1. **DEFINITIONS**:
1.1. ""**Customer**" means the company named in the MSA as the customer.
1.2. "**Description of Maintenance Services**" means the *Movius CARE Descriptions and Service Level Agreement* set forth at http://www.moviuscorp.com/technical-support.aspx, which contains descriptions of each "CARE" level of Maintenance Services and the add-on services.
1.3. "**Hardware**" means the equipment and devices listed on Exhibit A to the MSA.
1.4. "**Maintenance Fee**" means the total price specified in the MSA for the Maintenance Services selected by Customer in the MSA.
1.5. "**Maintenance Services**" means the level of maintenance services (including any add-on services) selected by Customer in the MSA, with the selected maintenance services described in the Description of Maintenance Services.
1.6. "**Movius**" means Movius Interactive Corporation.
1.7. "**MSA**" means the Maintenance Services Agreement between Customer and Movius, created by execution of the agreement or by Customer's issuance of a purchase order for the Maintenance Services for the applicable Service Period.
1.8. "**Product**" means a piece of Hardware or a version of Software sold or licensed, as applicable, by Movius to Customer.
1.9. "**Service Period**" means the service period specified in the MSA for which Customer has paid and is entitled to receive the Maintenance Services with respect to the Supported Products.
1.10. "**Software**" means the machine-executable object code versions of software that are listed on Exhibit A to the MSA.
1.11. "**Start Date**" means the date specified in the MSA for the start of Maintenance Services for Supported Products listed in Exhibit A to the MSA and for all newly delivered Products for which maintenance fees are paid at the time of purchase or license, the first calendar day following shipment of the Supported Product.
1.12. "**Supplier**" means a Third Party from whom Movius either licensed Software or purchased Hardware.
1.13. "**Supported Product**" means the Hardware listed on Exhibit A to the MSA and the Software listed on Exhibit A to the MSA, provided that the Software is at the current release level and the release level immediately preceding the current release level.
1.14. "**Terms and Conditions**" means this set of Terms and Conditions for Maintenance Services.
1.15. "**Third Party**" means a person or entity that is not a party to this Agreement.
2 RENEWAL
2.1 Any change in the fee structure will not increase the fee for Maintenance Services more than five percent (5%) over the prior year's fee.
3 NON-RENEWAL; TERMINATION.
3.1 **Non-Renewal.** Either party may elect not to renew Maintenance Services for an upcoming Services Period by refusing to sign an MSA (or issue a purchase order in the Customer's case) prior to the Start Date of such new Service Period.
3.2 **Termination for Convenience.** Customer may terminate the then-effective MSA at any time by providing notice to Movius, but no monies shall be refunded to Customer for termination of the MSA prior to the end of a Service Period.
3.3 **Termination for Cause**. Customer's Maintenance Services under the MSA may be terminated by Movius if Customer has not paid the Maintenance Fee prior to the Start Date of the Service Period. No monies shall be refunded to Customer for termination of Maintenance Services.
3. **MAINTENANCE SERVICES.** Subject to Customer's timely prepayment of the Maintenance Fee for a Service Period, Movius agrees to use commercially reasonable efforts to perform, or have provided, for Customer the Maintenance Services with respect to the Supported Products.
4. **DISCLAIMER OF WARRANTY.** Neither Movius nor it Suppliers makes any warranty with respect to the Maintenance Services performed or assistance furnished hereunder. All Maintenance Services are provided "As-Is." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MOVIUS AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITIED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND NONINFRINGEMENT, OR ARSING FROM A COURSE OF DEALING OR USEAGE IN TRADE.
5. **INDEMNIFICATION AND LIMITATION OF LIABILITY**

