

## MOKI MOBILITY TERMS AND CONDITIONS

**These Terms and Conditions** form a part of the Service Order by and between Moki Mobility, Inc., a Delaware corporation (“*Moki*”), and the Subscriber set forth on the Service Order (“*Licensee*”). For purposes of these terms and conditions, “*Agreement*” shall mean these terms and conditions, the Service Order and any exhibits or attachments to the Service Order or these terms and conditions. “*Effective Date*” shall have the meaning set forth on the Service Order.

### RECITALS

**WHEREAS**, Moki has developed and may in the future develop proprietary mobile device management software applications, and Licensee desires to obtain a license to such software and materials.

### AGREEMENT

**NOW THEREFORE**, in consideration of the above premises and the mutual promises set forth below and subject to the terms and conditions hereof, the parties hereto agree as follows:

1. **CERTAIN DEFINITIONS.** For purposes of this Agreement, the term “*Licensed Deliverables*” shall mean any and all of the following:
  - a. **DERIVATIVE WORK.** The term “*Derivative Work*” means a revision, enhancement, modification, translation, abridgment, condensation or expansion of any Licensed Deliverable or any form in which any Licensed Deliverable may be recast, transferred, or adapted.
  - b. **INFORMATION.** The term “*Information*” means information resulting from the use of any or all of the Licensed Deliverables.
  - c. **LICENSED MATERIALS.** The term “*Licensed Materials*” refers to any and all materials including documentation and support material, including any on line training materials, in hard copy and electronic format (if available) designed to assist Licensee in the understanding, application, capability, maintenance, or use of the Licensed Deliverables which are delivered to Licensee by Moki pursuant to and/or during the term of this Agreement, and any updates or modifications thereof.
  - d. **SOFTWARE.** The term “*Software*” refers to (i) the proprietary mobile device management software applications made available to Licensee pursuant to the terms of this Agreement as more fully described on the Service Order, (ii) any Add-ons as described on the Service Order (the “*Add-ons*”), and (iii) any Moki delivered updates, upgrades, enhancements, or modifications to the Software.
2. **LICENSE GRANT.** Moki hereby grants, and Licensee hereby accepts, subject to the terms and conditions of this

Agreement, a limited, non-exclusive, non-sublicensable, non-transferable, license during the term of this Agreement to use the Licensed Deliverables as set forth herein (the “*License*”) and as more fully set forth on or limited by the Service Order hereto. Licensee shall not have any rights to the Licensed Deliverables except as expressly granted in this Agreement. Moki reserves to itself all rights to the Licensed Deliverables not expressly granted pursuant to this Agreement.

3. **COPYRIGHT and TITLE.** The Licensed Deliverables and any copy thereof, in whole or in part, and all copyrights, trade secrets and other proprietary rights therein, including any Derivative Work are and will remain the sole property of Moki, regardless of the use made by Licensee of the same and in any format; and are protected by certain United States and international copyright laws and trademark laws. The License confers no title of ownership in the Licensed Deliverables and is not a sale of any rights in the Licensed Deliverables. Licensee shall treat the Licensed Deliverables with at least the same standard of care as it treats any other material copyrighted and/or trademarked by a third party, in no case less than a reasonable standard of care. Licensee agrees not to, and to use best efforts to cause its customers not to, challenge Moki’s ownership in or enforceability of Moki’s rights in and to any Licensed Deliverable or any related information technology.
4. **WARRANTY and INDEMNITY.** Moki shall defend, indemnify and hold harmless Licensee, its parent company and their respective affiliates, directors, officers, employees, agents and representatives from and against any losses, damages, liabilities, expenses (including reasonable attorneys’ fees), judgments and claims on the basis that Licensee’s authorized use of the Software violates or infringes any U.S. patent that has issued as of the Effective Date, copyright, trademark, or trade secret; provided that (a) Licensee gives Moki prompt written notice of the claim; (b) Moki has full and complete control over the defense and settlement of the claim; (c) Licensee provides assistance in connection with the defense and settlement of the claim as Moki may reasonably request; and (d) Licensee complies with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials). Moki shall have the right to settle the claims of any claimant(s) in its sole and absolute discretion. Moki will have no obligation under this Section 4 for any infringement to the extent that it arises out of or is based upon: (i) any unauthorized combination, operation, or use of the Software if such infringement would have been avoided but for such combination, operation, or use; (ii) designs, requirements, or specifications for the Software required by or provided by Licensee, if the alleged infringement would not have occurred but for such designs, requirements, or specifications; (iii) use of the Software outside of the scope of the License; (iv) Licensee’s failure to use the latest release of the Software

