTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, STATUTORY, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OF ANY KIND WHATSOEVER, OR FOR ANY LOST PROFITS, BUSINESS OR REVENUE, LOSS OF USE, DATA OR GOODWILL, OR OTHER LOST ECONOMIC ADVANTAGE, ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE BREACH HEREOF, WHETHER SUCH CLAIMS ARE BASED ON BREACH OF CONTRACT, STRICT LIABILITY, TORT, ANY FEDERAL OR STATE STATUTORY CLAIM, OR ANY OTHER LEGAL THEORY. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR SPECIAL, INCIDENTAL, INDIRECT, STATUTORY, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, IN SUCH STATES AND JURISDICTIONS, LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. A PARTY'S MAXIMUM LIABILITY FOR ANY AND ALL CLAIMS ARISING DIRECTLY OR INDIRECTLY FROM THE PERFORMANCE OF ITS OBLIGATIONS HEREIN (INCLUDING EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 5), WHETHER RESULTING FROM NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER (IF ANY) OVER THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, IN ANY CASE LIMITED TO AN AMOUNT OF USD \$100,000 (THIS AMOUNT TO BE CALCULATED BY TAKING INTO ACCOUNT ALL SUCH CLAIMS ARISING DIRECTLY OR INDIRECTLY FROM THE PERFORMANCE OF A PARTY'S OBLIGATIONS HEREUNDER AND ALL SUCH CLAIMS ARISING FROM ANY OTHER CUSTOMER AGREEMENT AGREED BETWEEN MOVILITAS AND CUSTOMER. CUSTOMER ACKNOWLEDGES THAT MOVILITAS COULD NOT MAKE THE PRODUCTS AND SERVICES AVAILABLE ON THE TERMS SET FORTH IN THIS AGREEMENT IF MOVILITAS' LIABILITY WAS NOT LIMITED AS SET FORTH IN THIS AGREEMENT.
- F. **Disclaimer.** EXCEPT AS EXPRESSLY CONTAINED IN THIS AGREEMENT, ALL WARRANTIES, CONDITIONS AND OTHER TERMS ON BEHALF OF MOVILITAS IMPLIED BY STATUTE, COMMON LAW OR IN ANY OTHER WAY, INCLUDING ANY IMPLIED WARRANTIES AS TO QUALITY, PERFORMANCE, TITLE, NONINFRINGEMENT, INFORMATIONAL CONTENT, INTEGRATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OF TRADE, ARE EXCLUDED FROM THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. MOVILITAS DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES WILL MEET THE REQUIREMENTS OF CUSTOMERS OR DISTRIBUTION PARTNERS OR THAT THE OPERATION OR USE OF THE PRODUCTS OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

## 6. *Confidential Information*

During the course of the performance of this Agreement, each Party may be given access to information (in any form) that relates to the other's past, present, and future research, development, business activities, products, services, software (in both source code and object code form), and technical knowledge, or business or financial information which is the property of the disclosing party and which is identified by the discloser as confidential, or which is reasonably identifiable as confidential ("**Confidential Information**").

During the term of this Agreement, and for a period of five (5) years thereafter, the following applies in respect of Confidential Information:

