

## Cellulogger® Standard Terms and Conditions of License and Service

Last Updated: 5/17/2024

This Agreement (“Agreement”) is a binding agreement between you (and your business to which you are authorized to accept on its behalf) (“Customer” or “you”) and JJDEVO LLLC dba Cellulogger (“Cellulogger,” “we,” “us,” “our”). For purposes of this Agreement, Customer and Cellulogger each may be referred to individually as a “Party” and together as the “Parties.” This Agreement governs your use of Cellulogger’s proprietary software platform, products and services, including associated offline components, as further described herein and in any Documentation made available to you (the “Services”). Services also include any specific service accepted by you as documented in a Proposal, Statement of Work, or Quotation from Cellulogger.

By utilizing the Services, you (a) acknowledge that you have read, understand and have the authority to enter into this Agreement; (b) represent that you are of legal age in your jurisdiction to enter into this Agreement; and (c) accept this Agreement and agree that you and your business, if applicable, are legally bound by its terms. If you do not agree with this Agreement, do not use the Services.

If you are a competitor of Cellulogger, you may not access the Services for purposes of monitoring the Services’ availability, performance or functionality, or for any other benchmarking or competitive purposes. Cellulogger reserves the right to terminate any Services if Cellulogger, in its sole discretion, determines such Services are being used by a competitor for such purposes.

### 1. Definitions

“Affiliate” means any entity controlling or controlled by or under common control with a Party, at the time of execution of the Agreement and any time thereafter, where “control” is defined as (a) the ownership of greater than fifty percent (50%) of the equity or beneficial interest of such entity, or (b) any other entity with respect to which such Party has significant management or operational responsibility (even though such Party may own less than fifty percent (50%) of the equity of such equity).

“Applicable Law” means all laws, statutory and other rules, regulations, instruments and legal provisions in force from time to time applicable to the Parties.

“Confidential Information” means all information disclosed by a Party (“Disclosing Party”) to the other Party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include any Customer Data; our Confidential Information shall include information regarding the Services.

“Customer Data” means any data and information submitted by Customer, or authorized and permitted and submitted by its Authorized Users or third parties through the Services, as more fully described in the Documentation.

“Documentation” means our help guides, documentation and help/training materials, (each as may be updated periodically) that we may make available as part of the Services.

“Fees” shall mean the subscription fees or other fees for service charged and payable for the Services pursuant to Section 9 herein.

“Term” has the meaning set forth in Section 14 herein.

“Authorized User” shall mean Customer and/or Customer’s authorized employees and independent consultants, contractors or agents working for Customer in the ordinary course of Customer’s business who: (a) agree to be bound by the terms of this Agreement; and (b) are specifically authorized by Customer to access the Services through the use of a user identification and password.

2. Free Trial Periods. If you choose a free trial period, we will make the Services available to you without charge for the earlier of: (a) the agreed upon trial period after your acceptance of this Agreement (depending on the length of your free trial); or (b) the start date of any purchased Services subscribed to by you. **NOTWITHSTANDING ANY TERMS TO THE CONTRARY HEREIN, DURING THE FREE TRIAL PERIOD, THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY.**

3. License Grant. Subject to the terms of this Agreement, during the Term, Cellulogger hereby grants you a limited, non-exclusive and nontransferable license to access and use the Services strictly in accordance with this Agreement.

4. Restrictions. Customer shall not:

- a. copy any of the Services;
- b. license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services in any way;
- c. frame or mirror any part or content of the Services, other than copying or framing on your own intranets or otherwise for your own internal business purposes;
- d. modify, translate, adapt or otherwise create derivative works or improvements of the Services;
- e. reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Services or any part thereof in order to:
  - i. build a competitive product or service;
  - ii. build a product using similar ideas, features, functions or graphics; or
  - iii. copy any ideas, features, functions or graphics of the Services.

- f. remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Services, including any copy thereof;
- g. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Services or any features or functionality of the Services, to any third party (except as permitted in this Agreement);
- h. use the Services to store or transmit infringing, libelous or otherwise unlawful material, or to store or transmit material in violation of third-party privacy rights;
- i. use the Services to store or transmit any virus, worm, time bomb, Trojan horse or other harmful or malicious code, files scripts, agents or programs;
- j. interfere with or disrupt the integrity or performance of the Services or third-party data contained therein;
- k. attempt to gain unauthorized access to the Services or related systems or networks;
- l. import or export the Services in violation of United States or other applicable import or export laws;
- m. remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Services; or
- n. access the Services in order to build a competitive product or service or copy any features, functions or graphics of the Services.