or to comply with instructions provided by Moki, if the alleged infringement would not have occurred but for such failure; or (v) any modification of the Software not made by Moki where such infringement would not have occurred absent such modification. Licensee will reimburse Moki for any costs or damages that result from these actions. This Section 4 states Moki's sole and exclusive liability, and Licensee's sole and exclusive remedy, for the actual or alleged infringement by Moki of any third party intellectual property right by the Software.

5. **USE OF LICENSED DELIVERABLES.** The Licensed Deliverables are for Licensee's use for its own internal business purposes. Use of Information is subject to the terms of use set forth in Sections 11 and 12 below, and the restrictions set forth in this Section will survive the termination of this Agreement. If there is unauthorized use by anyone who obtained access to the Licensed Deliverables directly or indirectly through Licenses, Licensee shall take all steps reasonably necessary to terminate the unauthorized use. Licensee will cooperate and assist with any actions taken by Moki to prevent or terminate such unauthorized use.
6. **TERM, FEE AND PAYMENT.** The License granted by this Agreement shall be for an initial term as set forth on the Service Order hereto which shall begin as of the Effective Date. In consideration of the License rights granted above, Licensee shall pay the Fees set forth on the Service Order due on the Effective Date. At the end of the initial term and each renewal term (if any), the License shall automatically renew for subsequent one-year terms, unless terminated in accordance with Section 13 below. The fees for a subsequent term shall be at the initial term price on an annualized basis unless Moki notifies Licensee of a price change at least sixty days before the end of the then-current term, and shall be due at the commencement of such subsequent term. All amounts payable hereunder by Licensee shall be payable in United States funds. The Licensee agrees to pay any and all fees, assessments, and taxes associated with the amounts due under this Agreement. A finance charge shall be imposed on all account balances outstanding over 30 days. The finance charge is 1½% per month or the highest rate allowed under applicable law, whichever is lower. During the term of this Agreement and for three years thereafter, Licensee will keep current, complete, and accurate records regarding the reproduction, installation, and use of the Software. Licensee will provide such information to Moki and certify that it has paid all fees required under this Agreement within fifteen business days of any written request, so long as no more than one request is made in any twelve month period. Licensee will, after reasonable prior notice from Moki, provide Moki and its representatives reasonable access to Licensee's premises, records, and personnel so that Moki may audit and confirm that Licensee complies with this Agreement. If an audit reveals any reproduction, installation, use, or distribution of the Software or any Licensed Deliverables that is not compliant with this Agreement, Licensee will promptly comply with this Agreement and make an additional payment as

contemplated by this Agreement, plus interest at the rate specified in this Section 6. If the amount of the underpayment is 5% or greater, Licensee will promptly reimburse Moki for its reasonable costs of conducting such audit.

