

# SilverbackMDM License Agreement

**IMPORTANT: BY PROCEEDING TO USE THE SOFTWARE YOU ARE AGREEING TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.**

SILVERBACKMDM "SILVERBACK" AGREES TO LICENSE CERTAIN OF ITS SOFTWARE TO YOUR BUSINESS OR ORGANIZATION ("CUSTOMER") ONLY IF (A) YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER AND (B) YOU ACCEPT AND AGREE ON BEHALF OF CUSTOMER TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS IN THIS SILVERBACK SERVER LICENSE AND SERVICES AGREEMENT (THIS "AGREEMENT"), WHICH SHALL BE DEFINITELY EVIDENCED BY ANY ONE OF THE FOLLOWING MEANS: YOUR CLICKING THE "ACCEPTANCE" OR "CONTINUE" BUTTON, AS APPLICABLE; YOUR SIGNATURE ON A TANGIBLE COPY OF THIS LICENSE; OR YOUR INSTALLATION OR USE OF THE SOFTWARE. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS, DO NOT COPY, INSTALL OR USE THE SOFTWARE.

THIS AGREEMENT MAY ONLY BE SUPERSEDED BY A SEPARATE, SIGNED WRITTEN AGREEMENT WITH SILVERBACK THAT EXPRESSLY PURPORTS TO SUPERSEDE THIS AGREEMENT (A "SUPERSEDING AGREEMENT").

## **1. ORDERS.**

Use of this software and the services hosted by Silverback are subject to the terms and conditions contained herein, including those incorporated by reference, and to the terms of all applicable written or electronic order forms (each an "**Order Form**") submitted by or on behalf of Customer to the applicable Silverback entity stated on the Order Form with which the billing and contractual relationship is established. In order to be effective, each Order Form shall be accompanied by one of the following payment methods reflecting the purchases delineated in the Order Form: (A) a check for immediately available funds, (B) a signed purchase order from Customer (a "**Purchase Order**") or (C) a credit card authorization signed by Customer. In some instances, Customer's purchasing relationship exists solely between Customer and an authorized reseller of Silverback's software and services (a "**Reseller**"), in which case Reseller shall be responsible for submitting Order Forms and the appropriate payment method therewith. An effective Order Form reflects an offer to form a contract which is accepted by Silverback only upon Customer's receipt of an order confirmation number (an "**Order Confirmation**").

## **2. CONTROLLING DOCUMENTS; ORDER OF PRIORITY.**

To the greatest extent possible, all documentation governing Customer's use of the Silverback software and services shall be read together and construed consistently. Notwithstanding the foregoing sentence, in the event of any conflict among documentation, the controlling document(s) shall be determined in this order of priority:

- First, all Order Forms shall control, with conflict among Order Forms to be determined in favor of the most recent in time.

- Next in order shall be any Superseding Agreement, if applicable.
- Next in order shall be this Agreement, including documents and links incorporated by reference, such as the Acceptable Use Policy and the Support and Maintenance Terms.
- Finally, any additional documentation or signed agreements between the Parties not qualifying as a Superseding Agreement.
- All of the above shall be collectively referred to as the "**Governing Documents**".

Notwithstanding anything to the contrary between Customer and Silverback (each a "**Party**" and together the "**Parties**"), all terms and conditions associated with Customer's form Purchase Order shall be disregarded and have no effect. Any agreements Customer has between itself and Reseller shall be solely binding between those parties and not on Silverback. Silverback shall be bound to Reseller, and solely to Reseller, with respect to its own agreements with Reseller.

### **3. FEES AND PAYMENT.**

*\*\*NOTE THIS "FEES AND PAYMENT" SECTION IS ONLY APPLICABLE TO CUSTOMER'S PURCHASE(S) DIRECTLY FROM SILVERBACK AND NOT THROUGH A RESELLER\*\**

3.1. Fees. When contracting directly with Silverback, Customer will pay to Silverback the applicable fees in the form or manner set forth in each applicable Order Form. The applicable currency will be stated on the Order Form; otherwise it is US dollars. Fees are not refundable. All amounts due are exclusive of taxes, withholding, duties, levies, tariffs, and other governmental charges (including without limitation VAT), excluding taxes on Silverback's net income (collectively, "**Taxes**"), and Customer is responsible for payment of all Taxes. The parties will reasonably cooperate to lawfully minimize Taxes.

