

# CELLTRUST SL2™ SERVER END USER LICENSE AGREEMENT

## v.18.6

### IMPORTANT! PLEASE READ CAREFULLY.

This END USER LICENSE AGREEMENT ("Agreement") is a legal agreement between You and CellTrust® Corporation ("CellTrust"). You should carefully read the following terms and conditions.

**BY INSTALLING, COPYING, UPDATING, OR OTHERWISE USING THE PRODUCTS OR SERVICES (as defined below), INCLUDING, BUT NOT LIMITED TO, THE CELLTRUST SL2 SERVER, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.**

YOU MAY NOT USE THE PRODUCTS OR SERVICES IF YOU (a) ARE NOT OF LEGAL AGE TO FORM A BINDING CONTRACT WITH CELLTRUST, OR (b) ARE A PERSON BARRED FROM THE PRODUCTS OR SERVICES UNDER THE LAWS OF THE UNITED STATES OR OTHER COUNTRIES, INCLUDING THE COUNTRY IN WHICH YOU ARE A RESIDENT OR FROM WHICH YOU USE THE PRODUCTS OR SERVICES. YOU EXPRESSLY REPRESENT AND WARRANT THROUGH ANY CONTINUED USE OF THE PRODUCTS OR SERVICES THAT YOU ARE AUTHORIZED TO USE THE PRODUCTS OR SERVICES.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY DISCONTINUE USE OF ANY AND ALL PRODUCTS AND SERVICES, INCLUDING, BUT NOT LIMITED TO, THE SL2 SERVER, AND DELETE OR DESTROY ALL RELATED FILES IN YOUR POSSESSION. IF YOU HAVE PAID ANY LICENSE FEE FOR THE SL2 SERVER AND DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MAY, BUT ONLY WITHIN 30 DAYS FROM THE DATE OF SUCH PAYMENT, CONTACT CELLTRUST OR THE PARTY FROM WHOM YOU RECEIVED THE CELLTRUST SL2 SERVICES OR SERVER TO RECEIVE ANY APPLICABLE REFUND. ADDITIONALLY, IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, CONTACT THE ENTITY FROM WHICH YOU RECEIVED THE SL2 SERVICES OR SERVER FOR DETAILS ON ANY OTHER RIGHTS OR RESPONSIBILITIES REGARDING CANCELLATION.

This Agreement and applicable laws, such as copyright law, govern Your actions with regard to the Products and Services, including, but not limited to, the SL2 Server.

The "Effective Date" of this Agreement is the earliest date on which You first agreed by Your actions or Your inaction to be bound by this Agreement, e.g., the date You installed the CellTrust Product or the date You first used a Service provided by CellTrust. In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

The entity installing or using the Products or Services ("You," as further defined below) represents that it has authority to enter into this Agreement with CellTrust, that it has read the terms and conditions set out herein, and that it accepts and agrees to be bound by this Agreement. If You do not agree with the terms and conditions, You must not use or permit the use of the Products or Services.

THIS SOFTWARE IS LICENSED, NOT SOLD. ANY AND ALL USES OF THE PRODUCTS AND/OR SERVICES ARE GOVERNED BY THE TERMS OF THIS AGREEMENT. THE SL2 SERVER IS DISTRIBUTED SOLELY FOR USE BY AUTHORIZED USERS ACCORDING TO THE TERMS OF THIS AGREEMENT, WHICH IS SUBJECT TO SEPARATE TERMS AND CONDITIONS AND PRIVACY POLICY AS REFERENCED AND HEREBY INCORPORATED INTO THIS AGREEMENT. ANY USE, REPRODUCTION, MODIFICATION, OR DISTRIBUTION OF THE PRODUCTS OR SERVICES NOT EXPRESSLY AUTHORIZED BY THE TERMS OF THIS AGREEMENT IS EXPRESSLY PROHIBITED.

IMPORTANT PRIVACY POLICY NOTICE: **PLEASE SEE SECTION 8 "BETA TESTING" FOR IMPORTANT INFORMATION REGARDING PRIVACY DURING BETA TESTING.** Since the information sent via SL2 may be stored, accessed and

used across national borders including the United States, You shall be solely responsible for all applicable compliancy and notice requirements related to privacy, records, and audit practices for Your use, including without limitation to Your Enterprise Users. CellTrust's current privacy policy is available at <http://www.celltrust.com/privacy-statement/>.

**IMPORTANT NOTICE REGARDING TRANSCRIPTION SERVICES:** You may have an option to enable transcription services through the Products; such feature is made possible through Google Transcription using Google APIs. If You choose to enable such services, You are agreeing to the following terms; **if you do not agree to the following terms, You shall not enable or utilize the transcription services through the Products:** YOU AGREE THAT GOOGLE MAY MONITOR USE OF THE APIS TO ENSURE QUALITY, IMPROVE GOOGLE PRODUCTS AND SERVICES, AND VERIFY COMPLIANCE WITH THE TERMS. This monitoring may include Google accessing and using your API Client, for example to identify security issues that could affect Google or its users. You will not interfere with this monitoring. Google may use any technical means to overcome such interference. Google may suspend access to the APIs by CellTrust or any API Client without notice if Google reasonably believes there has been a violation of its terms. Unless otherwise specified in writing by Google, Google does not intend use of the APIs to create obligations under the Health Insurance Portability and Accountability Act, as amended ("HIPAA"), and makes no representations that the APIs satisfy HIPAA requirements. If You are (or become) a "covered entity" or "business associate" as defined in HIPAA, You will not use the transcription services for any purpose or in any manner involving transmitting protected health information to Google unless You have received prior written consent to such use from Google. Some of Google's APIs allow the submission of content. Google does not acquire any ownership of any intellectual property rights in the content that You submit to the Google APIs through the Products, except as expressly provided in the Google terms. For the sole purpose of enabling Google to provide, secure, and improve the APIs (and the related service(s)) and only in accordance with the applicable Google privacy policies, You give Google a perpetual, irrevocable, worldwide, sublicensable, royalty-free, and non-exclusive license to Use content submitted, posted, or displayed to or from the APIs through the CellTrust API Client. "Use" means use, host, store, modify, communicate, and publish. Before You submit content to the Google APIs through the Products, You will ensure that You have the necessary rights (including the necessary rights from Your end users) to grant us the license.

