



## SIMBLE MOBILITY END USER LICENCE AGREEMENT (AUSTRALIA)

This Simble Mobility End User Licence Agreement and all Exhibits thereto ("Agreement") is effective on the \_\_\_\_\_ (the "Effective Date") between SIMBLE MOBILITY PTY LTD, an Australian corporation with offices at Level 12, 6 O'Connell Street, Sydney, NSW 2000 AUSTRALIA ("Simble") and Customer, \_\_\_\_\_, a corporation with offices at the address in the signature block below ("Customer").

**1. DEFINITIONS.** As used in this Agreement and in addition to any other terms defined herein, the following defined terms will have the meanings set forth below: (a) "**Confidential Information**" means (i) information of a party in all forms which derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, as well as (ii) other information that is provided to or obtained by one party and that is valuable to the other party and not generally known by the public; (b) "**Documentation**" means any user guides or manuals for installation related to the Software and delivered to Customer under this Agreement; (c) "**Licence Conditions**" means the conditions described in Exhibit A; (e) "**Products**" mean the Software and Documentation; (f) "**Software**" means the computer software programs described on Exhibit A of this Agreement, as well as any Updates provided pursuant to the terms hereof; (g) "**Support Services**" mean the annual Software support provided as per the description under section 3.1 and referenced in Exhibit B that is in effect as of the date Support Services are ordered, or subsequently renewed; (h) "**Updates**" mean new corrections, revisions and/or versions of the Software which Customer is entitled as per the description under 3.1 and referenced in Exhibit B; and (i) "**Services**" mean the Support Services provided by Simble to Customer under this Agreement.

### 2. SCOPE OF RIGHTS.

**2.1. Licence Grant.** Simble hereby grants to Customer a non-exclusive, nontransferable, nonassignable (subject to the assignment provisions set forth below) licence (the "Licence") (a) to access a copy of the Software identified on Exhibit A (subject to the conditions listed in Exhibit A); and (subject to payment of the Licence Fees described in Exhibit A), (b) to use the Software to transmit information to and receive information from those entities that routinely trade or transmit business with Customer in the normal course of business and solely for Customer's own business requirements; provided that such use of the Software is subject to the additional restrictions, if any set forth on Exhibit A (which shall take precedence and control over any conflict with the Licence granted in this section).

**2.2. Security Devices.** Customer shall not modify any security key or other device ("Key") used by Simble to protect the Software, attempt to bypass the Key or employ any device or other software products to circumvent the Key.

**2.3. Restrictions.** All Licences granted are for use of the Software in object code format only, and under no circumstances shall Customer be entitled to source code hereunder. Except as expressly permitted in this Agreement, Customer shall not (a) reverse assemble, decompile, or otherwise translate, or use, copy, modify, or distribute by any means any of the Software or the Documentation (provided that this restriction shall only apply to the extent permitted by law); (b) charge, or allow others to charge, any third party for use of the Software; or (c) use the Software in the operation of a service bureau or otherwise directly or indirectly use the Software to generate revenue other than as contemplated hereunder.

**2.4. Licence Continuity.** In the event that Simble ceases to trade and/or is unable to maintain the Support Services for Customer, then Simble will make available to customer the software (in source code format if necessary) and related know how that is required to continue to carry out the service.

### 3. OTHER SERVICES

**3.1. Support Services.** Support Services for the Software are provided by Simble upon completion of Exhibit B and payment by Customer of the proper Support Services fees. If Support Services are purchased after execution of this Agreement or after any other lapse of Support Services, Customer shall, at that time, owe all fees that would have been due and owing had the similar type of

Support Services been purchased continuously from the Effective Date.

**3.2. Other Services.** Assistance for implementation or any other services may be provided by Simble upon execution of a separate services agreement.

### 4. PRICE AND PAYMENT.

**4.1. Licence and Support Fees.** Customer shall pay Simble the Licence fees set forth on Exhibit A and the Support Fees set forth on Exhibit B. Unless otherwise set forth on either exhibit, the fees shall be due upon execution of this Agreement. Licence and Support Fees are subject to increase no more often than once per year after the Effective Date and will not increase by more than CPI over the prior year's fees. Subject to any rights of refund under the warranty obligations and duty of indemnification set forth herein, all fees are non-refundable and not subject to offset or reduction by Customer.