3.2. Payment. Silverback will invoice Customer for Services upon acceptance of the Order Form, after delivery of the Software. Subject to Customer's express agreement, Silverback may invoice Customer electronically. Each invoice is due and payable within thirty days following the invoice date. (At Customer's direction, Silverback can elect to charge the invoiced amount against a valid credit card in lieu of invoicing.) If Silverback has not received payment within thirty days after the due date, interest will accrue on past due amounts at the rate of one percent per month or any lower legal maximum. In addition to any other rights it may have, Silverback may suspend its services and use of its software in the event any payment under this Agreement is not paid when due after notice to Customer. In the event that Customer activates more licenses or uses more services than are then permitted per applicable Order Forms, Customer agrees to pay for such additional software and services for the relevant time period upon invoicing by Silverback per the applicable pricing schedule between the Parties or, if none, at the then applicable rates subject to the terms of this Agreement. Customer agrees that this Agreement shall independently serve as full authorization to invoice Customer for all applicable fees.

3.3. Reconciliation. At Silverback's request from time to time not exceeding twice per year, Customer will provide Silverback with a report detailing its use and circulation of software, and Silverback may review such report and inspect related records not more frequently than

annually to ensure payment of all applicable fees. Any on site review will be conducted during regular business hours at Customer's offices and will not interfere with Customer's business. The parties will use reasonable Silverback faith efforts to promptly resolve any discrepancies.

#### **4. INFRASTRUCTURE NEEDED TO USE THE SILVERBACK PLATFORM.**

4.1. The Silverback Platform. The "**Silverback Platform**" refers to the combination of Silverback software and hosting services (if any) provided by Silverback enabling secure access to Customer data to Customer's mobile workforce (each a "**User**"). Various configurations and modules of the Silverback Platform are possible -- please refer to Customer's Order Forms to determine which one(s) is/are applicable under this Agreement.

4.2. On Premise. In order to enjoy the benefits of the Silverback Platform, Customer and/or each User, as applicable, is required to procure (i) all telecommunication and computing equipment and facilities (and associated third party software), including physical servers necessary to run the applicable Silverback Platform server software behind Customer's firewall ("**Servers**") and Silverback-supported mobile wireless handsets for Users ("**Handsets**"); and (ii) a wireless data plan associated with each Handset, typically procured from a wireless operator (with each such plan referred to as a "**Line**"). Customer and each User, as applicable, shall also be responsible for maintaining the security of the Servers and Handsets, account information, passwords (including but not limited to administrative and user passwords) and files, and for all uses of the same with or without such Party's knowledge or consent. Silverback makes no representation or warranty and shall have no responsibility whatsoever with respect to use or attempted use with the Silverback Platform of any mobile device that is not a Silverback-supported Handset.

4.3. Hosting Services. For the purposes of this clause, the following definitions shall apply:

"**Co-location Facility**" means the site providing the dedicated virtual machine hosting platform, physical access and security, electrical power, fire prevention and retardation, air-conditioning to within specified hardware requirements of the hosting environment for the service, and rack space sufficient to house the Hosting Services, as supplied to us by third-party suppliers.

"**Hosted Data**" means all such information that the Hosting Provider does not actively collect and may include personally identifiable information and other information that the Hosting Service stores and transmits on Licensee's behalf.

"**Hosting Provider**" means Silverback and the Co-location Facility.

"**Hosted Services**" means the services provided by the Hosting Provider to host the Silverback Platform to allow communication and control functions with Handsets via internet-based consoles.

Where Customer has purchased Hosting Services from Silverback, Silverback shall (i) provide all necessary Server facilities in connection with the delivery of Hosting Services; (ii) use reasonable commercial efforts to monitor and maintain the host servers and to ensure continuous connectivity, availability and operation of the host servers on the World Wide Web; and (iii) monitor hardware and systems software and environmental controls and take the necessary actions based on detected problems or issues. The Hosting Service is provided in good faith and to the best of our ability for availability, performance and security by a Co-location Facility. In the event of a failure of the Co-location Facility that prevents us from providing the Hosting Service, we will make reasonable commercial efforts to work with the

providers of the Co-location Facility to find the cause, to notify you of the nature and cause of the failure, and to have the supplier(s) of the Co-location Facility rectify the failure in a timely manner. As part of the Hosting Service, you must nominate one or more Technical Contact(s). Change requests must come from the nominated Technical Contact(s). Changes to your nominated Technical Contacts must come from another nominated Technical Contact or the person/s who signed the agreement in writing. Change requests will be fielded during Business Hours and commenced within 1 Business Day of your lodgement of a request for change in writing via email or fax from your nominated Technical Contacts. The maintenance window is 21:00 - 23:00 EST Mondays and 00:00 - 02:00 EST Thursdays each week. During this time our monitoring, reporting and customer access systems may be unavailable for short periods. Emergency scheduled downtime may occur for security reasons. Due to their nature minimal notice may be given for such events.