**IMPORTANT NOTICE REGARDING LANDLINE SMS:** You acknowledge and understand that, in order to utilize the landline SMS feature in the Products, You must provide phone numbers and proper authorization to utilize such phone numbers in the manner necessary to enable such feature. You represent and warrant that You shall not provide phone numbers for such use that You are not authorized to utilize in this manner, and You shall indemnify CellTrust and its vendors in the event of a third party lawsuit alleging that You did not have the right to make such authorization.

#### 1. Definitions.

As used in this Agreement, words referencing persons shall include bodies corporate and unincorporated.

**"Affiliate"** means any company, corporation, or business in which a party owns or controls at least a fifty percent (50%) ownership interest or which directly or indirectly owns or controls more than a fifty percent (50%) ownership interest in such party.

**"CellTrust"** means CellTrust Corporation of 20701 N. Scottsdale Rd., Suite #107-451, Scottsdale, Arizona, 85255 USA.

**"Device"** means a mobile phone, PDA, handset, cell phone, tablet, phablet, or other electronic device or computer, including workstation and/or server, capable of installing, running, and/or using the CellTrust SL2 App.

**"Documentation"** means any written materials relating to the Products or Services, including, but not limited to, user guides, technical manuals, release notes, installation instructions, screen shots, and online help files regarding use of the Products or Services, and shall include any updated versions of Documentation as may be provided by CellTrust from time to time during the Term of this Agreement.

**"Enterprise Agreement(s)"** means, individually or collectively as the context may require, any Master License Agreement, CellTrust SL2 Service Agreement, Mutual Non-Disclosure Agreement, and/or CellTrust SL2 Server EULA that are required for a party to host or operate through an authorized CellTrust SL2 Server.

**"Enterprise User"** means a user who connects to the SL2 Server authorized for use by You under the terms of this Agreement and any Enterprise Agreement. Each Enterprise User's use shall be subject to the terms and conditions of the CellTrust SL2 App EULA and to the terms and conditions established by You that shall be no less restrictive than this Agreement and any Enterprise Agreement. Each Enterprise User must check directly with You to ensure such Enterprise User has received notice of and abides by any applicable terms and conditions. You are solely responsible to ensure each Enterprise User receives any notice required by any applicable law, regulation, rule, or guideline including without limitation in regards to privacy, audits, or the recording of communications.

**"Evaluation Copy"** is a version of the SL2 Server that may be limited either in period of time or functionality and is used for the purpose of a trial or demo to evaluate the SL2 Server for specific needs prior to purchase. Evaluation Copies shall not be used by You in regular business or day-to-day activities unless otherwise authorized by CellTrust in a separate written agreement.

**"Instance"** shall mean what is created by setting up or installing the software or by duplicating an existing instance. "Running/run an instance" shall mean the loading of the software into memory and executing one or more of its instructions, and an Instance will be considered to be running (whether or not the instructions are executing) until the software is removed from memory.

**"Interface"** means any software, firmware, or hardware created or used by You (except for the Products or Services) which provides a means to communicate information from one system of computing devices or programs to the Products or Services.

**"License"** has the meaning set forth in Section 2.

**"License Fees"** means the payments as set forth in the price quote provided to you for the SL2 Server Software or in such other document as CellTrust or an authorized reseller has deemed acceptable setting forth the fees to be paid or waived for use of the SL2 Server.

**"Machine Code"** means code resulting from the translation or processing of source code by a computer into a form that would not be convenient for human understanding of the program logic, but which is appropriate for execution or interpretation by a Device.

**"Products"** means, in whole or in part, the CellTrust SL2 Server and App (aka "SL2 Server" and "SL2 App"), any additional CellTrust product necessary for use or enhancement of the SL2 Server or App, including, but not limited to, any short code, or modem, any and all applicable Documentation, and any and all applicable updates provided under the terms of this Agreement.

**"App"** means the CellTrust SL2 mobile App (aka "SL2 App"), including any modifications, corrections, improvements, enhancements, and releases to which You or Enterprise Users are entitled as part of the SL2 service, as expressly set forth in this Agreement, the App EULA, any Enterprise Agreements, and pursuant to the terms and conditions set forth therein.

**“Order”** means Your written request in the form of a signed price quote or similar document from CellTrust or an authorized reseller for a SL2 Server Software license and/or App License(s), which shall be considered to be made pursuant to the terms and conditions of this Agreement.

**“SL2 Server Software (or SL2 Server)”** means the CellTrust computer software programs (in Machine Code form only), including Documentation, together with any modifications, corrections, improvements, enhancements and releases to which You are entitled as part of the License, such as updates for the SL2 Server and/or SL2 App installed on any Enterprise User’s Device.

**“Services”** means, in whole or in part, the SL2 service, and any additional CellTrust service for use or enhancement of the Products, including, but not limited to, transmission of messages, access or viewing of the CellTrust website, and CellTrust customer support.

