

MovinCool Connect Subscription Agreement

This MovinCool Connect Subscription Agreement (“Agreement”) together with the Privacy Notice and Terms and Conditions of Use for the Service is subject to the relevant terms of the Order Form and permits Customer to purchase subscriptions to the Service (as defined below) and related Professional Services (as defined below) from Carrier pursuant to mutually executed Order Forms (as defined below) and sets forth the basic terms and conditions under which the Service and Professional Services will be delivered and performed. This Agreement will govern Customer’s initial purchase on the Effective Date as well as any future purchases made by Customer that reference this Agreement.

1 SERVICES

- 1.1 This Agreement applies to Customer’s use of the MovinCool Connect service only. The terms and conditions applicable to the sale of the equipment are contained in the sales contract.
- 1.2 The MovinCool Connect product and affiliated services are manufactured by and originate from Denso Products and Services Americas, Inc. (“Denso”). Carrier is acting as a reseller of the MovinCool Connect services. Customer acknowledges and agrees that it may be bound by terms and conditions established by Denso.

2 FEES AND PAYMENT

- 2.1 **Service Fees.** Except as otherwise specified herein or in an Order Form, (i) the fees payable for the Service are as set forth in the Order Form, (ii) the fees are quoted and payable in United States dollars, (iii) payment obligations are non-cancellable and fees paid are non-refundable unless the Agreement is terminated for cause pursuant to Section 5.
- 2.2 **Fee Increases at Renewal.** The fees payable for any Renewal Term (as defined in Section 5.1 Term and Termination) will be set forth in the Order Form. If the Order Form does not include any pricing for a Renewal Term, then Carrier’s standard pricing available at the date of renewal will apply. Carrier may increase the fees to the then-current rate for the Service at the time of renewal. Carrier will provide a 30 day renewal notice of any fee increase prior to renewal.
- 2.3 **Invoicing and Payment.** Fees will be invoiced in advance in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, fees are due 30 days from the invoice date. If any amounts invoiced hereunder are not received by Carrier by the due date, then such amounts shall accrue late interest at the rate of 2.0% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- 2.4 **Suspension of the Service.** If any undisputed charge owing by Customer is 30 days or more overdue, Carrier may, without limiting its other rights and remedies, suspend the Service until such amounts are paid in full or terminate the Agreement and Service.
- 2.5 **Taxes.** Customer agrees to pay all applicable taxes levied by any tax authority on the Service or on Customer’s use thereof, which shall be separately invoiced, excluding any and all taxes based on the net income of Carrier.

3 CUSTOMER DATA

- 3.1 **Customer Data.** Customer is responsible for any Customer Data submitted or contributed

to the Service by any of its Permitted Users, and Customer is fully responsible for such content and Customer's and its Permitted Users' use of such content, including without limitation its legality, reliability, accuracy, and appropriateness.

- 3.2 **Rights in Customer Data.** Customer will retain all right, title and interest in and to the Customer Data as provided to Carrier, and hereby grants to Carrier and its Affiliates a non-exclusive, perpetual, sub-licensable, irrevocable and worldwide, royalty-free right and license to receive, host, store, analyse, process, enhance, copy, transmit, modify, create derivative works of, maintain, display or otherwise use the Customer Data to provide the Service in accordance with this Agreement.
- 3.3 **Aggregated Data.** Customer acknowledges and agrees that Carrier monitors Customer's and its Permitted Users' use of the Service and collects, logs, and aggregates usage statistics and usage data as part of the normal operation of the Service ("Aggregated Data"). Carrier may use Aggregated Data for any business purpose during or after the Term of this Agreement, including but not limited to (i) improve the Service, (ii) produce and share aggregated insights from the usage statistics or usage data, or (iii) compare usage and adoption rates of Customer's and other organizations as long as the Aggregated Data is anonymized or de-identified. For the avoidance of doubt, Customer Data does not include Aggregated Data, and Carrier will not disclose or provide Customer Data or Customer's or Permitted Users' identities to third parties, except as provided in this Agreement or the Privacy and Data Usage Policy, and Carrier shall own all right, title and interest in and to Aggregated Data, the usage statistics and usage data including without limitation all Intellectual Property Rights therein.