The following activities are expressly prohibited: Spam / Unsolicited Commercial Email; Hacking or perpetration of any security breach; Unauthorized access to any computer or system, including intrusion into or scanning of other Silverback or Co-location facility accounts; Dissemination of deliberately offensive material, including any message or information that is or may be threatening, libelous, obscene, or harassing; Child pornography or any other activity harmful to minors; Fraud; Violation of privacy rights, publicity rights, trade secret rights, or information security, including dissemination of material non-public information about companies without authorization, as well as harvesting or collecting information about Website visitors without their express consent; Use of third party software without a proper license or other appropriate permission; Network attacks or any unfriendly effort to interfere with service on another network or server; Virus distribution or distribution of any worm or other harmful code; or Illegal activities of any kind.

The Hosting Provider is a passive recipient of Hosted Data: we take no active part in collecting it, and generally we do not access its content. However, our staff may occasionally access Hosted Data through delivery of services and support to the Licensee. For instance, staff may come into contact with Hosted Data by verifying back-up and restore processes, by verifying that applications are running properly, or through debugging efforts. We do not share personally identifiable information or Hosted Data under any circumstances, except: (1) as requested by law enforcement agencies or required by law; (2) to maintain the security of the Hosted Service and of the Co-location facility's own network and data, including by assisting third party claimants in investigating security breaches; and (3) to identify, contact, or take legal action against customers or third parties violating this Agreement, interfering with property rights or with the Hosted Service, or breaking the law. The Hosting Provider shall retain full administrative access to any Hosted Service. If this access is removed from a service, Silverback reserves the right to disable the service until such access is restored. A single snapshot of each running virtual machine is kept and updated on a weekly basis. Silverback will restore this entire image upon request on a best-effort basis. Patch Management of Managed Hosting Services is for vendor-supported Operating Systems only. The timing and priority of the patch application is subject to the risk of the security vulnerability as assessed by us and at our absolute discretion. The time that a patch will be applied will be liaised with you to minimise business impact, notwithstanding the above security assessment. The Co-location Facility may revise its Terms of Service from time to time by posting an amended version at their website, and such modification will automatically revise the terms with which we provide the Hosting Services under this Clause. Such change will become effective upon posting an amended version on the Silverback website.

## **5. LIMITED LICENSE GRANT.**

Subject to the Governing Documents and payment of all applicable fees, Customer is granted a non-exclusive and non-transferable license ("**License**") to install and use the applicable components of the software as stated on the Order Form(s) intended for enterprises and end users, in machine-readable form, together with accompanying documentation (including all copies thereof, the "**Software**") solely in connection with authorized access to and use of the Silverback Platform. The License does not cover functionality and modules of the Silverback Platform that are excluded on the Order Form(s). No license is granted in the source code of the Software. Customer may make a reasonable number of archival or backup copies of the Software. The License is further restricted to the number and kind of Lines and/or Handsets, if and as set forth in the Order Form, and subject to support and maintenance terms and fees. A Line shall be restricted to use on a single Handset at any given time. In some cases, a single Handset may require more than one Line if network switching is made on the Handset (such as, for example, switching from 3G to WiFi). If the Order Form is non-restrictive, Lines and/or Handsets may be transferred from one User to another, so long as the previous User discontinues his/her use. The term of the License and each Line shall be as specified on the Order Form. Term licenses (if applicable) and support and maintenance services will be renewed on these same conditions upon invoicing by Silverback or a Reseller and Customer's timely payment.

