

## Data Processing Agreement

This Data Processing Agreement (“**DPA**”) forms an integral part of the Services Agreement (“**Agreement**”) entered into by and between [\_\_\_\_\_] (hereinafter referred to as “**Controller**”) and **Mobilize Networks Inc.** (hereinafter referred to as “**Processor**”). Controller and Processor are hereinafter jointly referred to as the “**Parties**” and individually as the “**Party**”. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement.

1. **Definitions.** In addition to capitalized terms defined elsewhere in this DPA
2. , the following terms shall have the meanings set forth opposite each one of them:
  - 2.1. “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control” for purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
  - 2.2. “**Applicable Laws**” means (a) European Union or Member State laws with respect to any Controller Personal Data in respect of which Controller is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Controller Personal Data in respect of which the Controller is subject to any other Data Protection Laws
  - 2.3. “**Controller Personal Data**” means any Personal Data Processed by Processor on behalf of Controller pursuant to or in connection with the Agreement;
  - 2.4. “**Data Protection Laws**” means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other applicable country as agreed in writing between the Parties, including in Israel;
  - 2.5. “**EU Data Protection Laws**” means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;
  - 2.6. “**GDPR**” means EU General Data Protection Regulation 2016/679;
  - 2.7. “**Restricted Transfer**” means (i) a transfer of Controller Personal Data from Controller to Processor; or (ii) an onward transfer of Controller Personal Data from a Processor to a Sub Processor, or between two establishments of Processor, in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws);
  - 2.8. “**Sub Processor**” means any person (including any third party and any Processor Affiliate, but excluding an employee of Processor or any of its sub-contractors) appointed by or on behalf of Processor or any Processor Affiliate to Process Personal Data on behalf of the Controller in connection with the Principal Agreement; and
  - 2.9. The terms, “**Commission**”, “**Controller**”, “**Data Subject**”, “**Member State**”, “**Personal Data**”, “**Personal Data Breach**”, “**Processor**”, “**Processing**” and “**Supervisory Authority**” shall have the same meaning as in the GDPR.

### 3. Processing of Controller Personal Data.

3.1. Processor shall not Process Controller Personal Data other than on the Controller's documented reasonable and customary instructions as specified in the Agreement or this DPA, unless such Processing is required by Applicable Laws to which the Processor is subject or as strictly necessary for the provision of Processor's services under the Agreement.

3.2. Controller instructs Processor (and authorizes Processor to instruct each Sub Processor) to (i) Process Controller Personal Data; and (ii) in particular, transfer Controller Personal Data to any country or territory, all as reasonably necessary for the provision of the Services and consistent with the Agreement and in accordance with Applicable Laws.

3.3. Furthermore, Controller warrants and represents that it is and will remain duly and effectively authorized to give the instruction set out in Section 2.1 and any additional instructions as provided pursuant to the Agreement and/or in connection with the performance thereof, on behalf of itself and each relevant Controller Affiliate, at all relevant times and at least for as long as the Agreement is in effect and for any additional period during which Processor is lawfully processing the Controller Personal Data.

3.4. Controller sets forth the details of the Processing of Controller Personal Data, as required by article 28(3) of the GDPR in **Annex 1** (*Details of Processing of Controller Personal Data*) hereto.

3.5. Without derogating from the provisions of the Agreement, solely Controller (and not Processor) shall be liable for any excess Controller Personal Data provided or otherwise made available to Processor or any Sub Processor in the course of providing Processor's Services under the Agreement or this DPA. Processor's obligations under the Agreement or this DPA shall not apply to any such excess Controller Personal Data.

4. **Processor Personnel.** Processor shall take reasonable steps to ensure that access to the Controller Personal Data is limited on a need to know/access basis, and that all Processor personnel receiving such access are subject to confidentiality undertakings or professional or statutory obligations of confidentiality in connection with their access/use of Controller's Personal Data.

5. **Security.** Processor shall, in relation to the Controller Personal Data, implement appropriate technical and organizational measures to ensure an appropriate level of security, including, as appropriate and applicable, the measures referred to in Article 32(1) of the GDPR. In assessing the appropriate level of security, Processor shall take into account the risks that are presented by Processing, in particular from a Personal Data Breach.

## **6. Sub Processing.**

6.1. Controller authorizes Processor and each Processor Affiliate to appoint (and permit each Sub Processor appointed in accordance with this Section 5 to appoint) Sub Processors in accordance with this Section 5 and any restrictions in the Agreement.

6.2. Processor and each Processor Affiliate may continue to use those Sub Processors already engaged by Processor or any Processor Affiliate as of the date of this DPA, including for the purpose of cloud hosting services by reputable Sub Processors, to the extent necessary to perform Processor's obligations under the Agreement, as well as any Sub Processors whom Controller requested Processor to use.

