

## Mobility Suite Subscription Conditions

### 1. Subject Matter

These Mobility Suite Subscription Conditions (hereinafter referred to as the "Conditions") govern the use of SKIDATA's Mobility Suite Subscription by Customer.

### 2. Definitions

For the purposes of these Conditions, the following terms shall have the meaning assigned to them under this section:

**"Agreement"**: The entirety of the provisions governing the use of SKIDATA's Mobility Suite Subscription by Customer, including the Conditions and the Order Form and Factsheet incorporating the Conditions by reference.

**"Customer"**: The (natural or legal) person having signed the Order Form.

**"Expert Services"**: The expert services elements of the Mobility Suite Subscription as defined in Schedule 4: Expert Services Terms.

**"Factsheet"**: The document provided by SKIDATA to Customer further detailing the Mobility Suite Subscription.

**"Hardware"**: The hardware elements of the Mobility Suite Subscription.

**"Hosted Services"**: The software elements of the Mobility Suite Subscription which are hosted by SKIDATA.

**"Order Form"**: SKIDATA's order form agreed to by Customer, incorporating these Conditions by reference.

**"SKIDATA"**: The SKIDATA entity specified in the Order Form which is contracting with Customer.

**"Mobility Suite Subscription"**: the combination of Software, Hardware, Hosted Services, Interfaces and Expert Services included in the per-lane license ordered by Customer from SKIDATA in the Order Form.

**"Software"**: The software elements of the Mobility Suite Subscription which are hosted by customer on-premise or installed locally on the Hardware.

### 3. Term, Termination

Except where provided otherwise in the Order Form, the Agreement shall be entered into for period of five years after which it will be automatically renewed in one-year terms unless it is terminated by either party by giving at least 2 months' written notice to the other party before the end of the respective term.

In case of any material breach of the Agreement by a party, the other party is entitled to terminate the Agreement with immediate effect by means of a written declaration, provided that the breaching party was requested in writing to remedy the breach within a period of 30 days, whereby the breach of the Agreement must be specifically described, and provided that the breaching party fails to remedy such material breach. The non-payment of the license fee is considered a material breach of Agreement.

Any reimbursement of already paid license fees or any adjustment of due license fees in case of termination is excluded.

### 4. Payment

All invoices are due immediately upon receipt. Payments are to be made in the agreed currency without any deductions. Payment shall be deemed to have been made as soon as the amount has been credited to SKIDATA's bank account and SKIDATA can freely dispose of it. Recurring payments are due in advance on the 5th day of the agreed invoicing period (e.g. month, quarter, year).

SKIDATA shall be entitled to charge default interest of 1% per month in the event of default of payment by Customer. In addition, Customer shall reimburse SKIDATA all costs of extrajudicial (e.g. dunning process) and judicial debt collection.

If SKIDATA withdraws from the Contract due to default in payment, it is entitled to claim or retain 5% of the agreed price as a contribution to expenses. SKIDATA reserves the right to assert further claims for damages.

SKIDATA is entitled to make reasonable annual adjustments to any recurring fees based on the development of consumer prices in the country in which SKIDATA has its seat.

In case of non-payment, SKIDATA may withhold the Mobility Suite Subscription at its own discretion. Customer acknowledges that parts of the equipment not included in the Mobility Suite Subscription may stop functioning without the Mobility Suite Subscription.

### 5. Liability

SKIDATA shall only be liable for its own acts or omissions and not for acts or omissions of third parties. This exclusion expressly applies to acts or omissions of Scheme Owners and Acquirers or for events or activities originating outside the systems of SKIDATA (such as internet disturbances or malfunctions in third party systems), except in case such events were caused by the intent or gross negligence of SKIDATA. The total liability of SKIDATA under the Agreement towards Customer for breach of contract, tort or under any other legal theory in any calendar year is limited to an amount paid by Customer in the preceding year under this Agreement. SKIDATA shall not be liable for any special, indirect, or consequential damages (including any loss of profit, business, contracts, revenues or anticipated savings, or damage to good name) as a result of breach of contract, tort or under any other legal theory.

Nothing of the foregoing excludes or limits any liability under the Agreement for intent, gross negligence, death, fraud or personal injury. Except where such limitations would be prohibited, in no event shall SKIDATA Parties be liable for any indirect, special, punitive, exemplary, incidental and/or consequential damages of any kind (including, but not limited to, lost profits) whether based in contract, tort, strict liability or otherwise which arises out of or is in any way connected with this Agreement.

SKIDATA shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labour disputes, embargoes, government orders or any other force majeure event.

### 6. Confidentiality

Each party receiving information ("Recipient"), whether directly or indirectly, from the other party ("Disclosing Party") shall treat as confidential all such information in any medium or format (whether marked "confidential" or not) which concerns the business, operations,

software or customers of the Disclosing Party and which can reasonably be deemed to be of a confidential nature ("Confidential Information"). The contents and existence of this Agreement is considered Confidential Information.

The Recipient may only use the Confidential Information for the purposes of performing the activities set out in this Agreement.

The Recipient may only provide its employees, directors, subcontractors and professional advisers (Permitted Users) with access to the Confidential Information on a strict "need-to-know" basis for this purpose.

The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence. Where a Permitted User is not an employee or director of the Recipient (and is not under a professional duty to protect confidentiality) the Recipient shall ensure that the Permitted User shall enter into a written confidentiality undertaking with the Recipient on substantially equivalent terms to this clause.

The obligation of confidentiality as described in this clause shall remain in effect also following the termination of the Agreement, regardless of the grounds for termination.