## **6. TRIAL LICENSE.**

Silverback may provide Customer with a free testing arrangement ("Trial") of the Silverback Platform, whether written, verbal or implied. If Customer has been granted a server license key prior to placing an Order for licenses, in the absence of a written arrangement defining the scope of a Trial, a 30-day Trial shall be assumed. Notwithstanding any terms and conditions described in this Agreement to the contrary, any Trial shall be subject to the following:

- The Trial license(s) shall be of limited duration and shall expire automatically upon completion of the Trial
- The Trial shall terminate immediately without notice from Silverback if Customer fails to comply with any provision of this Agreement
- The Customer may terminate the Trial earlier at any time by destroying and/or returning to Silverback all copies of the Software
- Upon any expiration or termination of the Trial, the Customer must return and/or destroy all copies of the Software
- Silverback shall be permitted to terminate all access to the Silverback Platform without notice to Customer upon any expiration or termination of the Trial.

## **7. LICENSE RESTRICTIONS AND CUSTOMER OBLIGATIONS.**

7.1. Restrictions. Customer shall not remove or alter any copyright notice or any other notices that appear on the Software. Customer shall not (and shall not allow its personnel or any third party to): (i) modify or create derivative works of any Software without the express written consent of Silverback; (ii) reverse engineer, decompile, decrypt or attempt to discover any source code or underlying ideas or algorithms of any Software (except to the extent that applicable law prohibits reverse engineering restrictions, in which case advance notice to Silverback of such action shall be given); (iii) provide, lease, lend, transfer, assign, sublicense, use for timesharing or service bureau purposes or otherwise use or allow the use of the Software for the benefit of any third party (including by way of multiplexing or pooling) other than permitted by Silverback in writing; (iv) disclose the results of any benchmark testing, technical results or other performance data relating to the Software without Silverback's prior written consent; or (v) use any Software, or allow the transfer, transmission, export, or re-

export of any Software or portion thereof in violation of any export control laws or regulations, or in violation of any laws or regulations governing Customer. Customer shall be solely responsible for the compliance of each of its employees, contractors and agents with the terms and conditions hereof and with all applicable laws. CUSTOMER AGREES THAT THE SILVERBACK SOFTWARE AND SERVICES MUST NOT BE RELIED UPON FOR THE TRANSMISSION OF DATA RELATING TO EMERGENCY, MISSION CRITICAL OR LIFE THREATENING SITUATIONS OR FOR USE REQUIRING FAILSAFE PERFORMANCE AND OR WHERE FAILURE COULD LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL DAMAGE. THE SILVERBACK PLATFORM IS NOT USABLE WITHOUT BANDWIDTH AND HANDSETS, AND SILVERBACK IS NOT RESPONSIBLE FOR PROVIDING HANDSETS NOR BANDWIDTH NOR ITS QUALITY.

7.2. Obligations. Customer will ensure that each of its Users complies with Silverback's Acceptable Use Policy located at [www.silverbackmdm.com/legal/acceptable-use-policy](http://www.silverbackmdm.com/legal/acceptable-use-policy). Customer will use the server portion of the Software solely to support its Users and limit access to its qualified information technology personnel. Customer will allow its Users to use the client portion of the Software in accordance with Silverback's client agreement solely with the number and kind of Handsets approved by Silverback. Upon termination or expiration of the License, Customer shall return or destroy all copies of the Software and certify that it has done so to Silverback upon request.

## **8. SUPPORT AND MAINTENANCE SERVICES.**

The Order Form may specify that Customer is ordering either basic or extended levels of support. Subject to the payment of applicable support fees, Silverback will support and maintain the Silverback Platform and the Software pursuant to the Silverback Support and Maintenance Terms found at [www.silverbackmdm.com/legal/support-terms-and-conditions](http://www.silverbackmdm.com/legal/support-terms-and-conditions). For the avoidance of doubt, if Customer does not order at least basic support and/or is not current on support fee payments, Silverback has no obligation whatsoever to provide support, maintenance, correct software defects (subject to the Limited Warranty below), or provide future versions or upgrades to the Silverback Platform or any component of Software. To the extent provided to Customer pursuant to the Support and Maintenance Terms, the term "Software" used herein shall include, after the date of delivery by Silverback, any upgrades, updates, bug fixes or modified versions, related documentation and backup copies of the Software licensed or provided to Customer by Silverback directly or indirectly pursuant to the Support and Maintenance Terms. Software maintenance for all licenses must terminate on the same date. Whenever additional licenses are purchased, Customer has the option to either: 1) pro-rate the software maintenance period of the additional licenses to terminate earlier with the existing Software maintenance term, or 2) extend the Software maintenance term of the existing licenses to co-terminate with the software maintenance period of the additional licenses.