**4.2. Expenses.** The fees for Services are exclusive of expenses and Customer shall reimburse Simble for out-of-pocket expenses reasonably incurred in rendering the Services, including without limitation, reasonable travel and transportation expenses, lodging, and meals. Expenses shall be invoiced on a monthly basis. All payments shall be due within thirty (30) days after receipt by Customer of an invoice for same.

**4.3. Taxes.** The fees and all other amounts due to Simble as set forth in this Agreement are net amounts to be received by Simble, exclusive of all taxes, duties, and assessments, including without limitation all sales, withholding, VAT, GST, excise, ad valorem, and use taxes, (collectively, the "Taxes") and are subject to offset or reduction because of any Taxes incurred by Customer or otherwise due as a result of this Agreement. Without limiting the foregoing, all amounts stated in and payable under this agreement exclude GST, as defined in "A New Tax System Act" 1999 (Cth), unless otherwise stated. Customer shall not be responsible for and shall not pay directly, any and all Taxes relating to the performance of this Agreement, provided that this paragraph shall apply to taxes based solely on Simble's income.

**4.4. Late Fee.** Customer shall pay a late charge of one and a half percent (1½%) per month or the highest amount allowed by law, whichever is less, on all amounts not paid to Simble when due hereunder.

**5. AUDIT RIGHTS.** During the term of this Agreement and for one (1) year thereafter, Customer grants Simble the right, which Simble will exercise at its own expense and no more than once per year, to examine Customer's records and other information relating to the Customer's use of the Software. If this examination reveals that Customer has improperly used the Software, such conduct shall be considered a material breach of this Agreement and Simble may choose to either terminate this Agreement or invoice Customer for such unauthorised use based upon Simble's standard fees in effect at the time the examination is completed. If the underpaid fees exceed five percent (5%) of the fees actually paid, then Customer shall also pay Simble's reasonable costs of conducting the examination. Additionally, at Simble's written request, not more frequently than annually, Customer shall furnish Simble with a signed certificate verifying that the Products are being used pursuant to the provisions of the Agreement.

### 6. TERM AND TERMINATION.

**6.1. General.** This Agreement and the right to use the Products shall continue unless the Agreement is terminated as follows: (a) By Simble immediately upon written notice to the Customer in the event of a material breach by the Customer of the confidentiality or intellectual property ownership terms set forth herein; (b) By either party upon thirty (30) days prior written notice to the other party in the event of a material breach by the other party of any terms and conditions of this Agreement (other than as set forth in subsection

(a) above), and the failure to cure such material breach during such thirty (30) day period; or (c) By either party immediately in the event that the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganisation pursuant to bankruptcy laws or laws of debtor's moratorium.

**6.2. Effects of Termination.** Upon termination of this Agreement, all rights and Licences granted hereunder to Customer shall terminate immediately and, in the event Customer is receiving services from Simble under a separate agreement between the parties, Simble shall have the right to terminate such other agreement(s) and its obligations thereunder. Immediately upon such termination, Customer shall (a) cease all use of the Products; (b) return to Simble all copies of the Products and any Confidential Information of Simble; and (c) delete all copies of the Software embedded within any computer or merged within any other programs or stored on any storage media under Customer's control.

**6.3. Survival.** Upon termination of this Agreement, the provisions of this Agreement concerning the ongoing interests of the parties shall continue and survive in full force and effect, including without limitation Sections 2.3, 5, 6.2, 6.3 and 7 through 12.

## 7. LIMITED WARRANTY.

**7.1. Warranty.** Simble warrants, for Customer's benefit alone, for a period of ninety (90) days from the date of receipt by Customer of the Software that (a) the disks on which the Software is furnished will be free from defects in materials and workmanship under normal use, and (b) the Software will conform in all material respects to its Documentation. Simble shall be under no obligation to correct or replace the Software or refund any fees if (i) Customer or any third party has made any changes to the Software, (ii) the Software has been misused or damaged in any respect, (iii) Customer has not reported to Simble in writing the existence and nature of such nonconformity or defect promptly upon discovery thereof, (iv) Customer has moved the Software from the Designated Equipment or the Designated Site(s), or (v) the nonconformity or defect in the Software was caused by hardware or third party software malfunctions or failure.