This obligation of confidentiality shall not apply to any information which

- 1) is in or subsequently enters the public domain other than as a result of a breach of this confidentiality obligation;
- 2) has been or is subsequently received by the Recipient from a third party which is under no confidentiality obligation in respect of that information; or
- 3) is required to be disclosed any competent regulatory authority or court – subject to the obligation of the Recipient to give immediate notice of such requirement to the Disclosing Party (where lawful and practical to do so) – so that the Disclosing Party has sufficient opportunity (where possible) to prevent or control the manner of disclosure by appropriate legal means.

## 7. Schedules

The following schedules are incorporated herein by reference:

- Schedule 1: Software Terms
- Schedule 2: Hardware Terms
- Schedule 3: Hosted Services Terms
- Schedule 4: Interface Terms
- Schedule 5: Expert Services Terms

In case of any conflict of the provisions in the Agreement, the following order of precedence shall be observed:

- 1) Order Form
- 2) Factsheet
- 3) Schedules
- 4) Remainder of the Agreement

## 8. General Provisions

The laws at SKIDATA's seat apply with the exception of the United Nations Convention on Agreements for the International Sale of Goods (CISG) and any and all reference of law provisions.

The courts at the seat of SKIDATA shall have exclusive jurisdiction to hear, settle and/or determine any dispute, controversy or claim arising out of or in connection with the Agreement, including any question regarding its existence, validity, formation or termination. However, SKIDATA is entitled to bring a claim against Customer before the court having subject matter and local jurisdiction at the seat of Customer. Should any provision contained in the Agreement be or become ineffective or unlawful, this shall not affect the validity of the remaining provisions. The parties shall replace any ineffective or unlawful provision with an effective and lawful provision most closely reflecting the Parties' original economic intent.

Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver of such party's right to assert or rely upon such provision, right, or remedy in that or any other instance.

This Agreement constitutes the entire agreement of the parties and supersedes any and all previous agreements between the parties regarding the subject matter of the Agreement.

The Agreement shall not be assigned by either party in whole or in part (by contract, merger, operation of law, or otherwise). Any attempted assignment in violation of this provision is void.

SKIDATA may revise the terms of the Agreement from time to time by giving at least 30 days' written notice to Customer. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer may terminate the Agreement by giving at least one month written notice to SKIDATA (such termination notice to be sent at the latest 60 days after Customer received notice of the change). Customer is not entitled to object to and shall not have the rights set out in this clause for any change which SKIDATA implements in order to comply with applicable law or regulations.

### Schedule 1: Software Terms

These terms apply to Customer's use of the Software.

#### 1. License

The Customer is granted a non-exclusive, non-transferable, non-sublicensable, right to use the Software limited to the term of the Agreement.

The Software may only be used in the scope of the contract and in connection with the contractually specified Mobility Suite Subscription. All other use of the Software, in particular in connection with third-party products, requires the explicit consent of SKIDATA.

The license entitles the Customer to install, load and use the Software for its current business activities in the manner as described to SKIDATA. The Customer shall purchase a sufficient number of licenses corresponding to the number of entry and exit lanes. Software may only be used with compatible SKIDATA products and systems. Even if Software is made available to the Customer on a DVD or any other physical data carrier, SKIDATA shall remain the owner of the Software and all trademarks, copyrights, patents, trade secrets and other intellectual property rights relating thereto. The source code shall not be part of the Agreement.

Software by the Microsoft Corporation is additionally subject to compliance of the Customer with the applicable End User License Agreement (EULA) are provided to Customer by SKIDATA.

## 2. Responsibilities of the Customer

SKIDATA and persons authorized by SKIDATA shall be entitled to execute an audit by examining the systems, computers, books, records and accounting records of the Customer during normal business hours as far as they are connected to Software provided under the Agreement. If such audit discloses that the number of lanes exceeds the number of the licenses, the Customer shall promptly pay the license fee for all additional devices. Customer shall also pay the license fee for the use of the Software in the past. If the Customer cannot prove a beginning of actual use in the current contractual year, the license fee for a contractual year in the past as well as for the current contractual year shall be due.

To the extent the Customer is allowed to exchange Hardware, the Customer undertakes to fully and irretrievably remove Software from the exchanged equipment and provide evidence for such removal.

Without the written consent of SKIDATA the Customer must not himself or allow any third party to: (a) reverse engineer, decompile, disassemble or otherwise reduce the Software to any human perceivable form; (b) modify, adapt, translate or create derivative works based upon the Software, the written materials accompanying the Software, or any part thereof; (c) combine the Software with any kind of open-source-Software; (d) remove or manipulate copyright notices and other signs on the Software copies; (e) use or permit the Software to be used to perform services for third-parties; or (f) make or use any copies of the Software, even if the Software has been merged or included with other Software, or any accompanying materials for any purpose other than as provided in these Conditions. If the Customer creates a back-up copy in accordance with these Conditions, the Customer shall include all copyright notices and/or proprietary notices that are affixed to or appearing in the original copy.

The use of the Software may require third-party components and/or other system requirements in order to work properly. The corresponding requirements are described in the documentation for the respective product. These third-party components may be supplemented or modified by SKIDATA at its sole discretion. Generally, the Customer is responsible for obtaining, installing, maintaining and operating any third-party components. For third-party components additional agreements may apply, which shall be observed by the Customer. The use of third-party components is at the risk of the Customer. SKIDATA shall not be liable for damages or losses caused by third-party components. All costs and fees for third-party components shall be borne by the Customer in addition.

## 3. Maintenance, Updates and Upgrades

Software updates, service packs, hot fixes and patches (collectively, "**Updates**") may be provided to the Customer, as such are available to comply with the applicable laws, regulations and/or compatibility requirements, including but not limited to security-related and operational standards developed by ISO or the PCI Security Standards Council LLC.

In addition, Software upgrades including new releases or versions of Software (collectively, "**Upgrades**") may be provided to the Customer, as such are available.

The Customer acknowledges and accepts that SKIDATA, using Software for automated Software download ("Digital Software Delivery" or "DSD"), may download Software for improving system quality from a central SKIDATA server to Customer's system via a secure connection and pre-install it locally. To complete the Software installation, the client has the choice to complete the installation automatically or manually.

