

# Terms & Conditions - Legal version

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## Definitions and Interpretation

1. The definitions and rules of interpretation set out in Schedule 1 apply to this Agreement (as defined in the Order Form).

## Purpose and Contract Formation

2.1 Flowminder has produced mobility indicators which it makes accessible on a software-as-a-service ("SaaS") basis by way of remote internet access and Additional Services, via two account plans (free and premium).

### Free account plan

2.2 The Customer wishes to use Flowminder's Data Services for the purpose specified on the online registration form.

2.3 Once the free account has been validated by the user, and access has been granted by Flowminder, the Agreement shall come into full force and effect.

### Premium account plan

2.4. In the case of premium accounts, the Customer wishes to use Flowminder's Data Services for the purpose specified on the Order Form together with any Additional Services specified in the Order Form. The Order Form shall be completed by the Customer and submitted to Flowminder. The Order Form constitutes an offer by the Customer to purchase a licence to access and use the Data Service in accordance with the terms of these T&Cs.

2.5 The Order Form shall be deemed to be accepted by Flowminder on Flowminder issuing a written acceptance of the Order Form, at which point the Agreement shall come into full force and effect.

## Data Subscription (Access, Maintenance and Support)

### Data Services

3.1 The platform provides access to authorised users to interactive visualisations of pre-computed and anonymised mobility indicators based on Digicel's pseudonymised call detail records (CDR data), and Flowminder Foundation's data processing and analytical methods. The pseudonymised CDRs are processed by Flowminder Foundation thanks to its open source software FlowKit. The mobility indicators are estimates of mobility and distribution of the population of Haiti.

## Access

3.2 In consideration of the account validated, or when applicable, the payment by the Customer to Flowminder of the Fees and/or the covenants provided herein, Flowminder grants to Customer (and any Customer Affiliates identified in the Order Form) access to the Data Services from the applicable Commencement Date until the applicable Expiry Date.

3.2.1. Commencement dates and renewal period for Free account plans: This Agreement will commence from the date of access acceptance by Flowminder and continue for one (1) year, and thereafter automatically renew for consecutive periods of one (1) year, unless terminated in accordance with its terms.

3.2.2. Commencement dates and renewal period for Premium account plans: This Agreement shall commence when the Order Form is signed, the account is validated, and the payment of the subscription fee is received. Premium accounts are valid one year. Close to renewal date, users will be sent a revised order form to renew their subscription. If no revised order form is received, the account will be shut by Flowminder.

3.3 Flowminder shall use reasonable endeavours to provide the Data Services materially in accordance with the applicable Service Descriptions and the Assurance Centre and within five (5) business days of acceptance of the account / the Order Form in accordance with Clauses 2.3 and 2.5 of these T&Cs.

3.4 In relation to the Data Services:

3.4.1 the Customer's access to the Data Services shall be limited to the Usage Rights specified in these terms and conditions;

3.4.2 Flowminder hereby grants to the Customer on and subject to the terms and conditions of this Agreement a non-exclusive, non-transferable licence to allow the Authorised Users to access the Data Services solely for the Customer's and any relevant Customer Affiliate's use in accordance with the Usage Rights;

3.4.3 the Customer shall not store, distribute or transmit any Virus, or any material, information or data through the Data Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

3.4.4 the Customer shall not:

1. attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;
2. access all or any part of the Data Services in order to build a product or service which competes with the Data Services;
3. attempt to undertake any security testing of the Data Services without the prior written consent of Flowminder;

4. unless otherwise provided in the online registration and/or Order Form, and agreed upon by Flowminder, use the Data Services to provide services to third parties (including the Customer's Affiliates);
5. subject to Clause 21.1, transfer, temporarily or permanently, any of its rights under this Agreement;
6. attempt to obtain, or assist third parties in obtaining, access to the Data Services, other than as specifically agreed pursuant to Clause 3.4.3; or
7. access the Data Services from outside the Territory; access the Data Services from a Prohibited Location;

3.4.5 the Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the Data Services and shall notify Flowminder promptly of any such unauthorised access or use; and

3.4.6 Flowminder may audit the Customer's compliance with this Clause 3.7 by any lawful, technical means and the Customer shall provide all reasonable assistance and information to Flowminder necessary to establish that the Data Services are only being accessed and used in accordance with this Agreement.

## Usage rights

3.5 The authorised user is granted by Flowminder Foundation the rights to:

1. visualise the data and interact with the data via the dashboard functionality
2. download the service data to a customer terminal;
3. store the service data and manipulated data on a customer terminal;
4. manipulate service data and create derived data on a customer terminal for internal purposes only

3.6 Without express written approval from the Flowminder Foundation, the Customer shall not:

1. Incorporate service data or derived data into external publications
2. Share the service data, derived data, and access to the platform with unauthorised users.

