

English

PLEASE READ THE FOLLOWING SUBSCRIPTION AGREEMENT FOR MOBIASSIST® ("LICENSE") CAREFULLY BEFORE USING THE SOFTWARE. UPON INDICATING YOUR ACCEPTANCE AND BY INSTALLING AND/OR USING THE SOFTWARE, YOU ARE AGREEING TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE AS WELL AS SOTI'S TERMS OF USE AND PRIVACY POLICY PROVIDED FOR ON THE SOTI WEBSITE. SOTI MAY AT ANY TIME, WITHOUT PRIOR NOTICE TO YOU, REVISE THE TERMS OF USE AND PRIVACY POLICY WHICH SAID REVISIONS WILL BE EFFECTIVE ONCE POSTED ON THE SITE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE DO NOT INSTALL OR USE THE SOFTWARE AND PROMPTLY EXIT THE SETUP SOFTWARE AND RETURN ALL ACCOMPANYING ITEMS (INCLUDING ALL FORMS OF DOCUMENTATION) TO THE ORIGINAL PLACE OF ORIGIN.

1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. Control means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

"Application Directory" means the online directory of applications that interoperate with the Service, located at <http://mobiassist.soti.net/> or at any successor Websites.

"Documentation" means all reference materials provided with the Software.

"Malware" means the generation or dissemination of computer viruses, Trojan horses, time bombs, denial of service attacks, key logging and other monitoring software, worms, logic bombs, and other code, files, scripts, agents or programs whose effect is to negatively impact the operation or performance of the Software or the safety, security, or privacy of Users or owners of the Software, or to negatively impact the operation or performance of the wireless networks with which the Software may interfere ("Networks") or to permit unauthorized use of or access to such Networks.

"MobiAssist Online Help" means the online user guide for the Service, accessible via [MobiAssist Online Help](http://mobiassist.soti.net/onlinehelp/onlinehelp.htm) (<http://mobiassist.soti.net/onlinehelp/onlinehelp.htm>), as updated from time to time. You acknowledge that You have had the opportunity to review the [MobiAssist Online Help](http://mobiassist.soti.net/onlinehelp/onlinehelp.htm).

"Party" or **"Parties"** means You and/or SOTI referred to individually or together.

"Purchased Service" means the Service that You purchase under a Registration Form.

"Registration Form" means the registration documents for the trial version and to purchase the Service.

"Service" means the online, web-based applications and platform provided by SOTI via <http://www.soti.net> and/or other designated Websites as described in the [MobiAssist Online help](http://www.soti.net) that are ordered by You.

"Software" means SOTI's MobiAssist product and its components.

"SOTI" means SOTI Inc, a Canadian based company with its principal place of business at 5770 Hurontario Street, Suite 1100, Mississauga, Ontario L5R 3G5, Canada.

"Third-Party Applications" means online, web-based applications and offline software products that are provided by third parties, interoperate with the Service, and are identified as third-party applications, including but not limited to those listed on the Application Directory.

"Users" means individuals who are authorized by You to use the Service, for whom subscriptions to the Service have been purchased, and who have been supplied user identifications and passwords by You (or by SOTI at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents; or third parties with which You transact business.

"You" or **"Your"** means the company or other legal entity for which you are accepting this License as licensee.

"Your Data" means all electronic data or information submitted by You to the Purchased Service.

2. FREE TRIAL PERIOD

SOTI makes the Service available to You on a forty-five (45) day trial basis free of charge until the earliest of (i) the forty-fifth (45th) day after Your acceptance of this License or (ii) the start date of the Purchased Service ordered by You.

After the trial period, SOTI will disable all created Users. You will be able to enable all created Users when You purchase the Service for the same amount of Users as created during the trial period. If the Purchased Service is less than the number of created Users during the free trial period, You will only be able to enable the amount of Users the Service is purchased for. If the Purchased Service is greater than the number of created Users during the trial period, You will be able to add Users.

IT IS UNDERSTOOD THAT DURING THE FORTY-FIVE (45) DAY FREE TRIAL THE SERVICE IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY.

3. PURCHASED SERVICE

3.1. Provision of Purchased Service

SOTI shall make the Purchased Service available to You pursuant to the acceptance of this License and upon payment of all applicable fees.

3.2. User Subscriptions

Unless otherwise specified in the applicable Registration Form, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the subscription term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Service.

4. USE OF THE SERVICE

4.1 SOTI’s Responsibilities

SOTI shall: (i) provide to You support for the Purchased Service at no additional charge, (ii) use commercially reasonable efforts to make the Purchased Service available twenty-four (24) hours a day, seven (7) days a week, except for: (a) planned downtime (of which SOTI shall give at least eight (8) hours’ notice via the Purchased Service and which SOTI shall schedule to the extent practicable during the weekend hours from 9:00 P.M. Eastern time Friday to 6:00 A.M. Eastern time Monday), or (b) any unavailability caused by circumstances beyond SOTI’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems or Internet service provider failures or delays, and (iii) provide the Purchased Service only in accordance with applicable laws and government regulations.

