

SUBSCRIPTION AGREEMENT

Terms of Use

1. LICENSE AND SUPPORT.

1.1 **Paid Subscription Service.** If Customer has purchased a license to use the Subscription Service as indicated on a Mobilengine commercial order form, Mobilengine online registration form or Mobile App activation form (each an "Order Form"), subject to the terms, conditions and restrictions set forth in this Agreement the Order Form, including without limitation the payment of applicable Subscription Fees, Mobilengine hereby grants, and Customer hereby accepts, a non-exclusive, non-transferable, limited right and license to access and use, solely for its internal business purposes, (i) the Subscription Service identified on the Order Form including the Mobilengine Software (the "Service"), on a hosted basis, in accordance with the Mobilengine solution documentation for the Service at mobilengine.com/solutiondoc ("Documentation"), and (ii) the Documentation, each for the Subscription Term set forth in the applicable Order Form. Use of the Service is restricted and subject to the number of users and other limitations set forth in the Order Form. During the Subscription Term Mobilengine will support the Service in accordance with the Support and Service Level Policy attached as Appendix 2.

1.2 **SDK License.** In the event Customer has been granted an SDK License on the Order Form, Mobilengine hereby grants to Customer for the Subscription Term on the Order Form a non-exclusive, non-transferable, limited right and license to the Mobilengine SDK software ("SDK Software") solely for the purpose of developing and testing mobile applications for Customer's internal use in a nonproduction environment ("Mobile Apps"). The SDK Software shall not be used for any other purpose, including without limitation for production or commercial purposes. All rights and title in and ownership of the SDK Software and Mobile Apps shall remain with Mobilengine. Mobilengine hereby grants to Customer a nonexclusive, non-transferable, limited license to use the Mobile Apps solely for Customer's internal nonproduction and noncommercial purposes during the applicable Subscription Term. Customer shall not sell, transfer, assign, distribute, disclose or sublicense the Mobile Apps to any other party. In the event Customer desires to do so, Customer must obtain Mobilengine's prior written consent, pay applicable license fees or royalties as required by Mobilengine and agree to other terms mutually agreed with Mobilengine. Mobilengine will support Customers use of the SDK License during the development Subscription Term only as determined by Mobilengine in its sole discretion.

1.3 **Demonstration License.** In the event Customer has been granted a demonstration license in the Order Form, Mobilengine hereby grants, and Customer hereby accepts, a non-exclusive, non-transferable, limited right and license to access and use, for internal evaluation and demonstration purposes only, (i) the Service identified on the Order Form, on a hosted basis, in accordance with the Documentation, and (ii) the Documentation, each for the demonstration Subscription Term set forth in the Order Form and subject to any additional limitations set forth in the Order Form. Mobilengine will support the Service during the demonstration Subscription Term as determined by Mobilengine in its sole discretion.

2. TERM; RENEWAL; TERMINATION; DATA

2.1 **Term of Agreement.** This Agreement is effective as of the Effective Date and will continue until the services as described in the Order Form expired or terminated.

2.2 **Term and Renewal of Orders.** The Subscription Term described in each Order Form for the Paid Subscription Service will commence upon the Effective Date of the Order Form and continue as set forth in the Order Form ("Initial Term") and will automatically renew for additional one (1) year terms ("Renewal Term") unless either party has given the other party written notice of non-renewal at least ninety (90) days prior to the end of an Initial Term or Renewal Term. The term for SDK and Demonstration licenses shall be 90 days from the effective date of the applicable Order Form unless otherwise authorized by Mobilengine in writing.

2.3 **Termination.** Unless otherwise set forth on the Order Form, this Agreement and any Paid Subscription Service may be terminated only if one party materially breaches this Agreement and fails to cure such breach within thirty (30) days or receipt of notice of the breach from the non-breaching party.

2.4 **Data.** Customer shall be responsible for ensuring that all data and information collected, stored, handled and generated by Customer from third parties (through Customer's products, the Service, the Mobilengine Software, and Mobile Apps or otherwise) are collected, protected, stored and handled in accordance with all applicable laws and regulations, including without limitation laws and regulations regarding personally identifiable information, health information, credit information, data security and data protection, and Customer shall defend, indemnify and hold harmless Mobilengine against all damages, fines, claims, actions, suits, losses, penalties, expenses, costs and liability arising therefrom, but only to the extent of the Customer's negligence or willful misconduct and without fault by Mobilengine. In the event of a termination pursuant to Article 2.2 and 2.3 above, Mobilengine shall provide Customer with access and a reasonable opportunity to remove any Customer information and data from the Mobilengine systems and software.

3. **FEES; PAYMENT TERMS.** Subscription Fees for the Paid Subscription Service and any other fees for professional services are specified on the Order Form. Customer agrees to pay any pre-approved reasonable travel and living expenses incurred in connection with the provision of professional services under a Order Form. Unless otherwise set forth on any Order Form all fees will be monthly starting from the Effective Date of the Order Form. Payment terms are Net 20 days from the date of Customer's receipt of invoice. Customer shall be responsible for all taxes on the fees, except for taxes on Mobilengine's income.

