

End User License Agreement

1. AGREEMENT

1.1 In subscribing to receive the Services, User acknowledges and agrees that

- (a) it has engaged MOVUS to provide the Services in accordance with this Agreement; and
- (b) it has the requisite power, and authority, to enter into, perform its obligations and discharge its liabilities under this Agreement.

1.2 This Agreement will continue until it is terminated in accordance with its terms.

2. ACCESS TO SERVICES

2.1 Notwithstanding any other provision in this Agreement, the System and User Documentation remains the property of MOVUS.

2.2 Subject to clause 3, MOVUS will use reasonable endeavours to ensure that the Services are provided in a manner that is substantially consistent with MOVUS' User Documentation.

2.3 MOVUS may, from time to time, make modifications to the Services (other than the Equipment Sale), including modifications to the design, functionality and appearance of the System.

2.4 MOVUS may access the System, without notice to User, for any purpose associated with the overall management of the Services, including the application of software changes, the provision of training, education and support services to User.

2.5 User is responsible for ensuring all persons accessing the System are authorised to do so, and comply with the provisions of this Agreement. MOVUS is under no obligation to ensure that persons accessing the System using User's security identifier have the authority to do so. MOVUS is entitled to assume that any person using User's security identifier to access the System is authorised to do so.

2.6 User is solely responsible for the confidentiality and use of any security identifiers relating to the System. If User become aware of any loss, theft or unauthorised use of any of its security identifiers, User must notify MOVUS immediately and take all steps necessary or otherwise directed by MOVUS to remedy the security breach.

3. EQUIPMENT

3.1 User may, by written notice to MOVUS within 5 Business Days from the date of delivery, refuse to accept any Equipment that has been provided where:

- (a) the Equipment is considered to be Defective; or
- (b) the Equipment was not ordered by User.

3.2 **Warranty:** It is User's responsibility to replace the Equipment's batteries as and when required. Without limiting clause 3.1, within 12 months from the date of delivery of the Equipment, if the Equipment is Defective, User may contact MOVUS (using the contact details in the Quotation), to request MOVUS to repair or replace the Equipment (at MOVUS' discretion). User agrees to return the Equipment to MOVUS, and User is responsible for any postage or shipping costs. If the Equipment is determined to be Defective, MOVUS will reimburse User for its reasonable postage or shipping costs.

The warranty under this clause 3 is in addition to User's rights and remedies at law. Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer User with rights, warranties, guarantees and remedies relating to the supply of the Equipment and Services by MOVUS to User which cannot be excluded, restricted or modified (**Consumer Law Rights**).

Mandatory Wording (under the Australian Consumer Law only): *If applicable under the Australian Consumer Law, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.* "Our" means MOVUS, "you" means User and "goods" means the Equipment.

3.3 Any Equipment returned to MOVUS in accordance with clause 3.1(a) or clause 3.2 will be replaced as soon as practicable at MOVUS's cost, unless the Defect is the result of unreasonable or improper neglect, use or damage by User (reasonable wear and tear excepted). Despite any provision to the contrary, to the maximum extent permitted by law, MOVUS's liability for any Defective Equipment will be limited to replacing the Defective Equipment in accordance with this clause 3.3.

3.4 Risk in the Equipment will pass to User on delivery. User assumes all risk, and liability, for the Equipment from User's receipt of the Equipment, unless (and until such time as) the Equipment is properly returned to MOVUS in accordance with clause 3.1(a) or clause 3.2. User agrees that –

- (a) it will ensure that the Equipment is operated in a secure area, in accordance with all applicable laws, and in accordance with MOVUS's instructions and User Documentation, at all times;
- (b) it will not alter the Equipment (including by way of repair or servicing) or remove from the Equipment any attachment or fittings without the prior written consent of MOVUS; and
- (c) should MOVUS (acting reasonably) consider that there is evidence of neglectful use, abuse or damage to the Equipment (beyond reasonable wear and tear), then, without prejudice to MOVUS's other remedies under this Agreement or at law, MOVUS may, at User's cost –

- (1) undertake any necessary repairs, or maintenance, to restore the Equipment to proper working order or to the condition the Equipment was in prior to the Equipment passing into User's possession; or
- (2) if such repairs are not possible, replace the Equipment.

