

General terms and conditions of MobileSTATS Ltd

A. General section

This chapter of the General Terms and Conditions forms part of all Agreements between MOBILESTATS and the Customer and applies to all acts, including legal acts, connected therewith, regardless of the manner in which they are realised.

Article 1: Definitions 1.1

The following definitions apply in these General Terms and Conditions:

- MobileSTATS Ltd ('MOBILESTATS'): the supplier referred to in these General Terms and Conditions or a company affiliated with it;
- Customer: any natural person or legal entity with which MOBILESTATS negotiates regarding the conclusion of an Agreement, or to which MOBILESTATS Software or Services are made available;
- Agreement: any agreement, regardless of the manner in which it is realised, between MOBILESTATS and a Customer, any amendment or addition thereto and any acts, including legal acts, related to the preparation and performance of that Agreement.
- Services: all services that are the subject of an Agreement, including but not limited to the supply of Software, programming activities, hosting, server management, project management, operating and managing of databases and monitoring of Sites;
- Software: computer programs that MOBILESTATS provides to a Customer for the Customer's use, as described in an Agreement;
- Sites: Web sites that are maintained by the Customer and in connection with which the Software is used and/or for which MOBILESTATS provides Services;
- Order: all orders from a Customer to MOBILESTATS.

Article 2: Applicability

2.1 These General Terms and Conditions apply if the Customer purchases Services or Software from MOBILESTATS, whether or not by electronic means.

2.2 Unless the nature or the specific content of a provision in these General Terms and Conditions so opposes, the provisions of these General Terms and Conditions also apply to agreements in which MOBILESTATS does not act in its capacity as licensor and/or service provider.

2.3 MOBILESTATS expressly excludes the applicability of any general or specific conditions or stipulations of the Customer.

Article 3: Offers, conclusion of agreements, specifications and specifications of services

3.1 MOBILESTATS is not bound by any offer, specification or quotation that serves only as an invitation to place an Order.

3.2 An Agreement has been concluded only if and insofar as MOBILESTATS has accepted an Order in writing or electronically, or if MOBILESTATS fills an Order.

3.3 If a Customer purchases Software electronically, the Agreement will be concluded either at the time when the Customer accepts the General Terms and Conditions by means of

confirmation or when the Customer begins to use the Software.

3.4 All of MOBILESTATS's specifications in respect of the Software and/or Services are carefully prepared. MOBILESTATS cannot guarantee, however, that there will be no deviations in that respect.

Article 4: Amendments and additions

4.1 Amendments and additions to any provisions in an Agreement and/or in these General Terms and Conditions will apply only if they are recorded in writing by MOBILESTATS and signed by the parties and will pertain only to that particular Agreement.

4.2 MOBILESTATS may amend these General Terms and Conditions. The Customer will be notified of any amendments in advance. If the Customer does not accept the amendment, it will be entitled to terminate the Agreement with MOBILESTATS within 10 (ten) workdays after MOBILESTATS has informed the Customer of the amendment.

Article 5: Prices

5.1 All of MOBILESTATS's prices are exclusive of VAT and other government levies. The Customer is responsible for all taxes related to the use of the Software and Services. Unless otherwise expressly provided, the Customer will bear all costs related to the acquisition and/or maintenance of on-line network connections and telecommunications or data communications facilities. Once the euro becomes legal tender, all prices within the European Union will be deemed to be expressed in euros, and the Customer will pay in euros.

5.2 In the case of an Agreement in which the Customer makes periodic payments, MOBILESTATS will be entitled to amend the applicable prices and rates by means of a written notification subject to one month's written notice. If the Customer does not accept MOBILESTATS's notification of the amendment to the applicable prices and rates, the Customer will be entitled to terminate the Agreement in writing within 10 (ten) workdays effective as from the date on which the amendment to the price or rate would have become effective, as indicated in the notification from MOBILESTATS.

5.3 An annual fee applies to some of MOBILESTATS's Services and Software, which will be due at the beginning of each new year, as agreed. The provisions of Article 5.2 also apply to the annual fee.

5.4 In the case of use on approval of the Services or the Software, the Customer will not owe MOBILESTATS any fee, provided that the use does not continue for more than 30 (thirty) days. If the term indicated in the previous sentence is exceeded, the Customer will automatically owe MOBILESTATS the customary fee.

