

Annex 1
Mobiess End User License Agreement for Planon

This software as a service (SaaS) agreement (the “**EULA**”) is made by and between Mobiess Ltd (“**Tech Partner**”) and the legal entity which has ordered the access to the Tech Partner Platform Apps and Connector Software under an Order Form (“**Customer**”), each a “**Party**”, and jointly the “**Parties**”. This EULA shall be effective upon access to the Tech Partner Platform Apps and Connector Software (“**Effective Date**”).

- 1. DEFINITIONS.** Where capitalized in this EULA, capitalized terms shall have the meanings as set forth within the body of the EULA or as set forth in this article. “**Affiliate**” means any entity controlled by, controlling, or under common control with a Party hereto. For this purpose, the term “control” shall mean the direct or indirect ownership of more than 50% of the voting stock or other ownership interests of that entity. “**Customer Data**” means any data submitted by or for Customer to the Tech Partner Platform Apps and Connector Software and all results from processing such data, including derivative works thereof. “**Documentation**” means the documentation of the Tech Partner Platform Apps and Connector Software made accessible by Tech Partner, as updated or amended from time to time, including without limitation the description of the Tech Partner Platform Apps and Connector Software including the related support services and the user guides. “**Order Form**” means an ordering document specifying the Tech Partner Platform Apps and Connector Software to be provided hereunder that is entered into between Customer and Planon. “**Tech Partner Platform Apps and Connector Software**” means the software as a services and related support services thereto that are provided by Tech Partner and/or its licensors as more specifically defined and set forth in this EULA, including associated offline components, as described in the Documentation. “**Planon**” means the legal entity Planon International B.V. a private limited liability company, duly incorporated and existing under the laws of the Netherlands, with its principal office at Wijchenseweg 8, 6537 TL Nijmegen, the Netherlands, registered with the trade register under number 09102087, any of its Affiliate(s) or any of its authorized reseller(s).
- 2. TECH PARTNER PLATFORM APPS AND CONNECTOR SOFTWARE.** Tech Partner grants Customer the right to access and use the Tech Partner Platform Apps and Connector Software pursuant to this EULA, the Documentation and the applicable Order Form for the duration as agreed in the Order Form. The foregoing grant of rights applies to Affiliates of Customer as well provided that Customer is responsible for compliance by its Affiliates with this EULA and any breach thereof by an Affiliate shall constitute a breach of this EULA by Customer. Tech Partner expressly reserves all rights in its Tech Partner Platform Apps and Connector Software. It is acknowledged that all right, title and interest and all intellectual property rights inherent therein and/or related thereto are and will remain with Tech Partner (or third party supplier(s) or licensor(s), if applicable) and that the Tech Partner Platform Apps and Connector Software are provided to Customer on a “Software as a Service” basis only and not sold, assigned or transferred to Customer.
- 3. CUSTOMER'S DUTIES AND OBLIGATIONS.** Customer shall prevent any unauthorized access to, or use of, the Tech Partner Platform Apps and Connector Software and Customer will promptly notify Tech Partner of any such unauthorized access or use. Customer shall be responsible for its users in compliance with this EULA, for the accuracy, quality, integrity and legality of Customer Data. Customer shall not (i) use the Tech Partner Platform Apps and Connector Software to store or transmit infringing, libellous or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (ii) use the Tech Partner Platform Apps and Connector Software to store or transmit any malicious code such as but not limited to cancelbots, back doors, easter eggs, time bombs, trap doors, trojan horses viruses, worms, files, scripts, agents or programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information (“**Malicious Code**”); (iii) intentionally interfere with or disrupt the integrity or performance of the Tech Partner Platform Apps and Connector Software or third party data contained therein, and shall make reasonable efforts to ensure that no other software, data or equipment having an adverse impact on the Tech Partner Platform Apps and Connector Software has been introduced in backend systems; or (iv) attempt to gain unauthorized access to the Tech Partner Platform Apps and Connector Software or to related systems or networks.
- 4. PERFORMANCE OF THE TECH PARTNER PLATFORM APPS AND CONNECTOR SOFTWARE.** During the Subscription Period Tech Partner ensures that (a) the Tech Partner Platform Apps and Connector Software will operate in accordance with this EULA, the Order Form(s) and the Documentation and that; (b) the Tech Partner Platform Apps and Connector Software will be free from Malicious Code; provided, that (i) Customer has implemented and used the Tech Partner Platform Apps and Connector Software in accordance with all instructions supplied; (ii) Customer notifies Tech Partner in writing of any defect within three (3) business days after the appearance thereof; (iii) Customer has, if applicable and/or if requested by Tech Partner, installed all updates/upgrades, new versions, and new releases made available by Tech Partner with respect to the Tech Partner Platform Apps and Connector Software, and all updates/upgrades recommended by Tech Partner with respect to any third party software products that may materially affect the performance of the Tech Partner Platform Apps and Connector Software on the Devices used; and (iv) Customer has maintained all associated equipment, software and environmental conditions in accordance with applicable specifications and industry standards; (v) Customer has not introduced other equipment or software creating an adverse impact on the Tech Partner Platform Apps and Connector Software; (vi) Customer is not in material default of any provision of the EULA.