7. **ASSIGNMENT.** Licensee shall not assign or otherwise transfer the License granted hereby or the rights granted hereunder without the prior written consent of Moki. A request by Licensee to assign or otherwise transfer the License granted hereby must be in writing and Moki shall have absolute, complete and unqualified discretion in granting or denying such request. Any attempt to assign or otherwise transfer any of the rights, duties or obligations hereunder without compliance with this Section is and shall be void *ab initio*. Moki shall be permitted to assign this Agreement to any successor to all or substantially all of the assets of Moki, whether by merger, acquisition, asset sale, exclusive license, stock sale or otherwise.
8. **PERMISSION TO COPY LICENSED DELIVERABLES.** Licensee may copy the Licensed Deliverables only as reasonably necessary to support a use authorized under this License. Licensee shall maintain and place on any copy of the Licensed Deliverables which it reproduces any notice(s) and/or legend(s) embedded in and/or affixed to the Licensed Deliverables. Licensee shall reproduce and include the copyright notice on any copy. All copies of the Licensed Deliverables, whether provided by Moki or made by Licensee as permitted by this Agreement, shall remain the property of Moki. All other copying is prohibited.
9. **UPDATES AND SUPPORT SERVICES.** Moki will provide updates to the Software, and, if applicable and unless as stated to the contrary on the Service Order, the Add-ons. Updates, but not Add-ons, shall be provided without additional charge. Moki will provide Licensee with two-tier support as long as Licensee is not in default of any material terms of this Agreement as follows: Moki will provide tier one support to Licensee for critical Software failures resulting in complete or substantial shutdown of the Software within one (1) business day of any request, and Moki will respond to all other support requests as soon as reasonably and commercially practical on an as needed basis at its own cost and expense. The support in using the Licensed Deliverables may occur at the discretion of Moki by phone, email, or mail request(s) to Moki for help on incidental needs related to use of Software. Licensee shall also have web access to online Moki training materials, for its internal use only, at no additional charge.
10. **TRADE SECRETS.** The Licensed Deliverables are trade secrets of Moki and contain valuable proprietary products and trade secrets of Moki, embodying substantial creative efforts and confidential information, ideas, and expressions. Licensee shall take appropriate action to protect the confidentiality of the Licensed Deliverables. Licensee shall not modify, translate, disassemble, create Derivative Works based on, reverse-

assemble, reverse-compile or otherwise reverse-engineer the Licensed Deliverables in whole or in part, or otherwise use, copy, reproduce or distribute any Licensed Deliverable except as expressly permitted hereunder. The provisions of this section shall survive the termination of this Agreement.

11. **CONFIDENTIALITY.** All information that either party receives from the other that is marked “confidential” by the disclosing party (hereinafter the “**Disclosing Party**”) or that would reasonably be considered confidential by a party experienced in the industry (hereinafter “**Confidential Information**”) shall be kept confidential, and each party agrees to treat (and take precautions to ensure that its employees treat) the Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below.

Each party agrees, during the term hereof and for a period of five years thereafter, to keep confidential all Confidential Information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof with at least the same standard of care with which it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable standard of care in the protection of Confidential Information); provided, however, that neither party shall have any such obligation with respect to the use or disclosure to third parties of such Confidential Information as can be established to: (a) have been known publicly; (b) have been known generally in the industry on a non-confidential basis before communication by the Disclosing Party to the recipient (hereinafter the “**Recipient**”); (c) have become known publicly; (d) have been known otherwise by the Recipient before communication by the Disclosing Party; (e) have been received by the Recipient without any obligation of confidentiality from a source (other than the Disclosing Party) lawfully having possession of such information.

Except as prohibited by applicable law or legal process or to the extent part of an examination by a regulatory or self-regulatory body, if the Recipient is requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas, regulatory processes (including those of self-regulatory organizations), or similar process) in connection with any proceeding to disclose or otherwise becomes legally compelled to disclose any Confidential Information, the Recipient shall provide the Disclosing Party with prompt written notice and, if requested by the Disclosing Party after receipt of such notice, the Recipient shall provide Disclosing Party with reasonable assistance (subject to reimbursement by the Disclosing Party of all reasonable and out-of-pocket expenses incurred by the Recipient in providing such assistance) so as to enable the Disclosing Party to seek a protective order or other appropriate remedy or waive compliance with this Agreement. To the extent this Agreement applies, if such a protective order or other remedy is not obtained or if the Disclosing Party waives compliance with this Agreement, the Recipient may disclose Confidential Information, but only such Confidential Information as it is legally required to disclose in

the reasonable opinion of counsel to the Recipient, and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information disclosed. Licensee’s obligations under this paragraph will survive the termination of this Agreement or of any License granted under this Agreement for whatever reason.

12. **OTHER RESTRICTIONS.** Licensee may not rent, loan, license, market, or sell the Licensed Deliverables or copies thereof, in whole or in part, to any party. Licensee hereby agrees (i) to notify its employees and agents who may have access to the Licensed Deliverables or Information of the restrictions contained in this Agreement and (ii) to ensure their compliance with such restrictions.