Article 6: Payment

6.1 The Customer will pay MOBILESTATS the amounts charged in the currency and on the payment conditions indicated in the invoice. If no specific conditions are indicated, the Customer will pay within 7 (seven) days of the invoice date.

6.2 All amounts charged to the Customer must be paid without any discount or deduction. The Customer is not authorised to any set off or to suspend any payment obligation vis-à-vis MOBILESTATS.

6.4 If the Customer fails to pay the debt after notice of default, the debt may be passed on for collection. In that event, in addition to the total amount due at that time, the Customer will be obliged to fully reimburse MOBILESTATS's judicial and extra judicial costs, including the costs charged by external experts in addition to the costs fixed by the court, and costs related to collection of the debt or other legal action, all of the above subject to a minimum of 15 (fifteen) percent of the total amount.

6.5 If at any time MOBILESTATS has doubts about the Customer's creditworthiness, MOBILESTATS will be entitled, before performing or performing further, to demand payment in advance from the Customer or a sound security equal to the amounts that MOBILESTATS can or will be able to claim from the Customer under the Agreement, whether or not due, all of the above at the discretion of MOBILESTATS.

Article 7: Delivery periods

7.1 Delivery periods indicated by MOBILESTATS are based on the circumstances applicable to MOBILESTATS at the date of conclusion of the Agreement and, to the extent that they depend on the performance of third parties, on the information provided to MOBILESTATS by those third parties. MOBILESTATS will observe the delivery periods insofar as possible.

7.2 MOBILESTATS is at all times entitled to make partial deliveries.

7.3 If MOBILESTATS requires information or resources for the performance of an Agreement that the Customer must provide, the delivery periods will not commence before the first workday after all of the required information or resources are in the possession of MOBILESTATS.

7.4 If a delivery term is exceeded, the Customer will not be entitled to any compensation in that respect, nor will the Customer be entitled to dissolve the Agreement, unless the exceeding of the delivery term is such that the Customer cannot reasonably be expected to maintain the relevant part of the Agreement. In that event the Customer will be entitled to dissolve the Agreement insofar as strictly necessary.

Article 8: Risk

8.1 The risk of loss of or damage to Software or information carriers containing Software that are the subject of the Agreement passes to the Customer at the time when they are at the actual disposal of the Customer or an auxiliary person used by the Customer.

8.2 The Customer will bear the risk of loss of or damage to the Software, information, files and/or data that is made available to the Customer by means of telecommunications or data communications facilities, including by electronic means

Article 9: Inspection and complaints

9.1 The Customer is obliged to carefully inspect the Services (or have them inspected) immediately upon their arrival at the destination-including in its computer system if the Software is supplied electronically. Any complaints must be notified to MOBILESTATS in writing within 5 (five) workdays after the arrival or download of the Software.

9.2 If upon installation of the Software the Customer notices that there is a defect, it must immediately discontinue further installation and must do or refrain from doing everything reasonably possible to prevent any (further) damage.

Article 10: Server and Sites

10.1 If and insofar as Services are performed by means of a server offered, operated or maintained by MOBILESTATS or if MOBILESTATS provides hosting, MOBILESTATS will provide the Customer with the information necessary to use the server. **10.2** The Customer is responsible for installing, maintaining and operating its own Sites and for the proper use of the Software, whether or not by means of the MOBILESTATS server.

Article 11: Registration of domain name

11.1 The Customer indemnifies MOBILESTATS in respect of all liability resulting from a domain name registered by the Customer or by MOBILESTATS for the Customer that

infringes the trademark or trade name rights of a third party.

Article 12: Customer's obligations

12.1 The Customer will always timely provide MOBILESTATS with all data or information that is useful and necessary for proper performance of the Agreement and will fully cooperate in that regard.

12.2 The Customer is responsible for the use and application in its organisation of all hardware, Software and Services provided by MOBILESTATS, as well as for inspection and safety procedures, proper system management and databases and their use.

12.3 The Customer will always timely make available to MOBILESTATS all necessary materials, tests and data, and it guarantees the correctness and completeness thereof. MOBILESTATS is not responsible for damage resulting from errors in operation analyses, diagrams, illustrations, databases or names, or for errors in the conversion thereof.