- 5. SUBSCRIPTION PERIOD AND TERMINATION.** This EULA shall commence on the Effective Date and continues until all subscription(s) to the Tech Partner Platform Apps and Connector Software have been terminated. The term of a subscription to the Tech Partner Platform Apps and Connector Software shall as specified in the applicable Order Form. Except as otherwise specifically specified in an Order Form, a subscription to the Tech Partner Platform Apps and Connector Software shall continue for an initial term of one (1) year (the “**Initial Subscription Period**”); thereafter, the subscription term shall be automatically extended for successive twelve (12) months periods (each an “**Extended Subscription Period**”), unless either Customer or Planon have terminated the subscription in accordance with the Order Form, in which case the subscription to the Tech Partner Platform Apps and Connector Software shall terminate upon the expiry of the applicable Initial Subscription Period or Extended Subscription Period (all together the “**Subscription Period**”). Tech Partner shall not be liable to Customer or any third party for termination of this EULA in accordance with its terms or any suspension of Customer’s access to, and/or right to use, the Tech Partner Platform Apps and Connector Software under this EULA in accordance herewith. Upon the effective date of termination of this EULA for any reason, whether by Customer or Tech Partner, Customer shall cease any use whatsoever of the Tech Partner Platform Apps and Connector Software and all other information and materials provided by Tech Partner to Customer under this EULA. The definitions and the rights, duties and obligations of the Parties that by their nature continue and survive shall survive any termination of this EULA for any reason.
- 6. CONFIDENTIALITY.** Each Party agrees that all business, technical, financial and other information that it obtains from the other is the confidential property of the disclosing Party (“**Confidential Information**” of the disclosing Party). Except as expressly and unambiguously allowed herein, the receiving Party will hold in confidence and not use or disclose any Confidential Information of the disclosing Party and shall similarly bind its employees in writing. Each Party may disclose Confidential Information of the other to the receiving Party’s parent company and Affiliates, provided that employees receiving such Confidential Information are bound by confidentiality obligations at least as restrictive as those contained herein. Upon termination of this EULA or upon request of the disclosing Party, the receiving Party will return to the disclosing Party or destroy (and certify in writing such destruction) all Confidential Information of such disclosing Party, all documents and media containing such Confidential Information and any and all copies or extracts thereof. The receiving Party shall not be obligated under this article with respect to information the receiving Party can document: (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; or (e) is required to be disclosed by law or order of court of competent jurisdiction.
- 7. WARRANTY.** Tech Partner warrants that the Tech Partner Platform Apps and Connector Software will operate during the Subscription Period subject to and in the manner as provided in article 4. Except as provided in the previous sentence and to the maximum extent permitted by law, Tech Partner expressly disclaims any warranties or conditions of any kind, including, without limitation, any (implied) warranty, guarantee or condition in respect of quality, title, performance, merchantability, fitness for a particular purpose or non-infringement. Tech Partner does not warrant that the Tech Partner Platform Apps and Connector Software meet requirements other as warranted hereunder or that the provision of the Tech Partner Platform Apps and Connector Software will be uninterrupted or that the Tech Partner Platform Apps and Connector Software will be error-free.
- 8. INDEMNIFICATION.** Tech Partner shall at its sole option defend or settle at its expense any claim or suit against Customer arising out of or in connection with a third party claim assertion that the Tech Partner Platform Apps and Connector Software infringes any intellectual property rights from a third party and Tech Partner shall indemnify and hold harmless Customer and Planon from damages, costs, and reasonable attorneys’ fees, if any, finally awarded in such suit or the amount of the settlement thereof; provided that (a) Tech Partner shall have the right to replace or modify the alleged infringing Tech Partner Platform Apps and Connector Software with a non-infringing version under the condition that Customer shall use this replaced or modified version; (b) Tech Partner is promptly notified in writing of such claim or suit, (c) Tech Partner shall have the sole control of the defence and/or settlement thereof, and (d) Customer furnishes to Tech Partner, on request, all relevant information available to Customer and reasonable cooperation for such defence.
- 9. LIMITATION OF LIABILITY.** Notwithstanding anything to the foregoing and to the maximum extent permitted by law, neither Party shall be liable whether in tort or contract for (i) lost profits, (ii) lost savings, (iii) reduced goodwill, (iv) damage caused by interruption of business operations, (v) lost or damaged data, or (vi) any incidental or consequential, special or punitive damages, even if a Party has been notified of the possibility of such damage. Tech Partner’s aggregate liability with respect to any matters whatsoever arising under or in connection with this EULA (including non-contractual claims) shall not exceed EURO 100.000 or the amounts for which Tech Partner is insured.