## **9. LIMITED WARRANTY.**

Silverback warrants that during the Warranty Period the Software will conform to the specifications set forth in Silverback's relevant documentation. The "**Warranty Period**" begins on the date Silverback makes the Software available for electronic download by Customer and ends ninety days later. Customer's sole and exclusive remedy under this limited warranty will be, at Silverback's option, repair or replacement of the Software or, if repair or replacement is not feasible, refund of the applicable fees paid. This warranty does not apply if the Software: (a) is licensed for beta, evaluation, testing or demonstration purposes; (b) has

been altered, except by Silverback; (c) has not been installed, operated, repaired, or maintained in accordance with the relevant documentation; or (d) has been used in conjunction with Customer or third party software, accessories, products, services or ancillary or peripheral equipment and the problem is the result of such use and not of the Software itself. DESPITE ANY OTHER PROVISION OF THIS AGREEMENT, SILVERBACK MAKES NO WARRANTY WITH RESPECT TO BANDWIDTH OR ANY THIRD PARTY HARDWARE, SOFTWARE AND SERVICES. SILVERBACK DOES NOT WARRANT THAT THE SOFTWARE IS ERROR FREE OR THAT CUSTOMER WILL BE ABLE TO OPERATE THE SOFTWARE WITHOUT INTERRUPTION. EXCEPT AS EXPRESSLY GRANTED IN THIS AGREEMENT, THE SOFTWARE AND ALL RELATED SERVICES ARE PROVIDED "AS IS". TO THE EXTENT PERMITTED BY LAW, SILVERBACK EXCLUDES ALL TERMS, CONDITIONS AND WARRANTIES IMPLIED INTO THIS LICENSE BY LAW, STATUTE, COURSE OF DEALING, USAGE OR TRADE PRACTICE OR OTHERWISE. SPECIFICALLY, AND WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, DESIGN, MERCHANTABILITY, SATISFACTORY QUALITY AND NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED. TO THE EXTENT AN IMPLIED TERM, CONDITION OR WARRANTY CANNOT BE EXCLUDED OR DISCLAIMED, THEN IT IS LIMITED IN DURATION TO THE WARRANTY PERIOD.

#### **10. LIMITATION OF LIABILITY.**

SUBJECT TO (C) BELOW: (A) SILVERBACK, ITS RESELLERS AND ITS SUPPLIERS EXCLUDE AND DISCLAIM ANY LIABILITY TO CUSTOMER AND ANY USER FOR (i) ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, AND (ii) LOSS OF PROFIT (WHETHER DIRECT OR INDIRECT), LOSS OF INCOME, DATA, REVENUE, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF DATA, OR COST OF SUBSTITUTE SOFTWARE OR SERVICES, OR OTHER ECONOMIC LOSS, WHETHER OR NOT CUSTOMER OR SILVERBACK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE; (B) SILVERBACK'S, ITS RESELLERS' AND ITS SUPPLIERS' AGGREGATE LIABILITY TO CUSTOMER AND ANY USER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S ACCESS TO AND USE OF THE SILVERBACK PLATFORM WILL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER TO SILVERBACK IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM OR ACTION AROSE; (C) NEITHER SILVERBACK, ITS RESELLERS NOR ITS SUPPLIERS EXCLUDE OR LIMIT THEIR LIABILITY IN RESPECT OF BODILY INJURY OR WRONGFUL DEATH ARISING FROM THEIR NEGLIGENCE, FRAUDULENT MISREPRESENTATION OR SUCH OTHER MISCONDUCT THAT CANNOT BE EXCLUDED BY APPLICABLE LAW. DESPITE ANY OTHER PROVISION OF THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW SILVERBACK, ITS RESELLERS AND ITS SUPPLIERS SHALL HAVE NO LIABILITY DURING ANY EVALUATION, DEMONSTRATION, BETA OR TESTING PERIOD, OR WITH RESPECT TO BANDWIDTH DELIVERY OR THIRD PARTY HARDWARE, SOFTWARE AND SERVICES NOT PROVIDED BY SILVERBACK. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SILVERBACK, ON BEHALF OF ITSELF, ITS RESELLERS AND ITS SUPPLIERS, DISCLAIMS ANY AND ALL LIABILITY FOR EVENTS OR DAMAGES OF ANY NATURE OR KIND RESULTING FROM MISUSE OF

THE SOFTWARE. NO RESELLER CAN ENLARGE SILVERBACK'S OBLIGATIONS UNDER THIS AGREEMENT NOR RESTRICT THESE LIMITATIONS OF LIABILITY. IT IS AGREED BETWEEN THE PARTIES THAT THE FOREGOING LIMITATIONS ARE REASONABLE IN LIGHT OF THE COST OF ALTERNATIVES.