3.5 Without limiting any other clause in this Agreement or MOVUS's rights at law, if any Equipment is returned to MOVUS under clause 3.1(a) or clause 3.2, and MOVUS determines User has no remedy under clause 3.3 (including where the Equipment is damaged beyond reasonable wear and tear), User may request a replacement of the Equipment, at User's cost - refer to the "Customer Invoice" for details of replacement costs, as stipulated in local currency.

3A EQUIPMENT SALE

3A.1 Upon the later of payment of the applicable Fees for the Equipment Sale in full, title to the Equipment will transfer to User. If User relies on the Money Back Guarantee in clause 5.4, title to the Equipment will immediately transfer back to MOVUS.

4. SUPPORT SERVICES

4.1 User acknowledges that the Services may not be free from fault or interruption, and that the Services may be unavailable during scheduled, or unscheduled, outages or maintenance periods. MOVUS will take all reasonable steps to notify User of any scheduled outages or maintenance, or when the Services may be temporarily unavailable.

4.2 MOVUS agrees to provide User with access to a help desk on Business Days to provide User with all reasonable assistance to remedy any technical Defects, or operational difficulties, in respect of the Services.

4.3 Notwithstanding clause 4.2, MOVUS shall not be liable to provide assistance to User if

- (a) User has not paid all Fees in accordance with clause 5;
- (b) User does not provide the necessary access, or assistance, to MOVUS to allow the assistance; or
- (c) a technical, or operational, Defect is caused, or contributed to, by User's

(1) use of the System in combination with User's own software and/or hardware;

(2) use of the System in a manner other than as reasonably contemplated, or approved, by MOVUS;

(3) failure to maintain the supported operating environment;

(4) use of the System in a manner that is not reasonably contemplated, or not expressly, authorised by this Agreement or in accordance with the User Documentation; or

(5) use of the System that results in accidental damage.

4.4 MOVUS reserves the right to make any changes to the Services that it considers necessary, including updates and new releases (**Changes**). MOVUS will use reasonable endeavours to give User prior notice of any changes to the Services to the extent that there is any adverse effect on the functionality or performance of the Services. However, User acknowledges that prior notice may not be possible in respect of all changes, such as any urgent changes that are necessary to remedy errors or Defects to the Services. Despite any provision to the contrary, to the maximum extent permitted by law, MOVUS will have no liability, and User waives and releases MOVUS from all liability, arising from or in connection with any Change.

5. FEES AND PAYMENT

5.1 User must pay MOVUS all Fees in connection with the Services. MOVUS will issue invoices for the Fees in accordance with the Quotation.

5.2 User must pay invoices issued by MOVUS in accordance with clause 5.1 within 30 days from the date of invoice. All invoices will be Tax Invoices for GST purposes.

5.3 Unless otherwise specified, all Fees are exclusive of GST and any other applicable taxes and duties (which must be paid by User).

5.4 Failure of User to make the payments in accordance with clause 5.2 may cause MOVUS, at its discretion, to discontinue the Services, enter User's premises or any other premises where the Equipment is located to recover the Equipment, and charge an administration fee for any overdue amounts at the rate of fifty Australian dollars (A\$50.00) (exclusive of GST), plus the application of an interest cost of one percent (1%) per month to the overdue amount.

5.4 Money Back Guarantee: If the Customer is not satisfied with the Services within 90 days following the date of delivery of the Equipment and provided that the Equipment is in its original condition and has been properly deployed by User on its machines within 30 days following the date of delivery of the Equipment, MOVUS offers a money back guarantee. User agrees to return the Equipment in its original condition, prior to the end of the 90 days and to immediately cease using the Services. User will remain liable for any damage to the Equipment prior to its return.

6. USER OBLIGATIONS

6.1 In accepting the Services, User acknowledges and agrees that, at all times, it

(a) will use the Services and the Equipment strictly in accordance with these Terms and Conditions for the purposes contemplated by this Agreement;

(b) will not tamper with or modify, or attempt to tamper with or modify, the System or the Equipment;

(c) will ensure that its use of the Services and the Equipment does not in any way infringe any third party's Intellectual Property Rights or other rights;

(d) is responsible for ensuring compliance with all Applicable Laws and reasonable directions from MOVUS in relation to the Services, unless such directions breach any Applicable Laws;

(e) will cooperate with MOVUS, and provide all assistance, access, information and documentation reasonably necessary to enable MOVUS to provide the Services, and perform its obligations, under this Agreement;

(f) will comply with any reasonable directions or instructions of MOVUS in connection with the Services (including in relation to Data security, Data back up and disaster recover);