5.1 **General Indemnification**. Movius hereby agrees to indemnify and defend Customer (and its directors, officers, employees, agents, and shareholders) from any action, claim or demand arising as a direct result of Movius' provision of services to the extent that such actions, claims or demands are due directly to Movius' gross negligence or intentional misconduct on Movius' part. Customer hereby agrees to indemnify and defend Movius (and its directors, officers, employees, agents, and shareholders) from any action, claim or demand arising as a result of Movius' entering a Customer's site to perform services; or in connection with Movius' provision of the services; to the extent that such actions, claims or demands are due directly to Customer's gross negligence or intentional misconduct. A party seeking to be indemnified hereunder must provide the other party with prompt, written notice of any claim for which indemnification is sought; permit the indemnifying party to take over all aspects of the case (provided, however, that the indemnifying party shall not be entitled to settle or resolve the case in a manner which causes the indemnified party to pay any amount or make any statement or admission); and incur no legal or related fees for which it will seek reimbursement (i) until the indemnifying party is notified and takes over the matter; and (ii) then only upon express request by the indemnifying party for action; and cooperate with the indemnifying party.
5.2 **Intellectual Property Infringement Indemnification**. To the extent that Movius and Customer had or have an agreement in place applicable to Customer's initial license of the Software from Movius, which agreement contained intellectual property indemnification, such intellectual property indemnification provisions are hereby incorporated by reference into these Terms and Conditions.
5.3 **Limitation of Liability**. Movius' cumulative liability to Customer for all claims of any kind resulting from Movius' performance or breach of the MSA or the Maintenance Services furnished thereunder for a Service Period shall not exceed the Maintenance Fees received by Movius from Customer under such MSA for the applicable Service Period, regardless of whether Movius has been advised of the possibility of such damages or any remedy set forth herein fails of its essential purpose or otherwise. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL MOVIUS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING ANY LOST PROFITS OR LOST SAVINGS ARISING FROM THE MAINTENANCE SERVICES PROVIDED, EVEN IF MOVIUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF ANY REMEDY HEREIN SHALL HAVE PROVEN INEFFECTIVE.
6. **CONFIDENTIALITY**
6.1 **Confidential Information.** Either party (the *"Disclosing Party"*) may deliver to the other party (the *"Receiving Party"*) certain non-public information, including, without limitation, formulae, flow charts, diagnostic routines, business information, forecasts, financial plans and data, balance sheet information, customer information, marketing plans, hardware, software and unannounced product information (collectively, *"Confidential Information"*). Such Confidential Information shall be in writing and marked prominently with the legend "confidential," "proprietary" or a similar legend or, if disclosed orally, shall be described as Confidential Information at the time of oral disclosure. Notwithstanding anything to the contrary herein (i) the Software, documentation for a Product, non-public Product information including the price list or price quotations and discount terms, the results of any benchmark tests on the Products run by Customer and the terms of this Agreement shall be deemed Confidential Information of Movius and (ii) the terms of this Agreement shall be deemed Confidential Information of Customer. Customer acknowledges and agrees that the Software contains Movius' valuable trade secrets and agrees not to reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Software. In jurisdictions where a right to reverse engineer is provided by law, unless information is available about the Products in order to achieve interoperability, functional compatibility or similar objectives, Customer agrees to submit a detailed written proposal to Movius concerning Customer's information needs before engaging in reverse engineering. Movius may, in its sole discretion, propose to Customer terms and conditions under which it is willing to make such information available. The obligations in this Section 6 shall expire on the third anniversary of the expiration of the Service Period, except that as to Confidential Information that is a trade secret, the obligations in this Section 6 shall continue until the Confidential Information is no longer a trade secret.

6.2 **Protection.** Each party will maintain in confidence all Confidential Information disclosed by the other party. The Receiving Party will not disclose or grant use of the Disclosing Party's Confidential Information to any third party except to the Receiving Party's attorney(s) or as expressly authorized by the Disclosing Party in writing and will not use the Disclosing Party's Confidential Information except as authorized by this Agreement. The Receiving Party will use at least the same standard of care to protect the Confidential Information of the Disclosing Party as it uses to protect its own confidential information of a similar nature, but in no event with less than with reasonable care. Each party has entered into, and will continue to enter into, a written agreement with each of its employees and contractors to treat third party Confidential Information and intellectual property in accordance with the provisions of this Agreement. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. Unless otherwise set forth herein, upon the expiration or termination of this Agreement or upon the request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party or destroy all of the Disclosing Party's Confidential Information in tangible form and shall promptly confirm in writing that it has done so.

6.3 **Limitation.** The foregoing obligations of confidentiality shall not apply to any information that the Receiving Party can show is or was:
   a. Already known to the Receiving Party at the time of disclosure without obligation of confidentiality;
   b. Independently developed by the Receiving Party without use of the Confidential Information of the Disclosing Party;
   c. Approved for disclosure by the Disclosing Party in writing;
   d. In the public domain without breach of this Agreement; or
   e. Lawfully received by the Receiving Party from a Third Party without an obligation of confidentiality.

6.4 **Mandatory Disclosures.** Nothing in this Section 6 shall be construed to prohibit either party from disclosing the Confidential Information of the other party to the extent that such disclosure is required by applicable law or order of a court, tribunal or other governmental agency; provided, however, that the Receiving Party shall promptly notify the Disclosing Party in writing of such requirement and shall cooperate with the Disclosing Party to minimize the scope of any such disclosure and to obtain of a confidentiality, protective or similar order.

7. **License of Software and Proprietary Rights.** Any Maintenance Release or Upgrade provided to Customer under the MSA is licensed to Customer under the license provisions in the agreement between Movius and Customer pursuant to which the Software was originally licensed to Customer and if there is no such agreement, is licensed under Movius' standard Software license terms. Customer acknowledges that Movius or its Suppliers retain all right, title and interest in and to the Software and documentation relating to the Products (including any copies thereof), and ownership of all patent, copyright, trade secret, trademarks and other intellectual property rights pertaining thereto shall be and remain the sole property of Movius or its Suppliers. Customer agrees to give Movius the right to audit Customer's use of the Software, including port usage, to confirm the use of the Software features, functionality and ports is consistent with the use Customer has licensed and paid for.