**7.2. WARRANTY LIMITATIONS.** SUBJECT TO SECTION 7.1 OF THIS AGREEMENT, NEITHER SIMBLE NOR ITS LICENSORS, EMPLOYEES, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, PARENT, AFFILIATES OR SUBSIDIARIES MAKE ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO CUSTOMER, ANY OF ITS AFFILIATES, OR ANY OTHER PARTY WITH RESPECT TO THE SOFTWARE OR ANY SERVICES FOR WORKS OF AUTHORSHIP PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE IS EXPRESSLY EXCLUDED AND DISCLAIMED.

**7.3. Exclusive Remedy.** Customer's exclusive remedy for Simble's breach of its limited warranty hereunder shall be correction or replacement of the Software affected or, if Simble is unable to do so, then Customer's exclusive remedy shall not exceed the total amount of all Licence fees paid to Simble for the defective product upon return of the defective product to Simble. Customer shall be responsible for the delivery of the affected Software, applications, and equipment to a location designated by Simble.

**8. OWNERSHIP.** Simble, its affiliates and/or its licensors are the owners of all intellectual property rights, including without limitation patent, trademark, copyright, and trade secret rights, in the Products, and the techniques and ideas embodied and expressed in the foregoing, including the structure, sequence, and organisation of the Software (the "Program Concepts"), and any modification, enhancement or other derivative work thereof. Customer acknowledges that, except for the limited Licence granted hereunder, Customer has no rights in or to the Products, the Program Concepts or any copies thereof. To the extent Customer is permitted to make copies hereunder, Customer shall include Simble's copyright, trademark, service mark, and other proprietary notices on any complete or partial copies of the Products in the same form and location as the notice appears on the original work.

## 9. CONFIDENTIALITY.

**9.1. General.** Each party will hold in confidence and, without the consent of the other party, will not use, reproduce, distribute, transmit, or disclose, directly or indirectly, the Confidential Information of the other party. The recipient of Confidential Information may only disclose the Confidential Information to its employees or third party contractors with a need to know the information for the implementation of this Agreement and who are under a written obligation to abide by the confidentiality terms of this Agreement. Without limiting the foregoing, the recipient of the Confidential Information

agrees that it will exercise at least the same highest standard of care in protecting the confidentiality of the other party's Confidential Information as it does with its own Confidential Information of a similar nature.

**9.2. Exceptions.** Confidential Information shall not include information if, and only to the extent that, the recipient establishes that the information: (a) is or becomes a part of the public domain through no act or omission of the recipient; (b) was in the recipient's lawful possession prior to the disclosure and had not been obtained by the recipient either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the recipient by a third party without restriction on disclosure; (d) is independently developed by the recipient; or (e) is disclosed by the recipient pursuant to a requirement of a governmental agency or by operation of law, provided that the recipient shall disclose only that part of the Confidential Information which it is required to disclose and shall notify the owner of such Confidential Information prior to such disclosure.

**9.3. Term.** The obligations under this Confidentiality Section of the recipient of Confidential Information with regard to the Confidential Information remains in effect for as long as such information remains a trade secret or non-public information under applicable law.

**10. INTELLECTUAL PROPERTY INDEMNIFICATION.** Simble will indemnify the Customer against claims that the Software infringes a valid patent, copyright, or trademark or violates a third party's trade secrets. If Simble determines that the affected Software is likely to or if the Software is determined in a final, non-appealable judgment by a court of competent jurisdiction to infringe a patent, copyright, or trademark or to violate a trade secret, Simble will have the option, in Simble's sole discretion, to elect one or more of the following: (a) replace such affected Software; (b) modify such affected Software to make it non-infringing; or (c) require the return of such affected Software and termination of all rights thereto from the Customer, in which case Simble agrees to refund the Licence fees paid by the Customer for the affected Software, with a deduction for depreciation assuming straight-line depreciation over a five-year period. This right of indemnification set forth in this section only applies if: (i) Customer provides Simble notice of such claim or cause of action upon which Customer intends to base a claim of indemnification hereunder within thirty (30) days of the claim or cause of action, (ii) Simble is given sole control of the defense and all related settlement negotiations relating to such claim or action, and (iii) Customer provides reasonable assistance and cooperation to enable Simble to defend the action or claim hereunder. Simble has no obligation to Customer under this section if (A) Customer is using any release of the Software that is more than one revision behind the then current revision or (B) the claim is based on either changes or modifications to the Software made by Customer, or its combination, operation or use with any product, software, data, or apparatus not provided, specified or approved in writing by Simble. This section states Simble's entire liability and Customer's exclusive remedy for any claim of infringement.