10. GENERAL. This EULA executed by the Parties is the entire agreement between the Parties regarding the subject matter hereof. This EULA The rights and obligations of each Party under this EULA may not be transferred or assigned directly or indirectly without the prior written consent of the other Party. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the Parties hereto. No waiver will be deemed effective unless set forth in writing and signed by the Party charged with such waiver, and no waiver of any right arising from any breach will be deemed to be a waiver or authorization of any other breach or of any other right arising under this EULA. If any provision of this EULA is held to be invalid, illegal, or unenforceable, the remaining provisions hereof shall be unaffected thereby and remain valid and enforceable as if such provision had not been set forth herein. The Parties agree to substitute for such provision a valid provision that most closely approximates the intent of such severed provision. This EULA will be governed exclusively by the laws of the Netherlands. If Tech Partner and Customer are located in the European Union the parties irrevocably consent to the exclusive jurisdiction of the competent court in Arnhem, the Netherlands in connection with any dispute or action arising out of or in connection with this EULA, the overall relationship between the parties (if any), as well as any tort claims related to the EULA. If Tech Partner and/or Customer is/are located outside the European Union the Parties irrevocably consent to settle any dispute or action arising out of or in connection with this EULA, the overall relationship between the Parties (if any), as well as any tort claims related to the EULA, in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The place of arbitration shall be Nijmegen, the Netherlands and the proceedings shall be conducted in the English language. The Parties agree that the United Nations Convention of Contracts for the International Sale of Goods shall not apply to this EULA. Neither Party shall be liable for non-performance or delay caused by wars, riots, strikes, fires, floods, earthquakes, government restrictions, failure or errors of the internet or causes beyond its reasonable control, together: **"Force Majeure"**.

SERVICE AVAILABILITY AND SUPPORT SERVICES

1 DEFINITIONS. Where capitalized in this EULA, capitalized terms shall have the meanings as set forth within the body of the EULA or as set forth this article. **"Excluded Events"** means Planned Maintenance Times and issues (i) caused by factors outside of Tech Partner's reasonable control, including denial of service or similar attacks, mail bombs, DNS resolution, Domain Name expiration, Internet availability, SYN attacks, and other events or Force Majeure event or internet access or related problems beyond the demarcation point of the Tech Partner Platform Apps and Connector Software, (ii) that result from any actions or inactions of Customer or any third party, (iii) that result from Customer's equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within Tech Partner's direct control) and/or (iv) arising from Tech Partner's suspension and termination of Customer's right to use the Tech Partner Platform Apps and Connector Software in accordance with this EULA. **"Planned Maintenance Times"** means maintenance times in minutes in each 12 Months Period, which are set by Tech Partner by means of an advance notice at five (5) business days before. Tech Partner will, if possible, perform Planned Maintenance between Monday to Friday outside 08.00 am through 6.00 pm local Datacentre location time; however, only the first four (4) incidents of planned maintenance per month will be regarded as Planned Maintenance Times. **"Service Availability"** means the availability of the Tech Partner Platform Apps and Connector Software in production environment essentially for the usage of Tech Partner Platform Apps and Connector Software by Customer. Failures affecting not essential features or features that are not used by Customer do not count. Service Availability is calculated per 12 Months Period as follows: (Total Minutes – Excluded Events – unavailability in minutes) / (Total Minutes – Excluded Events) x 100. **"Total Minutes"** mean the total minutes of the respective 12 Months Period. **"Upgrade Control"** means the product ordered by Customer by means of an Order Form, which entitles Customer to carry out updates/upgrades of the software as made available as part of the Tech Partner Platform Apps and Connector Software itself at Customer's own responsibility.