3.7 In relation to Authorised Users:

3.7.1 the Customer shall ensure that the Authorised Users comply with the terms of this Agreement, and shall be responsible for any acts and omissions of the Authorised User as if committed by the Customer itself;

3.7.2 where the relevant Service Description for a Data Service specifies the enrolment process for Authorised Users for that Data Service and the Customer and Flowminder shall comply with such processes;

3.7.3 where the Customer wishes to grant access to the Data Services to any third party individual contractor or anyone who is not an employee or director of the Customer or a Customer Affiliate, Flowminder's express prior written consent shall be required and Flowminder may:

1. impose reasonable conditions on such consent including, without limitation, requiring the Customer to pay reasonable additional Fees and/or requiring the third party supplier to enter into a direct agreement with Flowminder; and
2. withhold consent at its absolute discretion, including where any third party is a Competitor or an individual contractor is, or is employed by, a Competitor;

3.7.4 the Customer shall ensure that each Authorised User keeps any password(s) for their use of the Data Services secure and confidential, that such password(s) are changed no less frequently than once every ninety (90) days and that each Authorised User does not share their password(s) to allow any other employees, contractors (individuals or otherwise), representatives and agents of the Customer or the Customer's Affiliates or any other individual or third party to access the Data Services;

3.7.5 the Customer will not allow any Authorised User account to be used by more than one (1) individual Authorised User;

3.7.6 in the event that an Authorised User leaves the employment or engagement of the Customer or a Customer Affiliate or where the employment or engagement of an Authorised User is transferred such that the Customer or Customer Affiliate does not intend for them to have access to the Data Services, the Customer shall:

1. disable such individual's passwords and shall not issue any new passwords to such individual; or
2. where, as specified in the relevant Service Description, Flowminder controls the enrolment or removal of Authorised Users for a Data Service, immediately inform Flowminder so that Flowminder may disable such individual's passwords (which Flowminder shall do within a reasonable period of time); and

3.7.7 Flowminder may audit the Data Services regarding the name and password for each Authorised User and, if such audit reveals that passwords have been provided to individuals who are not Authorised Users, Flowminder may, without prejudice to Flowminder's other rights, (a) disable such passwords (or require the Customer promptly to disable such passwords) and the Customer shall not issue any new passwords to such individuals; and/ or (b) charge the Customer the relevant fees for such additional Authorised Users, as set out in the Order Form.

3.8 For premium accounts, if the Customer wishes to be granted the right to increase the number of Authorised Users, the Customer shall notify Flowminder in writing or through completion of an additional Order Form which shall be delivered to Flowminder in accordance with the procedure at Clause 2. Flowminder shall evaluate such request for additional Authorised Users and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld).

3.9 If Flowminder approves the Customer's request to purchase access for additional Authorised Users, the Customer shall, within thirty (30) calendar days of the date of Flowminder's invoice, pay to Flowminder the relevant fees for such additional Authorised Users, as set out in the Order Form.

## Maintenance and Support

3.10 Flowminder may amend the Data Services, the Service Descriptions and/or the Assurance Centre from time-to-time provided such changes apply to the majority of Customers for the Data Services and do not materially and negatively impact the functionality, performance or security of the Data Services. Flowminder shall inform the Customer of such changes in accordance with the process set out in the relevant Service Description or the Assurance Centre, as applicable.

3.11 Flowminder shall use reasonable endeavours to meet any performance dates set out in an Order Form or agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence in this Agreement or any Order Form.

3.12 The Customer acknowledges that Flowminder may sub-contract any of its rights or obligations under this Agreement to a third party (including any Affiliate of Flowminder) and Flowminder accepts liability for the acts and omissions of any sub-contractors as if they were acts or omissions of Flowminder itself.

## Additional Services

4.1 Flowminder shall provide the Additional Services in accordance with this Agreement.

4.2 Flowminder warrants that it will perform the Additional Services using reasonable skill and care.

## Use of Service Data

5.1 The Customer hereby acknowledges that the Service Data is confidential in nature and that the Customer's access to and use of the Service Data via the Data Services shall be limited to the Usage Rights specified in the online registration form and/or Order Form. The Customer shall keep all Service Data, Manipulated Data secret (save for the publication of Derived Data as expressly provided for under clause 5.2.2) and securely protected against theft or unauthorised access.

5.2 Flowminder hereby grants to the Customer (and any Customer Affiliates identified in the Order Form) on and subject to the terms and conditions of this Agreement a non-exclusive, non-transferable and non-sublicensable licence, including under all Intellectual Property Rights subsisting in the Service Data, for Authorised Users to:

5.2.1 view the Service Data via the Data Services;

5.2.2 conditional on an express written approval by the Flowminder Foundation, not granted by the agreement, use Service Data and Manipulated Data for the Purpose provided that where the use of such data results in a decision which is recorded in a Publication the Customer shall include an attribution in the body of Publication or by way of footnote, endnote or other suitable means of attribution acknowledging that the Flowminder data was consulted as part of the decision making

process, for the Term and within the Territory and in each case solely for the Customer's and any relevant Customer Affiliate's use in accordance with the Usage Rights.

5.3 The Customer may disclose the Service Data to any regulator, law enforcement agency or other third party if it is required to do so by law, regulation, or similar authority. In those circumstances the Customer shall (to the extent practical and lawful to do so) notify Flowminder in writing as soon as practicable before the disclosure and use all reasonable endeavours to consult with Flowminder with a view to agreeing the timing, manner and extent of the disclosure.