Further, Customer agrees to comply with Cellulogger's reasonable policies concerning acceptable use of the Services, including but not limited to the Acceptable Use Policy of Cellulogger's hosting vendor, currently posted at <https://www.microsoft.com/licensing/docs>, as that policy may be replaced or amended from time to time.

5. Reservation of Rights. You acknowledge and agree that the Services, and any customizations thereto, are provided under license, and not sold, to you. You do not acquire any ownership interest in the Services under this Agreement, or any other rights thereto other than to use the Services in accordance with the access and use license granted, and subject to all terms, conditions and restrictions, under this Agreement. Cellulogger reserves and shall retain its entire right, title and interest in and to the Services, including all copyrights, trademarks and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

## 6. Provision of Services

6.1. Provision of Services. We shall make the Services available to you pursuant to this Agreement during the applicable free trial or subscription Term. You agree that your subscription hereunder is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by us regarding future functionality or features of the Services.

6.2. Authorized Users. If your Services purchased are based on Authorized User quantity, Cellulogger shall provide Customer with the number of accounts purchased for employees or other authorized representatives to whom Customer elects to grant access to the Services (the "Authorized Users"). Customer shall be responsible for paying the Fees for each Authorized User. Customer agrees that each Authorized User shall be bound by this Agreement. Customer is responsible for protecting Authorized User passwords, and for any damage caused by unauthorized access to the Services or to the Customer Data through any of the Authorized User accounts. Customer's Authorized Users shall be allowed to access and use the Services via compatible electronic devices. These devices systems shall be selected, maintained, and controlled solely by Customer.

## 7. Responsibilities of the Parties and Suspension of Services

7.1. Cellulogger Responsibilities. During the Term, we shall:

- a. provide basic support for the Services as set forth in the Proposal, Statement of Work, or Quotation from Cellulogger;
- b. provide the Services only in accordance with Applicable Laws;
- c. use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for:
  - i. planned downtime (Cellulogger will use commercially reasonable efforts to provide at least 8 hours prior notice via the Services prior to any planned downtime);
  - ii. emergency maintenance; or
  - iii. unavailability caused by factors outside of Cellulogger's reasonable control or a Force Majeure Event (defined below) (for example, a network or device failure external to Cellulogger or its hosting vendor's data center);
  - iv. unavailability resulting from Customer's use of hardware, software or services not provided by Cellulogger;
  - v. unavailability due to Customer's use of Cellulogger in a manner inconsistent with Cellulogger's Documentation, guidance, or advice;
  - vi. unavailability due to acts by persons gaining unauthorized access to Cellulogger by means of Customer's passwords or otherwise resulting from Customer's failure to follow appropriate security practices.
- d. as long as Customer has paid the applicable Fees for Services, provide Customer, at no additional charge, with any update that we make generally available.
- e. implement industry standard safeguards, procedures and systems to protect the privacy and security of Customer Data we receive, access, use, create, or disclose in the course of providing the Services;
- f. perform incremental long lasting geo-redundant system backups and full backups from time to time at our discretion (with the exception of some bulk electronic file storage systems). Backups will be maintained on a rolling basis, and Cellulogger will not be responsible for archiving more than the most recent backup. Cellulogger will use reasonable efforts to maintain data integrity in any backup, but Cellulogger is not responsible for loss of data or data integrity.

7.2. Your Responsibilities. During the Term, you shall:

- a. be responsible for your and all of your Authorized Users' compliance with this Agreement, any Documentation and Applicable Laws
- b. be solely responsible for the accuracy, quality, integrity and legality of any Customer Data and of the means by which you acquired such Customer Data,
- c. use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify us promptly of any such unauthorized access or use, and
- d. use the Services only in accordance with this Agreement, the Documentation and Applicable Laws. You will not:
  - i. make the Services available to anyone other than Authorized Users,
  - ii. interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or
  - iii. attempt to gain unauthorized access to the Services or their related systems or networks.
- e. understand and agree that, although Cellulogger may advise you on certain matters, you at all times remain responsible for your own operations and the consequences thereof. Cellulogger is not responsible for erroneous entries into Cellulogger or erroneous interpretation of data displayed by Cellulogger;
- f. provide Cellulogger reasonable access to appropriate business and technical contacts, background information and data sources as necessary or useful for Cellulogger to provide the Services. Delays by Customer or its vendors may impact the ability to achieve the delivery timeframes set forth in the applicable Proposal, Statement of Work, or Quotation provided by Cellulogger;
- g. maintain Customer's hardware and software necessary to access the Services;
- h. comply with any requirements regarding installation, use, and maintenance of Cellulogger, including hardware, connectivity, and remote access requirements.