(g) to the extent MOVUS requires access to User's premises in order to perform MOVUS's obligations under this

Agreement, or to rectify or retrieve any Equipment from User's premises, to provide MOVUS with unfettered and safe access to User's premises, free from harm or risk to safety, and at the times reasonably requested by MOVUS;

(h) is solely responsible for the collection and input of Data into the System, including its completeness, accuracy, lawfulness and correctness, and for obtaining all necessary licences and consents to its storage, handling and use, and User acknowledges and agrees that MOVUS assumes no responsibility for ensuring the correctness, accuracy, completeness or suitability of any part of the Services for any intended purpose;

(i) will take necessary precautions to prevent the transfer to the System of any material that contains any contamination, virus, trojan, worm or other malware or harmful or disabling code that may damage, or interfere, with the operation of the System;

(j) will not breach, or attempt to breach, the security of the System or otherwise interfere with, or attempt to interfere with, the normal operation of the System;

(k) will comply with all security policies, standards and procedures notified by MOVUS, and implement and maintain industry best practice security procedures and safeguards to protect Data against misuse, loss, interference, unauthorised access, modification or disclosure; and

(l) will ensure that, except as expressly authorised by (and subject to any conditions prescribed under) any Applicable Law, User must not, in any form or by any means – (1) copy, adapt, reproduce, store, distribute or sell, print, display, perform, broadcast, publish, communicate to the public, make available to the public or create derivative works of the whole, or any part, of the Services or any User Documentation (including all trade-marks); or (2) seek to disassemble, or reverse engineer, the System.

6.2 If MOVUS reasonably believes that User is, or is likely to be, in breach of this Agreement, MOVUS may by written notice (and without limiting any other right or entitlement of MOVUS under this Agreement or at law) –

(a) suspend User's access to, or use of, the System without any liability to MOVUS; or

(b) discontinue the Services or the provision of any Output, access to the System, Data, or output provided through, or associated with, the Services.

7. LIABILITY

7.1 Despite any provision to the contrary, to the maximum extent permitted by law, MOVUS's liability under any guarantee, condition or warranty (including any guarantee, condition or warranty of merchantability, acceptable quality, suitability or fitness for use or purpose, or suitability or fitness for any disclosed result), or any other right or remedy, whether under any legislation or implied into this Agreement by any legislation (**Statutory Warranties**) or otherwise, is hereby excluded. If any Statutory Warranties are found to be applicable, MOVUS's liability for any breach of such Statutory Warranties will be limited to the refund of any Fees paid for the Services.

7.2 Without limiting clause 7.1 –

(a) MOVUS does not represent, or warrant, that the Data, Output or any other information made available through the Services will be available at any particular time, or that the Services, System, or Output Data will be free from error or interruption;

(b) User acknowledges and agrees that MOVUS is not liable, and User waives and releases MOVUS from all liability, caused or contributed to by User or any third party (including wireless carriers, data centres, network congestion or blackouts), or for any events or circumstances beyond MOVUS's reasonable control (including, without limitation, any weather conditions, accidents, any act of God or other factors outside of MOVUS's control); and

(c) MOVUS specifically disclaims any, and all, liability, representations and warranties, implied or expressed, for uses requiring fail-safe performance.

7.3 Despite any provision to the contrary, to the maximum extent permitted by law, MOVUS excludes all liability, and User waives and releases MOVUS from all liability, (whether arising in contract, tort (including negligence), statute, in enquiry or otherwise) for any Loss arising from or in connection with –

(a) the use of, or reliance on, any aspect of the Services, Equipment, Output or Data;

(b) any third party which integrates, in any way, with the Services, System or any Equipment; or

(c) any support services, documentation, or other services provided by MOVUS in respect of the Services, whether that Loss is direct, indirect or Consequential Loss.

8. INDEMNITY

8.1 User agrees to indemnify MOVUS and each of its officers, directors, employees, agents, consultants and contractors (Indemnified Persons), and hold each Indemnified Person harmless, from, and against, any Loss of any kind which those Indemnified Persons may suffer, or incur, arising from or in connection with –

(a) any breach or non-compliance by User or any of its Personnel of any provision of this Agreement; or

(b) any fraudulent, wrongful or unlawful act or omission of User or any of its Personnel;

(c) any death or personal injury caused or contributed to by any act or omission of User or any of its Personnel;

(d) any damage to or loss or destruction of real or personal property caused or contributed to by any act or omission of User or any of its Personnel;

(e) any claim, action, demand, remedy, suit, proceeding or right of action against any Indemnified Person by –

(1) any third party relating to User's access to, or use of, any part of the Services; or

(2) User or third party relating to an allegation or finding that any –

(A) Data provided, or collected, by User infringes the Intellectual Property Rights of a third party; or

(B) Data or Output is illegal, fraudulent, inaccurate, incorrect, incomplete, misleading or deceptive, or likely to mislead or deceive.

9. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

9.1 User acknowledges and agrees that

(a) all Intellectual Property Rights in, and relating to, the Services is owned by MOVUS or its licensors; and
(b) it will ensure that the User Documentation, and any other material derived from the User Documentation, is utilised only for the purpose of using the Services, except with MOVUS's prior written consent, and that User is responsible for the safekeeping of the User Documentation.

9.2 Subject to this Agreement and User's compliance with the terms of this Agreement, MOVUS grants User a non-exclusive, non-transferable and royalty free licence:

(a) in perpetuity to –

(1) access, store and process the Output on User's computer system; and

(2) use and reproduce the Output for conducting its business in accordance with this Agreement.

(b) for the duration of this Agreement, to use the User Documentation for the purpose of using the Services.

9.3 MOVUS agrees not to provide the Data to any third party (other than a third party engaged by MOVUS to assist in the provision of the Services), unless it is:

(a) required to do so for the purpose of any audit or compliance purposes, or as otherwise required by law; or

(b) provided on an aggregated and anonymous basis, together with Data from one, or more, other subscribers to the Services, for the purposes of providing statistical and/or analytical information.

9.4 Subject to clause 9.3, User hereby unconditionally and irrevocably grants to MOVUS, a perpetual worldwide, royalty-free, non-exclusive licence (including the right to sub-licence and transfer those rights to third parties) to use, reproduce, copy, store, modify, adapt, distribute, publish and create derivative works from, and otherwise exercise all Intellectual Property Rights in, the Data or Output for any purpose and in any form, without compensation to User.

9.5 Each party (Receiving Party) must keep the Confidential Information of the other party (Discloser) confidential, safe and secure at all times during, and after the termination of, this Agreement and not disclose it to any person other than:

(a) the Receiving Party's agents, advisors, contractors and personnel who have a need to know, provided they are subject to an obligation to keep the Confidential Information confidential or, in the case of MOVUS, as contemplated by this Agreement;

or (b) where required to do so by law.

9.6 The Receiving Party will only use or disclose the Confidential Information of the Discloser in accordance with this Agreement.

9.7 Both parties agree to deal with Confidential Information that is personal information (as defined in the Privacy Act 1988 (Cth)) in accordance with the Privacy Act 1988 (Cth).

9.8 User agrees to allow MOVUS to use, until termination of this Agreement and for a period of one year thereafter, User's company name and logos for the sole purpose of identifying User on MOVUS marketing material.

10. DATA RETENTION AND BACK-UP

10.1 Subject to clause 10, User acknowledges and agrees that MOVUS may retain all Data and Output obtained through the provision of the Services, as well as any information provided by User during the provision of the Services, at the termination of this Agreement.

10.2 MOVUS will, following termination of this Agreement, make available to User all Data that it retains in a comma separated value format (or another format as agreed in writing). User acknowledges that reprocessing the Data in another way may attract additional Fees.

11. TERMINATION

11.1 This Agreement commences from the date that MOVUS notifies User of its acceptance of the PO (or, if User engages MOVUS to provide the Services through a Reseller, the date on which MOVUS commences performance of the Services) and continues until it is terminated in accordance with its terms.

11.2 Either party may terminate this Agreement immediately by giving 30 days' written notice to the other party. **11.3** Either party may terminate this Agreement immediately for any of the following reasons by providing written notice to the other party:

(a) the other party breaches any material term of this Agreement and such breach is not capable of being remedied;

(b) the other party breaches any material term of this Agreement and, if it is capable of being remedied, does not remedy that breach within 14 days after receipt of notice of breach; or

(c) the other party becomes insolvent, has a controller or receiver appointed, enters into liquidation or administration, fails to comply with a statutory demand, it is unable to pay its debts when they fall due or something having a similar effect to the foregoing happens in connection with the party.

11.4 Termination of this Agreement is without prejudice to accrued rights and obligations of a party as at the date of expiry or termination.

