

mElimu ASP License Agreement and Terms of Service

IMPORTANT, READ CAREFULLY: YOUR USE OF THE MELIMU WEBSITES AND MELIMU SASS SOFTWARE SERVICES AND ASSOCIATED SOFTWARE IS CONDITIONED UPON YOUR COMPLIANCE WITH AND ACCEPTANCE OF THIS AGREEMENT.

BY SIGNING THE MELIMU SALES ORDER FORM AND/OR BY ACCESSING, BROWSING, AND USING THE SERVICES, YOU ACCEPT, WITHOUT LIMITATION OR QUALIFICATION, THESE TERMS OF SERVICE ("TOS"). IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS OF SERVICE, DO NOT SIGN THE MELIMU SALES ORDER FORM AND DO NOT ACCESS/USE THE SOFTWARE OR SERVICES.

mElimu LLC, and/or one of its affiliates or parents or subsidiaries (the "Company" or "we") provides the *MELIMU* services and software to "you" (namely, the Customer listed on the signed MELIMU Sales Order Form and signatory to this mElimu ASP License Agreement and Terms of Service), subject to the Terms of Service ("TOS") described in this Agreement, which the Company reserves the right to modify, from time to time, effective five (5) days after such modified document is posted at the relevant link(s), such posting to constitute effective notice of change. You can review the most current version of these TOS at any time through the link <http://www.melimu.com/privacy-and-policy-2/>

These TOS, together with the MELIMU Sales Order Form (the "Order Form") you signed, constitute a legal agreement (the "Agreement") between you and the Company for your use of the specific service(s), and/or software set forth on the Order Form. Further, in connection with the use of certain services, and/or software, you may be required to download content, software, and/or required to agree to supplemental terms and conditions. These supplemental terms and conditions are hereby incorporated into these TOS. You represent and warrant that you have all of the necessary right, power and authority to enter into this Agreement and to perform and otherwise discharge all of your obligations hereunder. In the event of any conflict between the terms of this Agreement and the terms of the Order Form, the terms of the Order Form shall prevail.

1. GRANT OF RIGHTS

1.1 The Company hereby grants, and you hereby accept, subject to the terms and conditions of the Agreement, as follows:

- (i) where ASP Services are specified in the Order Form, a limited, personal, non-exclusive, non-transferable, non-sub-licensable license to use the ASP Services, Software, and Documentation to facilitate the conduct of your classes, training sessions, seminars and other meetings in furtherance of your on-line education, or e-learning, purpose;
- (ii) where a term license is specified in the Order Form, a limited, personal, non-exclusive, non-transferable, non-sub-licensable license to use the Software and Documentation for the term specified in the Order Form to facilitate the conduct of your classes, training sessions, seminars and other meetings.

1.2 As part of the set-up and initialization of the Software, the Company will set-up the learning privileges, administrative privileges, and class schedules in the manner agreed to with you and specified in the Order Form. You shall pay the appropriate fees as per the Order Form or provide the Company with a purchase order prior to such set-up and initialization pursuant to Section 8 below.

1.3 So long as you are in compliance with the terms of this Agreement, including payment terms, the Company will make available to you for Software (i) at no additional charge (other than reasonable implementation fees), as they become available, all Upgrades and (ii) for the fee to be determined by the Company upon issue, any New Versions of the Software. Nothing in this Agreement will obligate the Company to maintain the Software in the version covered by this Agreement indefinitely. Company reserves the right to put *Powered by mElimu* at the bottom of the web templates, mobile apps, mobile pages, and discussion messages.

2. CUSTOMER RIGHTS, RESTRICTIONS AND OBLIGATIONS

2.1 Back-up/Archival Copy. You shall not be entitled to make any copy of the Software (where Software is provided to you) and/or Documentation except only one copy only for backup or archival purposes. You shall reproduce with such copy any trade-mark, copyright and other notices, or any other indicia of ownership contained in or associated with the Software, and/or Documentation on such copy.

2.2 No Rights to Other Software/Services. You acknowledge and agree that you are only being granted a license to use the ASP Services, Software, and Documentation specified in the Order Form for the period specified therein and that, for greater certainty, such license shall not be construed as to grant to you the right to use any other software, services or documentation of the Company or its suppliers, or to use or exploit the Software, ASP Services, and Documentation in any manner other than as expressly permitted by the Agreement.

2.3 Use by Authorized Users. You may (subject to, and only to the extent of, the license rights granted to you in Section 1.1 above) permit your Authorized Users to use the Software, ASP Services and/or Documentation for such purpose. You may provide access to, or copies of, the Documentation to your Authorized Users as necessary for, and in conjunction with, your authorized use of the Software and/or ASP Services, and may abridge or condense the Documentation in connection therewith, provided that the copyright to any derivative work shall belong to the Company and you shall reproduce with such copy or work any trade-mark, copyright and other notices, or any other indicia of ownership contained in, or associated with, the Documentation. You acknowledge and agree that you shall be responsible and liable for all uses made by you or your Authorized Users of the Software, ASP Services, or Documentation. You agree that the Company may use customer content and confidential information according to the privacy policy at <http://www.melimu.com/privacy-and-policy-2/>.

2.4 Compliance with Laws. You shall comply with all applicable laws (including, but not limited to export/import laws and laws relating to privacy, data security, obscenity, copyright, trademark, confidential information, trade secret, libel, slander or defamation), as well as all policies and practices of your affiliated school or organization. You shall not, directly or indirectly, send, submit, post, receive or otherwise facilitate, or in any way use, or permit to be used, the Software, ASP Services, or Documentation, to send, submit, post, receive or otherwise facilitate the transmission of any materials that are abusive, obscene, profane, sexually explicit, threatening, or materials containing blatant expressions of bigotry, racism or hate, or which violate or infringe any third-party right.