4 PROPRIETARY RIGHTS

- 4.1 **Reservation of Rights.** This is a subscription agreement for access to and use of the Service. Customer acknowledges that it is obtaining only a limited and revocable right and license to access and use the Service. The Service is licensed, not sold. The Service (including without limitation, any updates, upgrades, modifications, customizations, and improvements thereto) and all intellectual property rights therein, are and will remain the sole property of Carrier and/or Carrier's partners, suppliers and licensors, and that irrespective of any use of the words "purchase", "sale" or like terms in this Agreement no ownership rights are being conveyed to Customer and its Permitted Users under this Agreement with respect to the Service. Customer's, and any Permitted User's, access and use of the Service does not transfer to Customer, any Permitted User, or any third party any rights, title, or interest in or to such intellectual property rights. Carrier and its suppliers reserve all rights not expressly granted to Customer in this Agreement.
- 4.2 **Suggestions.** Customer may choose to, or may be invited to submit, comments, suggestions, or ideas about the Service, including how to improve the Service ("**Feedback**"). Customer agrees that Feedback submissions are voluntary, gratuitous, unsolicited, and without restriction and will not place Carrier under any fiduciary or other obligation. Carrier shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual right and license to use, copy, modify, publish, or redistribute Feedback and its contents for any purpose, including the right and license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other Feedback provided by Customer and its Permitted Users relating to the Service. Customer waives all moral rights Customer may have in the Feedback.

5 TERM AND TERMINATION

- 5.1 **Term of Agreement.** Unless otherwise terminated as provided herein, this Agreement

commences on the Effective Date and continues until the expiration of the term specified in the Order Form (the “**Initial Term**”) or, immediately following the Initial Term, any additional, successive one (1) year term (the “**Renewal Term**”). The Initial Term and the Renewal Term together refer to the “**Term**” herein. Customer must provide its written intent not to renew its access to the Service at least sixty (60) days prior to the end of the Term. Customer’s notices of its intent not to renew shall be sent directly to the Carrier contact identified in the Order Form.

- 5.2 **Termination for Cause.** A party may terminate this Agreement for cause (i) upon 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.
- 5.3 **Effects of Termination; Refund or Payment upon Termination.** Upon any termination for cause by Customer, Carrier shall refund Customer any prepaid fees covering the unused portion of the Term. Upon any termination for cause by Carrier, Customer shall pay any unpaid fees covering the remainder of the Term after the effective date of termination. In no event shall any termination relieve Customer of its obligation to pay any fees payable to Carrier for the period prior to the effective date of termination. ONCE A SUBSCRIPTION HAS BEEN TERMINATED IT CANNOT BE REACTIVATED.
- 5.4 **Surviving Provisions.** The provisions of this Agreement which by their terms call for performance subsequent to termination of the Agreement shall so survive such termination, whether or not such provisions expressly state that they shall so survive.

6 DATA PRIVACY AND SECURITY

- 6.1 **Manufacturer’s Privacy Policy.** Customer acknowledges that the Service is provided by Denso and that the additional terms and conditions of the manufacturer’s privacy policy, available at <https://www.movincool.com>, are incorporated herein and shall apply.
- 6.2 **Compliance with Law.** The Parties acknowledge and agree that in the execution and the administration of the Agreement, Personal Information of either party will be collected and processed, as independent data controllers, for invoicing and contract management purposes, and that where a party provides the other party with any Personal Data for such purpose, it will ensure that it has the legal right to do so, including obtaining consent and providing notice to the individuals whose Personal Data it has provided to the other, if needed.
- 6.3 **Processing of Personal Information.** The Parties further acknowledge and agree that Customer’s use of the Service requires Carrier to process Personal Information of Data Subjects, which may include the Personal Information of Customer and its Permitted Users. Where Carrier processes Personal Information in relation to providing the Service, it will do so in accordance with the Privacy Notice.
- 6.4 **No Sensitive Personal Information.** Customer specifically agrees not to use the Service to collect, store, process or transmit any Sensitive Personal Information. Customer acknowledges that Carrier is not a Business Associate or subcontractor(as those terms are defined in HIPAA) or a payment card processor and that the Service are neither HIPAA nor PCI DSS compliant. Carrier will have no liability under this Agreement for Sensitive Personal Information, notwithstanding anything to the contrary herein.