Article 13: Telecommunications and data communications

13.1 The Customer is at all times responsible for the proper choice, timely availability and maintenance of telecommunications and data communications facilities and the hardware necessary for the provision of the Services by MOBILESTATS.

13.2 MOBILESTATS accepts no liability for loss of data and Software or for the Customer's inability to use the Services due to a defect in or failure to function of telecommunications or data communications facilities, regardless of the manner in which the transmission takes place.

13.3 If MOBILESTATS makes access codes or identification codes available to the Customer for data processing and/or the provision of Services using telecommunications and data communications facilities, the Customer will treat those codes confidentially and will reveal them only to authorised staff members.

13.4 With respect to telecommunications and data communications, the Customer will adhere to the protocols and/or specifications desired by MOBILESTATS and to MOBILESTATS's instructions in that regard.

Article 14: Security and privacy

14.1 The Customer warrants that all statutory regulations in respect of the personal data to be processed by the Customer, including in particular the regulations pursuant to the applicable Data Protection Act or comparable regulations, have been and will be strictly complied with and that all prescribed notifications have been made. The Customer will immediately provide MOBILESTATS with all information requested in that regard. MOBILESTATS will arrange for adequate protection of the personal data to the extent possible based on current technical developments.

14.2 The Customer indemnifies MOBILESTATS against all claims of third parties brought against the Customer or MOBILESTATS on account of violation of statutory regulations in respect of the processing of personal data, including the Dutch Personal Data Protection Act and/or statutory storage periods.

Article 15: Intellectual property rights

15.1 All intellectual or industrial property rights to all Services developed or made available pursuant to the Agreement, including but not limited to Software, including the source codes, databases, hardware or other material such as analyses, designs, documentation and reports, as well as preparatory material, vest exclusively in MOBILESTATS or its licensors. The Customer obtains only the right of use and the powers expressly granted pursuant to

these General Terms and Conditions, other general terms and conditions or otherwise. The Customer will not otherwise duplicate the Software or other materials or make copies thereof.

15.2 The Customer is not permitted to change or delete trademark or identifying marks and/or any other indications in respect of copyrights, trade names or other intellectual property rights affixed to the Software by means of MOBILESTATS's site, including indications with respect to the confidential nature and secrecy of the Software, or to change or copy the Software or any portion thereof.

15.3 MOBILESTATS indemnifies the Customer against legal actions that are based on the allegation that Software developed by MOBILESTATS infringes an intellectual or industrial property right applicable in England and Wales, on the condition that the Customer immediately inform MOBILESTATS in writing of the existence and content of the legal action and leaves settlement of the case, including reaching any settlements, entirely to MOBILESTATS. The obligation to indemnify will lapse if and insofar as the relevant infringement is related to changes that the Customer has made to the Software or has had made by third parties. If it is irrevocably established at law that the Software developed by MOBILESTATS infringes any intellectual or industrial property right of a third party, or if in MOBILESTATS's opinion there is a good chance that such an infringement has occurred, MOBILESTATS will take back the goods supplied while crediting the purchase price after deducting a reasonable user fee, or, at its discretion, ensure that the Customer can continue to use the goods supplied or other Software that is functionally equivalent.

15.4 Any other liability or duty to indemnify of MOBILESTATS due to infringement of intellectual or industrial property rights of third parties is excluded if it is caused by use of the Software in a modified form, which modification was not implemented by MOBILESTATS, in connection with Software that was not supplied or provided by MOBILESTATS, or in any other manner than that for which the Software was developed or intended.

Article 16: Confidentiality

16.1 Both parties undertake to observe a duty of confidentiality with respect to the conditions contained in an Agreement and all information regarding the other party of which they become aware in the context of an Agreement. The duty of confidentiality in any event covers technical, financial, operational and business information of the other party.

16.2 The following does not fall under 'information' within the meaning of the first paragraph: (a) information that was already in the possession of the receiving party at the time when that information was provided by the other party; (b) information that is generally known; (c) information that is acquired from a third party that was entitled to provide the information, or information that the receiving party developed itself without using confidential information of the providing party.