7.3. Suspension. Cellulogger may suspend Customer's access to Cellulogger if (i) reasonably needed to prevent unauthorized access to Customer Data; (2) Customer does not pay amounts due under this Agreement, as set forth in Section 9.1 and 9.2. below; or (3) Customer does not abide by Cellulogger or its vendors' policies, including its hosting vendor's Acceptable Use Policy.

## 8. Third-Party Items and Services

8.1. Use of Third-Party Items and Services. Use by you of third-party products or services, including but not limited to third-party applications, customizations, hardware, software, services, telecommunication services (including Internet connectivity), and other services ("Third-Party Items"), and any exchange of data between you and any third-party provider, is solely between you and the applicable third-party provider. We do not warrant or support Third-Party Items. If the Parties desire Cellulogger obtain any Third-Party Item on behalf of Customer, such item and all related fees and charges shall be set forth in the Proposal, Statement of Work, or Quotation, and all fees will be passed through to Customer. For any proprietary Third-Party Items included in the Services, such Third-Party Items may be governed by additional license terms from the applicable third-party including but not limited to the terms of any end user license agreement accompanying such Third-Party Item. Customer agrees that it shall at all times comply with the lawful terms and conditions of its agreements with such Third-Party Item providers.

8.2. Third-Party Items and Your Data. If you install or enable Third-Party Items for use with the Services, you acknowledge that Cellulogger may allow providers of those Third-Party Items to access Customer Data as required for the interoperation of such Third-Party Items with the Services. We shall not be responsible for any disclosure, modification, or deletion of any Customer Data resulting from any such access by Third-Party Items providers.

## 9. Fees and Payment for Purchased Services

9.1. Fees. You agree to pay all Fees specified when you purchase Services ("Fees"). You will be billed in advance on a recurring basis. Except as otherwise set forth herein, (a) Fees are payable in United States dollars (b) Fees are based on Services purchased and not actual usage, (c) payment obligations are non-cancelable and Fees paid are non-refundable, and (d) the number of Authorized Users purchased cannot be decreased during the relevant Term (if your Services purchased are based on Authorized User quantity). Fees are based on monthly, quarterly or annual periods as determined by the Parties that begin on the agreed upon start date and each anniversary thereafter. Fees for Authorized Users added to a Service in the middle of an applicable period will be prorated and charged to the nearest period-end and going forward for the applicable period remaining in the Term. At the end of your applicable period, your subscription will automatically renew under these terms of use unless you or we terminate in accordance with this Agreement. All pricing terms are confidential, and Customer agrees not to disclose them to any third-party.

9.2. Support Fees, Setup Fees, and Other Expenses. In addition to the annual Fees payable, Customer shall pay for any support and setup services provided by Cellulogger as set forth on the Proposal, Statement of Work, or Quotation. Customer also shall reimburse Cellulogger for all reasonable, approved, and appropriately documented travel and related out-of-pocket expenses incurred by Cellulogger in performing the Services.

9.3. Invoicing and Payment. All payments for your Services will be paid via: (a) credit card or debit card, each of which is processed by our third-party payment processor in accordance with our Privacy Policy (<https://cellulogger.com/privacy/>), or (b) another payment method (e.g. check, wire transfer) as mutually agreed upon by the Parties. You authorize us to, as applicable, charge (and for our payment processor to process) or invoice you via your selected payment method for all Services for the Initial Term and any Renewal Term(s). You, and not Cellulogger, are responsible for paying any unauthorized amounts billed to you by a third-party. You agree to pay all Fees and charges incurred in connection with your accessing the Services (including any applicable taxes) at the rates in effect when the charges were incurred. If Cellulogger does not receive payment from you (or your credit or debit card issuer or its agent, if applicable) when due, you agree to pay all amounts upon demand by Cellulogger or its agents. If paying by credit or debit card, you will

provide Cellulogger with valid and updated credit card or debit card information, as applicable. You are responsible for maintaining complete and accurate billing and contact information in the Services. Cellulogger reserves the right to charge and collect interest on any unpaid, past-due Fees equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law. Customer will reimburse Cellulogger for all reasonable collection expenses, including reasonable attorneys' Fees and court costs, for delinquent amounts.