The Customer acknowledges that, according to the respective release planning, older versions of Software may no longer be supported after the expiry of a certain period.

No provision of these Conditions obliges the Customer to install Updates or Upgrades but SKIDATA recommends their immediate installation. In case of non-installation of offered Updates or Upgrades, this could possibly endanger the security and operability of Software and related systems and even infringe third-party licenses or laws; all consequences of non-installation are at the sole risk of the Customer. Guaranty / warranty claims regarding systems related to the Software will automatically become void. The Customer acknowledges and agrees that SKIDATA shall never be liable for damages resulting from the non-installation of Updates and Upgrades.

The Customer acknowledges and accepts that SKIDATA uses Software ("Connected Asset Management" or "CAM") for the purpose of improving service quality, which collects system data – such as, but not limited to, topology, Hardware and Software version and serial numbers, status of the Software, time of installation – from the Customer.

Updates and Upgrades are included in the scope of the Agreement.

## 4. Warranty

Software is provided "as is". Any suitability for a purpose other than the one expressly agreed upon and a warranty which may be associated with it, is excluded.

The warranty applies solely to the fact that the Software has the functionalities and characteristics described in the product description provided that the system requirements are fulfilled. The warranty period shall be 6 months and shall commence upon the time of delivery. It is technically impossible to produce Software that is absolutely free of any defect. The Customer knows and accepts this risk. Minor defects not impairing essential functions of the Software therefore do not have to be corrected under the warranty.

SKIDATA fulfils its warranty obligation within a reasonable period of time in its sole discretion either by rectification or a substitute delivery of the defective Software or by granting a price reduction, excluding thereby further and other claims. For warranty repairs at the Customer's premises, the Customer shall make available free of charge to SKIDATA resources and employees as required by SKIDATA.

Defects which are not within the responsibility of SKIDATA are excluded from warranty. This shall especially apply to defects from materials or Software provided by the Customer. The warranty shall lapse if the Customer or any third-party effects any changes to the Software that are not authorized by SKIDATA in writing. The Customer shall only be entitled to make warranty claims after full payment of the agreed price. In addition, any warranty shall be excluded in case of damage caused by third-party acts, atmospheric discharge, instable networks and chemical influences or force majeure.

## 5. Limitation of Liability

To the fullest extent permitted by law, the following applies: In the event that SKIDATA (a) breaches these Conditions; (b) breaches any warranty condition; (c) otherwise fails to perform in accordance with these Conditions; or (d) otherwise commits wrongdoing, whether directly or indirectly related to these Conditions, the sole liability of SKIDATA shall be limited to the amount of the license fee paid within the framework of the Agreement within the last contractual year. The Customer is obligated to mitigate damages that are under its direct or indirect control. Insofar as such limitation of liability is permitted by applicable law, SKIDATA shall in no event be liable for any indirect damages (including, but not limited to, lost profits).

3<sup>rd</sup> Party Software: Licensing models for 3<sup>rd</sup> party software are subject to changes by 3<sup>rd</sup> party software manufacturers from time to time whereas the actual need for the appropriate number and type of licenses depend on the whole IT-environment, not only the SKIDATA system. Recommendations for 3<sup>rd</sup> party software which is not included in the Mobility Suite Subscription are by not binding to Customer. Customer accepts and confirms that SKIDATA excludes any liability or warranty regarding its recommendation for and the provision of such 3<sup>rd</sup> party licenses. Generally, Customer accepts and confirms that SKIDATA's liability in regards 3<sup>rd</sup> party software shall always be limited by the amount and/or action the respective software supplier has paid and/or provided to SKIDATA.

#### **6. Termination**

Upon termination of the Agreement, the Customer shall (a) immediately cease to use the Software; (b) irretrievably destroy or return to SKIDATA all copies of the Software, including all backup copies, in whatever form they exist; and (c) confirm towards SKIDATA within ten (10) days in writing that all copies have been returned or destroyed. After ending of the Agreement SKIDATA and persons authorized by SKIDATA shall be entitled to check compliance with this obligation during normal business hours.

### **Schedule 2: Hardware Terms**

These terms apply to Customer's use of the Hardware.

#### **7. Delivery and Term of Delivery**

The dates for deliveries, services and commissioning, if any, are stipulated in the Order Form. SKIDATA shall be entitled to effect partial deliveries at an earlier date. In order to comply with the agreed upon dates the Customer must appoint a person responsible for the project and inform SKIDATA of such person's name and the planned project steps must be effected in accordance with the time schedule. Only then can the agreed dates be met.

#### **8. Preconditions for Commissioning**

The Customer shall, at its own risk and expense, make sure that any and all preconditions for commissioning and mounting of the purchased item are met to the extent such performance is not included in the subject matter of the Agreement. Such preconditions include but are not limited to: foundation works including mounting tools to be provided, pipe and cable works between the individual devices in accordance with the SKIDATA's specifications, set-up of power supply and mounting of the devices at the designated places, set-up and maintenance of power and voltage supply in accordance with applicable standards and of a broadband internet connection.

#### **9. Commissioning**

SKIDATA shall ensure that the subject matter of the Agreement is commissioned at the agreed date(s), provided that the Customer adheres to the dates for the fulfilment of the preconditions of commissioning and mounting and effects all agreed partial payments in full and in due time. Commissioning of the subject matter of the Agreement by SKIDATA on behalf of the Customer or in any case the putting into operation of the subject matter of the Agreement for the intended purpose by the Customer (commercial use) shall be deemed to be the factual and formal delivery / acceptance of SKIDATA's delivery and service. Immaterial defects do not entitle the Customer to refuse acceptance. SKIDATA's warranty obligations, if any, shall remain unaffected thereby.