4. **RESTRICTIONS; PROPRIETARY RIGHTS.** Customer shall not: (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, user interface techniques or algorithms of the Service or disclose any of the foregoing; (ii) encumber, transfer, manufacture, distribute, sell, sublicense, assign, provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use (except as expressly provided herein) the Service, SDK Software, Mobile Apps or Documentation; (iii) copy, modify, adapt, translate, incorporate into or with other software, or create a derivative work of any part of the Service, SDK Software, Mobile Apps or Documentation, except as expressly permitted herein; or (iv) attempt to circumvent any user limits, timing or use restrictions that are built into the Service, if any. The Service, SDK Software, Mobile Apps and Documentation are the proprietary intellectual property of Mobilengine that contain trade secrets and are protected by copyright law. Subject to any license granted hereunder, Mobilengine retains sole and exclusive ownership of all right, title, and interest in and to the Service, SDK Software, Mobile Apps, and Documentation. Any and all enhancements, modifications, corrections and derivative works that are made to the Service, SDK Software, Mobile Apps and Documentation will be considered part of such materials for the purposes of this Agreement and will be owned by Mobilengine. For the sake of clarity, Mobilengine owns all rights, title and interest in any solution and Mobile Apps developed and implemented by Customer or by Mobilengine pursuant to any Paid Subscription Service or any "Subscription to Mobilengine Service" between Parties under this Agreement or prior to this Agreement, including without limitation any API and integration solutions related to Customer's other software systems. Mobilengine shall own all rights, title and interest in any deliverables created by Mobilengine under any statement of work or development or additional Order Forms, but all such deliverables shall be licensed to Customer for use in connection with Customer's use of the Service hereunder. Notwithstanding the foregoing, Customer retains all rights, title and interest in and to Customer's own information and data, including Customer's employee and project data, other business relevant data input, standards, practices, and management policies, that is input by Customer into the Service or supplied to Mobilengine ("CustomerData").

5. **PUBLICITY.** Notwithstanding Section 6, Customer agrees to (a) allow its name and reference to be used in sales materials and user literature, which references Mobilengine's customers, and (b) the use of its name and case study, without endorsement, in a listing of Mobilengine's other customers. Customer shall also make reasonable efforts to, upon Mobilengine's prior reasonable request, serve as a reference account and to participate in case studies and other promotional activity.

6. **CONFIDENTIALITY.** Each party shall maintain as confidential and shall not disclose (except to its employees, accountants, attorneys, advisors, affiliates, outsourcers and third party service providers of recipient with a need to know in connection with recipient's performance under this

Agreement, and who have been advised of the obligation of confidentiality hereunder), copy or use for purposes other than the performance of this Agreement, any information which relates to the other party's business affairs, trade secrets, technology, research, development, pricing or terms of this Agreement ("Confidential Information") and each party agrees to protect all received Confidential Information with the same degree of care that it would use with its own Confidential Information and to prevent unauthorized, negligent or inadvertent use, disclosure or publication thereof. Breach of this Section may cause irreparable harm and damage. Thus in addition to all other remedies available at law or in equity, the disclosing party shall have the right to seek equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use. The recipient shall be liable to the disclosing party for any use or disclosure in violation of this Section by recipient or its affiliates, employees, third party service providers or any other related party. Confidential Information shall not include information that (a) is already known prior to the disclosure by the owning party; (b) is or becomes publicly known through no breach of this Agreement; (c) is independently developed without the use of the other party's Confidential Information and evidence exists to substantiate such independent development; (d) information that is obtained from a third party, and that third party is not, in good faith belief to the recipient, under any legal obligation of confidentiality; or (e) the recipient receives written permission from the disclosing party for the right to disclose any Confidential Information.

7. LIMITED WARRANTY. Mobilengine represents and warrants that the Paid Subscription Service will substantially conform to the Documentation during the Subscription Period, which shall mean the Initial Term and any Renewal Term. If Customer notifies Mobilengine in writing of a nonconformity of Service during the Subscription Period, Mobilengine will, at its option and expense, (a) correct any nonconformities in the Service that cause the Service to fail to conform to the Documentation, or (b) provide to Customer a pro rata refund of any prepaid but unutilized Subscription Fees applicable to the non-conforming Service. The limited warranty set forth in this Section shall be void if the Service nonconformity is caused by (i) the use or operation of the Service with an application or in an environment other than that recommended in writing by Mobilengine, (ii) modifications to or customizations of the Service without the express written authorization of Mobilengine, (iii) accident, disaster or event of force majeure, (iv) misuse, fault or negligence of or by Customer, (v) use of the Service in a manner for which it was not designed, (vi) causes external to the Service such as, but not limited to, power failure or electrical power surges. **THE WARRANTY AND REMEDIES SET FORTH IN THIS SECTION 7 REPRESENT MOBILENGINE'S SOLE WARRANTY AND CUSTOMER'S SOLE REMEDY IN THE EVENT OF BREACH OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, MOBILENGINE MAKES NO AND DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DEMONSTRATION LICENSES, SDK LICENSES, SDK SOFTWARE AND MOBILE APPS ARE EXPRESSLY EXCLUDED FROM ANY WARRANTIES CONTAINED IN THE AGREEMENT AND ARE PROVIDED ON AN "AS-IS" BASIS WITH NO WARRANTIES OR INDEMNITIES OF ANY KIND.**