**“You”** means the entity installing or using the Products or Services with the License granted by this Agreement under the terms and conditions of this Agreement and any other applicable agreement, policy, Order or terms and conditions as referenced. It shall be Your responsibility to read and review these and any referenced agreement, policy, Order and/or terms and conditions that will apply to the License granted to You herein. Except as set forth in an Order, Your Affiliates are not licensed under this Agreement; please contact CellTrust directly if an agreement covering Affiliates is desired.

2. **Grant of a Limited Use License.** Subject to all applicable terms and conditions and payment of License Fees, CellTrust grants to You a limited, non-exclusive, non-transferable, non-assignable license (without the right to grant sublicenses) to use the SL2 Server Software on **one** Instance (whether such Instance is run by CellTrust, You, or an authorized third party), in Machine Code only, for the term of this Agreement, and, without any expansion of the foregoing, CellTrust grants to You a limited, non-exclusive, non-transferable, non-assignable license (without the right to grant sublicenses) to use the Products and Services, as expressly stated in this Agreement for the term of this Agreement (the **“License”**). Such License will be voided immediately upon a material breach by You of the terms of this Agreement. Use of more than one Instance requires an additional, separate license for each Instance of the SL2 Server Software. Except as explicitly expressed in this Section, nothing contained in this Agreement transfers to You any license or rights in the Products or Services, including, but not limited to, the App, which license shall be governed by the SL2 App EULA, terms and conditions of use, and the applicable provisions in the CellTrust SL2 Service Agreement and any other Enterprise Agreement. The Products and Services are licensed, not sold. For the avoidance of doubt, CellTrust maintains complete and exclusive ownership of any and all of CellTrust’s intellectual property rights in and to the Products and Services, including any customizations that are made at the request or cost of a licensee. CellTrust retains ownership of all copies of the Products, including, but not limited to, the SL2 Server. No transfer of title to any copy of a Product shall be deemed to have occurred. All rights of CellTrust not expressly granted to You in this Agreement are reserved to CellTrust. All use of the Products and Services is subject to this Agreement and the Enterprise Agreements, **all of which You must accept before You may use the App or SL2 Server.** If Your SL2 Server License is for an Evaluation Copy, Your use shall be confined to the duration and restrictions communicated at any time to You by CellTrust. Any use, reproduction, modification, or distribution not expressly authorized by the terms of this Agreement is expressly prohibited.

3. **License Limitations.** The License granted in Section 2, “Grant of a Limited Use License,” is subject to the limitations contained in this Agreement – and applicable agreements, policies, and terms and conditions referenced herein – (**“License Limitations”**), including, but not limited to, those specified within this section below. Any use of the Products or Services in violation of the License Limitations will be regarded as an infringement of CellTrust’s copyrights, and any other legal rights of CellTrust, in and to the Products and/or Services. You agree,

under any circumstances, that You **SHALL NOT** Yourself, or through any affiliate, agent or any other third party (including without limitation through authorization, encouragement, or support):

- (a) Attempt, or knowingly permit or encourage others to attempt, to copy, photocopy, reproduce, translate, modify, decompile, decipher, disassemble, reverse engineer or otherwise decrypt or discover or derive the source code of all or any portion of the Products or Services;
- (b) Sell, resell, lease, license, sublicense, rent, encumber, or otherwise transfer to others any rights in any portion of the Products or Services;
- (c) Create, write, or develop any derivative works based on the Products or Services without express, written permission from CellTrust to do so;
- (d) Use any portion of the Products or Services in any manner except as expressly provided for in this Agreement;
- (e) Use the Products or Services for the primary purpose of exploiting vulnerabilities and weaknesses in the Products and Services without express, written permission from CellTrust to do so;
- (f) Use the Products or Services for the primary purpose of studying its features to, directly or indirectly, build, develop, or create any products similar to the Products and Services;
- (g) Use the Products or Services to provide processing services to third parties, to provide commercial timesharing, rental or sharing arrangements to third parties on a "service bureau" basis, or to otherwise allow any third party to use the Products or Services for the benefit of any third party;
- (h) Facilitate, maintain, create, revise, disclose, divulge or make available to, or permit unauthorized use of or unauthorized access to the Products or Services;
- (i) Share personally identifiable information on any individual or confidential information without the authority to do so, or provide any personally identifiable information ("PII") or Personal Health Information ("PHI") on yourself or any individual data subject without having the legal authority (and/or full consent of the data subject) to do so, as providing such information may be considered a cross-border transfer of information from your location to another country, particularly to the United States of America, where CellTrust is located;
- (j) Remove, efface, or obscure any copyright notices or proprietary notices or legends from the Products or any Confidential Information provided by CellTrust;
- (k) Intentionally or knowingly use any device, software, or routine for interference with the proper working of Your use of the Products or Services, or use any device, software, or routine that interferes with the proper working of the Products or Services for others, nor shall You attempt to interfere with or disrupt the proper working of the Products or Services;
- (l) Use the Products or Services in any way that violates any law, regulation, rule, or guideline of any applicable governmental, regulatory, or business entity or association, including, but not limited to, the Mobile Marketing Association ("MMA"), telecommunication carriers, or any other company necessary for use of the License, and any and all regulating bodies (whether governmental, private or otherwise and foreign or domestic, as the case may be) applicable to Your specific use of the Products or Services;
- (m) Export, ship, transmit, or re-export any part of the Products or Services in violation of any applicable law or regulation, including, without limitation, the Export Administration Act of 1979 or the Export Administration Regulations issued by the United States Department of Commerce, or re-export, download, or otherwise export into (or to a national or resident of) any country to which the United States has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. You represent and warrant that You are not located in, under the control of, or a national or resident of any such country or on any such list.