16.3 The parties will not use the information referred to in the first paragraph for any purpose other than to fulfill obligations arising from an Agreement. The parties will ensure that the same duty of confidentiality is imposed on their employees or third parties that they call in and that have access to the information referred to in the first paragraph.

16.4 Notwithstanding the provisions of this article, MOBILESTATS is at all times entitled to refer to the identity and capacity of the Customer in advertising statements.

Article 17: Communication

17.1 The Customer is at all times responsible for the correctness and completeness of the information that is provided by or on behalf of the Customer on a Site or elsewhere. In particular, the Customer is not permitted to use public Sites and other Software, whether or not managed by MOBILESTATS, or networks for which the Customer uses the Services of MOBILESTATS, for acts and/or conduct that are contrary to the law, public policy or morality

or to the provisions contained in the Agreement. The following acts and/or conduct are not permitted, among others: (a) infringement of rights related to works protected by patents, copyrights, design rights or trademarks, or to otherwise act contrary to the intellectual property rights of third parties; (b) entering another computer system or the World Wide Web without consent, whether or not by breaking the access codes ('hacking') and/or in the event that access is provided by a technical intervention with the aid of counterfeit signals or keys, or by taking on a false identity; (c) making damaging, illegal or misleading statements; (d) distributing material that is prohibited by law; and (e) acting contrary to regulations (including international regulations) in that respect.

17.2 The Customer indemnifies MOBILESTATS against all claims of third parties in respect of breach of the provisions contained in the first paragraph.

Article 18: Termination/dissolution

18.1 Agreements for a definite period of time-with the exception of agreements related to use on approval-will be automatically extended after the expiry of the initial term by the same term unless one of the parties terminates the agreement in writing, by registered post, not later than 3 (three) months before the expiry of the term of the Agreement. Agreements for an indefinite period of time can be terminated by either of the parties with due observance of a notice period of three (3) months.

18.2 An Agreement in respect of use on approval has a term of 30 (thirty) days and terminates automatically after the expiry of that term, in which case the Customer is bound by the provisions of Article 18.5. If the Customer does not comply with the provisions of Article 18.5, the Customer will automatically owe MOBILESTATS the fee applicable at that time, on the ground of Article 5.4.

18.3 If the Customer does not properly or timely fulfill any obligation arising for it out of any Agreement, the Customer will be in default without any notice being required, and MOBILESTATS will be entitled to: · suspend the performance of all Agreements until performance by the Customer is sufficiently guaranteed; · dissolve the relevant Agreement in whole or in part.

18.4 In the event of a suspension of payments (including a provisional suspension of payments), bankruptcy, closure or dissolution of the Customer's company, all Agreements with the Customer will be dissolved by operation of law unless MOBILESTATS informs the Customer within a reasonable period of time that it requires specific performance of the Agreement(s) or a portion thereof. In the latter case, MOBILESTATS is entitled to suspend performance of the Agreement(s) without notice of default until performance by the Customer is sufficiently secured. The provisions of the previous Articles do not affect MOBILESTATS's other rights pursuant to the law and the Agreement.

18.5 In the event of termination of, or dissolution of all or part of, the Agreement, the Customer is obliged, to: (a) return to MOBILESTATS or to destroy all copies of Software and materials in its possession that were made available by MOBILESTATS within the framework of the Agreement; (b) to return any consumer articles that MOBILESTATS made available; (c) to either return to MOBILESTATS any confidential information of MOBILESTATS that is in the Customer's possession (and to simultaneously delete that information from its computer system) or to immediately destroy the information and not to use it any further.

18.6 The Customer will give MOBILESTATS the opportunity to verify the fulfilment of that obligation at the Customer's location.

Article 19: Transfer of rights

19.1 MOBILESTATS is entitled to transfer to third parties rights and obligations arising out of any Agreement. The Customer is entitled to do so only with MOBILESTATS's prior written consent, unless a situation as described in Article 24.3 is involved.

Article 20: Liability of MOBILESTATS

20.1 Nothing in this Agreement shall be taken to limit MOBILESTATS's liability for death, personal injury or the tort of deceit. **20.2** The Software and the Services are provided 'AS IS' and to the extent permitted by relevant law without condition, warranty or terms of any kind, either expressed or implied (whether by statute, common law, custom or otherwise), including but not limited to the implied conditions or warranties of merchantability, fitness for a particular purpose, or non-infringement.