- 6.5 **Security.** Carrier agrees to use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of any Customer Data, as further described in Carrier's Service Security Standards. However, as the Service is to be provided over the internet, Carrier will have no responsibility for errors in transmission, unauthorized third-party access, interruptions due to a failure of third-party communication technologies or any other causes beyond Carrier's control.

7 LIMITATION OF LIABILITY AND DAMAGES

- 7.1 **Damages Waiver.** Under no circumstances shall Carrier or its suppliers be liable for any indirect, incidental, special or consequential damages, including loss of revenue, loss of use of equipment or facilities, loss of data, failure of security mechanism, interruption of business, or economic damages howsoever arising.
- 7.2 **Liability Cap.** To the extent permitted by law, Carrier's aggregate liability for any reason including, to the greatest extent permissible under applicable laws, for gross negligence, whether in contract, tort, breach of statutory duty or otherwise, will be limited to the total amount paid and payable by the Customer to Carrier under this Agreement in the 12-month period preceding the commencement of the event or events.

8 CONFIDENTIALITY

- 8.1 **Confidential Information.** Each party (as "**Receiving Party**") agrees that all code, inventions, know-how, business, technical, financial information, technical or non-technical data, formulas, patterns, compilations, prototypes, models, sample products, equipment, patent applications, concepts, ideas, programs, software, devices, methods, techniques, drawings, designs, functional specifications, processes, financial data, financial plans, product or service plans or lists of actual or potential customers or suppliers it obtains from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Carrier technology, performance information relating to the Service, and the terms and conditions of this Agreement will be deemed Confidential Information of Carrier without any marking or further designation.
- 8.2 **Use of Confidential Information.** Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than as stipulated herein, and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section. The Receiving Party's confidentiality obligations will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for

which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

9 MANUFACTURER'S ADDITIONAL TERMS

- 9.1 **DISCLAIMER OF WARRANTIES:** THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY AND THE REMEDIES HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT NEITHER DENSO, NOR ANY OF ITS AFFILIATES, WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED. DENSO WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN PERFORMANCE.

DENSO MAKES NO WARRANTY OR REPRESENTATION REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SERVICE IN TERMS OF ITS RELIABILITY AND/OR AVAILABILITY. AMONG OTHER THINGS, THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING THE SERVICE, INCLUDING TELEPHONE SERVICES, COMPUTER NETWORKS AND THE INTERNET, CAN BE UNPREDICTABLE AND MAY FROM TIME TO TIME INTERFERE WITH OR PREVENT ACCESS TO THE SERVICE. DENSO IS NOT IN ANY WAY RESPONSIBLE FOR ANY SUCH INTERFERENCE OR PREVENTION OF CUSTOMER'S OR ITS USERS ACCESS TO OR USE OF THE SERVICE

- 9.2 **Limitation of Liability:** CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT DENSO AND ITS AFFILIATES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SHALL NOT BE LIABLE FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, (EVEN IF DENSO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF, OR RESULTING FROM, OR IN ANY WAY RELATED TO THE USE OR INABILITY TO USE THE SERVICE.

NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE MONETARY LIABILITY OF DENSO ARISING OUT OF OR RELATED TO A SUBSCRIPTION FOR ANY REASON AND FOR ALL CAUSES OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER FOR SUCH SUBSCRIPTION IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

- 9.3 **Indemnification:** Customer agrees to indemnify, hold harmless and, at DENSO's option, defend DENSO and its affiliates and their respective officers, directors, employees, agents and representatives from any and all third party claims, liability, damages and/or costs (including reasonable legal fees) arising from its and/or its users improper use of the Service or Customer's or its users' violation of these Terms and Conditions.

10 GENERAL PROVISIONS

- 10.1 **Entire Agreement, Assignment.** This Agreement contains the complete and exclusive statement of the Agreement between the parties and supersedes all previous or contemporaneous, oral or written, statements. Customer may assign this Agreement only with Carrier's prior written consent. Orders shall be binding upon Carrier when accepted in

writing by an authorized representative of Carrier. CARRIER'S ACCEPTANCE OF CUSTOMER'S ORDER IS CONDITIONED UPON CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN (THIS "AGREEMENT") AND CUSTOMER'S AGREEMENT TO BE BOUND BY AND COMPLY WITH THIS AGREEMENT. THIS AGREEMENT AND ALL REFERENCED ATTACHMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN CARRIER AND CUSTOMER, AND NO AMENDMENT OR MODIFICATION SHALL BE BINDING ON CARRIER UNLESS SIGNED BY AN OFFICER OR AUTHORIZED EMPLOYEE OF CARRIER. THE FAILURE OF CARRIER TO OBJECT TO PROVISIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER DOCUMENT OF CUSTOMER SHALL NOT BE CONSTRUED AS A WAIVER BY CARRIER OF THE TERMS IN THIS AGREEMENT OR AN ACCEPTANCE OF ANY OF CUSTOMER'S PROVISIONS. ANY CONFLICTING OR ADDITIONAL TERMS OR CONDITIONS SET FORTH BY CUSTOMER IN A PURCHASE ORDER OR OTHER DOCUMENT SHALL NOT BE BINDING UPON CARRIER, AND CARRIER HEREBY EXPRESSLY OBJECTS THERETO.

- 10.2 **Modifications.** Customer acknowledges and agrees that Carrier may modify this Agreement at any time and Customer's continued use of the Service after being notified of a change to the Agreement shall constitute acceptance and agreement to such modified Agreement. This Agreement applies to any updates to the Service as well as any applications (if any) used to access the Service that Denso may, in its sole discretion, provide or make available to Customer ("**Update**").
- 10.3 **Relationship of the parties.** The Parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
- 10.4 **Governing Law and Forum.** This Agreement and any Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of New York, USA without regard to conflicts of law principles, except that Sections 5-1401 and 5-1402 of the New York General Obligations law will apply and except that the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980, as amended to date, will not apply.
- 10.5 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 10.6 **International Trade Compliance.** Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any of its Permitted Users to) access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the Service any information that is controlled under the U.S. International Traffic in Arms Regulations.
- 10.7 **Subcontractors.** Carrier may use the services of subcontractors and permit them to exercise the rights granted to Carrier in order to provide the Service under this Agreement, provided that Carrier remains responsible for (i) compliance of any such subcontractor with the terms of this Agreement and (ii) for the overall performance of the Service as required

under this Agreement.

- 10.8 **Expenses.** Unless otherwise expressly provided herein, all expenses incurred by either party in connection with the formation or implementation of this Agreement shall be the sole responsibility of that party and neither party shall have any claim for such expenses against the other.
- 10.9 **Notices.** Notices relative to this Agreement shall be given in writing and sent by email or certified mail, return receipt requested. Any such notice sent by Customer to Carrier, or sent by Carrier to Customer shall be addressed to the entities identified in the Order Form.
- 10.10 **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and that are beyond the reasonable control of such party, including strike, blockade, an act of war, hostility, sabotage, terrorism or riot; natural disaster, pandemic, failure or diminishment of power or telecommunications or data networks or services, government restrictions, or refusal of a license by a government agency.