9.4. Suspension of Service and Acceleration. If any Fees owed by you for Services are thirty (30) or more calendar days overdue based on your selected payment method, Cellulogger may, without limiting any of its other rights and remedies: (a) accelerate your unpaid Fees obligations under this Agreement so that all payment obligations become immediately due and payable; and/or (b) suspend your and your Authorized Users' access to the Services until such amounts are paid in full. Cellulogger reserves the right to impose a fee for restoration of any suspended accounts.

9.5. Disputes. If Customer believes Customer's bill is incorrect, Customer must contact Cellulogger in writing within 30 days of the invoice date to be eligible to receive an adjustment or credit.

9.6. Taxes. Unless otherwise stated, Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction. Customer is solely responsible for the payment of such taxes.

## 10. Proprietary Rights

10.1. Ownership. As between the Parties, all rights, title and interest in and to the Services are the property of or licensed by Cellulogger and are protected by U.S. and international copyright, trademark, patent or other intellectual property rights and laws to the fullest extent possible. As between the Parties, Cellulogger owns the copyright in the selection, compilation, assembly, arrangement and enhancement of the Services.

10.2. Trademarks. All registered and common law trademarks, product names and company names or logos referenced in connection with the Services are the property of their respective owners and licensed for use by Cellulogger. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof by Cellulogger but for identification purposes only.

10.3. Ownership of Customer Data. As between the Parties, you own all right, title and interest in and to all Customer Data, provided that you grant Cellulogger the right to access and use the Customer Data in connection with the provision of the Services under this Agreement. You acknowledge that when you access and use the Services we may use automatic means (e.g., tracking technologies) to collect information about a Customer's use of the Services. Customers also may be required to provide certain information about themselves as a condition to accessing or using the Services or certain of its features or functionality, and the Services may provide you with opportunities to share information with us. All personal information about you that we collect through or in connection with the Services is subject to our Privacy Policy (<https://cellulogger.com/privacy/>). By accessing and using the Services, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy and Applicable Law. Each Customer acknowledges that Cellulogger shall have the right to de-identify and aggregate Customer Data it receives through the Services ("Aggregated Data"). Cellulogger may share such Aggregated Data with Affiliates and may use such Aggregated Data for product and service research and development, for product marketing purposes, for customer benchmarking and for other lawful business purposes of Cellulogger and its Affiliates, provided that no Customer is identified as the source of such Aggregated Data.

10.4. Customer Suggestions. You hereby grant to Cellulogger a non-exclusive, royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by you, including Authorized Users, relating to the operation of the Services.

10.5. U.S. Government Restricted Rights. This section applies to all subscriptions to use the Services by or for the federal government. By accepting delivery of the Services, the government hereby agrees that the access and use license to the Services qualifies as a customary commercial license provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under this Agreement, it must negotiate with Cellulogger to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable agreement. If the access and use license granted under this Agreement fails to meet the government's minimum needs or is inconsistent in any respect with federal procurement law, the government agrees to cease using the Services.

## 11. Security; Confidentiality

11.1. Security. During the Term, we will maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of the Services and Customer Data. Except as permitted herein or in our Privacy Policy, we will not: (a) modify any Customer Data, (b) disclose Customer Data, except as compelled by Applicable Law in accordance with the below or as expressly permitted in writing by you or (c) access Customer Data, except to provide the Services or prevent or address Service or technical problems, or at your request in connection with Authorized User support matters.

11.2. Confidentiality. In the event a Receiving Party receives any Disclosing Party Confidential Information, the Receiving Party acknowledges and agrees that it will use such Confidential Information solely in connection with the Services and will maintain the confidentiality of such Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by Applicable Law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by Applicable Law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 12. Warranties; Disclaimers; Exclusions; Limitation of Liability

12.1. Limited Warranties. Cellulogger warrants that it will use commercially reasonable efforts to provide Customer with access to Services substantially as described in its then current Documentation. If access to Services fails to perform, Customer will promptly notify Cellulogger of, and adequately describe, any such failure. Cellulogger will use commercially reasonable efforts to correct the identified defect. Cellulogger does not warrant that access to or the performance of Services will be error-free, or that its use will be uninterrupted. Cellulogger is not obligated to remedy any defect that cannot be adequately repeated. If Cellulogger is unable, after reasonable effort, to provide access to Services substantially in accordance with its then current Documentation, Customer may terminate this Agreement without further obligation. Termination of the Agreement and recovery of direct damages not to exceed the Fees paid to Cellulogger for use of Services during the twelve (12) month period preceding the event shall be Customer's exclusive remedy, and shall be Cellulogger's sole liability in connection with any breach of this warranty or any failure of Cellulogger to perform in accordance with its Documentation.