8. LIMITATION OF LIABILITY. THE CUMULATIVE LIABILITY OF MOBILENGINE TO CUSTOMER FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO MOBILENGINE UNDER THE APPLICABLE ORDER FORM WITHIN THE YEAR PRECEDING THE CLAIM. NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL MOBILENGINE OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR DAMAGES FOR LOSS OF DATA, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF MOBILENGINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IS NEGLIGENT.

9. INDEMNIFICATION. If a third-party claims that the Service infringes any patent, copyright, or trade secret, Mobilengine will defend, indemnify and hold Customer harmless against such claim, provided that Customer promptly notifies Mobilengine in writing of the claim, allows Mobilengine sole control of the defense and/or settlement, and cooperates with Mobilengine in, the defense or settlement of such action. If such a claim is made or appears possible, Mobilengine may, at its option, secure for Customer the right to continue to use the Service, modify or replace the Service so that it is non-infringing, or, if neither of the foregoing options is available in Mobilengine's reasonable opinion, terminate this Agreement and refund to Customer any unamortized pre-paid fees for use of the Service. Mobilengine shall have no liability or obligation hereunder with respect to any infringement claim if such infringement is caused by (i) compliance with Customer's instructions, designs, guidelines, plans or specifications; (ii) Customer's use of the Service other than as specified in the applicable Documentation; (iii) modification of the Service by any person other than as authorized in writing by Mobilengine; or (iv) the combination, operation or use of the Service with other product(s) or services not supplied by Mobilengine, where the Service would not by itself be infringing. THIS PARAGRAPH STATES MOBILENGINE'S ENTIRE OBLIGATION TO CUSTOMER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

10. GENERAL.

10.1 Entire Agreement. This Agreement is the complete and exclusive statement of the parties' agreement and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. If these Terms and Conditions conflict with any of the terms or conditions of any Order Form or Statement of Work, then, unless otherwise provided herein, the terms and conditions of such Order Form or Statement of Work will control solely with respect to the Services covered by such Order Form or Statement of Work. Any purchase orders issued by Customer shall be deemed to be for Customer's convenience only and, notwithstanding acceptance of such orders by Mobilengine, shall in no way change, override, or supplement this Agreement.

10.2 Waiver. Any waiver or modification of the provisions of this Agreement will be effective only if in writing and signed by the party against whom it is to be enforced. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. A waiver of any provision, breach or default by either party or a party's delay exercising its rights shall not constitute a waiver of any other provision, breach or default.

10.3 Independent Contractor. Mobilengine is an independent contractor and not an employee of Customer. At no time shall either party make any commitments or incur any charges or expenses for or in the name of the other party, or be considered the agent, partner, joint venture, employer or employee of the other party.

10.4 Notices. All notices or other communications required to be given hereunder shall be by email to the receiving party at the address specified on the Order Form. Notices shall be effective upon their receipt by the party to whom they are addressed.

10.5 Assignment. This Agreement may not be assigned by Customer without Mobilengine's prior written consent.

10.6 Compliance with Laws. Each party will be responsible for compliance with all legal requirements related to its performance under this Agreement, including all applicable laws related to the protection, privacy and disclosure of data and information.

10.7 Force Majeure. Neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, terrorism, war, riot, embargoes, fire, floods, earthquakes, or strikes (each a "Force Majeure Event") provided that such party gives prompt written notice to the other party of the Force Majeure Event. The time for performance will be extended for a period equal to the duration of the Force Majeure Event.

10.8 Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted and construed in accordance with the laws of England.

10.9 Jurisdiction. The Parties hereby agree to irrevocably submit themselves to the exclusive jurisdiction of the High Court of Justice in England.

10.10 Non-Solicitation. Neither party shall directly or indirectly solicit, employ or engage any employee of the other party with whom the non-employing party came into contact through the performance of this Agreement during the period such employee was engaged in the performance of this Agreement and for one (1) year after such engagement. If any court or other adjudicatory body determines that the foregoing provision is unenforceable because of its duration or scope, the court or adjudicatory body has the power to reduce the duration or scope of the provision, as the case may be, so that in its reduced form the provision is enforceable. Such power includes the authority to reform the provision by rewriting it, if required, so that it conforms to applicable law and carries out the parties' intentions under this Agreement.

10.11 Survival. The following provisions of this Agreement shall survive any termination or expiration hereof: Sections 3, 4 and 6 through 10.