To ensure that improper use of the License has not occurred, during the term of this Agreement, and any renewal or extension thereof, and for a period of one (1) year after such later date, You shall not, directly or indirectly, build, develop, or create any products similar to the Products and Services, including, but not limited to, the SL2 Server and App. You agree to safeguard all Products and Services against use, copying, or transfer by any third party.

For the avoidance of doubt, You may not transfer Evaluation Copies, beta copies, courtesy copies, or any copy of the SL2 Server Software. In particular and without limitation, You agree that it would be deceptive and a material breach of this Agreement to transfer an Evaluation Copy to another person or entity, or to receive such a purportedly transferred Evaluation Copy. The person/entity using the Evaluation Copy must be the same person/entity that is identified to CellTrust as the user of the Evaluation Copy.

4. **Hosting.** Except as to any data center that has at minimum current industry standard security requirements, or the equivalent, certification, You may not engage any third party to operate or host the SL2 Server Software on Your behalf without CellTrust's prior written approval, which approval shall not be unreasonably withheld. For express clarification, CellTrust may refuse to grant such approval if the third party is a competitor of CellTrust (as determined by CellTrust in its sole discretion) and provided further that such approved third party shall execute and deliver a use and non-disclosure agreement which is in form and substance reasonably acceptable to CellTrust.

5. **Custom Interfaces.** YOU SHALL NOT DEVELOP INTERFACES TO ENABLE INTEROPERABILITY BETWEEN THE SL2 SOFTWARE AND YOUR OTHER SOFTWARE PRODUCTS AND INFORMATION TECHNOLOGY SYSTEMS UNLESS YOU HAVE PURCHASED CELLTRUST'S SOFTWARE DEVELOPMENT KIT ("SDK") AND EXECUTED THE SEPARATE SDK AGREEMENT WITH CELLTRUST.

6. **Other Entities.** This Agreement is solely between You and CellTrust; however, the Products and Services may be provided in connection with products and services of other entities, including, without limitation, vendors, carriers, mobile operators, resellers, aggregators, franchisees, partners, suppliers, independent contractors, or affiliates. You acknowledge and agree that the other entities will be entitled to provide non-CellTrust services or products to You as is beneficial or necessary for the Products and Services. You acknowledge and agree that, except for CellTrust Products and Services covered hereunder, CellTrust shall have no liability or responsibility whatsoever for the actions, inaction, or availability of, or products or services provided by, any other entity. Furthermore, You acknowledge and agree that this Agreement does not, and shall not be construed to, (i) grant to You any right, title, interest in, or reliance on such third party entities or their respective products and/or services, (ii) create any obligations whatsoever from such other entities to You, and (iii) create any representations, warranties, or commitments (including without limitation for availability or non-infringement) of such other entities, and, unless otherwise expressed in a separate written agreement between you and such entity/entities, such entities expressly disclaim all damages, whether direct, indirect, consequential, or otherwise, under any cause of action even if advised beforehand of the possibility of such damages. For express clarification, You may not bring a claim or action against any such third party entity based upon this Agreement.

7. **Copying of Documentation.** Subject to the requirements for treatment of Confidential Information, as defined in the applicable Enterprise Agreements, and other related provisions of this Agreement, You may reproduce a single copy of the Documentation for Your own personal reference by printing the electronic files. You have no right to reproduce, copy, access, or use the Documentation following expiration or termination of this Agreement and must comply with the deletion and destruction obligations set forth in the Termination provision herein.

8. **Beta testing.** Beta software is a version of software that has not yet been released to the general public. CellTrust, at its sole discretion, may offer beta testing to selected, interested customers. If You use a Product or Service during beta testing, You are asked to provide feedback to CellTrust and assume all risks associated with the beta software. **CellTrust advises all beta users to use extreme care when beta testing software since beta software is subject to strict confidentiality and the quality of the software is still under evaluation.**

BY DOWNLOADING OR USING CELLTRUST'S BETA SOFTWARE, YOU EXPRESSLY AGREE TO THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO ANY PROVISIONS CONTAINED HEREIN, YOU MUST NOT DOWNLOAD OR IMMEDIATELY DISCONTINUE ANY USE OF THE BETA SOFTWARE. You acknowledge and agree that CellTrust offers beta software "as is" without warranty of any kind, express or implied, and subject to the terms contained within this Agreement. CellTrust shall have no obligation to maintain, correct, update, change, modify, or otherwise support the software in beta testing. CellTrust may discontinue providing service to the beta software at any time. CellTrust makes no guarantee or commitment as to the success of the beta software. **You acknowledge that the privacy terms set forth or referenced herein WILL NOT apply to beta testing and no privacy or security should be reasonably expected during beta testing.**

Beta testing is at the entire risk of You, not CellTrust. CellTrust shall not be liable for any lost revenue, lost profits, or other incidental or consequential damages due even if advised of the possibility of such damages by reason of any performance or non-performance under this Agreement, including, but not limited to, the beta testing software. Furthermore, CellTrust shall not be liable for any delays, losses, or other damages which may result from the furnishing or canceling of any CellTrust software, features, and/or modules, including, but not limited to, the beta testing software.

9. **Feedback.** You agree that if You provide CellTrust with any suggestions, comments, or other feedback about the Products or Services or Confidential Information of CellTrust ("**Feedback**") such Feedback is given voluntarily. You also agree that even if You designate such Feedback as confidential, unless the You and CellTrust enter into a separate, subsequent, written agreement, the Feedback shall not be Your confidential information, and CellTrust shall be free to use, disclose, reproduce, license, or otherwise distribute the Feedback in its sole discretion, without any obligations or restrictions of any kind, including, without limitation, intellectual property rights. Any modifications made by CellTrust based on or related to Feedback shall be owned exclusively by CellTrust, and CellTrust shall have exclusive rights and interests on any product, service, or intellectual property incorporating such Feedback.