12.2. Cellulogger Service Warranties. Cellulogger represents and warrants that the Services provided to Customer will be performed in a competent, workman-like and professional manner, which meets or exceeds industry standards. In the event Cellulogger is notified of a breach of this warranty, Cellulogger shall re-perform the nonconforming Services. Cellulogger's obligation to re-perform the Services shall be Customer's sole remedy and Cellulogger's entire liability for any breach of this warranty.

12.3. Customer Warranties. Customer warrants that it has the right to provide all Customer Data to Cellulogger in connection with the Services and that the Customer Data will not infringe upon the personal or proprietary rights of any third-party.

12.4. Mutual Warranties. Each Party represents and warrants that (a) it has the legal power to enter into this Agreement; and (b) it will comply with Applicable Law in connection with the provision, access and use of the Services.

12.5. Non-Infringement. Cellulogger warrants that Services and Customer's permitted use of Services do not, to the knowledge of Cellulogger, infringe upon the copyright, patent or other proprietary rights of any third party.

12.6. Warranty Disclaimer. Except as expressly set forth herein, the Services are provided to Customers "AS IS" and with all faults and defects without warranty of any kind. Except as expressly set forth herein, to the maximum extent permitted under Applicable Law, Cellulogger, on its own behalf and on behalf of its Affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, statutory or otherwise, with respect to the Services, including all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement and warranties that may arise out of course of dealing, course of performance, usage or trade practice. Without limitation to the foregoing, Cellulogger provides no warranty or undertaking, and makes no representation of any kind that the Services will meet your requirements, achieve any intended results, be compatible or work with any device or other software, applications, systems or services, operate without interruption, meet any performance or reliability standards or be error free or that any errors or defects can or will be corrected. Some jurisdictions do not allow the exclusion of or limitations on implied warranties or the limitations on the applicable statutory rights of a consumer, so some or all of the above exclusions and limitations may not apply to you.

### 12.7. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, CELLULLOGER'S CUMULATIVE LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL NOT EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT.

THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

12.8. Statute of Limitations. No action arising out of the performance or failure to perform under the Agreement may be brought more than one (1) year after such action has accrued.

13. Indemnification. Customer agree to indemnify and hold Cellulogger, its licensors, subsidiaries, affiliates, officers, directors, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with Customer's use of Services.

#### 14. Term and Termination

14.1. Free-Trial Term. If you elect to use the Services for a limited free trial period and do not purchase Services before the end of that trial period, this Agreement will automatically terminate at the end of the applicable free trial period.

14.2. Initial and Renewal Term. Purchased Services commence on the date specified at the time of purchase and continue for the subscription term specified at purchase (the "Initial Term"). Except as otherwise specified at the time of purchase, all Services shall automatically renew for additional periods equal to the Initial Term or one year (whichever is shorter) (each a "Renewal Term" and collectively with the Initial Term the "Term"), unless either Party gives the other notice of non-renewal at least thirty (30) days before the end of the Initial Term or then current Renewal Term. Pricing during any such Renewal Term shall be the same as that during the Initial Term or immediately prior Renewal Term unless Cellulogger gives you written notice of a pricing increase at least sixty (60) days before the end of the Term, in which case the pricing increase shall be effective upon renewal and thereafter. You understand your subscription Term will automatically renew and you authorize us (without further notice to you) to charge or invoice you the renewal price (plus applicable taxes).

14.3. Termination for Cause. Subject to Section 14.4 below, either Party may terminate this Agreement for cause: (a) upon 30 days' written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

14.4. Termination by Cellulogger. Cellulogger may terminate this Agreement at any time without notice if it ceases to provide or support the Services, which Cellulogger may do in its sole discretion. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms in Section 4 herein. Cellulogger further reserves the right to terminate any Services if Cellulogger, in its sole discretion, determines such Services are being used by a competitor as set forth above.

14.5. Refund or Payment upon Termination. Upon any termination by you for breach by Cellulogger, Cellulogger will refund any prepaid Fees covering the remainder of the Term of all subscriptions after the effective date of termination. Upon any termination for cause by Cellulogger, you shall pay any unpaid Fees covering the remainder of the applicable Term. In no event shall any termination relieve you of the obligation to pay any Fees payable to Cellulogger for the period prior to the effective date of termination.