6.3. Processor may appoint new Sub Processors and shall give notice of the appointment of any new Sub Processor (for instance by e-mail), whether by general or specific reference to such Sub Processor (e.g., by name or type of service), including relevant details of the Processing to be undertaken by the new

Sub Processor. If, within seven (7) days of such notice, Controller notifies Processor in writing of any objections (on reasonable grounds) to the proposed appointment, Processor shall not appoint for the processing of Controller Personal Data the proposed Sub Processor until reasonable steps have been taken to address the objections raised by Controller, and Controller has been provided with a reasonable written explanation of the steps taken. Where such steps are not sufficient to relieve Controller's reasonable objections then Controller or Processor may, by written notice to the other Party, with immediate effect, terminate the Agreement to the extent that it relates to the Services which require the use of the proposed Sub Processor without bearing liability for such termination.

6.4. With respect to each new Sub Processor, Processor shall:

6.4.1. before the Sub Processor first Processes Controller Personal Data, take reasonable steps (for instance by way of reviewing privacy policies as appropriate) to ensure that the Sub Processor is committed to provide the level of protection for Controller Personal Data required by the Agreement; and

6.4.2. ensure that the arrangement between the Processor and the Sub Processor is governed by a written contract, including terms which offer materially similar level of protection for Controller Personal Data as those set out in this DPA that meet the requirements of Applicable Laws.

## **7. Data Subject Rights.**

7.1. Controller shall be solely responsible for compliance with any statutory obligations concerning requests to exercise Data Subject rights under Data Protection Laws (e.g., for access, rectification, deletion of Controller Personal Data, etc.). Taking into account the nature of the Processing, Processor shall reasonably endeavour to assist Controller insofar as feasible, to fulfil Controller's said obligations with respect to such Data Subject requests, as applicable, at Controller's sole expense.

7.2. Processor shall:

7.2.1. promptly notify Controller if it receives a request from a Data Subject under any Data Protection Law in respect of Controller Personal Data; and

7.2.2. ensure that it does not respond to that request except on the documented instructions of Controller or as required by Applicable Laws to which the Processor is subject, in which case Processor shall, to the extent permitted by Applicable Laws, inform Controller of that legal requirement before it responds to the request.

## **8. Personal Data Breach.**

8.1. Processor shall notify Controller without undue delay upon Processor becoming aware of a Personal Data Breach affecting Controller Personal Data, in connection with the Processing of such Controller Personal Data by the Processor or Processor Affiliates. In such event, Processor shall provide Controller with information (to the extent in Processor's possession) to assist Controller to meet any obligations to inform Data Subjects or Data Protection authorities of the Personal Data Breach under the Data Protection Laws.

8.2. At the written request of the Controller, Processor shall reasonably cooperate with Controller and take such commercially reasonable steps as are agreed by the parties or necessary under Privacy

Protection Laws to assist in the investigation, mitigation and remediation of each such Personal Data Breach, at Controller's sole expense.

## 9. Data Protection Impact Assessment and Prior Consultation.

9.1. At the written request of the Controller, the Processor and each Processor Affiliate shall provide reasonable assistance to Controller, at Controller's expense, with any data protection impact assessments or prior consultations with Supervising Authorities or other competent data privacy authorities, as required under any applicable Data Protection Laws. Such assistance shall be solely in relation to Processing of Controller Personal Data by the Processor.

## 10. Deletion or return of Controller Personal Data.

10.1. Subject to Section 9.2, Processor shall promptly and in any event within up to sixty (60) days of the date of cessation of any Services involving the Processing of Controller Personal Data (the "**Cessation Date**"), delete or pseudonymize all copies of those Controller Personal Data, except such copies as authorized including under this DPA or required to be retained in accordance with applicable law and/or regulation.

10.2. Subject to the Agreement, Processor may retain Controller Personal Data to the extent authorized or required by Applicable Laws, provided that Processor shall ensure the confidentiality of all such Controller Personal Data and shall ensure that it is only processed for such legal purpose(s).

10.3. Upon Controller's prior written request, Processor shall provide written certification to Controller that it has complied with this Section 9.

## 11. Audit Rights

11.1. Subject to Sections 10.2 and 10.3, Processor shall make available to a reputable auditor mandated by Controller in coordination with Processor, upon prior written request, such information necessary to reasonably demonstrate compliance with this DPA, and shall allow for audits, including inspections, by such reputable auditor mandated by the Controller in relation to the Processing of the Controller Personal Data by the Processor, provided that such third-party auditor shall be subject to confidentiality obligations.

11.2. Provisions of information and audits are and shall be at Controller's sole expense, and may only arise under Section 10.1 to the extent that the Agreement does not otherwise give Controller information and audit rights meeting the relevant requirements of the applicable Data Protection Laws. In any event, all audits or inspections shall be subject to the terms of the Agreement, and to Processor's obligations to third parties, including with respect to confidentiality.