#### **10. Ownership, Changes to the Equipment**

During the duration of this Agreement, and after its expiry, all equipment which may be delivered with the "SKIDATA Mobility Suite Subscription" remains in the property of SKIDATA. Customer shall ensure that this is clearly and demonstrably made visible and expressed towards third parties, in particular to authorities and courts. Customer is liable for any interference with SKIDATA's ownership position. Customer shall not be entitled to remove, conceal or otherwise identify any identifications which have been affixed to the equipment by SKIDATA and which indicate their ownership. In particular, Customer shall inform SKIDATA immediately of an imminent execution in the leased objects or the property on which it is located and forward the name and address of the creditor in charge, including essential documents, to SKIDATA. Customer bears all costs for the defense by SKIDATA and for the securing of its property.

Customer is not entitled to make changes to the equipment which are not agreed including any alteration of the location of the equipment. This includes, but is not limited to, changes in the substance of the equipment, the addition or removal of parts, or the modification of software. If Customer intends to make such a change, prior written consent of SKIDATA shall be obtained with detailed information on the planned changes.

If parts are fixed to the equipment, whether authorized or not, which afterwards cannot be removed without loss of value or altering the substance or without reasonable effort, such parts shall be transferred into SKIDATA's ownership upon fixation. Provided however, that this shall not apply in case such parts or the adding of such parts would cause SKIDATA to infringe third party's intellectual property.

#### **11. Obligations of Customer**

Customer is obligated to use the equipment only in accordance with its intended use and in accordance with appropriate maintenance, inspect it on a regular basis and undertake everything necessary for maintaining the proper and functional condition of the equipment. Unless otherwise agreed in writing, Customer shall not be entitled to transfer the equipment to third parties, make it available to third parties, or otherwise provide the possibility of operating or altering the equipment. In particular, Customer is not permitted to sublet the equipment without the prior written consent from SKIDATA.

Customer shall ensure that the equipment is adequately protected against interference by third parties and other external influences.

#### **12. Training**

SKIDATA offers optional training for the operation, troubleshooting and maintenance of the equipment which may be ordered by Customer under a separate agreement.

#### **13. Warranty**

SKIDATA is obligated to maintain the agreed functionality of the Hardware during the term of the Agreement. SKIDATA does not warrant the Hardware being new or free from optical defects which do not materially impact functionality.



**14. Third-party Products**

To the extent the Customer wishes to obtain - in addition to SKIDATA's deliveries and services - compatible products or services and accessories made by other manufacturers and use them instead of the products or services originally proposed by SKIDATA, the Customer shall be solely responsible for checking and selecting such third party products. In such cases, SKIDATA does not assume any liability whatsoever, in particular no liability for defects in quality and/or the technical suitability of such products.

**Schedule 3: Hosted Services Terms**

These terms apply to Customer's use of the Hosted Services.

**15. Scope of Services**

Customer is granted a non-exclusive, non-transferable, non-sublicensable, revocable, limited right to use the Hosted Services in connection with SKIDATA systems for Customer's business activities notified to SKIDATA at the time of conclusion of the Agreement.

The Hosted Services shall be made available to Customer exclusively via a network, the Internet.

SKIDATA reserves the right to change the Hosted Services unless this is unreasonable for Customer. SKIDATA will notify Customer thereof if necessary.

SKIDATA reserves the right to modify or replace in particular but not limited to the following components of the Hosted Services at its sole discretion and without notice to Customer: (i) system configurations, (ii) designs, (iii) routing configurations or rearrangements thereof, (iv) technical specifications and (v) the equipment used to provide the Hosted Services.

**16. Responsibilities of Customer**

Customer is obligated to establish and maintain the system requirements described in the Factsheet.

Customer undertakes to accept updates or upgrades to the Hosted Services.

Updates and upgrades may change the system requirements and it may be necessary to install the respective updates/upgrades, third-party components and additional or modified Hardware. Any resulting costs shall be borne by the Customer and are therefore not included in the usage fee. These Conditions do not oblige Customer to install updates or upgrades, but SKIDATA recommends their immediate installation. If updates or upgrades are not installed, Customer shall act at its own risk and may endanger the security and operability of the software and related systems and may violate third-party licenses, legal regulations or laws. Warranties/warranty claims relating to systems associated with the software may also become invalid as a result. SKIDATA shall not be liable for damages resulting from the non-installation of updates and upgrades.

Customer must always keep SKIDATA's system and Customer's computer infrastructure up to date.

Customer is not permitted to carry out the following without the written consent of SKIDATA or to permit a third party to do so: (i) back-developing, decompiling, disassembling or otherwise reducing SKIDATA software, computer systems, servers or other SKIDATA products into a humanly perceptible form, (ii) copying, publishing, transmitting and/or distributing the Hosted Services and related content, (iii) making copies of the Hosted Services software, object code or source code or parts thereof, (iv) modifying, adapting, translating or creating derivative works based on the Hosted Services or other SKIDATA products or services, (v) combining the Hosted Services or other SKIDATA products with open source software, (vi) providing access to other SKIDATA systems, programs, features or data beyond the rights granted by the Conditions, (vii) disclosing passwords provided to Customer to third parties.

The provision of the Hosted Services by SKIDATA and compliance with the agreed performance dates depend on the cooperation of Customer. Customer therefore undertakes to provide SKIDATA with all necessary support to provide the Hosted Services and to achieve the agreed availability. In particular, Customer shall cooperate with SKIDATA in testing, determining and verifying the system with respect to potential errors of the Hosted Services. Customer is obliged to reimburse SKIDATA for all costs arising from a breach of its duty to cooperate. SKIDATA shall not be liable for any delay if Customer is directly or indirectly responsible for such delay.

**17. Service Level Agreement (SLA)**

The following availability of the Hosted Services is agreed:

Availability	99.5% during the observation period
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The observation period is one calendar month.