**You further agree that You shall be required to immediately report to CellTrust, at [cs@celltrust.com](mailto:cs@celltrust.com), any vulnerability You perceive or discover in the Products or Services, including, but not limited to, the App and SL2 Server, and You shall keep any and all information related to such vulnerability confidential and the obligations regarding Confidential Information, as set forth in the applicable Enterprise Agreements, shall fully apply to such information.**

10. **Product and/or Service Updates.** The Products or Services may be updated from time to time. Any updates of the Products or Services will be available at CellTrust's discretion and shall only be available upon complete payment of the applicable maintenance fee(s). Such updates may be available either automatically or through notice to You, via CellTrust's Products and/or Services, standard SMS, or email on how to update the Products or Services. You shall be exclusively responsible for providing notice to any Enterprise Users of any available or necessary updates. If CellTrust provides notice of an available or necessary update, You shall be solely responsible for taking all necessary steps to ensure the update is completed.

11. **Changes or Discontinuation to Services.** You acknowledge and agree that the form and nature of the Products and Services may change from time to time without prior notice to You. You acknowledge and agree that,

at its sole discretion, CellTrust, as part of its continuing innovation, may stop (permanently or temporarily) providing the Products or Services, or any feature thereof, to You or to users generally, without prior notice to you.

12. **Right to Do Business.** You represent and warrant that You (i) are duly organized, validly existing and in good standing under the laws of the state/country of Your organization and have the full right, power, and authority to operate Your business and conduct Your business as presently conducted and to enter into, execute, and perform all of Your obligations under this Agreement; (ii) this Agreement has been duly and validly executed and delivered by You, has been duly and validly authorized by all company action, and constitutes the legal, valid and binding obligation of You; (iii) the execution, delivery, binding effect, and performance of this Agreement and the transactions contemplated hereby will not conflict with any judgment or decree or any agreement or other instrument to which you are a party; (iv) are either not a government agency and are not acquiring the License granted by this Agreement pursuant to any government contract or with government funds, or else You agree to the GOVERNMENT RESTRICTED RIGHTS set forth later in this Agreement; and (v) that no pending or threatened claim or litigation known to You would have a material adverse impact on Your ability to perform as required by this Agreement. You further represent and warrant that You possess current and valid third party licenses from the licensor for all applicable third parties necessary for Your performance under this Agreement and the transactions contemplated hereby. You further agree that you shall be responsible to CellTrust or any third party for any breach of your obligations under this Agreement and for the consequences, including any loss or damage, of any such breach.

13. **Investigation of Unauthorized Use and Distribution.** If CellTrust reasonably suspects that the Products or Services have been distributed to, obtained by, or accessed by any unauthorized person or entity or is otherwise being used in a manner in noncompliance with the terms of this Agreement, CellTrust has the right to reasonably request from You an unqualified certificate executed by You, at Your cost, for the purpose of verifying compliance with the authorized use of the Products and Services.

14. **Indemnification.** You hereby agree to defend, indemnify, and hold CellTrust harmless from and against any claim, liability, loss, injury, damage, cost, or expense (including reasonable attorneys' fees) incurred by CellTrust arising out of or relating to Your use of the Products or Services, including, but not limited to, the SL2 Server.

15. **CellTrust Warranty.** CellTrust offers NO WARRANTY for beta software or Evaluation Copies. Except for Beta Software or Evaluation Copies, CellTrust represents and warrants to You, for a period of thirty (30) days from the date of receipt of the SL2 Server Software, that the SL2 Server Software, as exclusively developed by CellTrust, shall perform substantially in accordance with the user guides provided to You by CellTrust from time to time. CellTrust does not warrant that the SL2 Server shall operate in combination with other software or services selected by You, or that any Product or Service shall operate uninterrupted or error-free.

16. **Warranty Conditions and Limitations.** The limited warranty set forth above is made to and for Your individual benefit only and is conditioned upon Your compliance with the terms of this Agreement, the Documentation, and other reasonable instructions provided by CellTrust. This limited warranty shall not apply to the extent that the SL2 Server fails to perform as warranted because of and would not have so failed but for: (a) modifications made to the Products or Services (other than those modifications provided by CellTrust under this Agreement or under a Professional Services Agreement with CellTrust); (b) the creation and/or use of an Interface You use; (c) Your failure to implement modifications or enhancements as required by CellTrust; (d) use of the Products or Services in connection or in combination with any computer hardware or software or Device not expressly approved or recommended by CellTrust in writing; or (e) use of the Products or Services contrary to the specifications and directions contained in the Documentation or other reasonable instructions of CellTrust. **NOTE: Some local laws do not allow for the exclusion of implied warranties or have other applicable terms controlling**



warranties, including without limitation regarding the recovery of damages. In such a case, any implied warranties, guarantees, or conditions will last only during the term of the limited warranty and shall be limited as much as Your local law allows; however, You will not be able to recover the remedies described in this Agreement if such remedies are in conflict with the applicable local laws. For express clarification, some states and countries do not allow the exclusion or limitation of incidental, consequential, or other damages, so any limitation or exclusion of such damages set forth in this Agreement may not apply to You but shall be limited to the maximum extent allowed under applicable law.