13. **TERMINATION.** If Licensee provides a written notice to terminate to Moki at least 30 days prior to the end of the initial term or subsequent [annual] terms set forth in Section 6 and ceases use of the Licensed Deliverables on or prior to the end of the then current term, the License granted herein shall terminate at the end of that term. Moki may immediately terminate this Agreement, or any License granted under it, by giving Licensee written notice of termination if Licensee commits a material breach hereof. Upon any termination of this Agreement, Licensee shall cease all use of the Licensed Deliverables, destroy or return to Moki all copies of the Licensed Deliverables then in Licensee’s possession and take such other actions as Moki may reasonably request in writing to ensure that no copy of the Licensed Deliverables remain in Licensee’s possession. If Licensee terminates this Agreement with or without cause, there shall be no refund of the fees paid or due to be paid hereunder.

14. **COMPLIANCE WITH LAWS.** Licensee will comply with all applicable export and import control laws and regulations in its use of the Licensed Deliverables and, in particular, Licensee will not export or re-export the Licensed Deliverables without Moki’s prior written consent, and, if such consent is granted, without Licensee first obtaining all required United States and foreign government licenses. Licensee shall obtain at its expense all necessary licenses, permits and regulatory approvals required by any and all governmental authorities as may from time to time be required in connection with its activities related to this Agreement. To the extent permitted by applicable law, Licensee will defend, indemnify, and hold harmless Moki from and against any violation of such laws or regulations by Licensee or any of its agents, directors, or employees.

15. **DISCLAIMER OF WARRANTY.** **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE LICENSED DELIVERABLES ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE BEARS ALL RISK RELATING TO QUALITY AND PERFORMANCE OF THE LICENSED MATERIALS AND TO THE ACCURACY AND USE OF THE INFORMATION. WITHOUT LIMITING THE**

**FOREGOING, MOKI DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE LICENSED DELIVERABLES SHALL BE UNINTERRUPTED OR ERROR-FREE.**

Because some states may not allow the exclusion of implied warranties, such limitation may not apply in its entirety to Licensee. Any warranties made in this Agreement are for the benefit of Licensee only.

**16.LIMITATION ON LIABILITY.** IN NO EVENT WILL MOKI, ITS SUPPLIERS, SHAREHOLDERS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY LOST PROFITS, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES DUE TO LOSS OF DATA OR GOODWILL, ARISING OUT OF THIS AGREEMENT OR THE USE OF OR RELIANCE UPON THE LICENSED DELIVERABLES OR INFORMATION, EVEN IF MOKI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL MOKI BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES OR ANY UNAUTHORIZED USE OR MISUSE OF ANY LICENSED DELIVERABLES OR INFORMATION, EXCEPT IN THE CASE OF MOKI'S GROSS NEGLIGENCE WITH RESPECT TO SUCH USE OR MISUSE. LICENSEE ASSUMES RESPONSIBILITY FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE LICENSED DELIVERABLES. UNDER NO CIRCUMSTANCES WILL MOKI'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY LICENSEE TO MOKI DURING THE IMMEDIATELY PRECEDING TWELVE MONTH PERIOD (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION). THE PARTIES AGREE THAT THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF CONSIDERATION OR OF AN EXCLUSIVE REMEDY. THE PARTIES ACKNOWLEDGE THAT THE PRICES HAVE BEEN SET AND THE AGREEMENT ENTERED INTO IN RELIANCE UPON THESE LIMITATIONS OF LIABILITY AND THAT ALL SUCH LIMITATIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. BECAUSE SOME STATES MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SUCH LIMITATIONS MAY NOT APPLY TO LICENSEE.

**17.GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Utah, U.S.A.

**18.REMEDIES.** Licensee agrees that the obligations of Licensee provided herein are necessary and reasonable in order to protect Moki and its business interests, and Licensee expressly agrees that monetary damages alone may be inadequate to compensate Moki for any breach by Licensee of its covenants and agreements set forth herein. Accordingly,

Licensee acknowledges that the unauthorized use, transfer, or disclosure of the Licensed Deliverables or Information, or copies thereof will (a) substantially diminish the value to Moki of the proprietary interest that are the subject of this Agreement; (b) render Moki's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (c) cause irreparable injury in a short period of time. If Licensee breaches any of its obligations with respect to the use the Licensed Deliverables or Information, Moki shall be entitled to equitable relief to protect its interest therein, including but not limited to, preliminary and permanent injunctive relief. For such purposes, the parties hereto agree to submit to the exclusive jurisdiction of the federal and state courts found within the State of Utah, and they do agree that venue shall be proper in the County of Salt Lake in the State of Utah. In addition to any other remedies that may be available, in law, in equity or otherwise, Moki shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by Licensee, without the necessity of proving actual damages.