11.5 Upon the termination of this Agreement:

(a) User's rights to access, and use, the Services shall cease;

(b) all Equipment and User Documentation must be returned to MOVUS, at User's costs; and

11.6 Clauses 3.2 3.3(d), 5, 6, 7, 8, 9, 10, 11, 13 and 14 as well as any other clauses that are intended to survive termination, shall survive termination of this Agreement.

12. VARIATION

12.1 MOVUS may vary this Agreement provided that it provides User with not less than 14 days' prior notice.

12.2 User may terminate this Agreement by giving 30 days' written notice to MOVUS upon receipt of a notice in accordance with clause 12.1.

13. NOTICES

13.1 All notices under this Agreement –

(a) must be in writing and by email; and

(b) will be deemed to be delivered when acknowledgement of receipt is recorded on the sender's computer.

13.2 Notices to User will be sent to the nominated system administrator (or such other address as User may notify MOVUS of from time to time). Notices to MOVUS must be sent to support@movus.com.au or as otherwise notified to User from time to time.

14. GENERAL

14.1 This Agreement does not create a relationship of partnership, employment or agency between MOVUS and User.

15. DEFINITIONS

In this Agreement, unless the context otherwise requires:

Agreement means these Terms and Conditions, the Quotation, and any documentation attached to or referred to in these Terms and Conditions.

Applicable Laws means any and all statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time which pertains to the Services.

Business Day means a day from 9:00 a.m. to 5:00 p.m., other than a Saturday, Sunday, or a public holiday in Brisbane, Queensland.

Confidential Information means information that relates to the business, assets, or affairs, of the Discloser and is by its nature confidential or the Receiving Party knows, or ought to know, is confidential, but does not include information that:
(a) was rightfully known to, or in the possession or control of, the Receiving Party prior to its receipt and which is not subject to a separate obligation of confidentiality on that party; or
(b) is, or becomes, public knowledge (other than as a result of a breach of confidentiality by the Receiving Party or any person to whom it discloses Confidential Information).

Consequential Loss means any loss of, or failure to realise, revenue, agreements, income, profit, savings or opportunity, damage to reputation, loss or corruption of data, loss of use, loss of business, or any indirect, special, economic or consequential loss of any kind (whether real or anticipated).

Data means any data that is recorded by the Equipment.

Defect means where the Equipment or the Services, as applicable, do not conform with the requirements of this Agreement, as a result of MOVUS's default (as determined by MOVUS, acting reasonably), and **Defective** has a corresponding meaning, and **Defective** has the corresponding meaning.

Equipment means any product or equipment that MOVUS provides User, from time to time.

Equipment Sale means the supply and sale of the Equipment by MOVUS to User in accordance with this Agreement.

GST has the meaning given to that term in the *A New Tax System (Equipment and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means any and all:

(a) current and future registered and unregistered rights in respect of copyright, designs, semiconductor or circuit layouts, trade marks, trade names, business names, trade secrets, know-how, Confidential Information, patents, inventions and discoveries;

(b) applications for grant of any of the above;

(c) other rights of a similar nature arising (or capable of arising) under statute or at common law in the Commonwealth of Australia or anywhere else in the world; and

(d) other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation. **Loss** means loss, damage, cost, expense or liability of any kind, including liability to a third party, any loss of profits or indirect, consequential, incidental, special exemplary, or punitive loss or damage.

MOVUS means MOVUS Australia Pty Ltd (ACN 612 412 611) and its subsidiary and affiliated, or related, companies.

Output means any information or data generated by the System using, or as a result of the processing of, the Data.

Personnel means, in relation to a party, any agent, employee, contractor or representative of that party, and in relation to User, means any individual or entity that accesses or uses the System, Equipment, Data and/or Output.

Quotation means MOVUS' quotation issued to User in respect of the Services.

Reseller means a reseller of the Services, as authorised by MOVUS, from time to time.

Service(s) means, except where the context otherwise requires:

(a) the Equipment Sale; and

(b) the service of providing User with the right to access and use the System Data and/or Output, and the provision of associated helpdesk and support services, and User Documentation, subject to and in accordance with the terms of this Agreement.

System means the system that integrates the web-based software, and the Equipment and its integrated technology.

User means the entity whose details are entered into the System and includes any executors, administrators, successors and permitted assigns of that entity. It also includes an individual natural person user (such as the entity's officers, directors, employees, agents, consultants and invitees) that is authorised to use and access the Services.

User Documentation means any user manual, service standards, fee schedule or other documentation relating to the Services, as may be published by MOVUS, from time to time.