14.6. Surviving Provisions. Sections 1 1, 4, 5, 9, 10, 11.2, 12.6, 12.7, 13, 14, 15, 16, 14.6 and any section that by its nature should survive shall survive any termination or expiration of this Agreement.

#### 15. Notices, Governing Law

15.1. Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals shall be delivered by e mail or by conventional mail. Notices will be sent to the e-mail address or mailing address Customer provides to Cellulogger. Notices to you shall be addressed to the system administrator designated by you for your relevant Customer account, and in the case of billing-related notices, to the relevant billing contact designated by you. Notices given by Customer to Cellulogger must be given by e mail to support@Cellulogger.com or such updated address as Cellulogger may provide.

15.2. Governing Law/Venue. The Agreement shall be governed by and interpreted under the laws of the State of South Dakota without reference to conflicts of laws principles, and excluding the UN Convention on Contracts for the International Sale of Goods. Federal and state courts located in Sioux Falls, South Dakota shall have jurisdiction and venue to redress any dispute or claim. The parties stipulate that the state and federal courts located in Sioux Falls, South Dakota shall have personal jurisdiction and venue over each of them for the purpose of litigating any such dispute or claim. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

#### 15.3. Dispute Resolution, Arbitration

The Parties will first attempt to resolve any dispute informally. Please send a written notice describing the dispute both electronically to support@Cellulogger.com and via physical letter to:

JJDevo LLC dba Cellulogger  
28820 477<sup>th</sup> Ave  
Canton, SD 57013

All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration between the Parties. Any arbitration hereunder shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"). The Parties shall mutually agree on one (1) arbitrator to settle the dispute within ten (10) days of notice by a Party of its desire to arbitrate. If the Parties fail to select an arbitrator within such 10-day period, the arbitrator shall be chosen by the AAA Rules. A reasoned arbitration decision shall be rendered in writing no later than sixty (60) days after the selection of the arbitrator and any such decision shall be final and binding on the Parties. The situs of any arbitration proceedings shall be Sioux Falls, South Dakota and all hearings shall be held in Sioux Falls, South Dakota. Each Party shall pay its own costs and

expenses (including attorneys' fees) for such arbitration. Judgment upon the award so rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be.

## 16. General Provisions

16.1. Relationship of the Parties. Nothing in this Agreement is intended, nor should be construed, to create a partnership, agency, joint venture or employment relationship between a Customer and Cellulogger. It is understood by the Parties that each Party will be treated as an independent contractor with respect to the other Party. Cellulogger may use third parties under contract with Cellulogger to assist Cellulogger in the performance of its obligations under this Agreement, provided that Cellulogger will remain responsible for all its obligations under this Agreement.

16.2. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

16.3. Force Majeure. Neither party shall 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 result from events, circumstances or causes beyond its reasonable control (inability to meet financial obligations is expressly excluded from this clause) (a "Force Majeure Event"). Such Force Majeure Events include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, pandemics, epidemics, labor disputes, fire and explosions. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations.

16.4. Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be modified rather than voided, if possible, in order to achieve the intent of the parties to the extent possible. Any provision held overbroad as written will be deemed amended to narrow its application to the extent necessary to make the provision enforceable under Applicable Law, and enforced as amended. All other provisions of this Agreement will be deemed valid and enforceable to the full extent.

16.5. Assignment. You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Cellulogger (not to be unreasonably withheld). Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

16.6. Use of Name. Cellulogger may, in its sole discretion, use Customer's name in Cellulogger's promotional materials, unless Customer provides Cellulogger written objection of such use.

16.7. Compliance with Laws. Each Party shall at all times comply with all applicable U.S. federal, state and local laws, ordinances, regulations, rules, orders and requirements relating to this Agreement, Cellulogger, and the Services. However, Cellulogger makes no representation that it will comply with international laws, ordinances, regulations, rules, orders or requirements relating to this Agreement, Cellulogger or the Services.

16.8. Audit Rights. Cellulogger or its agent may examine Customer's systems, desktop computers, laptops, servers, books and records for the purposes of verifying Customer's compliance with the terms of this Agreement, upon reasonable notice and during normal business hours at Customer's offices. Customer shall have the right to request that the agent acting on behalf of Cellulogger sign an appropriate non-disclosure agreement.

16.9. Entire Agreement. This Agreement, together with any authorized Proposal, Statement of Work, or Quotation from Cellulogger and any additional terms presented to Customer with the Services and any addendum referenced hereto constitute the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the Party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions of this Agreement and the Documentation or addendum, the terms of the Documentation or addendum shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in your purchase order or other order Documentation provided by you shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.