SKIDATA will use commercially reasonable efforts to achieve the agreed availability and to provide the Hosted Services in accordance with the standards of the hosting industry (the "Service Standards"). SKIDATA will also use commercially reasonable efforts, depending on the circumstances of the particular case and on Customer's technical environment, to remedy interruptions, disruptions or errors that result in a failure to meet the Service Standards and/or the agreed availability (collectively referred to as "Interruption") and to make the Hosted Services available again.

A period during which the Hosted Services are unavailable due to an Interruption (a "Downtime") shall be calculated from the time SKIDATA becomes aware of an Interruption. In case of doubt, this is the time at which the Customer informs SKIDATA of the interruption. The Downtime ends when SKIDATA determines availability.

SKIDATA will monitor the performance indicators for the availability of the Hosted Services in its own system or in the system of the Service Provider in order to measure the availability of the Hosted Services. The basis for determining the achieved availability of the Hosted Services is solely SKIDATA's documentation and data. Upon request, SKIDATA will provide Customer with the latest report on the availability achieved.

SKIDATA's liability for failure to achieve the agreed availability is excluded if this is due directly or indirectly and at least in part to the following: (i) Force Majeure Event; a Force Majeure Event is a natural disaster, fire, flood, industrial action, war, terrorism, riot, civil disturbance, rebellion or revolution, Internet breakdown or similar events beyond the reasonable control of SKIDATA, (ii) acts or omissions of Customer or any third party attributable to Customer (an "Agent"), (iii) access lines, cables or equipment of Customer or its Agents, (iv) SKIDATA or third parties commissioned by SKIDATA are not permitted access to the access lines of the Hosted Services or SKIDATA equipment, (v) a configuration, routing event or technology that is not under SKIDATA's control, (vi) failure to comply with the configurations recommended by SKIDATA, (vii) default in payment by Customer, (viii) disruptions lasting less than 5 (five) minutes, (ix) modifications to the Hosted Services requested by Customer or its Agents, (x) failure to comply with the measures recommended by SKIDATA to achieve the agreed availability, and/or (xi) any law, regulation or industry standard which makes the provision of the Hosted

Services to the extent of the agreed availability inappropriate, prohibited or unreasonable, or otherwise alters the character and underlying terms and conditions of the Hosted Services to such an extent that there would be a material change in the terms and conditions of the Hosted Services and its availability.

Access to the Hosted Services may be temporarily unavailable for reasons beyond SKIDATA's control, such as but not limited to connection problems, server and/or network downtime. Such limitation of access to the Hosted Services does not constitute a Downtime and does not affect the availability of the Hosted Services.

SKIDATA is entitled to carry out maintenance work, updates and upgrades at its own discretion. Customer agrees that the Hosted Services are temporarily unavailable as a result. Such limitation of access to the Hosted Services do not constitute a Downtime and therefore do not affect the availability of the Hosted Services.

SKIDATA is not obliged to notify Customer of maintenance work, updates or upgrades to the Hosted Services. However, SKIDATA will use commercially reasonable efforts to give reasonable advance notice of maintenance, updates or upgrades and to keep the duration of maintenance periods as short as possible. Security relevant maintenance can be carried out at any time, even at short notice.

SKIDATA is entitled to block access to Customer's Data, delete Customer's Data and restrict or terminate reports, batch jobs and/or processes if (i) Customer's Data violates these Conditions, in particular if Customer is in default of payment, (ii) Customer uses excessive computer resources that affect the performance of the Hosted Services for other participants, or (iii) Customer's Data constitutes a security risk or could cause other serious damage. SKIDATA will use commercially reasonable efforts to inform Customer thereof.

#### **18. Customer's Data**

Data created or transmitted by Customer and stored on SKIDATA's servers or on the servers of the Service Provider ("Customer's Data") shall remain the property of Customer.

The use of the Hosted Services and of access data is the sole responsibility of Customer and is at its own risk.

SKIDATA will not generally monitor Customer's Data but reserves the right to check it from time to time at SKIDATA's own discretion.

SKIDATA will make backup copies of Customer's Data, the transaction history and other relevant information at SKIDATA's own discretion. However, SKIDATA is not obligated to do so and is therefore not liable for any loss of or damage to Customer's Data.

SKIDATA shall store for the storage period specified in the Factsheet. After expiry of the storage period stipulated in the Factsheet, SKIDATA is entitled to delete Customer's Data without consulting Customer. Storage of Customer's Data beyond this period requires a separate agreement between the Parties. Backup copies of Customer's Data serve exclusively to restore the Hosted Services and therefore not to extend the storage period stated in the Factsheet.

SKIDATA shall provide Customer with an annual data export of its customer, sales, access and invoice data in a .csv format free of charge upon request. The costs for data exports in excess of this shall be charged to Customer on a time and material basis.

The data center used by SKIDATA meets the security standards of ISO/IEC 27001.

SKIDATA shall use commercially reasonable and state-of-the-art security precautions to ensure the security, confidentiality and integrity of Customer's Data. Despite these efforts, SKIDATA cannot guarantee that the confidentiality of Customer's Data will be maintained in connection with communication via the Internet or another public network.

Customer shall indemnify SKIDATA against all claims asserted by third parties based on an infringement of their rights due to Customer's Data.

After termination of the Agreement, Customer may choose whether to have its customer, sales, access and invoice data (a) handed over in .csv format; (b) remain stored with SKIDATA for a reasonable fee or (c) be irrevocably deleted.

#### **19. Warranty**

SKIDATA warrants only the achievement of the agreed availability of the Hosted Services. Any other warranty, in particular for the design, functionality and usability of the Hosted Services and the suitability of the Hosted Services for a particular purpose, is excluded.

### **Schedule 4: Interface Terms**

These terms apply to Customer's use of the Interface(s).