- A. **Use.** A Party may use or make copies of the Confidential Information of the other Party only to the extent reasonably necessary for purposes of this Agreement, in particular for the purpose of fulfilling its obligations under this Agreement, or for the Parties' discussions regarding potential products or services to be provided under this Agreement.
- B. **Protection.** Each Party will protect the confidentiality of the Confidential Information of the other in the same manner that it protects the confidentiality of its own similar confidential information, but in no event using less than a reasonable industry standard of care. Each Party will restrict access to the Confidential Information to those of its personnel and subcontractors (including personnel of such subcontractors) engaged in the performance, management, receipt or use of the products and services provided under this Agreement, provided that such personnel and subcontractors are bound by obligations of confidentiality substantially similar to the terms of this Agreement.
- C. **Return.** During the term of this Agreement, each Party will return or destroy the other Party's Confidential Information in its possession upon request by the other Party, unless otherwise allowed to retain such Confidential Information. Upon the termination of this Agreement, each Party will upon request by the other Party promptly return or destroy the other Party's Confidential Information. Each Party may retain copies of the other Party's Confidential Information required for compliance with its recordkeeping, or quality assurance requirements (subject to the terms of this Agreement).
- D. **Exceptions.** Nothing in this Agreement will prohibit or limit a Party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (a) previously known to it without an obligation not to disclose such information, (b) independently developed by or for it without use of the information, (c) acquired by it from a third party which is not, to the receiver's knowledge, under an obligation not to disclose such information, or (d) which is or becomes publicly available through no breach of this Agreement.
- E. **Compelled Disclosure.** If the receiver receives a validly issued administrative or judicial process requesting Confidential Information of the other Party, it will promptly notify the other Party of such receipt and tender to the other Party the defense of such process. If requested by the other Party, the receiver will reasonably cooperate (at the expense of the other Party) in opposing such process. Unless the process is timely limited, quashed or extended, the receiver will then be entitled to comply with such request to the extent permitted by law.

## 7. *Data Protection*

- A. **Roles.** In relation to the personal data which is defined as personal data under the relevant laws relating to data protection, transborder data flow and data privacy (collectively "**Privacy Laws**") (i) Customer shall at all times act as and maintain the role of the owner and/or controller of such data, and (ii) Movilitas shall at all times act as and maintain the role of the provider of data transfer, and shall only transfer such personal data as instructed in writing by Customer and in accordance with the terms of this Agreement. Nothing in this Agreement shall restrict or limit in any way Customer's rights or obligations as owner and/or controller of the personal data or be deemed as an assignment of such

rights and obligations to Movilitas; nor shall anything in this Agreement restrict or limit in any way Movilitas' rights or obligations as provider of data transfer or its obligations to comply with all of Customer's instructions as to the transfer of personal data.

- B. **Written Agreement.** For purposes of the relevant Privacy Laws, this Agreement (including the Exhibits and attachments thereto), including the SOW, are the written agreements relating to the transfer of personal data by Movilitas.
- C. **Instructions.** This Agreement (including the Exhibits and attachments thereto, including the SOW) constitutes the written instructions by Customer as of the applicable effective date for Movilitas' transfer of the personal data. Such instructions may be modified and/or supplemented from time to time by written agreement of Customer and Movilitas.
- D. **Compliance.** Customer and Movilitas as controller and transfer provider, respectively, of any personal data shall duly observe all of their respective obligations under the relevant Privacy Laws. Customer and Movilitas shall make or obtain and maintain throughout the term of this Agreement all necessary registrations or filings and notifications which Customer or Movilitas, as the case may be, is obliged to obtain and maintain pursuant to the relevant Privacy Laws in respect of the services or other activities contemplated to be undertaken under or in connection with this Agreement. Movilitas will, during the term of this Agreement, as part of the services, comply with Customer's written instructions regarding the transfer of personal data and, in so transferring the personal data, engage in activities and operations and maintain safeguarding and confidentiality measures (collectively the "**Actions**") which comply with Privacy Laws.
- E. **Changes.** The requirements by either Customer or Movilitas relating to any changes of the written processing instructions or the Actions shall be subject to the change control procedures to be agreed between the Parties. If such a change requirement is generated by a modification in the Privacy Laws and is required for ongoing compliance with such Privacy Laws, then Customer will have the right to require the implementation of the requested change even if the change control procedures have not yet been followed through to completion. In such event, Customer agrees to pay the reasonable fees charged by Movilitas in consideration for the change.

#### 8. ***Non-Solicitation***

Neither Party will solicit, offer work to, employ, or contract with, directly or indirectly, on its own behalf, any of the other Party's Personnel, during their participation in the Services or during the twelve (12) months after the conclusion of such participation unless otherwise agreed.