**17. Disclaimers & Exclusive Remedy.**

**THE WARRANTY SET FORTH IN THE SECTION "CELLTRUST WARRANTY," STATE CELLTRUST'S SOLE AND EXCLUSIVE WARRANTIES TO YOU, AND ANY THIRD PARTY, CONCERNING THE PRODUCTS AND SERVICES.**

**YOUR EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE REPLACEMENT OF THE SL2 SERVER OR A REFUND OF LICENSE FEES PAID BY YOU FOR THE CELLTRUST PRODUCTS AND SERVICES IN THE 30 DAYS SPECIFIED ABOVE.**

**EXCEPT AS EXPRESSLY SET FORTH IN THE SECTION "CELLTRUST WARRANTY," THE SL2 SERVER SOFTWARE IS PROVIDED STRICTLY "AS IS," AND CELLTRUST MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE PRODUCTS OR SERVICES OR ANY MATTER WHATSOEVER.**

**IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING IN LAW OR FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USE OF TRADE ARE EXPRESSLY EXCLUDED.**

**THE WARRANTY SET FORTH IN THE SECTION "CELLTRUST WARRANTY" IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY CELLTRUST. CUSTOMER HEREBY DISCLAIMS ANY RELIANCE ON ANY WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.**

**IN PARTICULAR AND WITHOUT LIMITING THE FOREGOING, CELLTRUST DOES NOT REPRESENT OR WARRANT TO YOU THAT (a) Your use of the Products or Services will meet Your requirements, (b) Your use of the Products or Services will be uninterrupted, timely, secure, or free from error, (c) any information obtained by You, as a result of Your Use of the Products or Services, will be accurate or reliable, and (d) that defects in the operation or functionality of the Products or Services You access or are provided will be corrected.**

**18. Exclusion of Unauthorized Warranties.** No employee, agent, representative, or affiliate of CellTrust has authority to bind CellTrust to any oral representations or warranty concerning the Products or Services or License granted herein. Any written representation or warranty not expressly contained in this Agreement is not authorized and is unenforceable. No amendment to this Agreement altering or adding a representation or warranty shall be effective unless set forth in a writing executed by an authorized officer of CellTrust.

**19. Claim of Infringement.** CellTrust agrees to indemnify and hold You harmless from and against and either defend or settle, at CellTrust's expense and discretion, any claim, demand, threat, suit or proceeding brought by a third party against You to the extent that the claim, demand, threat, suit or proceeding alleges that Your use of the Products or Services (in accordance with the terms of this Agreement), in the form delivered by CellTrust (or its authorized reseller if delivered as authorized by CellTrust) to You, as modified by CellTrust or under CellTrust's direction, infringes the claimant's United States patent, copyright, trademark or trade secret (collectively, "Claim") and shall pay any final judgments awarded or settlements entered into with CellTrust's prior written authorization, provided that You give prompt written notice to CellTrust of any such Claim and give CellTrust the authority to proceed as contemplated herein. CellTrust shall defend any such Claim and make settlements thereof at its own discretion. You shall have the right, at your option and expense, to participate in the defense of any suit or

proceeding through a counsel of your own choosing. You shall give such assistance and information as CellTrust may reasonably require to settle or defend such Claims. In the event any such Claim is brought or threatened, CellTrust may, at its sole option and expense: (a) procure for You the right to continue use of the Products or Services or infringing part; (b) modify or amend the Products or Services or infringing part in such a way as to make the modified Products or Services or infringing part non-infringing, or replace the Products or Services or infringing part with other products or services having substantially the same capabilities; or (c) if neither of the foregoing is commercially practicable in CellTrust's reasonable judgment, terminate the Server License, App License or Enterprise Agreement (as applicable) and refund a pro rata portion of the Server License Fees (based on a useful life equal to three (3) years) or the annual License Fees paid by You for the CellTrust Products or Services (for the then existing term), as applicable.

20. **Limitations for a Claim of Infringement; Exclusive Remedy.** CELLTRUST SHALL HAVE NO LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY ALLEGED INFRINGEMENT, OR CLAIM THEREOF, BASED UPON: (A) ANY MODIFICATIONS MADE TO THE PRODUCTS OR SERVICES (OTHER THAN THOSE MODIFICATIONS PROVIDED BY CELLTRUST UNDER THIS AGREEMENT OR UNDER A PROFESSIONAL SERVICES AGREEMENT WITH CELLTRUST), INCLUDING BUT NOT LIMITED TO INTERFACES; (B) YOUR FAILURE TO IMPLEMENT MODIFICATIONS OR ENHANCEMENTS AS REQUIRED BY CELLTRUST; (C) USE OF THE PRODUCTS OR SERVICES IN CONNECTION OR IN COMBINATION WITH ANY HARDWARE OR SOFTWARE NOT SPECIFIED IN THE DOCUMENTATION AND NOT OTHERWISE APPROVED IN WRITING BY CELLTRUST (IF SUCH INFRINGEMENT OR CLAIM COULD HAVE BEEN AVOIDED BY THE USE OF OTHER EQUIPMENT, DEVICES, OR SOFTWARE); (D) INSTALLATION OR USE OF THE PRODUCTS OR SERVICES CONTRARY TO THE SPECIFICATIONS AND DIRECTIONS CONTAINED IN THE DOCUMENTATION OR OTHER REASONABLE INSTRUCTIONS OF CELLTRUST; (E) THE USE OF THE PRODUCTS OR SERVICES IN A MANNER NOT EXPRESSLY PERMITTED UNDER THIS AGREEMENT OR IN A MANNER FOR WHICH IT WAS NOT INTENDED; (F) THE USE OF THE PRODUCTS OR SERVICES, OR ANY PART THEREOF, THAT IS NOT THE MOST CURRENT RELEASE PROVIDED BY CELLTRUST, AS PART OF MAINTENANCE AND SUPPORT (IF SUCH CLAIM WOULD HAVE BEEN PREVENTED BY THE USE OF SUCH RELEASE); (G) THE USE OF THE ALLEGEDLY INFRINGING PRODUCT OR SERVICE, OR PART THEREOF, AFTER BEING INFORMED OF MODIFICATIONS THAT WOULD HAVE AVOIDED THE ALLEGED INFRINGEMENT; OR (H) ANY COSTS OR EXPENSES INCURRED BY YOU WITHOUT CELLTRUST'S PRIOR WRITTEN CONSENT. THE REMEDIES SET FORTH IN SECTION 19 SHALL BE YOUR SOLE AND EXCLUSIVE REMEDIES IN THE EVENT OF AN INFRINGEMENT CLAIM RELATING TO THE PRODUCTS AND SERVICES.