#### **20. Definitions**

For the purposes of these Interface Terms, the following terms shall have the meaning assigned to them under this section:

**"Application"**: An application of Customer which is integrated through one or more Interface(s) and is made specifically for Customer's use.

**"Application Developer"**: A third party developing an application exclusively for Customer which integrates through the Interface(s).

**"Approved Integrator"**: A third party having entered into an agreement with SKIDATA which governs its integration through SKIDATA's Interface(s) and the sale or leasing of such integrated application to Customer.

**"Interface"**: Each of SKIDATA's proprietary application programming interfaces, which are used by Customer to interface with SKIDATA's products and services, subject to the conditions of the Agreement.

#### **21. License**

Customer is granted a non-exclusive, non-transferable, non-sublicensable, revocable limited right to access, integrate and use the Interface(s) under the terms and for the duration of this Agreement, subject to the restrictions set out in this Agreement.

Customer acknowledges that SKIDATA's Interface(s), respectively its specifications, may expire and Customer agrees to implement new specifications in time, otherwise Customer accepts that its products may fail to work properly or even be damaged. Additionally, SKIDATA reserves the right to discontinue the Interface(s) upon giving notice to Customer. In its sole discretion, SKIDATA may or may not replace the Interface(s) by another interface.

Customer shall not allow third parties to use the Interface(s), whether directly nor indirectly, unless explicitly agreed by SKIDATA.

Notwithstanding the foregoing, Customer may freely use an Approved Integrator within the scope of such Approved Integrator's respective agreement with SKIDATA to provide Customer with an integrated application.

For the development of an Application, Customer may use an Application Developer sub. Such Application Developer shall have materially the same obligations toward SKIDATA as Customer has under this Agreement. To this end, SKIDATA shall be a third-party beneficiary in the agreement between Customer and Application Developer. Additionally, such Application Developer shall be obligated in the agreement between itself and Customer not to

Customer acknowledges and agrees that SKIDATA is entitled to terminate the use of all or only certain Interfaces with immediate effect upon justified reasons including, but not limited to, non-compliance by Customer with this section of the Agreement.

SKIDATA retains all rights, title and interest in the intellectual property embodied in or associated with the Interface(s).

There are no implied licenses under the Agreement, and any rights not expressly granted are reserved by SKIDATA. Except as licensed expressly herein, the Agreement does not transfer any intellectual property rights between the parties.

## **22. Termination**

In case of any material breach of these Interface Terms by a Customer, SKIDATA may revoke Customer's license to use the Interface. In case the breach is curable, Customer shall be given a 30-day notice period to cure the breach. The non-payment of the license fee constitutes a material breach.

Any reimbursement of already paid license fees or any adjustment of due license fees in case of termination is excluded.

## **23. Warranty**

Any Interface is provided "as is". SKIDATA explicitly disclaims any representations or warranties, express or implied, regarding such Interface, including but not limited to any implied warranty of merchantability, fitness for a particular purpose or non-infringement.

## **24. Indemnification**

Customer will defend, at its expense, and indemnify SKIDATA (and its affiliates, officers, directors, employees and agents), from and against any losses, costs or damages arising from any claims alleging or arising out of (i) patent, copyright, trade secret or trademark infringement resulting from or in connection with the use, manufacture, assembly or distribution of the Interface(s) by Customer, Customer's representatives, or distributors and its direct and indirect end users in any country; (ii) any combination by Customer, Customer's representatives, or distributors of the Interface(s) with one or more other applications, content, or processes which infringes the intellectual property rights of or has otherwise harmed a third party; (iii) Customer's or its end users' use of the Interface(s) in violation of the Agreement; (iv) gross negligence, reckless or intentional acts or omissions, or fraud by Customer, Customer representatives, distributors, or end users; (v) any representations or warranties agreed to by Customer under the Agreement; (vi) any unauthorized warranties or representations made by Customer, Customer's representatives, or distributors with regard to the Interface(s); and (vii) expenses or costs from a third party subpoena or compulsory legal order or process that seeks Customer-related information; provided that SKIDATA will: (a) promptly give written notice of the claim to Customer; (b) give Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless it unconditionally releases SKIDATA of all liability); and (c) provide to Customer, at Customer's cost, reasonable assistance.

## **Schedule 5: Expert Services Terms**

These terms apply to the provision of the Expert Services by SKIDATA to Customer.

### **25. Scope of Services**

These Expert Services Terms govern Customer's use of SKIDATA Expert Services as described in the Order Form and service description in the Factsheet.

SKIDATA renders the Expert Services for products ordered under the Order Form in the scope determined by the Customer and in accordance with these Expert Services Terms and other provisions contained in this Contract.

The Mobility Suite Subscription includes the Expert Services Modules Upgrade.Care, Maintenance.Care and Protect.Care. SKIDATA shall perform the Expert Services as described in the Agreement.

SKIDATA shall render the Expert Services covered by these Expert Services Terms only for the SKIDATA products stated in this Agreement and not for any third-party products, unless otherwise expressly agreed upon. If the Customer purchases other products from SKIDATA, such other products shall only be included in the Expert Services to the extent such inclusion is expressly agreed upon and included in the contract.

### **26. Place of Performance of Services**

SKIDATA shall render the Expert Services as required and in accordance with these Expert Services Terms on site or remote.

Expert Services on site shall be rendered at the address stated in this Agreement (place of operation). In case of any changes of the place of operation without SKIDATA's express consent, SKIDATA shall be released from the performance obligation, however, the Customer's obligation to pay shall continue to exist.

In case of any change of the place of operation, SKIDATA reserves the right to adjust the service fee to a reasonable extent, taking into account, among other things, the new travel distances. Alternatively, SKIDATA shall be entitled to terminate the Expert Services under the Agreement with immediate effect.