5.4 The Customer hereby acknowledges and agrees that it shall not, and shall procure that (i) any Customer Affiliates identified in the Order Form; and (ii) any and all Authorised Users shall not, use the Service Data or, Manipulated Data or disseminate, redistribute or otherwise disclose the Service Data or, Manipulated Data other than as expressly permitted under clause 5.2 or clause 5.3.

5.5 The Customer acknowledges that damages alone would not be an adequate remedy in the event of breach by the Customer of the provisions of clauses 5.1 or 5.4. Accordingly, it is agreed that Flowminder shall be entitled, without proof of special damages, to seek an injunction or other interim remedy for any threatened or actual breach of clause 5.4 or 5.1 by the Customer, without prejudice to any other rights and remedies which Flowminder may have.

5.6 In circumstances such as natural disasters or other humanitarian crises, Flowminder shall, at its sole discretion, have the right to broaden the Usage Rights and/or the licence granted pursuant to clause 5.2 by notice provided in writing to the Customer. Such notice shall (i) identify the additional rights granted to the Customer; and (ii) specify the period of time during which such additional rights shall apply. Any additional rights granted pursuant to this clause 5.6 shall be subject to the terms of this Agreement and shall terminate upon expiry of the period specified in Flowminder's written notice to the Customer.

## Protection of Personal Data

6.1 For the purposes of this article 6, the terms Commissioner, controller, data subject, personal data, personal data breach, processor and processing, shall have the meaning given to them in the UK GDPR, and supervisory authority shall have the meaning given to it in the EU GDPR.

6.2 Flowminder will comply with all applicable requirements of Applicable Data Protection Laws. This article 6 is in addition to, and does not relieve, remove or replace, Flowminder's obligations or rights under Applicable Data Protection Laws.

### 6.3 Flowminder's privacy policy

6.3.1 Without prejudice to the generality of 6.2:

1. Flowminder shall process all Personal Data strictly in accordance with its privacy policy a copy is available at [haiti.mobility-dashboard.org](https://haiti.mobility-dashboard.org)

2. Flowminder hereby undertakes, warrants and represents that the Flowminder's Privacy Policy, and any amendments, will at all times comply with Applicable Data Protection Laws and that it will not make any amendments to its Privacy Policy where this would be in contravention of Applicable Data Protection Laws;
3. as between the parties, the Flowminder is solely responsible for ensuring that the processing of Personal Data complies with Applicable Laws, including Applicable Data Protection Laws, and in particular, that all required fair processing information is provided to the relevant data subjects; and
4. in the event of any inconsistency or conflict between the terms of the Flowminder Privacy Policy and this agreement, this agreement will take precedence

6.3.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate:

6.3.2.1 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

6.3.2.2 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

6.3.2 Flowminder acts as a controller as to the following categories of personal data:

- Your email address;
- Your preferred language;
- Your name;
- Your affiliation and the industry it operates in (if provided);
- Your profession and job title (if provided);
- Date you signed up;
- How often you have logged in;
- The last browser you used to access our services;
- The last IP address you used to access our services;
- Intended use of the platform.

6.3.2 If the user chooses to log in with an existing account instead of creating a username and password ( "single sign-on") Flowminder also acts as a controller as to the following categories of personal data:

- Your identity provider;
- Your profile information.

## 6.4 Particulars of Data Processing

6.4.1 Scope:



1. A collection of the information contained in your email or contact form submission in order to provide the information or service requested
2. A collection of contact information regarding individuals who may be of interest for future business relationship with Flowminder

6.4.2 Nature: collection of information in order to provide information or service requested.

6.4.3 Purpose of processing: Giving access to users to Mobility indicators via the demonstration platform, improve the demonstration platform functionalities and design, produce aggregated statistics on usage of the platform reported to key stakeholders such as Digicel Haiti, Flowminder Foundation staff or the donors of this programme.

6.4.4 Duration of processing: From the day access to the platform has been requested to two years from the date of the end of the subscription.

## Flowminder's Obligations

7.1 Flowminder warrants that the Data Services will operate substantially in all material respects in accordance with the Service Descriptions, but makes no representation, and gives no warranty or undertaking, that the operation or availability of the Data Services will be uninterrupted or error-free.

7.2 The warranty at Clause 7.1 shall not apply to the extent of any non-conformance which is caused by the Customer's breach of this Agreement or any Order Form, use of the Data Services contrary to Flowminder's instructions, or modification or alteration of the Data Services by any party other than Flowminder or the Related Persons.

7.3 The Customer acknowledges that Flowminder and/or the Related Persons may from time to time carry out routine and emergency maintenance of the Data Services. The Customer may be unable to access the Data Services during any period in which routine or emergency maintenance is being carried out.

7.4 Without limitation to Clause 16, the Customer acknowledges that Flowminder has no direct control over the availability of bandwidth over the entirety of the internet and that, while Flowminder will use such endeavours as Flowminder deems appropriate to facilitate the Data Services, Flowminder shall not be responsible for delays caused by such unavailability.

7.5 If Flowminder fails to comply with the warranty set out in Clause 7.1, it shall use its reasonable endeavours to rectify such failure as soon as reasonably practicable. Flowminder's obligations under this Clause 7.5 shall be the Customer's sole and exclusive remedy in respect of a breach of the warranty set out in Clause 7.1.