**11. LIMITATION OF DAMAGES.** IN NO EVENT SHALL SIMBLE, ITS LICENSORS, EMPLOYEES, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, PARENT, AFFILIATES OR SUBSIDIARIES BE LIABLE FOR ANY LOSS OF DATA OR INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, OR THE USE OR INABILITY TO USE ANY SOFTWARE OR SERVICES, BASED ON ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF SIMBLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SIMBLE'S CUMULATIVE LIABILITY TO CUSTOMER FOR ALL CLAIMS RELATING TO (A) DEFECTIVE SERVICES SHALL NOT EXCEED THE FEES PAID BY THE CUSTOMER FOR THE SERVICES GIVING RISE TO THE CLAIM (WHICH FOR SUPPORT SERVICES SHALL NOT EXCEED THE ANNUAL SUPPORT FEES PAID BY THE CUSTOMER FOR THE PERIOD IN WHICH THE DEFECTIVE SUPPORT SERVICES WERE PERFORMED); OR (B) THE SOFTWARE OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL LICENCE FEES PAID TO SIMBLE HEREUNDER WITH RESPECT TO THE LICENSED PRODUCT GIVING RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO SIMBLE'S OBLIGATION UNDER THE INTELLECTUAL PROPERTY INDEMNIFICATION SECTION OF THIS AGREEMENT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LOSSES ARISING FROM DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACT OF SIMBLE OR TO OTHER SITUATIONS IF, AND ONLY TO THE EXTENT THAT, SUCH CONTRACTUAL LIMITATIONS CANNOT UNDER APPLICABLE LAWS LIMIT IN SUCH SITUATION THE LIABILITY OF SIMBLE.

## 12. MISCELLANEOUS PROVISIONS.

**12.1. Assignment.** Customer may not assign, sublicense, or otherwise transfer this Agreement or the Licence granted to Customer herein, or any of its rights or obligations under this Agreement, to any party without the prior

written consent of Simble, which consent shall not be unreasonably withheld. Simble may assign this Agreement to any of its subsidiaries, parent company or other affiliates or upon the merger, consolidation or sale of substantially all of the assets of Simble upon notice to the Customer. This Agreement shall be binding upon and inure to the benefits of the parties, their legal representatives, permitted transferees, successors and assigns as permitted by this Agreement.

**12.2. Access to Third Party Products.** To the extent that the provision of services by Simble require access or use of any third party products provided by Customer, Customer warrants that Customer shall have all rights and licences of third parties necessary or appropriate for Simble to access or use such third party products and agrees to produce evidence of such rights and licences upon the reasonable request of Simble.

**12.3. No Waiver.** No delay or failure in exercising any right hereunder and no partial or single exercise thereof shall be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of this Agreement shall constitute a consent to any prior or subsequent breach.

**12.4. Notices.** All notices required to be given hereunder shall be given in writing and shall be delivered either by hand, by registered mail with proper postage affixed thereto, or by facsimile (with confirmation copy sent by registered mail) addressed to the signatory at the address set forth on the signature page, or such other person and address as may be designated from time to time in writing. With respect to any notice to Simble, a copy of each notice also shall be sent to the following:

Simble Mobility Pty Limited  
Level 12,  
6 O'Connell Street  
NSW 2000, Australia  
Attn: Fadi Geha  
Facsimile Number: + 61 2 9247 3008

All such communications shall be deemed received by the other party upon the earlier of actual receipt or actual delivery.

**12.5. Severability.** If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

**12.6. Force Majeure.** Neither party shall be liable for delay in any of its performance hereunder due to causes beyond its reasonable control, including but not limited to, an act of God, war or natural disaster.