### **27. Customer's Obligation to Cooperate**

The Customer undertakes

- 1)** to use its best efforts to support SKIDATA and fulfil the technical requirements necessary to enable SKIDATA to render the requested Expert Services; in particular by giving SKIDATA any necessary and requested information and enabling SKIDATA to access any networks, data bases, programs, devices and services by third parties to the extent they could be useful for the correction of errors;
- 2)** to make available - to the extent necessary - employees who can be of assistance for the Expert Services or whom SKIDATA expressly requests. Such employees are to support SKIDATA accordingly;
- 3)** to establish contact with third parties to the extent necessary for the rendering of the Expert Services or to the extent as expressly requested by SKIDATA and to affect the necessary communication or support SKIDATA in making the necessary communication;

- 4) to duly and regularly effect the data backups to the extent possible and designated; this obligation refers to a general data backup in the extent usual in the industry as well as to a specific backup of data located on computers or servers before the Expert Services are rendered, for example before updates are performed;
- 5) subject to these Expert Services Terms, to effect maintenance, service, and cleaning of the equipment including the exchange of spare parts, wear and tear parts, and mechanical components; such works are to be effected in accordance with the specifications given by SKIDATA as well as in accordance with training information, manuals, maintenance instructions or similar information, if any, on a regular basis as a precaution measure;
- 6) to establish and maintain at its own expense the system requirements necessary for the Expert Services and/or the required working environment. To the extent the Customer refuses to accept services rendered by SKIDATA for software or hardware, the Customer loses any warranty claims in relation to the respective SKIDATA products;
- 7) to provide keys for equipment, use of power grid, toilets and in general a safe working environment to SKIDATA.

These obligations to cooperate shall apply in addition to the Customer's obligations to cooperate to be fulfilled in connection with the individual services, if any.

## **28. Maintenance (Module "Maintenance.Care")**

The module "Maintenance.Care" defines the scope of services and the interval of preventative performed maintenance.

### **General**

- 1) SKIDATA shall perform maintenance as described in the document Factsheet in the quoted interval according to the agreed module "Maintenance.Care".
- 2) Customer acknowledges and agrees that Maintenance work shall only be carried out during SKIDATA's normal business hours ("Normal Business Hours"). Customer further acknowledges and agrees that Normal Business Hours do not include any holidays that are recognized by the Federal government and/or SKIDATA, and that SKIDATA's maintenance services will not be available at those times or any other days or times that are outside of the Normal Business Hours.
- 3) Customer acknowledges and agrees that basic in-house maintenance (also called Level 1 maintenance) can only be performed by Customer when Customer participates routinely SKIDATA trainings.
- 4) Spare and wear parts are not included in the maintenance fee, therefore accounting and treatment of required spare and wear parts for troubleshooting must be made according to the module "SpareParts.Care".
- 5) These maintenance conditions and the fees to be paid therefore do not include services rendered for troubleshooting purposes.

### **Hardware**

- 6) Hardware maintenance is a preventive maintenance and includes the inspection, cleaning, and adjustment of hardware components as well as the execution of test runs necessary for proper operation.
- 7) SKIDATA shall render the services included in Hardware Maintenance exclusively for the equipment specified in this Contract and at the location stated in the Contract.
- 8) Hardware maintenance shall be effected as agreed in this Contract once or several times per year within the stated periods of time. The Customer and SKIDATA shall agree on the specific date for each hardware maintenance a reasonable period of time in advance, taking into consideration each party's legitimate interests.
- 9) The Customer shall bear the travel expenses for the employees of SKIDATA on an actual cost basis unless a lump sum fee for travel expenses was agreed upon.
- 10) If the hardware inspection shows that parts of the hardware must be exchanged, especially wear and tear parts (such as rollers, pressure rollers, and drive belts), spare parts or other parts, such exchange shall be effected immediately by SKIDATA's employees to the extent such requirements could be foreseen and SKIDATA's employees brought such parts with them. Subject to and in consideration of any agreement concerning spare parts management (module "SpareParts.Care"), SKIDATA shall invoice the exchanged parts in accordance with the price list valid at the time.
- 11) In particular the following activities are not included in the scope of the preventive hardware maintenance:
  - a) remedy of errors and malfunctions caused by force majeure;
  - b) remedy of errors and malfunctions caused by any intervention by the Customer, its employees or any third party;
  - c) delivery and replacement of consumable products;
  - d) remedy of errors and malfunctions caused by the Customer's failure to fulfil its obligations, in particular its obligation to cooperate.

### **Software**

#### **12) Updates**

- a) Within the scope of Software Maintenance, the Customer shall receive from SKIDATA current updates for the SKIDATA software included in the scope of services to the extent such updates are generated by SKIDATA. For the purposes of these provisions, updates means service packs within the same release (service packs) and shall include minor changes to existing software with the purpose of removing software bugs and making small improvements. Any and all updates provided to the Customer shall be subject to the same software and license conditions applicable to the original software in the respective current version.
- b) The installation as well as any other services within the scope of Software Maintenance, if any, shall be rendered by employees of SKIDATA on site or remotely at SKIDATA's discretion. The Customer shall bear the travel expenses for the employees of SKIDATA on an actual cost basis unless a lump sum fee for travel expenses was agreed upon. The Customer and SKIDATA shall agree on the specific date for the provision of services within the scope of Software Maintenance a reasonable period of time in advance, taking into consideration each party's legitimate interests.
- c) Updates will be prepared by SKIDATA on the basis of legal or technical requirements and in its sole discretion. The Customer shall not be entitled to demand that SKIDATA prepares and publishes any updates. SKIDATA reserves the right to freely choose the contents and release time of updates.
- d) SKIDATA reserves the right to determine in which environment the updates are to be used and to change the system requirements for updates including hardware and software requirements. As a general rule, changes to the system



requirements and/or to the environment of the updates are necessary as an adjustment to advancing technological developments in order to keep the SKIDATA software up to date. The Customer shall be liable for the implementation of any system requirements which are necessary for the installation and use of updates. Should the Customer fail to fulfil these requirements, SKIDATA does not assume any warranty for the functionality of the software. The Customer take the responsibility to hold his system network virus free and secure.