4.2. Your Responsibilities

You shall (i) be responsible for Users’ compliance with this License, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify SOTI promptly of any such unauthorized access or use, and (iv) use the Service only in accordance with the [MobiAssist Online Help](#) and applicable laws and government regulations. You shall not (a) make the Service available to anyone other than Users, (b) sell, resell, distribute, rent or lease the Service, (c) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of third-party privacy rights, (d) use the Service to store or transmit Malware, (e) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein, or (f) attempt to gain unauthorized access to the Service or their related systems or networks.

5. FEES AND PAYMENT FOR PURCHASED SERVICE

5.1. User Fees

You shall pay all fees specified in the Registration Forms hereunder. Except as otherwise specified herein or in a Registration Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on Service purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Registration Form. User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

5.2. Invoicing and Payment

You will be invoiced based on You providing SOTI with a valid purchase order (whereby accepting the terms and conditions for payments in such cases) or alternative documentation of reasonable acceptance by SOTI, for your purchase request. You will provide SOTI with payment in the form of updated credit card purchase (through our secure site) whereby you authorize SOTI to charge such credit card for the total amount, or in the frequency as applicable on your order submitted. Such charges shall be in advance, annually or in accordance with any different billing frequency stated in the applicable Order Form.

SOTI reserves the right to allow payment by other method other than credit card, whereby SOTI will invoice You in advance and otherwise accordance to terms and conditions as outlined in quotation and consequent purchase orders provided. It is Your responsibility to ensure and maintain that all information for accounting, billing and technical purposes is current and accurate for services to be offered to You.

5.3. Suspension of Service and Acceleration

If any amount owing by You under this or any other agreement for SOTI's service is thirty (30) or more days overdue or ten (10) or more days overdue in the case of amounts You have authorized SOTI to charge to Your credit card, SOTI may, without limiting SOTI's other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend SOTI's service to You until such amounts are paid in full.

5.4. Taxes

You are responsible for paying all taxes associated with Your purchases hereunder. If SOTI has the legal obligation to pay or collect taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide SOTI with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. PROPRIETARY RIGHTS

6.1. Reservation of Rights

The Software, the components, the Service and all related Documentation is licensed, not sold, to You by SOTI for use only under the terms of this License. SOTI and its suppliers reserve all rights not expressly granted to You.

The Software, including but not limited to the source code, its components, Documentation, design and structure, and any copies thereof is the proprietary property of SOTI or its suppliers and is protected by copyright laws and international copyright treaty provisions as well as other intellectual property laws and treaties. All title and copyrights in and to the Software, or any copy, modification or merged portion of the Software shall at all times remain with SOTI.

6.2. Restrictions

You shall not (i) permit any third party to access the Service except as permitted herein or in a Registration Form, (ii) create derivative works based on the Service, (iii) copy, frame or mirror any part or content of the Service, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse

engineer the Service, or (v) access the Service in Registration to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Service.

6.3. Ownership of Your Data

You exclusively own all rights, title and interest in and to all of Your Data.

6.4. Suggestions and Feedback

You hereby grant SOTI a royalty-free, worldwide, transferable, sub licensable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Service.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information

"**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; SOTI's Confidential Information shall include the Service; and Confidential Information of each party shall include the terms and conditions of this License and all Registration Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. Confidential Information shall not include any information that (i) was known to the Receiving Party prior to disclosure by the Disclosing Party, and for which the Receiving Party can provide evidence that it was in its lawful possession free of any obligations to keep it confidential, (ii) is in the public domain at the time of disclosure or becomes part of the public domain after disclosure otherwise than through a breach of this License, (iii) is independently developed by the Receiving Party, (iv) is approved for release by prior written consent of the Disclosing Party, (v) is received by the Receiving Party from a third party and there was no knowledge or reason to know on the part of the Receiving Party that the third party had obtained the information from the Disclosing Party under obligation of confidentiality.

7.2. Protection of Confidential Information

The Receiving Party shall use the same degree of care that it uses to protect its own confidential information, but in no event less than reasonable care not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this License, and the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this License and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

7.3. Protection of Your Data

Without limiting the above, SOTI shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. SOTI shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 7.5 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Service or prevent or address service or technical problems, or at Your request in connection with customer support matters.

7.4. Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

7.5 Privacy Policy

At all times Your information will be treated in accordance with SOTI's Privacy Policy.

8. WARRANTIES AND DISCLAIMERS

8.1. Warranties

Except as specifically stated in this License, the Service is provided and licensed "AS IS" without warranty of any kind, either express or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. SOTI warrants that the Service shall substantially perform the functions or generally conform to the Service specifications published in [MobiAssist Online help](#). Your exclusive remedy shall be as provided in Section 11.3 (Termination for Cause) and Section 11.4 (Refund or Payment upon Termination) below.

8.2. Mutual Warranties

Each party represents and warrants that it has the legal power to enter into this License.