8. **GENERAL:**

8.1 **Taxes**. Customer will pay, or reimburse Movius for, all taxes assessed by a governmental entity on the Maintenance Services, except for taxes based on (1) Movius' net income or (2) franchise taxes.

8.2 **Dispute Resolution.** Any controversy or claim arising out of or relating to the MSA (including the Terms and Conditions) shall be determined by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. The arbitration shall take place in Atlanta, Georgia, the proceedings will be conducted in English and the arbitral award shall be final and binding on the parties. Notwithstanding the foregoing, either party may bring an action for injunctive or equitable relief in any forum having jurisdiction in order to protect its intellectual property rights, including the rights protected by Section 6 ("Confidential Information") and Section 7 ("License of Software and Proprietary Rights"). The prevailing party in any such proceeding shall be entitled to its reasonable attorneys' fees and costs incurred in bringing such claim.

8.3 **Governing Law**. Any action arising from or related to the MSA (including the Terms and Conditions) will be governed by the laws of the United States and the state of New York, excluding any choice of law rules that would require the application of laws of other jurisdictions. The United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transaction Act shall not apply to the MSA.

8.4 **Severability and Headings.** If any provision of the MSA (including the Terms and Conditions) is held by a court of competent jurisdiction to be invalid under any applicable statute, rule or law, the Parties agree that such invalidity shall not affect the validity of the remaining provisions of the MSA, and further agree to substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Headings used in the MSA (including the Terms and Conditions) are provided for convenience only, and shall not in any way affect the meaning or interpretation hereof.

8.5 **Waiver.** No waiver of any right by either party shall have any effect unless such waiver is in writing and signed by the waiving party. Any purported waiver not consistent with the foregoing shall be void.

8.6 **Force Majeure.** Each party's failure to perform its obligations under the MSA, except any obligation to pay money, shall be excused to the extent and for the period such performance is prevented by any of the following: fire, flood, earthquake, acts of God, explosion, casualty of war, labor dispute, inability to obtain delivery of parts, failure of supplies of electrical power, violence, any governmental law, order, regulation or ordinance, or any other act or condition beyond the reasonable control of such party. In such case, the party so affected shall give prompt, written notice to the other party, and shall resume performance promptly once the foregoing condition has abated. The party not affected by such act or condition may halt its performance hereunder until such time as the affected Party resumes its performance.

8.7 **Relationship of the Parties.** The parties understand and agree that their relationship is one of contract, and that they are not and shall not be construed as partners, joint ventures, or agent and principal and none of Movius' employees or contractors shall be considered employees or contractors of Customer. In no event shall either party be authorized to act for or on behalf of the other. Movius shall maintain workers' compensation insurance to cover its US employees performing services under the MSA.

8.8 **Language.** The official text of the MSA (including the Terms and Conditions, any riders and any addendums or amendments) shall be in English. In the event of any dispute concerning the construction or meaning of the MSA, reference shall be made only to the MSA (including the Terms and Conditions, any riders and any addendums or amendments) as written in English and not to any translation into another language.

8.9 **Amendment.** The MSA and the Terms and Conditions may be amended only in a separate written document, executed by both Parties. Any hand-marked changes of the Terms and Conditions and any purported oral modification hereof shall be void.

8.10 **Entire Agreement**. The MSA (including the Terms and Conditions, any riders and any addendums or amendments) is the Parties' entire agreement relating to the subject matter hereof. It supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgement, or other communication between the Parties relating to its subject matter.

8.11 **Assignment.** This Agreement and the rights and obligations of the parties hereunder may not be assigned by either party without the express prior written consent of the other; provided, however, Movius may assign this Agreement in whole or in part to a third party in the course of a merger, acquisition or reorganization, upon written notice to the Customer. Any permitted assignment shall be binding on the representatives, successors and assigns of the parties hereto.

8.12 **Export Control.** Prior to exporting, importing or re-exporting any Products (including replacement Hardware and repaired Hardware), Customer will obtain at its own expense all licenses and approvals required by the United States or any other government. Customer will comply with all applicable rules, policies and procedures of all governments in connection with Customer's import or export of the Products, including filing or registering the MSA with appropriate authorities. Movius and Customer agree to provide to each other information and assistance reasonably required by the other in connection with securing the foregoing licenses and approvals. All Products and technical data delivered under this Agreement are subject to United States export control laws, including the U.S. Department of Commerce Export Administration Regulation, as amended, and Customer hereby agrees to comply strictly with all such laws and regulations of the United States. Customer agrees that the Products will not be used for any purpose prohibited by law, including, without limitation, nuclear, chemical, or biological weapons proliferation or development of missile technology. Customer shall provide proof of compliance with required non-U.S. governmental authorization to Movius upon request.