- e) As of the time of discontinuation of a certain SKIDATA-product, updates for such software shall no longer be prepared and published.
- f) Software Maintenance can be carried out for the current and two preceding releases.

### **13) Software Configuration**

Adjustments and changes on the basis of a list of changes to be submitted by the Customer in writing are made on the basis of an existing configuration of the programs covered by Software Maintenance at least once a year within the time periods stipulated in this Contract. This list of changes, stating in detail the desired changes and adjustments, must be submitted to SKIDATA a reasonable period of time before the date SKIDATA is to render its services. The extent of such changes and adjustments is in any case limited by the maximum number of working hours stated in the Offer. Changes and adjustments shall only cover existing configurations; the compilation of new configurations shall not be included.

### **29. Installation of Software and Hardware Upgrades (Module "Upgrade.Care")**

The module "Upgrade.Care" defines SKIDATA's services in regard to the installation of upgrades to SKIDATA's software and hardware. For the purposes of these provisions, upgrade means the transition from one major release to the subsequent one. It usually contains some major new features as well as basic enhancements that extend the functionality of software or hardware. The details to the module "Upgrade.Care" are stipulated in the Factsheet.

To ensure proper operation of Customer's system, SKIDATA will review and test upgrades carefully prior to installation. After installation, SKIDATA will ensure that Customer's system is in good condition before it is put into operation.

Software upgrades are delivered or made available in electronic format. The module "Upgrade.Care" includes an upgrade only for those software functions and modules for which Customer has acquired a software license. Upgrades are installed only at the sites and devices listed in the corresponding table in the Factsheet.

Upgrades may alter the system requirements and it may be necessary for Customer to install the relevant previous updates, upgrades, third-party components and/or additional or modified hardware. The products and services required for this are not included in the module "Upgrade.Care" and the respective costs shall be borne by the Customer.

Spare and wear parts required for the installation of an upgrade are not included in the module "Upgrade.Care". The settlement of the required spare and wear parts is based on the option selected in the module "SpareParts.Care".

As of the time of discontinuation of a certain SKIDATA product, SKIDATA is no longer obligated to provide upgrades to the respective product.

### **30. Anti-Virus and Security Check (Module "Protect.Care")**

The module "Protect.Care" defines the support and usage of the Anti-Virus Software provided by McAfee ("Anti-Virus Software") and is described in the Factsheet.

#### **End User License Agreement**

The McAfee End User License Agreement (the "EULA") for the Anti-Virus Software is binding on the Customer. The Customer is therefore obliged to observe the EULA, which is changed from time to time by McAfee. The current EULA can be downloaded at <https://www.mcafee.com/enterprise/en-us/about/legal/end-user-license-agreements.html>.

#### **Warranty**

1) SKIDATA only warrants the Anti-Virus Software to the same extent that McAfee warrants. SKIDATA shall not be liable for errors or malfunctions of the Anti-Virus Software resulting from misuse, incorrect installation, mishandling, negligence or accident. SKIDATA does not warrant to the Customer that the Anti-Virus Software protects against all existing security threats (e.g. due to intentional third-party damage). Furthermore, SKIDATA does not guarantee that, despite the installation of the Anti-Virus Software, no functional errors can occur due to viruses, computer worms or other malicious code.

2) If the Customer detects malfunctions or errors of the Anti-Virus Software, he has to inform SKIDATA immediately in writing. Within the framework of the warranty, SKIDATA will make commercially reasonable efforts to correct or have corrected these errors and faults as quickly as possible. However, SKIDATA makes no guarantee that all malfunctions and errors will be remedied.

#### **3) Use in a High-risk Environment**

The Anti-Virus Software has not been designed for use in a high-risk environment. The use of the Anti-Virus Software in a high-risk environment is therefore at the Customers own risk. Furthermore, SKIDATA disclaims any warranty for use in a high-risk environment. The Customer waives against SKIDATA and McAfee any claims regarding the use of the anti-virus software in a high-risk environment.

#### **Limitation of Liability**

SKIDATA is only liable for the Anti-Virus Software insofar as McAfee is liable. SKIDATA shall in no event be liable for any indirect or consequential damages, loss of profit, loss of use, loss or damage of data or suspension of business activities, even if SKIDATA has been informed of the possibility of such damages. SKIDATA shall not be liable for statements or guarantees made by the Customer to third parties.

#### **Data Protection**

4) SKIDATA and McAfee are entitled to process and forward personal and technical data of the Customer, as far as this is necessary for the processing of the contract, for billing purposes and for the provision of the contractually agreed software functionalities, support and services as well as updates. SKIDATA and McAfee are entitled to forward such data to affiliates or third parties charged with processing of data from SKIDATA or McAfee, as far as this is necessary for the provision of services.

5) By using the Anti-Virus Software, the Customer explicitly agrees to the McAfee Privacy Policy. This can be downloaded at <https://www.mcafee.com/en-us/consumer-support/policy/legal.html>



**Indemnification**

If the Anti-Virus Software violates copyrights, trademark rights or patents of third parties, SKIDATA will make every reasonable effort to ensure that McAfee indemnifies the Customer against this. This shall, however, only be conditional on the Customer having informed SKIDATA without undue delay about the violation of the rights of third parties.

The Customer undertakes to indemnify SKIDATA and/or McAfee from any claims of third parties which the Customer is responsible for.

**End-of-Life Process and Supported Versions**

The end-of-life process of the Anti-Virus Software is defined by McAfee. SKIDATA reserves the right to transmit these specifications to the Customer one-to-one and the Customer agrees to be bound by these specifications.