7.6 Except as expressly provided in Clause 7.1, the Data Services are provided "as is" and to the extent permitted by law, Flowminder disclaims all other conditions, warranties or other terms which might have effect between the parties with respect to the Data Services, or be implied or incorporated into this Agreement, whether by statute, common law or otherwise, including any implied conditions, warranties, or other terms relating to satisfactory quality, reasonable skill and care, fitness for any particular purpose, ability to achieve a particular result or arising from course

of dealing or usage of trade. The Supplier does not warrant anything in relation to systems that do not make up the Data Services or the connection to those systems.

7.7 Flowminder does not warrant, represent, undertake or agree that: (a) the Service Data is accurate, complete, reliable, secure, useful, fit for purpose or timely; (b) the use of the Data Services by the Customer or its Authorised Users will meet the Customer's requirements nor that any recommendations derived from use of the Data Services will deliver any particular benefits if implemented; (c) defects in the Data Services will be corrected; or (d) the functions of the Data Services will operate in the combinations which the Customer selects for use.

7.8 This Agreement shall not prevent Flowminder from entering into the same or similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are the same or similar to those provided under this Agreement.

## Customer's Obligations

8.1 The Customer shall provide Flowminder with all necessary:

1. co-operation in relation to this Agreement; and
2. access to such information as may be required by Flowminder,

in order to deliver the Services;

8.2 ensure that the Authorised Users comply with any acceptable use policies specified in the Service Description for the SaaS Service or included within the SaaS Service;

8.3.1 maintain adequate internet connections and technical capabilities to access and use the Data Services, as notified by Flowminder from time to time;

8.3.2 provide such personnel assistance as may be reasonably requested by Flowminder from time to time;

8.3.4 comply with all applicable laws and regulations with respect to its activities under this Agreement;

8.3.5 carry out all other Customer responsibilities, obligations and/or dependencies set out in this Agreement in a timely and efficient manner;

8.3.4 take appropriate back-ups to secure media with such regularity and in such a manner so as to ensure that it can restore in the event of data loss or corruption from any cause

## Proprietary Rights

9.1 The Customer acknowledges and agrees that Flowminder and/or its licensors (including Flowminder's Affiliates and relevant mobile network operator) own all Intellectual Property Rights in the Service Data and Data Services. Except as expressly stated herein, this Agreement does not

grant the Customer any rights to, or in, any Intellectual Property Rights in respect of the Service Data, Data Services, the Software or any related documentation.

9.2 Flowminder, its Affiliates and their licensors shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Data Services any feedback and/ or enhancement requests provided by the Customer and any Authorised Users so long as the Customer is not identified in any way as the source of such feedback.

## Confidentiality

10.1 Each party shall:

10.1.1 only use (including making copies of) Confidential Information in connection with and to the extent necessary for the purposes of this Agreement;

10.1.2 not disclose the Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with Clauses 10.2 and 10.3; and;

10.1.3 keep all Confidential Information secret and securely protected against theft or unauthorised access.

10.2 The Customer may disclose Confidential Information disclosed to it by Flowminder and/or Flowminder Affiliates to its Authorised Users, provided that the Customer informs all Authorised Users that the Confidential Information is confidential. The Customer shall be responsible for all acts and omissions of Authorised Users as though they were its own acts or omissions under this Agreement.

10.3 The Receiving Party may disclose any Confidential Information to any regulator, law enforcement agency or other third party if it is required to do so by law, regulation, or similar authority. In those circumstances the Receiving Party shall (to the extent practical and lawful to do so) notify the Disclosing Party in writing as soon as practicable before the disclosure and use all reasonable endeavours to consult with the Disclosing Party with a view to agreeing the timing, manner and extent of the disclosure.

10.4 Nothing in this Agreement or the disclosures envisaged by this Agreement shall (except as expressly agreed otherwise in this Agreement) operate to transfer, or operate as a grant of any licences or right to use, to any Intellectual Property Rights in the Confidential Information.

10.5 The parties' obligations under this Clause 11 shall continue in force notwithstanding the termination or expiry of this Agreement.

10.6 Each party acknowledges that damages alone would not be an adequate remedy in the event of breach by the other party of the provisions of this Clause 11. Accordingly, it is agreed that either party shall be entitled, without proof of special damages, to seek an injunction or other interim remedy for any threatened or actual breach of this Clause 11 by the other party, without prejudice to any other rights and remedies which that first party may have.

## Indemnities

11.1 The Customer shall defend, indemnify and hold harmless Flowminder and the Related Persons against any and all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's or the Authorised Users' use of the Data Services in breach of this Agreement or any reasonable instructions from Flowminder.

## Limitation of Liability

12.1 Nothing in this Agreement shall operate so as to exclude or limit the liability of either party to the other for:

12.1.1 death or personal injury arising out of negligence;

12.1.2 fraud or fraudulent misrepresentation by it or its employees; or

12.1.3 any other liability that cannot be excluded or limited by law.