**19.ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance, or interpretation of this Agreement, shall be settled by arbitration in Salt Lake County, Utah, except any action for injunctive relief that may be brought pursuant to the terms of Section 18. Unless otherwise agreed, the arbitration shall be conducted in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held before three arbitrators, one arbitrator chosen by each of the parties and the third arbitrator chosen by the two arbitrators. Each of the arbitrators shall be chosen from a panel of attorneys knowledgeable in the field of business law in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties agree that the arbitrators shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty) or any other damages inconsistent with the terms and provisions of this Agreement. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law. Any ruling rendered by the arbitrators shall be final and non-appealable and shall be enforceable in any court of competent jurisdiction.

**20.ATTORNEY FEES.** In case of arbitration or action to enforce any rights or conditions of this Agreement, or appeal from said proceeding, it is mutually agreed that the losing party in such suit, action, proceeding or appeal shall pay the prevailing party's reasonable attorney fees and costs incurred.

**21.ENTIRE AGREEMENT; AMENDMENT.** This Agreement and the Service Order together are a binding contract and constitute the entire agreement and understanding of the parties, whether oral or written, relating to the subject matter hereof; are intended as the parties' final expression and complete and exclusive statement of the terms hereof, superseding all prior or contemporaneous agreements, representations, communications, and understandings, whether written or oral; and may be amended or modified

only by an instrument in writing or confirmed electronic transmission (including electronic confirmation or “click-through” formats) between the parties.

**22. NON-WAIVER.** No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision or of the right to enforce such provision or any other provision.

**23. NO THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

**24. SEVERABILITY; BINDING EFFECT.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and, to the extent permitted by Section 7, assigns.

**25. FORCE MAJEURE.** Moki will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond Moki’s reasonable control, so long as Moki uses all commercially reasonable efforts to avoid or remove such causes of non-performance.

**26. NOTICES.** All notices, consents, and other communications permitted or required to be given hereunder (herein referred to as a “*Notice*”) shall be in writing and addressed to the address set forth on the Service Order.

Any party may change its address or fax number for notification purposes by giving the other party Notice of the new address or fax number and the date upon which it will become effective in accordance with the terms of this Section. A Notice shall be deemed to have been received as of the next business day in the jurisdiction of its receipt following its transmission by fax.

**27. INVOICES.** Any invoices to Licensee hereunder (herein referred to as an “*Invoice*”) shall be in writing sent as set forth in Section 26. If sent via facsimile or other electronic transmission, the Invoice shall be deemed to have been received as of the same business day in the jurisdiction of its receipt following its transmission by electronic transmission.

**28. DEFENSE.** Licensee will defend Moki from any actual or threatened third party claim arising out of or based upon Licensee’s use of the Licensed Deliverables or Licensee’s breach of any of the provisions of this Agreement. Moki will: (a) give Licensee prompt written notice of the claim; (b) grant Licensee full and complete control over the defense and settlement of the claim; (c) assist Licensee with the defense and settlement of the claim as Licensee may reasonably request and at Licensee’s expense; and (d) comply with any settlement or court order made in connection with the claim.

**29. INDEMNIFICATION.** Licensee shall indemnify Moki against: (a) all damages, costs, and attorneys’ fees finally awarded against Moki in any proceeding under Section 28; (b) all out-of-pocket costs (including reasonable attorneys’ fees) reasonably incurred by Moki in connection with the defense of such proceeding (other than Licensee has accepted defense of such claim); and (c) if any proceeding arising under Section 28 is settled, Licensee will pay any amounts to any third party agreed to by Licensee in settlement of any such claims.

**30. USE OF RESELLER NAME.** Moki may identify Licensee in Moki advertising and marketing materials. Licensee hereby grants Moki a non-exclusive right to use Licensee’s trademarks, logos, and other materials provided by Licensee to Moki for this purpose.

**31. MUTUAL WARRANTIES.** Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party’s execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

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