2 SERVICE AVAILABILITY AND UPDATE. Tech Partner shall provide Customer a Service Availability of 99,5% per 12 Months Period. Tech Partner will automatically update the software made available as part of the Tech Partner Platform Apps and Connector Software within 3 months timeframe, unless Customer purchased Upgrade Control. If Customer has purchased Upgrade Control, then Customer may decide within a certain period to update the software as made available as part of the Tech Partner Platform Apps and Connector Software and the production environment as set out in more depth in the Documentation, provided that it is Customer's responsibility that its production environment will run a software version that is no more than 12 months older than the then latest software version made available by Tech Partner. If the software version in Customer's production environment is 12 months older than the then latest software version as made available by Tech Partner, then the software in Customer's production software as part of the Tech Partner Platform Apps and Connector Software will be scheduled to be updated automatically in the next maintenance window.

3 SUPPORT SERVICE. The following applies to the support services as provided by Tech Partner as part of the Tech Partner Platform Apps and Connector Software. During the Subscription Period, one or more application managers, as designated by Customer and agreed between Customer, Tech Partner and/or Planon (each a **"Customer Application Manager"**), are granted access to technical support as set forth in this article. Tech Partner shall respond to the request within the response time periods provided below. A Customer Application Manager may report a first request or issue related to Tech Partner Platform Apps and Connector Software in production environment as provided below. Such request or issue, will be provided by the Customer Application Manager with a clear description thereof, if applicable with a Customer request number and an indication of the urgency level (together **"Incident"**) to the Planon support desk (**"Planon Support Desk"**), either: a) by phone, b) by email, or c) via the Planon website as further detailed in the most current version of the Planon Support Handbook. Only Customer Application Managers may report Incidents to the Planon Support Desk. The Planon Support Desk shall assess the Incident and if validated assign the Incident to the Tech Partner. The support desk of the Tech Partner (or the Planon Support Desk on Tech Partner's behalf (herein after the **"Tech Partner Support Desk"**) shall respond to an Incident within the response time periods provided in Table 1 below. The urgency levels and service windows for Incidents as provided in Table 1 apply to standard software in production environment only. The Planon Support Desk and Tech Partner Support Desk are available on business days (excluding bank and public holidays) during Tech Partner business hours as further detailed in the most current version of the Planon Support Handbook. Tech Partner will respond to an Incident within the response time provided in Table 1 below. Five (5) Incident types and related support services are identified in table 1 as follows: **"Service Availability Incident"** is an Incident which has direct impact on the availability of the Tech Partner Platform Apps and Connector Software. The Tech Partner Support Desk will assign to a Service Availability Incident one of three degrees of urgency, and will take the related actions, each as set forth in Table 1 below. **"User question"** is an Incident related to a question regarding the use of the Tech Partner Platform Apps and Connector Software. User questions qualify as "Level 3" urgency level Incidents (see Table 1 below). **"Enhancement Request"** is an Incident related to a request for enhancements to standard functionality of the Tech Partner Platform Apps and Connector Software. An Enhancement Request will be noted by the Tech Partner Support Desk and included in the Tech Partner change management procedure. This procedure handles the acceptance, prioritization, and processing of enhancement requests. Enhancement Requests qualify as "Level 3" urgency level Incidents (see Table 1 below). **"Loss of functionality"** is an Incident related to limited functionality of the Tech Partner SaaS Service. The Tech Partner Support Desk will assign to a Loss of functionality Incident one of three degrees of urgency, and will take the related actions, each as set forth in Table 1 below. **"Security Incident"** is an Incident related to a report by the Customer Application Manager of a security risk perceived to be caused by the Tech Partner Platform Apps and Connector Software. The Tech Partner Support Desk will assign to a Security Incident one of three degrees of urgency levels, each as set forth in Table 1 below.

Table 1: INCIDENT URGENCY LEVELS AND SERVICE WINDOWS

Incident urgency level	Remark	Fulfils all criteria below:	Service window (response time)
Level 1 / STANDSTILL / P1	The highest urgency level; only assigned in very exceptional circumstances; to be reported by phone.	The Tech Partner Platform Apps and Connector Software is seriously disrupted, with the majority of users down	15 minutes
		There is limited functionality of the Tech Partner Platform Apps and Connector Software, rendering Customer incapable of fulfilling important internal needs in the short term	
		The Tech Partner Support Desk is unable to offer a workaround (or partial workaround) to resolve the problem completely or partially within 1 business day	
Level 2 / URGENT / P2	A midlevel degree of urgency.	The Tech Partner Platform Apps and Connector Software is disrupted at a level to cause inconvenience for a number of users but not all users	4 hours
		There is partial limited functionality of the Tech Partner Platform Apps and Connector Software, but Customer is still able to fulfil its own needs, and/or Tech Partner Support Desk is able to offer a workaround (or partial workaround) to resolve the problem completely or partially within 3 business days	
Level 3 / MINOR / P3	All Incidents that do not qualify as Level 1 or Level 2		1 business day