12.2 This Clause 12 sets out the entire liability of Flowminder and the Related Persons to the Customer:

12.2.1 arising under or in connection with this Agreement = (whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise); and

12.2.2 in respect of any use made by the Customer and/or its Authorised Users of the Data Services or any part of them.

12.3 Except as expressly and specifically provided in this Agreement, the Customer assumes sole responsibility for results obtained from the use of the Data Services by the Customer, and for conclusions drawn from such use. Flowminder and/or the Related Persons shall have no liability for any damage caused by errors or omissions in any information or reports, instructions or scripts provided to Flowminder and/or the Related Persons by the Customer in connection with the Data Services, or any actions taken by Flowminder and/or the Related Persons at the Customer's direction.

12.4 The Customer acknowledges and agrees that:

12.4.1 the Customer would be able to insure itself against business interruption and theft, loss, destruction or corruption of data or information (and shall give due consideration to acquiring such insurance); and

12.4.2 Flowminder and/or the Related Persons would not reasonably be able to insure against the consequences across its customer base of business interruption or theft, loss, destruction or corruption of data or information.

12.5 Subject to Clause 14.1 and 14.2, Flowminder and/or the Related Persons shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether tortious or statutory), restitution or otherwise for:

12.5.1 any loss of profits, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under or in connection with this Agreement; or

12.5.2 any loss or corruption of data or information.

12.6 Subject to Clause 14.1 and 14.2, the total aggregate liability taken together of Flowminder and the Related Persons under or in connection with this Agreement including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise, shall not exceed usd 1,00 (1 usd).

## Price and Payment

13.1 For premium plans, the Customer agrees to pay the Subscription fees at the rates and in the currency displayed during the Subscription process. Unless otherwise indicated, prices stated are inclusive of any applicable value added tax (VAT) or other sales taxes. The breakdown of any VAT will be indicated on the relevant invoice.

13.2. If Flowminder does not receive payment authorisation or any authorisation is subsequently cancelled, Flowminder may immediately terminate or suspend your subscription.

13.3 Flowminder will give the Customer at least 14 days' notice of any increase in the price of the Customer's subscription, which will take effect at your next renewal date.

13.4 Payments for all Services are to be done via bank transfers.

## Term, Termination and Suspension

14.1 This Agreement commences on the Commencement Date and continues until the Expiry Date, unless it is terminated earlier in accordance with its terms (the "**Term**").

14.2 Without affecting any other right or remedy available to it, Flowminder may, on no less than one (1) months' notice in writing to the other party, terminate this Agreement.

14.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

14.3.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;

14.3.2 the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of forty-five (45) days after being notified in writing to do so;

14.3.3 in the case of Flowminder, the Customer becomes a Competitor;

14.3.4 the other party suffers an Insolvency Event; or

14.3.5 [there is a Change of Control of the other party.]

14.4 On termination of this Agreement for any reason:

14.4.1 the Customer and the Authorised Users shall immediately cease all use of the Data Services. For the avoidance of doubt, all licences granted under this Agreement (as applicable) shall immediately terminate except that any licences granted under this Agreement which are stated to be granted on a perpetual and irrevocable basis shall survive the termination of this Agreement for any reason and shall continue in full force and effect;

14.4.2 the Supplier may immediately take steps to end the Customer's and the Authorised Users' access to and use of the Data Services;

14.4.3 subject to any continuing Data Services or any express rights to retain such equipment, property, materials and other items (and all copies of them), each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) received pursuant to the delivery of the Data Services under this Agreement and belonging to the other party (except Flowminder and Flowminder's Affiliates may retain reasonable professional records of the Customer's use of the Data Services);

14.4.4 save where a Customer has breached clauses 5.1 or 5.4 and subject to the continued application of clauses 5.1 and 5.4 to 5.5 the Customer may retain and continue using:

1. any Derived Data lawfully in its possession pursuant to this Agreement;

any Service Data and Manipulated Data (excluding Derived Data) lawfully in its possession pursuant to this Agreement 14.4.6 subject to the continued application of clauses 5.1 and 5.4 to 5.5 the Customer may also retain any Service Data or Manipulated Data lawfully in its possession pursuant to this Agreement for the purposes of internal audit or to comply with mandatory legal data retention requirements for so long as the need for such retention remains and during that period use such Service Data or Manipulated Data only for those purposes;

14.4.7 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced; and

14.4.8 Clauses 1, 2, 9, 10, 11, 12, 13, this Clause 14, and Clauses 17 to 26 and other provisions which are necessary for the interpretation or enforcement of this Agreement shall continue in force.

14.5 Flowminder may suspend the Customer's right to access the Data Services or use any portion or all of the Data Services immediately upon notice to the Customer if it determines:

14.5.1 that the Customer's (or an Authorised User's) use of or access to the Data Services (i) poses a security risk to Flowminder, the Data Services or any third party; (ii) may adversely impact availability or performance of the Data Services, the Software or the systems or software of any other customer of Flowminder; (iii) may subject Flowminder or any third party to any liability; (iv) may be fraudulent; or (v) exposes any individuals or group of individuals to harm or otherwise endangers the rights and freedoms of individuals or groups of individuals; or (vi) creates ethical risk which cannot be adequately mitigated.