11.3. Controller shall give Processor reasonable prior written notice of any audit or inspection to be conducted under Section 10.1 and shall use (and ensure that each of its mandated auditors uses) its best efforts to avoid causing (or, if it cannot avoid, to minimize) any damage, injury or disruption to the Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. Processor need not give access to its premises for the purposes of such an audit or inspection:

11.3.1. to any individual unless he or she produces reasonable evidence of identity and authority;

- 11.3.2. if Processor was not given a written notice of such audit or inspection at least 2 weeks in advance;
- 11.3.3. outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Controller has given notice to Processor that this is the case before attendance outside those hours begins;
- 11.3.4. for premises outside the Processor's control (such as data storage farms of Processor's cloud hosting providers);
- 11.3.5. if more than one (1) audit or inspection, in respect of each Processor, already took place in the same calendar year, except for any additional audits or inspections which:
  - 11.3.5.1. Controller reasonably considers necessary because of genuine concerns as to Processor's compliance with this DPA; or
  - 11.3.5.2. Controller is required to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory, where Controller has identified its concerns or the relevant requirement or request in its prior written notice to Processor of the audit or inspection.

## **12. General Terms**

### **12.1. Governing Law and Jurisdiction.**

- 12.1.1. The Parties to this DPA hereby submit to the choice of jurisdiction stipulated in the Agreement with respect to any disputes or claims howsoever arising under this DPA, including disputes regarding its existence, validity or termination or the consequences of its nullity; and
- 12.1.2. This DPA and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Agreement.

12.2. **Order of Precedence.** Nothing in this DPA reduces Processor's obligations under the Agreement in relation to the protection of Personal Data or permits Processor to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Agreement. In the event of any conflict or inconsistency between this DPA and the Agreement, this DPA shall prevail solely with respect to the subject matter of this DPA and solely if such conflict or inconsistency originate from the requirements of Article 28 of the GDPR (except where explicitly agreed otherwise in writing, signed on behalf of the Parties). This DPA is not intended to, and does not in any way limit or derogate from Controller's own obligations and liabilities towards the Processor under the Agreement, and/or pursuant to the GDPR or any law applicable to Controller, in connection with the collection, handling and use of Personal Data by Controller or its Affiliates or other processors or their sub-processors, including with respect to the transfer or provision of Personal Data to Processor and/or providing access thereto to Processor.

### **12.3. Changes in Data Protection Laws.**

- 12.3.1. Controller may by at least forty-five (45) calendar days' prior written notice to Processor, request in writing any variations to this DPA if they are required, as a result of any change in,

or decision of a competent authority under any applicable Data Protection Law, to allow Processing of those Controller Personal Data to be made (or continue to be made) without breach of that Data Protection Law; and

12.3.2. If Controller gives notice with respect to its request to modify this DPA under Section 11.3.1:

12.3.2.1. Processor shall make commercially reasonable efforts to accommodate such modification request, ; and

12.3.2.2. Controller shall not unreasonably withhold or delay agreement to any consequential variations to this DPA proposed by Processor to protect the Processor against additional risks, or to indemnify and compensate Processor for any further steps and costs associated with the variations made herein.

12.4. If Controller gives notice under Section 11.3.1, the Parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Controller's notice as soon as is reasonably practicable. In the event that the Parties are unable to reach such an agreement within 30 days, then Controller or Processor may, by written notice to the other Party, with immediate effect, terminate the Agreement to the extent that it relates to the Services which are affected by the proposed variations (or lack thereof).

12.5. **Severance.** Should any provision of this DPA be deemed invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall either be (i) amended as necessary to ensure its validity and enforceability, while preserving the Parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this DPA is entered into and becomes a binding part of the Agreement with effect from the later date set out below.

Controller: \_\_\_\_\_

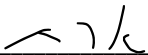
Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Processor: Mobilize Networks Inc.

Signature \_\_\_\_\_ 

Name \_\_\_\_\_ ARTHUR VAINER \_\_\_\_\_

Title \_\_\_\_\_ CTO \_\_\_\_\_

Date \_\_\_\_\_ May 20, 2018 \_\_\_\_\_

### ***Annex 1: Details Of Processing Of Controller Personal Data***

This **Annex 1** includes certain details of the Processing of Controller Personal Data as required by Article 28(3) GDPR.

**Subject matter and duration of the Processing of Controller Personal Data.** The subject matter and duration of the Processing of the Controller Personal Data are set out in the Agreement.

**The nature and purpose of the Processing of Controller Personal Data:** rendering Services in the nature detailed in the Agreement.

**The types of Controller Personal Data to be Processed are as follows:**

Community end user names, e-mails, phone numbers, custom data, activity logs, interactions, content and correspondences, preferences and habits.

**The categories of Data Subject to whom the Controller Personal Data relates to are as follows:**

Controller's Data Subjects who are end users of the Controller's internal systems and services.

**The obligations and rights of Controller.** The obligations and rights of Controller and Controller Affiliates are set out in the Agreement and this DPA.