20.3 MOBILESTATS's total liability for breach of the Agreement is limited to compensation of physical damage to goods (not including software or data) and for direct material loss up to a maximum of the amount of the price and/or fee stipulated in that Agreement (exclusive of VAT). If the Agreement relates to the provision of services or is a continuing performance contract of more than one year, the stipulated price is set at the total of the fees (exclusive of VAT) stipulated in one year. In no event will the total compensation for direct material loss amount to more than five thousand euros (EUR 5,000).

20.4 MOBILESTATS will be liable for breach of the Agreement only if the Customer immediately and properly gives notice of default to MOBILESTATS, at the same time giving a reasonable term to cure the breach, and if MOBILESTATS's breach in respect of its obligations continues after that term. The notice of default must contain as detailed a description of the breach as possible, so that MOBILESTATS will be in a position to respond adequately.

20.5 The Customer indemnifies MOBILESTATS against all liability vis-à-vis third parties due to product liability as a result of defects in a product or system that the Customer supplies to a third party and that consisted in part of products supplied by MOBILESTATS, unless the Customer demonstrates that the damage was caused thereby.

Article 21: Force majeure

21.1 If MOBILESTATS's inability to fulfil its obligations vis-à-vis the Customer is not caused by breach of contract (i.e. force majeure), the fulfilment of those obligations will be suspended for the duration of the event of force majeure.

21.2 If the event of force majeure has continued for 60 (sixty) days, both parties will be entitled to dissolve the Agreement, in whole or in part, in writing and in the agreed manner, to the extent justified by the event of force majeure.

21.3 In the event of force majeure, the Customer will not be entitled to compensation for damages or otherwise, even if MOBILESTATS has an advantage as a result of the force majeure.

Article 22: Applicable law; competent court

22.1 These General Terms and Conditions, as well as all Agreements, will be governed by the laws of England.

22.2 The applicability of the Vienna Sales Convention (CISG) is excluded.

22.3 Any disputes that arise on the basis of the Agreement or these General Terms and Conditions will be submitted to the irrevocable exclusive jurisdiction of the courts in England and Wales.

B. Special section

This chapter of the General Terms and Conditions forms part of all Agreements through which the Customer acquires a right to use Software and applies if Software is made available to the Customer by MOBILESTATS or if the Customer uses the Software.

Article 23: Right to use Software

23.1 MOBILESTATS grants the Customer, for the term indicated in the Order and on the conditions indicated in the Order or on MOBILESTATS's Site or an affiliated Site, a non-exclusive, terminable licence, which exclusively gives the Customer the right to use the Software indicated in the Order or downloaded by the Customer for the benefit of monitoring the use of the Site or internal business purposes.

23.2 Unless the parties agree otherwise, MOBILESTATS will install the Software on a server of MOBILESTATS. All Sites must have a valid and separate licence for the relevant Software.

23.3 The Customer may transfer the Software (including the licences for use thereof) only in the following cases: (a) the Customer may transfer the Software (including all licences for use thereof) from one computer to another computer for use through the same server, provided that the technical specifications of the computer are not changed and on the understanding that that Customer does not authorise use of the Software in a manner or for a purpose that does not correspond with the use for which the Customer was authorised before the transfer; and (b) the Customer may transfer its rights in respect of the Software to a third party in the event of a merger, consolidation or other form of disposal or take-over within the company/organisation, provided that the acquiring party declares in writing that it deems itself bound by the same provisions and conditions that bind the Customer, while all of the Customer's rights in respect of the Software lapse with the transfer.