9. INDEMNIFICATION

9.1. Indemnification by SOTI

SOTI shall defend You against any claim, demand, suit, or proceeding ("**Claim**") made or brought against You by a third party alleging that the use of the Service as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney's fees incurred by You in connection with any such Claim; provided that You promptly give SOTI written notice of the Claim, give SOTI sole control of the defense and settlement of the Claim (provided that SOTI may not settle any Claim unless the settlement unconditionally releases You of all liability); and provide to SOTI all reasonable assistance, at SOTI's expense.

9.2. Indemnification by You

You shall defend SOTI against any Claim made or brought against SOTI by a third party alleging that Your Data, or Your use of the Service in violation of this License, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify SOTI for any damages finally awarded against, and for reasonable attorney's fees incurred by, SOTI in connection with any such Claim; provided, that SOTI promptly give You written notice of the Claim, give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally release SOTI of all liability) and provide to You all reasonable assistance, at Your expense.

10. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL SOTI OR ITS SUPPLIERS BE LIABLE FOR DAMAGES FOR PERSONAL INJURY, DEATH, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE OR FAILURE TO REALIZE EXPECTED SAVINGS, LOSS AND/OR HARM OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES INCLUDING COSTS ASSOCIATED WITH DATA USAGE OVER COMMUNICATION NETWORKS (I.E. CELLULAR), ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF SOTI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER WILL SOTI NOR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, ANY ALLEGED OR ACTUAL IMPROPER USE OR INSTALLATION OF THE SOFTWARE BY YOU, ALLEGED OR ACTUAL NEGLIGENT ACTS OR OMISSIONS, WILLFUL MISCONDUCT, FRAUD OR FAILURE OF THE SOFTWARE DUE TO THIRD PARTIES SOFTWARE OR YOUR COMPUTER NETWORK. IN ANY CASE THE TOTAL LIABILITY OF SOTI AND ITS SUPPLIERS SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE WITHIN TWELVE (12) MONTHS PRECEDING THE CLAIM ("PERIOD") LESS THE AMOUNT CONSUMED FOR SUPPORT AND MAINTENANCE IN THE PERIOD PRECEDING THE CLAIM.

11. TERM AND TERMINATION

11.1. Term of License

This License shall enter into force upon signature by the duly authorized representatives of both Parties hereto. This License may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument. The Parties' faxed/emailed signatures shall be effective to bind them to this Agreement.

This License continues until all User subscriptions granted in accordance with this License have expired or been terminated. If You use the Service for a forty-five (45) day free trial period and do not purchase a subscription before the end of that period, this License will terminate at the end of the 45 day free trial period.

11.2. Term of Purchased User Subscriptions

User subscriptions purchased by You commence on the start date specified in the applicable Registration Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Registration Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one (1) year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless SOTI have given You written notice of a pricing increase at least thirty (30) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

11.3. Termination for Cause

Either Party may terminate this License for cause: (i) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.4. Refund or Payment upon Termination

Upon any termination for cause by You, SOTI shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by SOTI, You shall pay any unpaid fees covering the remainder of the term of all Registration Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to SOTI for the period prior to the effective date of termination.

11.6. Surviving Provisions

Section 5 (Fees and Payment for Purchased Service), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Mutual Indemnification), 10 (Limitation of Liability), 11.4 (Refund or Payment upon Termination) and 12 (Miscellaneous)

12. MISCELLANEOUS

12.1. Relationship of the Parties

Each Party to this License is an independent contractor. This License can in no way be construed as creating any partnership, agency, joint venture, employment or franchise relationship and neither Party will assert to any third party or otherwise claim that such legal relationship exists between them. Furthermore, no labour relationships between the Parties are created by this License. Neither Party shall assume or create any obligation upon the other Party other than those outlined in this License.

12.2. Notice

All communications and questions relating to the terms and conditions of this License and concerning its execution shall be made or confirmed in writing. Until further notice, all notices will be addressed as follows:

SOTI Inc
5770 Hurontario Street, Suite 1100
Mississauga, Ontario, L5R 3G5 Canada
ATTN: Legal/Contracts

or via email to: legal@soti.net

12.3. Governing Law and Jurisdiction

This License shall be construed in accordance with the laws of the Province of Ontario excluding its conflict of law provisions. The Parties agree to sole venue in the provincial or federal courts located in the Province of Ontario, and each Party hereby consents to the jurisdiction of such courts over itself in any action relating to this License.

12.4. Severability

If any provision of this License is found to be invalid or unenforceable to any extent, then the invalid portion shall be deemed conformed to the minimum requirements of law to the extent possible. In addition, all other provisions of this License shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

12.5. Waiver

Neither the failure nor any delay by any Party in exercising any right under this License will operate as a waiver of such right.

12.6 Amendment

Any modification or amendment of this License must be in writing and bear the signature of the duly authorized representatives of both Parties.

12.7. Assignment

Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this License in its entirety (including all Registration Forms), without consent of the other Party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party.