## **11. INDEMNIFICATION.**

11.1. Claims. Silverback shall defend Customer against any claim, and any lawsuit to the extent based thereon, that is brought by a third party against Customer alleging that the Software (including any bug fixes or upgrades delivered under a Support Agreement) by Silverback to Customer under this Agreement, infringes a patent, trade secret, copyright or other intellectual property right ("Infringement Claim"), so long as Silverback is notified in writing by Customer as soon as reasonably practicable as to any such claim and Silverback is given sole authority and control of the defense of such claim. Customer will endeavor to supply all requested information and assistance for resolving or defending the Infringement Claim. For third party software supplied hereunder, Silverback's obligations shall be limited to any indemnities or defense commitments provided by such third party supplier. In addition to Silverback's obligation to defend, and subject to the same conditions, Silverback shall pay all damages finally awarded against Customer by a court of competent jurisdiction to the extent based upon such Infringement Claim. If the Software is subject to an Infringement Claim or, if in Silverback's judgment, likely to become subject to a Infringement Claim, Silverback's obligations under this Section shall be fulfilled if at any time Silverback, in its sole discretion, shall: (i) obtain a license for Customer to continue to use the Software purchased from Silverback; (ii) replace or modify the Software so as to be substantially functionally equivalent but non-infringing; or (iii) refund the unearned portion (using a 24 month amortization period) of the purchase price paid to Silverback by Customer for such Software. Silverback shall have no liability to Customer for any alleged or actual infringement, or otherwise, arising out of or in connection with Customer's ordering, use or transfer of Software after Silverback's notice to Customer that Customer shall cease use or transfer of such Software to avoid further infringement.

11.2. Exclusions. Silverback shall have no liability to Customer under this agreement for any alleged or actual infringement arising out of (a) use of Software in connection or in combination with equipment, devices or software not provided by Silverback; (b) use of Software in a manner for which it was not designed; (c) any modification of Software by anyone other than Silverback; (d) compliance with Customer's designs, specifications, guidelines or instructions; or (e) where Licensee continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement. Silverback shall not be responsible for any compromise or settlement made by Customer without Silverback's prior written consent.

11.3. Disclaimer. THIS SECTION PROVIDES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SILVERBACK'S ENTIRE LIABILITY IN THE EVENT OF AN INFRINGEMENT CLAIM. CUSTOMER HAS NO RIGHT TO RECOVER AND SILVERBACK HAS NO OBLIGATION TO PROVIDE ANY OTHER OR FURTHER REMEDIES, WHETHER UNDER ANOTHER PROVISION OF THIS AGREEMENT OR ANY OTHER LEGAL THEORY OR PRINCIPLE, IN CONNECTION WITH AN INFRINGEMENT CLAIM. IN NO EVENT SHALL SILVERBACK BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, COLLATERAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS OF CUSTOMER IN CONNECTION WITH ANY CLAIMS, LOSSES, DAMAGES OR INJURIES UNDER THIS SECTION.



## **12. CONFIDENTIALITY.**

Each Party agrees that all inventions, processes, materials, software, know-how and ideas and all other business, technical and financial information they obtain from the other Party are the confidential property of the disclosing Party ("**Confidential Information**" of the disclosing Party). A Party shall not be obligated under this section with respect to information that such Party can demonstrate (a) is or has become readily publicly available without restriction through no fault of the receiving Party or its employees or agents; or (b) is received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; or (c) was rightfully in the possession of the receiving Party without restriction prior to its disclosure by the other Party; or (d) was independently developed by employees or consultants of the receiving Party without access to such Confidential Information. Each Party will: (i) not use the other Party's Confidential Information for any purpose other than exercising its rights and performing its obligations under this Agreement; (ii) not disclose the other Party's Confidential Information to any third party, other than its employees, agents or contractors that need to know it for bona fide purposes and are legally bound to comply with the obligations set forth herein; and (iii) take all reasonable steps (but no less than the steps it takes to protect its own Confidential Information of like importance) to ensure that the other Party's Confidential Information is not knowingly used or disclosed in breach of this Agreement. Notwithstanding anything contained herein to the contrary, either Party may disclose the other Party's Confidential Information to the extent required by applicable law or governmental agency. Neither Party will disclose the terms and conditions of this Agreement except as required by law or to such Party's advisors, accountants, attorneys, suppliers and existing or prospective investors and acquirers that need to know such information, and are subject to a binding obligation to maintain the confidentiality of such information.