#### 9. ***Term and Termination***

- A. The term of this Agreement will begin on the Effective Date and continue until it is terminated as set forth in this Agreement or by mutual agreement between the Parties.
- B. Each Party is entitled to terminate this Agreement for convenience with a written notice of ninety (90) calendar days from the end of each calendar quarter.
- C. Either Party may, in addition to other relief, terminate this Agreement for cause, if the other Party breaches any material provision hereof and fails within thirty (30) days after receipt of notice of default to correct such default or to commence corrective action reasonably acceptable to the aggrieved Party and proceed with due diligence to completion. Either Party may terminate this Agreement for cause, if the other party becomes insolvent, makes and/or a petition in bankruptcy is filed with respect to the Party and is not dismissed within thirty (30) days.
- D. Expiration or termination of this Agreement shall not affect any outstanding separate agreement agreed

upon hereunder.

**10. Miscellaneous**

- A. **Entire Agreement.** All Exhibits and the SOWs form integral parts of this Agreement. This Agreement, and any applicable Exhibit and attachments thereto, which are referred to and incorporated by reference, and the SOWs, is the complete understanding of the parties in respect of and set forth the entire understanding between the Parties with respect to the subject matter of this Agreement and the applicable Exhibit and attachment thereto, and the SOWs, and supersedes all prior agreements, conditions, warranties, representations, arrangements and communications, whether oral or written. Each party acknowledges that it is entering into this Agreement solely on the basis of the agreements and representations contained herein, and that it has not relied upon any representations, warranties, promises, or inducements of any kind, whether oral or written, and from any source, other than those that are expressly contained within this Agreement, and any applicable Exhibit and attachment thereto, and the SOWs.
- B. **Assignment.** Neither this Agreement nor any Exhibit or SOW can be assigned in whole or in part by Movilitas or Customer without the prior written consent of the other Party. Any purported assignment without such prior written consent will be wholly void and without effect. Approval of any requested assignment will not be unreasonably withheld.
- C. Unless otherwise agreed in writing, all services and products to be provided by Movilitas for Customer during the term of this Agreement, whether or not set forth in Exhibits, will be governed by this Agreement. In the event of any conflict between this Agreement and an Exhibit, this Agreement shall prevail and control.
- D. Neither Movilitas nor Customer will be liable to the other for any delay or failure to perform any of the services set forth in this Agreement or any Exhibit or SOW due to causes beyond its reasonable control, except non-payment of amounts due hereunder shall not be excused by this provision. If a delay or failure occurs longer than thirty (30) calendar days, Customer has the right to terminate the affected service upon written notice to Movilitas without any termination liability or penalties. Customer will, however, pay for services performed by Movilitas and reimbursement for expenses incurred.
- E. Unless otherwise agreed in writing, the duties, obligations, rights and remedies under this Agreement and any applicable Exhibit are in addition to and not in limitation of those otherwise imposed or available by law.
- F. Neither this Agreement nor any Exhibit or SOW or attachment thereto may be modified or amended except by the mutual written agreement of the Parties signed by an authorized representative of each of the Parties.
- G. **Waiver.** No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the party against which it is sought to be enforced. The delay or failure by either party to exercise or enforce any of its rights under this Agreement or any applicable Exhibit or SOW is not a waiver of that party's right to later enforce those rights, nor will any single or partial exercise of any such right preclude any other or further exercise of these rights or any other right.
- H. If a court of competent jurisdiction or arbitral panel finds any term or provision of this Agreement or any Exhibit or SOW or attachment thereto to be invalid, illegal or otherwise unenforceable, such term or provision will not affect the other terms or provisions of this Agreement or any Exhibit or SOW or attachment thereto or this Agreement as a whole. Such term or provision will be deemed modified to the extent necessary, in the court's or panel's opinion, to render such term or provision enforceable while preserving to the fullest extent permissible, the intent and agreements of the Parties. Upon such modification, the rights and obligations of the Parties will be construed and enforced in accordance

with such modification.

- I. **Governing Law.** This Agreement shall be governed by the laws of the State of Maryland, without regard to its conflict of law provisions. The United Nations Convention for the International Sale of Goods shall not apply.
- J. **Third Party Beneficiary.** The Parties acknowledge and agree that Movilizer GmbH, as a third party Product and Service provider, is an express third party beneficiary under this Agreement.