14.5.2 that the Customer, or any Authorised User, is in breach of this Agreement or any other agreement by which software being used on or in conjunction with the Data Services is licensed.

14.6 Flowminder shall reinstate the suspended Data Services once it has established the cause of the suspension and such cause has been remedied or ceased to exist. Where the cause of the suspension persists for more than thirty (30) days, Flowminder may immediately terminate this Agreement.

14.7 The Supplier shall have no liability whether under this Agreement or at law to the Customer for any exercise of its rights pursuant to Clauses 14.4 or 14.5.

14.8 Cancellation policy: annual subscriptions are non-refundable. You may cancel your plan by contacting us at [haiti.mobility-dashboard@flowminder.org](mailto:haiti.mobility-dashboard@flowminder.org)

## Force Majeure

15.1 Flowminder shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Flowminder or any other party), failure of a utility service or transport or telecommunications network or the internet, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or non-performance, default or suspension of services by suppliers or subcontractors. In such circumstances Flowminder shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three months, either party may terminate this Agreement by giving thirty (30) days' written notice to the other party.

## No Waiver

16.1 The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of this Agreement, this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

## Remedies Cumulative

17.1 The rights, powers and remedies provided under this Agreement are (except as expressly provided) cumulative, and not exclusive of, any rights, powers and remedies provided by Law or otherwise.

## Severance

18.1 If any provision, or part of a provision, of this Agreement is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of this Agreement, and the legality, validity or enforceability of the remainder of the provisions of this Agreement shall not be affected, unless otherwise required by operation of applicable law.

18.2 The parties shall use [all] reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same commercial effect as would have been achieved by the provision, or part-provision, in question and with no fundamental change to the bargain between the parties.

## Entire Agreement

19.1 This Agreement shall govern all transactions between the Supplier and the Customer with respect to the Data Services. Any terms or conditions that may be contained in any purchase order, work order, invoice or otherwise used by the Customer shall be without force or effect and the Customer hereby waives any and all rights it may have to rely on and enforce any terms contained therein.]

19.2 This Agreement constitutes the entire agreement between the parties in relation to its subject matter. It replaces and extinguishes all prior agreements, collateral warranties, collateral contracts, statements, representations and undertakings made by or on behalf of the parties, whether oral or written, in relation to that subject matter.

19.3 Each party acknowledges that in entering into this Agreement it has not relied upon any collateral warranties, collateral contracts, statements, representations or undertakings, whether oral or written, which were made by or on behalf of the other party in relation to the subject-matter of this Agreement (together "**Pre-Contractual Statements**") and which are not set out in this Agreement. Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

19.4 Nothing in this Clause shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

## Assignment



20.1 This Agreement is personal to the Customer. The Customer may not assign, transfer, sub-licence, declare a trust of, mortgage, charge or deal in any other manner with this Agreement or with any of its rights or obligations under it, without the prior written consent of Flowminder which consent may be withheld at Flowminder's absolute discretion.

## No Partnership or Agency

21.1 Nothing in this Agreement is intended to, or shall be deemed to, establish or constitute any partnership or joint venture between any of the parties, create a relationship of principal and agent for any purpose between the parties, or authorise any party to make or enter into any commitments for or on behalf of any other party.

## Variation

22.1 No variation of this Agreement (including its Schedules) shall be effective unless:

22.1.1 in respect of these T&Cs, it is made in writing and signed by or on behalf of each of the parties or by their duly authorised representatives;

22.1.2 in respect of the Order Form, it is either (i) made in writing and signed by or on behalf of each of the parties or by their duly authorised representatives; or (ii) it is accepted by Flowminder in accordance with Clauses 2.3 and 2.5.

## Third Party Rights

23.1 A person who is not a party to this Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

23.2 The Data Services provided under this Agreement are for the benefit of the Customer [and any Customer Affiliates]. Any act or omission of any Customer Affiliate shall be deemed to be an act or omission of the Customer. All losses and damages of any Customer Affiliate pursuant to the provision of the Data Services shall be deemed to be losses and damages of the Customer and the Limitation of Liability in Clause 12 shall be deemed to apply in the aggregate to the Customer and the Customer Affiliates. Any claim relating to a Customer Affiliate shall be brought by the Customer and not the Customer Affiliate.

## Notices

24.1 Any notice, consent, permission or other communication required to be given under this Agreement shall be in writing in English and shall be delivered by hand or sent by pre-paid first-class or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.

24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be

deemed to have been received at the time at which it would have been delivered in the normal course of post.

## Governing Law and Jurisdiction

25.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

## Precedence

26.1 If there is a conflict between any part of this Agreement, the following order of precedence shall apply:

26.1.1 first, these T&Cs including its Schedules;

26.1.2 second, the provisions of the Service Descriptions for any Data Services to be provided pursuant to this Agreement;

26.1.3 third, the relevant documentation applicable to this Agreement set out in the Assurance Centre; and

26.1.4 fourth, the relevant Order Form,

26.2 unless any provision of these T&Cs, a Service Description or the Assurance Centre is expressly varied in the relevant Order Form (which shall include an express reference to the specific provisions of these T&Cs, the Service Descriptions or the Assurance Centre that the Order Form is intended to prevail over).