## **13. PRIVACY.**

Silverback may collect, use, store or disclose Customer's name, company name, email address and other contact details and any other personally identifiable information that may have been provided for the purposes of managing Customer's registration and account with Silverback on the Silverback website, providing Customer with the products and services under this Agreement or contacting Customer in respect of a query or request. Without Customer's personally identifiable information, Silverback may be unable to process Customer's request or otherwise provide Customer with the products and services under this Agreement.

Silverback may also collect personally identifiable information from, or disclose personally identifiable information to, third parties who provide Silverback with services in the management of the business and/or website. This may include, for example, business partners, members of the Silverback group of companies, third parties who perform website maintenance, management and analytics services and information storage providers. Silverback may also be required to collect and/or disclose personally identifiable information to government, regulatory and/or law enforcement bodies in order to comply with Silverback's obligations required or authorised by law.

Occasionally, Silverback may disclose the personally identifiable information and related data to overseas recipients, for example to other members of the Silverback group of companies, service providers and authorized Resellers pursuant to this Agreement located overseas, most likely in the USA, Germany and Australia. Customer can access or correct the personally identifiable information collected and held by Silverback by contacting Silverback. Further

information about how Customer may request access to or seek the correction of, the personally identifiable information, or how Customer may submit a complaint or a privacy related query generally, is contained in the Silverback Privacy Policy, available at: [www.silverbackmdm.com/legal/privacy-policy](http://www.silverbackmdm.com/legal/privacy-policy).

By submitting any personally identifiable information to Silverback or its designees pursuant to this license or in connection with the use of the Software, Customer consents to the collection, processing, transmission and disclosure of such information and related data by Silverback pursuant to this Agreement to the extent necessary for Silverback to perform its obligations and in accordance with Silverback's privacy policy as modified from time to time and viewable at the link provided above.

Customer will at all times comply with all applicable data protection laws in using the Software and will use commercially reasonable efforts to obtain the consent of all Users to collect and so use such personally identifiable information with the Software when required. Silverback can elect to provide Users with appropriate self-help and best usage tips for the Software and Silverback Platform by email, unless Customer or the Users direct Silverback not to do so.

#### **14. EXPORT, RESTRICTED RIGHTS.**

The Silverback Platform, including the Software and technical data/documentation, may be subject to U.S. export control laws, including the U.S. Export Administration Act and related regulations the Export Administration Regulations promulgated by the U.S. Department of Commerce and codified at 15 C.F.R. §§ 730-774, the regulations pertaining to sanctions programs and Specially Designated Nationals and Blocked Persons administered by the U.S. Department of the Treasury, and may be further subject to export or import regulations in other countries. Customer agrees to comply with all such regulations and acknowledges that it has the responsibility to obtain licenses to import and re-export Software outside the USA. The Silverback Software and documentation may not be downloaded, distributed, or otherwise exported or re-exported (i) into, or to a national or resident of, Cuba, Iran, North Korea, Sudan, Syria or any country to which the U.S. at any time has embargoed Silverbacks or trade restrictions; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Denied Persons, Denied Entities, and Unverified List.

#### **15. INTELLECTUAL PROPERTY.**

The Silverback Platform and the Software is protected by copyright laws, international copyright, patents, trade secrets and other intellectual property rights. As between Customer and Silverback, Silverback shall retain all right, title, interest, ownership and intellectual property rights in and to the Software. The License confers no title or ownership in the Software and is not a sale of any rights in the Software. The License does not grant Customer any right to any enhancement or update to the Software. Silverback reserves any and all rights not expressly granted to you.

#### **16. TERM AND TERMINATION.**

16.1. Term. The term of this Agreement will commence on the date you first use the Software, and continue until applicable Order Forms expire, unless either Party terminates this Agreement or all applicable Order Forms earlier pursuant to this Section.