21. **Limitation of Liability.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT, EVEN IF CELLTRUST HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES ARISING, IN NO EVENT SHALL CELLTRUST BE LIABLE TO YOU OR ANY THIRD PARTY FOR:

- (a) ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF GOODWILL OR BUSINESS REPUTATION, WORK STOPPAGE, MOBILE DEVICE FAILURE OR MALFUNCTION, COST OF RECREATING LOST DATA, COST OF COVER, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS) IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT,
- (b) ANY LOSS OR DAMAGE INCURRED BY YOU OR A THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, LOSS OR DAMAGE AS A RESULT OF:
  - (i) THE FURNISHING, PERFORMANCE, OR USE OF THE PRODUCTS OR SERVICES,
  - (ii) ANY DELAY IN DELIVERY OR FURNISHING THE PRODUCTS OR SERVICES,
  - (iii) ANY CLAIM OF RELIANCE ON THE PRODUCTS OR SERVICES,
  - (iv) ANY CLAIM OF RELIANCE PLACED ON THE COMPLETENESS, ACCURACY, OR EXISTENCE OF ANY THIRD PARTY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN

YOU AND ANY THIRD PARTY ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE PRODUCTS OR SERVICES,

- (v) ANY CHANGES CELLTRUST MAY MAKE TO THE PRODUCTS OR SERVICES,
- (vi) ANY PERMANENT OR TEMPORARY CESSATION IN THE PRODUCTS OR SERVICES, OR ANY PORTION OR FEATURE THEREOF,
- (vii) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE ANY CONTENT OR OTHER COMMUNICATION DATA MAINTAINED OR TRANSMITTED THROUGH THE SERVICES OTHER THAN IN ACCORDANCE WITH THE LIMITED STORAGE TERMS AGREED TO IN WRITING BY CELLTRUST,
- (viii) YOUR FAILURE TO PROVIDE CELLTRUST WITH ACCURATE ACCOUNT OR CONTACT INFORMATION, OR
- (ix) YOUR FAILURE TO KEEP ANY PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL.

CELLTRUST'S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER FORM OF LIABILITY INCLUDING ANY LIABILITY RESULTING FROM ANY PROVISION OF THIS AGREEMENT OR REFERENCED AGREEMENT) FOR DAMAGES OR LOSS, HOWSOEVER ARISING OR CAUSED, WHETHER OR NOT ARISING FROM CELLTRUST'S NEGLIGENCE OR BREACH, SHALL IN NO EVENT BE GREATER THAN THE FEES PAID BY YOU FOR CELLTRUST PRODUCTS AND SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY, EVEN IF NO FEES HAVE BEEN PAID WITHIN SUCH A PERIOD. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

22. **Only As Allowed By Law.** NOTHING IN THE TERMS OF THIS AGREEMENT, INCLUDING ANY EXCLUSION OR LIMITATION OF WARRANTY OR EXCLUSION OR LIMITATION OF LIABILITY, SHALL EXCLUDE OR LIMIT CELLTRUST'S WARRANTY OR LIABILITY FOR LOSSES WHICH ARE NOT LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ONLY THE LIMITATIONS WHICH ARE LAWFULLY APPLIED IN YOUR JURISDICTION WILL APPLY TO YOU, AND CELLTRUST'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

23. **Term of this Agreement.** This Agreement is effective until terminated. You understand and agree that CellTrust may immediately terminate this Agreement and Your access to the Products or Services if CellTrust believes that Your conduct, or the conduct of any person with whom CellTrust believes you act in concert, violates or is inconsistent with the terms of this Agreement or the law, or violates or endangers the rights of CellTrust, a client of CellTrust, or another user of the Products or Services.

You may terminate this Agreement by destroying all copies of the Product in Your possession and following any termination procedures established by the Enterprise Agreements. Notwithstanding any other provisions of this Agreement, CellTrust or its authorized reseller shall have the right to terminate this Agreement immediately without further notice upon non-payment of any fees due.

24. **Termination.** Upon termination for any reason, the License granted herein shall immediately cease, and You must (1) immediately and permanently delete and destroy all copies of the Products in Your possession or control, and (2) within 30 days of a request by CellTrust, deliver a certificate of compliance with this provision signed by You. You expressly acknowledge and understand that, upon termination, all of the legal rights, obligations, and liabilities that You and CellTrust have benefited from, been subject to (or which have accrued over time while this Agreement has been in force), or which are expressed to continue indefinitely, shall be unaffected by the termination, and the choice of law and jurisdiction provisions shall continue to apply to such rights, obligations, and liabilities indefinitely. For the avoidance of doubt, and without any limitation, any financial obligation for the Products or Services shall be subject to the applicable Order, and any provision regarding

definitions, license limitations, feedback, ownership, indemnification, intellectual property rights, disclaimers, warranties, limitations of liability, or general terms shall also survive termination of this Agreement. You understand and agree that termination is not an exclusive remedy for CellTrust, and all other remedies will be available to CellTrust whether or not termination occurs.