23.4 The Customer is authorised to use the Software only to the extent to which that is permitted pursuant to the Agreement. The Customer may not duplicate the documentation in any manner whatsoever. The Customer may not disclose the Software to third parties. The Customer is not permitted: (a) with respect to the Software or the documentation, to change, translate, reduce to the source code, decompile or disassemble, or to create derivative works therefrom; information that is necessary to realise interoperability of an independently developed computer program with the Software (within the meaning of Article 6 of Directive 91/250/EC of the Dutch Council for the Legal Protection of Computer Programs can be obtained from MOBILESTATS upon request against payment of MOBILESTATS's administration rates current at that time; (b) to transfer the Software (except for cases listed in paragraph 24.3 in which that is expressly permitted) or to lend it, rent it, lease it, distribute it or use it to provide services to third parties or on behalf of third parties, or to grant rights in respect of the Software or documentation in any form to third parties, unless MOBILESTATS has granted written approval to do so in advance, any relevant fees have been paid and all other conditions of MOBILESTATS have been met; or (c) to remove from the Software or documentation, or to change or render illegible, the designations, labels or markings in respect of copyrights and other intellectual property rights.

23.5 Insofar as MOBILESTATS maintains software and/or databases for the Customer-whether or not by operating it on hardware located at MOBILESTATS-the Customer remains responsible for the use thereof. The Customer agrees that additional conditions are (or may be) attached to the use of software-and databases on its own Site-and hardware, whether or not located at MOBILESTATS, in particular with respect to fees (including licensing fees) due from the Customer.

23.6 If MOBILESTATS has secured the Products and/or Services by means of technical protection (e.g. firewalls or security keys), the Customer is not permitted to remove or avoid that security. If as a result of the security measures the Customer cannot make a reserve copy of the Software, MOBILESTATS will make a reserve copy available at the Customer's request.

23.7 Unless MOBILESTATS makes a reserve copy of the Software available to the Customer, the Customer is entitled to keep only one reserve copy of the Software, which must be understood to mean that the Customer is entitled to make only one copy. 'Reserve copy' within the meaning of these General Terms and Conditions means: a reserve file, an on-line

copy, whether or not saved on a server and/or a saved form of software, or a material object on which the software is recorded. Making a reserve copy is permitted only to replace the original copy of software in the event of involuntary loss or damage. The reserve copy must be an identical copy and must be provided with the same indications as the original copy.

Article 24: Software and database licences from third parties

24.1 Insofar as MOBILESTATS provides the Customer with software and/or database licences from third parties, the licence conditions and guarantees of that third party will apply.

Article 25: Server

25.1 From time to time MOBILESTATS will establish minimum specifications for the Customer's computer(s) and network environment, including-in appropriate cases-the MOBILESTATS server on which or in which the Customer uses the Software. The Software may be installed on the Customer's computer(s) or network environment if the installation conforms to the applicable specifications of MOBILESTATS, including the configuration and capacity requirements. Those requirements may change from time to time. The Customer is responsible for acquiring the above-mentioned specifications from MOBILESTATS and for compliance therewith.

25.2 If the computer(s) provided by the Customer, including the MOBILESTATS server, and the network environment meet those specifications but the Software still does not function in conformity with the accompanying documentation, MOBILESTATS will assist, within reasonable terms, in solving the installation and/or configuration problems that prevent the Software from functioning properly. If MOBILESTATS has rendered every reasonable assistance in order to find a solution for those problems together with the Customer, but the Software still does not function properly on or in the computer(s) and network environment provided by the Customer, including the MOBILESTATS server, the Customer has the choice (1) to purchase an alternative computer or computers, including the MOBILESTATS server, and changing the network configuration; or (2) to terminate this Agreement and return the Software in exchange for a refund of the fee paid, to be decreased by a straight-line depreciation over a period of three (3) years.

Article 26: Protection of code and terms of use

26.1 The concept and validation of data collection and all subsequent code written and used within the mobileSTATS applications are the property of mobileSTATS Limited. Reproduction of ANY of this code by other triallists of the service is not acceptable without the express permission of the mobileSTATS Commercial team in writing.

Failure to adhere to this will result in mobileSTATS issuing legal proceedings against the aforementioned triallists."

The trial of the services must run on the site that the client wishes to go live on.

Licences are non-transferable between domains.

If a clients page impressions exceed that of the agreed amount then mobileSTATS reserve the right to increase the costs to the next tiered banding.

For monthly subscriptions an invoice will be generated and e-mailed each month based on the initial date of subscription. Payment must be received within seven days of the invoice being sent. Failure to pay will result in the subscription being suspended until cleared payment is received by mobileSTATS Limited.