**12.7. Dispute Resolution.** The parties agree that, except as otherwise provided below, they shall first attempt to resolve any dispute, claim or controversy relating in any way to this Agreement (a "Dispute") between an officer of each party who has authority to resolve the dispute and who is not directly involved with the subject matter of this Agreement. If any Dispute

cannot be settled by this manner, the parties agree to use their best efforts to settle the dispute by non-binding mediation prior to pursuing litigation. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this mediation agreement and without any abridgment of the powers of the mediator.

**12.8. Governing Law.** This Agreement shall be governed and interpreted in accordance with the laws of New South Wales without regard to its conflicts of laws principles. Except as provided in the previous section regarding dispute resolution or as necessary to obtain injunctive relief, Customer consents to submit to the exclusive jurisdiction of the courts in New South Wales. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

**12.9. Complete Agreement.** This Agreement, including the exhibits attached hereto and other documents referenced herein, supersedes in full all prior discussions and agreements, oral and written, between the parties and constitutes the entire understanding of the parties relating to the subject matter hereof.

**12.10. Amendment or Modification.** No amendment or modification of this Agreement shall be valid or binding upon the parties unless it is in writing and signed by the duly authorised officers of the parties.

**12.11. Publicity.** Simble is hereby granted the right to identify the Customer as one of its customers on customer lists and in its marketing materials, including trade show materials; provided that the Customer has a right to revoke this right at any time by written notice to Simble and also provided that this does not give Simble a right to use Customer's logo or any other descriptive trademark or service mark of Customer without permission.

**12.12. Official Language.**

The official language of this Agreement is English. All contract interpretations, notices and dispute resolutions shall be in English. Any attachments or amendments to this Agreement shall be in English. Translations of any of these documents shall not be construed as official or original versions of the documents.

**12.13. Conflicts.** In the event of any discrepancies or conflicts between the terms and conditions in the body of this Agreement and an Exhibit, the terms and conditions of the Exhibit shall prevail over the terms and conditions in the body of this Agreement unless this Agreement specifically states otherwise. Notwithstanding anything else set forth herein, in no circumstances shall any discrepancies or conflicts in the Exhibits with respect to intellectual property indemnification, intellectual property ownership or limitation of liability provisions supercede the terms set forth in the body of this Agreement.

**12.14. Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute the same instrument. Each party agrees to be bound by its own telecopied or facsimiled signature, and agrees that it accepts the telecopied or facsimiled signature of the other party hereto.

IN WITNESS WHEREOF, Simble and Customer have caused this Agreement to be executed by their respective, duly authorised officers or representatives, effective as of the Effective Date.

SIMBLE MOBILITY PTY LTD:

CUSTOMER:

By: \_\_\_\_\_

Printed Name: Fadi Geha

Title: CEO

Address:

Level 12,

6 O'Connell Street

Sydney,

NSW 2000, Australia

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address:

Date: \_\_\_\_\_

**Exhibit A**

**Software and Fees**

**1. Software Products:**

<b>The following modules of Simble</b>	<b>Module Name</b>

**2. Annual Maintenance Fees:**

<b>Module Name</b>	<b>Annual Fee</b>	<b>Start Date</b>	<b>Renewal Date</b>
<b>Total</b>			

**3. Licence Condition(s):**

**4. Invoice Address:**

**Exhibit B**  
**Licence and Support Terms**

**A. Support Services Purchased:** Simble will provide the Updates, telephone support, maintenance, error correction, and other services for the Software in accordance with the Support Services purchased by Customer (the "Support Services").

<b>New Updates</b>	Yes
<b>Hours of Support</b>	9:00 am – 5:00 pm Australian Eastern Standard time, Monday through Friday but excluding Holidays*

\*As used herein, "Holidays" means the bank holidays and other public holidays recognised in the country in which the Simble Service Centre that will be providing support desk services to customer is located. Actual dates are available upon request.

**B. Annual Support Services Fees: (Included in Licence Fees as per Exhibit A)**

**C. Customer Primary Support Site(s):** Simble will only provide Support Services for the Software at the Customer Primary Support Site. Customer may acquire Support Services for additional sites by paying Simble the applicable secondary site Support Services fees.

**D. Customer Primary Support Site and Contact:**

**E. Customer Contractual Matters Contact:**