## **GENERAL PROVISIONS**

25. **Usage.** The accuracy of the data collected and presented through CellTrust Products and Services is not intended to match that of medical devices or scientific measurement devices. CellTrust is not responsible for the accuracy, reliability, effectiveness, or correct use of information you receive through the Products or Services. If applicable to your use, maps, directions, and other GPS or navigation data, including data relating to your current location, may be unavailable, inaccurate or incomplete. If you rely on any content or Service, you do so solely at your own risk. The CellTrust Products and Services is not intended to diagnose, treat, cure, or prevent any disease.
26. **Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered mail return receipt requested, (c) sent by overnight air courier, (d) by facsimile (with a hard copy mailed on the same date), or (e) if to You, by email, CellTrust Products and/or Services, or standard SMS. If to CellTrust, notice shall be forwarded to CellTrust at 20701 N. Scottsdale Road Suite#107-451, Scottsdale, Arizona 85255-6499 USA, Attn: Legal Department. You may change your contact information for notice by written notice to CellTrust; however, any such change in information shall not govern or direct the method or means in which CellTrust may provide notice to You. CellTrust may change its address for notice by posting its current address on the contact information located in its website at [www.CellTrust.com](http://www.CellTrust.com). Notices shall be considered to have been given at the time of actual delivery in person, five business days after posting if sent by registered mail, one business day after delivery to an overnight air courier service, or upon receipt of machine confirmation of successful transmission by facsimile, email, CellTrust Products and/or Services, or standard SMS, as described herein.
27. **Relationship of Parties.** Nothing contained herein shall be construed to create any business relationship (other than licensor and licensee) or joint-venture between the parties. The parties are not the franchisee, agent, or partner of each other, and neither party shall have the right to make any representations on behalf of the other.
28. **No Waiver.** The failure of CellTrust to enforce at any time any of the provisions hereof or exercise any right or option hereunder shall not be construed to be a waiver of the right of CellTrust thereafter to enforce any such provisions or exercise such right or option. Any consent by CellTrust to, or waiver of, a breach by You, shall not constitute a consent to, waiver of, or excuse of any other different or subsequent breach. Any waiver by CellTrust of CellTrust's rights must be in writing to be valid and enforceable.
29. **Force Majeure.** Neither party shall incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquakes, fire, and explosions, but the delay or failure to meet financial obligations under this Agreement, the SL2 Terms and Conditions, or any Enterprise Agreements, is expressly excluded.
30. **Assignment.** You may not transfer or assign this agreement.
31. **Government Restricted Rights.** The Documentation and software of and Products and/or Services are provided with Limited or Restricted Rights. Except as may otherwise be required by law, no rights to technical data of noncommercial items are being granted to any governmental entity with this Agreement, including without limitation any rights to source code. Use, duplication, or disclosure by a government entity shall be restricted to

that which is expressly stated in any Enterprise Agreement with such governmental entity, and, if a U.S. governmental entity, is, at minimum subject to restrictions as set forth in subparagraph (b)(3)(4) of the Rights in Technical Data –Noncommercial items clause at DFARS 252.227-7013 and subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is CellTrust Corporation, 20701 N. Scottsdale Road, Suite# 107-451, Scottsdale, Arizona 85255-6499.

32. **Applicable Law, Jurisdiction, & Dispute Resolution.** This Agreement shall have been deemed to have been made and executed in the State of Arizona, USA. This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona and the laws of the United States, without regard to the application of conflicts of law principles, and THE PARTIES HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF MARICOPA COUNTY, ARIZONA, USA. If this Agreement is translated from English, the translation is merely for convenience, and the English version of the Agreement provided by CellTrust shall govern. In the event of any default or breach by You which could result in irreparable harm to CellTrust, or cause any loss or dilution of the good will, reputation or business of CellTrust, CellTrust will be entitled to an immediate injunction in addition to any other remedies available, to stop or prevent such irreparable harm, loss or dilution, and You hereby consent to the same without the need for CellTrust to post bond or other security. In the event an action or suit is brought by any party hereto to enforce the terms of this Agreement, the prevailing party shall be entitled to the payment of reasonable attorneys' fees and costs, as determined by the judge of the court or arbitrator(s), as applicable.

33. **Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, then the meaning of said provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, the parties shall use commercially reasonable efforts to agree to such amendments that shall preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition, or provision shall be severed from the remaining terms, conditions, and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

34. **Conflicts with other agreements.** In the event of an apparent conflict of the terms of this Agreement with any CellTrust SL2 Service Agreement that cannot be resolved by interpreting the provisions in a means to give full legal effect to each, the terms of the CellTrust SL2 Service Agreement shall prevail.

35. **Entire Agreement.** This Agreement (including any documents incorporated by reference) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous or contemporaneous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may not be altered, modified, amended, changed, rescinded, or discharged in whole or in part, except by written agreement made by authorized officers of CellTrust or as otherwise provided herein. The section and paragraph headings herein have been inserted solely for convenience of reference and in no way define, limit, or describe the scope or substance of any provision of this Agreement.

36. **Amendments and Updates.** CellTrust may prospectively and unilaterally modify this Agreement at any time by providing You notice, via SL2 standard SMS, or email, that this Agreement has been modified and instructions as to how You may access a copy of the modified Agreement. YOUR CONTINUED USE OF ANY PRODUCT OR SERVICE WILL CONSTITUTE EXPRESS ACCEPTANCE OF THE REVISED TERMS.