## Schedule 1: Definitions And Interpretation

The definitions and rules of interpretation in this Schedule 1 apply in this Agreement.

- **Definitions:**

["**Additional Services**" means the services to be provided by Flowminder as set out in the Order Form that are additional to the Data Services;]

["**Affiliate**" means in respect of a party, any entity that from time to time, directly or indirectly, Controls, is Controlled by, or is under common Control with that party and any other entity agreed in writing by the parties as being an Affiliate in respect of either party; ]

**Applicable Laws** means: To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom. To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject. To the extent any local data protection law or regulation is applicable in the local jurisdiction where the Services take place, the local data protection law or regulation of this jurisdiction.

**Applicable Data Protection Laws** means: To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data. To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data. To the extent any local data protection law or regulation is applicable in the local jurisdiction where the Services take place, the local data protection law or regulation of this jurisdiction which relates to the protection of personal data.

["**Authorised Users**" means those employees, and directors of: (i) the Customer; (ii) the Customer's Affiliates identified in the Order Form; and (iii) any third party individual contractor or anyone who is not an employee or director of the Customer or a Customer Affiliate included in the Order Form or who are otherwise authorised by Flowminder in writing to use the Data Services by the Customer pursuant to the enrolment process set out in Clause 3.4; ]

"**Business Day**" means any day which is not a Saturday, Sunday or public holiday in London;

"**Change of Control**" means a circumstance where any person or group of persons acting in concert gains direct or indirect control of a party to this Agreement. For the purposes of this definition:

(a) control means:

(i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(A) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of that party; or

(B) appoint or remove all, or the majority, of the directors or other equivalent officers of that party; or

(C) give directions with respect to the operating and financial policies of the relevant party with which the directors or other equivalent officers of that party are obliged to comply; or

(ii) the holding beneficially of more than 50 per cent of the issued share capital of the relevant party (excluding any part of that issued share capital that carries no right to participate, or no right to participate beyond a specified amount, in a distribution of either profits or capital); and

(b) acting in concert means, in respect of a group of persons, that such persons pursuant to an agreement or understanding (whether formal or informal), co-operate to obtain or consolidate control of the relevant party;

**"Commencement Date"** means the date of acceptance of the Order Form, in accordance with Clause 2.3;

**"Competitor"** means any supplier of data services which provides its customers with mobility indicators from Digicel, Natcom or smartphone data.

**"Confidential Information"** means all information in any medium or format (including written, oral, visual or electronic, and whether or not marked or described as "confidential"), together with any copies, which relates to the Disclosing Party, to its Affiliates, or to its (or its Affiliates') employees, officers, customers or suppliers, and which is directly or indirectly disclosed by or on behalf of the Disclosing Party to the Receiving Party under or in connection with this Agreement (or which is learnt or acquired by the Receiving Party in connection with this Agreement), whether before or after the date of this Agreement, and which would reasonably be regarded as confidential, BUT shall not include (i) information which is in the public domain other than as a result of a breach of this Agreement or any separate confidentiality undertaking between the parties; (ii) information which the Receiving Party received, free of any obligation of confidence, from a third party which was not itself under any obligation of confidence in relation to that information, whether before the date of its disclosure by the Disclosing Party or otherwise; or (iii) information which the Receiving Party can show by its written or other records was developed or created independently by the Receiving Party or any of Receiving Party's Affiliates. Confidential Information shall include trade secrets, discoveries, knowhow, designs, specifications, drawings, present or future products or services (including the Data Services) and markets, inventions, prototypes, algorithms, software of any kind or nature, including, but not limited to the Software, object or machine codes, source codes (whether revealed in the Data Services or disclosed by other means), computer models and applications, developments, processes, formulae, technology, engineering, architectures, hardware configuration, information, diagrams, computer programs, business activities and operations, customer lists, reports, studies and other technical and business information. Confidential Information shall not include Service Data which shall be considered a separate category of confidential information which is subject to the obligations set out in Clause 5.

**"Control"** means the ownership of, or power to vote in respect of, at least 50% of the voting stock, shares or interests of an entity;

**"Customer Terminal"** means any information technology end user device owned or operated by the Customer from which Service Data is accessed in accordance with this Agreement.

**"Data Services"** means the software-as-a-service (SaaS) solutions and access to Service Data that Flowminder provides to the Customer pursuant to this Agreement, including the Software;

**"Derived Data"**: means any Service Data (wholly or in part) Manipulated to such a degree that it: (a) no longer contains the Services Data and the Services Data cannot be reverse-engineered from it; and (b) is not capable of use substantially as a substitute for the Service Data or the Data Services.