16.2. Termination for Cause. Either Party may terminate this Agreement or specific Order Form upon written notice if the other Party: (i) materially breaches and fails to correct the breach within thirty days following written notice specifying the breach; or (ii) becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation, insolvency, or where a receiver, administrative receiver or similar officer, is appointed for it or over any part of its undertaking or assets or if it shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if it enters into any voluntary arrangement with its creditors or shall become subject to an administration order. Furthermore, Silverback may suspend access to the Software and Services after notice to Customer if any payment under this Agreement is not paid when due or if Silverback reasonably determines that a User has breached the Acceptable Use Policy.

16.3. Effect of Termination. Upon termination of this Agreement (i) Customer and its Users will cease all use of and access to the Software and Silverback Platform as soon as possible; and (ii) each Party will return and make no further use of the other Party's Confidential Information and any materials belonging to the other Party. The rights and obligations of the Parties contained in all Sections of this Agreement will survive any expiration or termination of this Agreement EXCEPT Sections D, E, G and H.

## **17. GENERAL.**

17.1. Assignment. Each Party may assign this Agreement to a successor in interest with prior written notice, in the event of a merger, acquisition or sale of substantially all assets, but neither may otherwise assign this Agreement, in whole or in part, without the other's written consent, which will not be unreasonably withheld, and any attempted assignment in breach of this provision will be void. To be clear, Silverback may have some or all of its obligations performed by its chosen suppliers subcontractors for whose performance Silverback will remain responsible, without notice to Customer.

17.2. Notice. Any notices provided for in this Agreement shall be given in writing and transmitted by personal delivery of prepaid first-class mail or by facsimile, addressed as follows: if to SilverbackMDM, Attention: Legal Department, 88 Phillip Street Level 31, Sydney, NSW AUSTRALIA 2000; if to Customer, at the address of record stated on any Order Form ("Customer Address").

17.3. Governing Law and Language. FOR CUSTOMERS DOMICILED IN AUSTRALIA, THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW SOUTH WALES IN THE COMMONWEALTH OF AUSTRALIA, AND FOR CUSTOMERS DOMICILED OUTSIDE OF AUSTRALIA, THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE IN THE UNITED STATES OF AMERICA (EXCLUDING ITS CHOICE OF LAW PROVISIONS, THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS AND THE UNIFORM COMPUTER INFORMATION TRANSACTION ACT AND ANY ADAPTATION OF THIS ACT). Silverback can elect equitable relief to specifically enforce provisions of this license or to enjoin specific violations given the likely inadequacy of damages. The prevailing Party in any legal action related to this Agreement is entitled to recover its reasonable attorneys' and experts' charges. This Agreement and each Order Form is written and will be construed in standard American English, even if translated into other languages or used in places relying on other languages. The parties recognize that

this Agreement is intended for use in multiple jurisdictions. Any ambiguities will be clarified in an equitable manner without regard to authorship and minor errors and misspelling will be corrected to give maximal effect to obvious intent.

17.4. Resellers. When Customer utilizes a Reseller, (i) Customer will separately document its financial terms with the Reseller, e.g., price and payment terms; (ii) the Reseller will contract with Silverback through use of the Order Form for resale and Silverback will look to the Reseller for payment; and (iii) all other terms (e.g., usage, support, etc.) will be governed by this Agreement, if Silverback accepts the Order Form.

17.5. Miscellaneous. Nothing in this Agreement is intended to create a partnership, franchise, joint venture or agent/principal relationship between the parties. This Agreement constitutes the complete and exclusive agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings. There are no intended third party beneficiaries of this Agreement, and, if the laws of England and Wales are applicable, no term of this Agreement is enforceable pursuant to the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to it. If any of the provisions of this Agreement are held to be in violation of applicable law, void, or unenforceable in any court of competent and appropriate jurisdiction, then such provisions are herewith waived to the extent necessary for this Agreement to be otherwise enforceable in such jurisdiction. The Governing Documents are the complete agreement of Silverback and Customer with respect to the Silverback Platform, the Software and related services and its provisions may only be waived or modified in writing signed by a representative of each Party with authority to bind. Except for payment of sums due under this Agreement, neither Party shall be deemed to be in default of any provisions of this Agreement or for any failure in performance, resulting from acts or events beyond the reasonable control of such Party.