**"Disclosing Party"** means a party disclosing its Confidential Information to the Receiving Party and in the case of the Customer may be the Customer, the Authorised Users and/or the Customer's

Affiliates and in the case of Flowminder may be Flowminder and/or Flowminder's Affiliates, as applicable;

**"Expiry Date(s)"** means the date(s) specified in the Order Form from which Flowminder shall cease to provide the Customer with access to the relevant Data Services;]

**"EU GDPR"**: the General Data Protection Regulation ((EU) 2016/679).

**"Fees"** means the fees payable to Flowminder by the Customer for provision of the Data Services, as set out in the Order Form;

**"Service Data"** means any data or information (including any Visualisation of the same), in whatever form including images (of visible light or any other form of electromagnetic radiation), still and moving, and sound recordings, the provision of which comprises the Data Services (wholly or in part);

**"Hosting and Security Policies"** means Flowminder's published policies, located in the Assurance Centre and as updated from time to time in accordance with this Agreement, setting out its processes and procedures for maintaining the security, availability and performance of the Data Services;

**"Insolvency Event"** means the occurrence of any one or more of the following events in relation to a party:

(a) the party becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent;

(b) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the party;

(c) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the party and/or over all or any part of the assets of the party;

(d) the party enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or

(e) anything equivalent to any of the events or circumstances listed in limbs (a) to (d) (inclusive) occurs in any applicable jurisdiction;

**"Intellectual Property Rights"** means: (i) patents, rights to inventions, designs, copyright and related rights, database rights, trade marks, related goodwill and the right to sue for passing off and/or unfair competition and trade names and any other intellectual property rights, in each case whether registered or unregistered; (ii) proprietary rights in domain names; (iii) rights in confidential information (including know-how and trade secrets); (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world;

**"Manipulate"** means to process or format Service Data or to combine or aggregate Service Data (wholly or in part) with other data or information or to adapt Service Data;]

**"Manipulated Data"** means any Service Data which has been Manipulated;

**"Order Form"** means the order form which incorporates these T&Cs under which Flowminder and the Customer enter into this Agreement in accordance with Clause 2 of these T&Cs and which identifies: (a) the Data Services ordered; (b) the Fees for the Data Services ordered (if any); (c) the Commencement Date, Expiry Date(s) and Usage Right(s) for the Data Services ordered; and (d) other appropriate information as Flowminder may reasonably require to fulfil its obligations under this Agreement;

**"Personal Data"**: any personal data which Flowminder processes in connection with this agreement, in the capacity of a controller

**"Publication"** means (a) reports, white papers, presentations and training materials (print and electronic), (b) books, textbooks, newspapers, magazines, articles, journals (print and electronic); (c) posters, brochures, booth displays, (d) websites and social media; (e) video media including movies, television programs, documentaries, webinars and other broadcasts;

**"Purpose"** means the purpose and usage rights specified in the Order Form;

**"Receiving Party"** means a party receiving Confidential Information or Confidential Data from the Disclosing Party and in the case of Flowminder may be Flowminder and/or Flowminder's Affiliates, as relevant;

**"Related Persons"** means Flowminder's Affiliates and Flowminder's and Flowminder's Affiliates' employees, directors, officers, agents and subcontractors;

**"Renewal Period"** means a period of [twelve (12)] months following the Expiry Date and on each subsequent anniversary of the Expiry Date;]

**"Online registration form"** means the online registration form available at <https://haiti.mobility-dashboard.org/register> and submitted by the Customer.

**"Services"** means the Data Services and any Additional Services;

**"Service Description(s)"** means the published specification for the Data Service, as updated from time to time in accordance with this Agreement;

**"Software"** means the software used by Flowminder, Flowminder's Affiliates and/or any subcontractors in delivering the Data Services;

**"Term"** has the meaning given in clause 14.1;

UK GDPR has the meaning given to it in the Data Protection Act 2018.

**"Usage Rights"** means the conditional basis upon which Flowminder provides the Data Services as set out in each Order Form, including the Purpose and which may also include controls on the

Customer Terminals which may access the Data Services and/or geographic constraints on access to the Data Services;

"**Virus**" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and

"**Year**" shall mean the period of twelve months commencing on the Commencement Date and each and any period of twelve months commencing on an anniversary of the Commencement Date subsequent thereto.

## Interpretation

1. The Clause and Schedule headings are for convenience only and shall not affect the interpretation of this Agreement.
2. Any reference to a Clause, Schedule or paragraph is to a Clause of this Agreement, Schedule to this Agreement, or paragraph of a Schedule to this Agreement.
3. References to the singular include the plural and vice versa, and references to one gender include the other gender.
4. Any reference to persons includes natural persons, firms, partnerships, limited liability partnerships, companies, corporations, unincorporated associations, local authorities, governments, states, foundations and trusts (in each case whether or not having separate legal personality) and any agency of any of the above
5. Any phrase introduced by the terms "including", "include", "in particular", "such as", "for example" or any similar expression shall be construed as illustrative and shall not limit the SaaS of the words preceding or following those terms.
6. Any reference to a statute, statutory provision or subordinate legislation (legislation) (except where the context otherwise requires): (i) shall be deemed to include any bye laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that legislation; and (ii) shall be construed as referring to any legislation which replaces, re-enacts, amends or consolidates such legislation (with or without modification) at any time.
7. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules
8. Any reference to "writing" or "written" includes email.

9. Any reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated from time to time in accordance with its terms (in each case, other than in breach of the provisions of this Agreement).
10. Unless specified to the contrary, any times stated in this Agreement refer to local time in London, United Kingdom.