2.5 Customer Restrictions. You agree that, unless otherwise expressly permitted in this Agreement or in the Sales Order Form, you and your Authorized Users will not: (i) reproduce, republish, display, frame, download (except as expressly authorized herein), distribute, or transmit the Software and/or the ASP Service; (ii) redistribute, encumber, sell, rent, lease, loan, sublicense, assign, or otherwise transfer rights to the Software, and/or the ASP Service; (iii) modify or create any derivative works based on the Software, including customization, translation, or localization, or use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Software and/or the ASP Service; (iv) copy, reproduce, reuse in another product or service, modify, alter, or display in any manner any software or files, or parts thereof, included as part of the Software, or otherwise permit the Software, ASP Services, or Documentation to be subject to any timesharing, service bureau, subscription service or

rental activities; (v) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the Software, or in any way ascertain, decipher, or obtain the communications protocols for accessing the Software, or the underlying ideas or algorithms of the Software (e.g., in an effort to develop other applications or services that provide similar or substitute or complimentary or competitive functionality to the Software or the ASP Services); (vi) create or use any software other than as expressly authorized by the Company in writing to access the Software or to access the Software or the ASP Services by any means other than through the interface that is provided by the Company for use in accessing the Software or ASP Services; (vii) attempt to gain unauthorized access to the Software or to any account, application, platform, computer system or network associated with the Software; (viii) use the Software or ASP Services in any way that violates this Agreement, or any other agreements to which you are a party, or any law; and/or (ix) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or associated with the ASP Services. You may not charge any fees to any party for their use of the Software and/or ASP Services.

2.6 Modifications to Software and ASP Services. The Company may, at its sole discretion, and from time to time, (i) discontinue the Software or ASP Services or modify the features of the Software or ASP Services from time to time with proper prior notice; (ii) make available additional features and/or functionalities to the Software or ASP Service which may, but are not required to, be added to the Software or ASP Service by you at additional cost.

3. THIRD PARTY SOFTWARE; INTERNET ACCESS

3.1 Third Party Software. The Software and ASP Service may contain third party software and the Company reserves the right to modify the Software and ASP Service to maintain compliance with the license terms of third party software. The Company is required to, and you agree that you will also, comply with the applicable terms of any third party license of which you have been notified by the Company or have access to publicly. We are not responsible in any way for claims or damages arising from your use of such third party software and make no representation or warranty whatsoever concerning such third party software.

3.2 Internet Access and Necessary Equipment. In order to use the Software and ASP Services, you must obtain access to the World Wide Web, either directly or through that access web-based content, and pay any service and/or telephony fees associated with such access. In addition, you must provide all equipment necessary to make such connection to the World Wide Web, including a computer and modem or other access device. You acknowledge and agree that such equipment and system requirements, which may change from time to time, are your responsibility. Where ASP Services are specified in the Order Form, the Company shall use commercially reasonable efforts to provide you and your Authorized Users with access via the Internet to the Software for the purpose of using the Software in accordance with the terms of this Agreement and in the manner more particularly set out herein. Generally, the Company endeavors to provide such access on a 24-hour per day and 365 days per year basis. However, such access may not be available from time to time as a result of repairs, upgrades or routine maintenance. The Company will use commercially reasonable efforts to minimize the impact of such activities. We are not responsible in any way for interruptions in your use of the Software or ASP Services caused by failures of or problems with internet service or connection or third party equipment and make no representation or warranty whatsoever concerning such matters.

3.3 Equipment for Authorized users. In order to use the Software and ASP Services, you must obtain access to the World Wide Web, either directly or using a telephony and data service on the SIM card provided in the market; Authorized users have the full responsibility to access web-based content, and pay any service and/or telephony/data-service fees associated with such access. In addition, your authorized users must procure equipment necessary to make such connection to the ASP services from the Company or elsewhere. You acknowledge and agree that such equipment's safety and protection are

your responsibility and the responsibility of the authorized users. If the equipment is damaged, you must procure the equipment at an additional fee from elsewhere.

4. REGISTRATION; PASSWORDS AND ACCESS

4.1 Registration. In consideration of your use of the Software and ASP Services, you or your Authorized Users may be required to provide information in order to register for and/or use certain Software and ASP Services. You agree to (a) provide true, accurate, current and complete information about yourself and your Authorized Users as prompted by the Software's registration form, and (b) maintain and promptly update all such information to keep it true, accurate, current and complete.

4.2 Passwords and Access. You and your Authorized Users may receive a password and account designations upon completing the registration process. You are solely responsible for maintaining the confidentiality of these account(s) and password(s), and are fully responsible for all activities that occur under such passwords or user identifications. You shall be permitted to provide access codes and passwords to Authorized Users. You acknowledge and agree that you are solely responsible for the issuance of access codes and passwords and that the Company will only issue access codes or passwords to Authorized Users on your instruction and as your agent. You acknowledge and agree that you shall be responsible for each and every access, use or employment of the ASP Services or Software that occurs by your Authorized Users and/or in conjunction with such passwords and user identifications, and that the Company is authorized to accept the user identifications and passwords as conclusive evidence that you, or your Authorized Users, as the case may be, have accessed, utilized, or otherwise employed the ASP Services and/or the Software. You agree to (a) notify the Company of any unauthorized use of such password or user identifications and any other breach of security, and (b) ensure that you and your Authorized Users exit from your account at the end of each session using the logout button. You and your Authorized Users are solely responsible for applying the appropriate level of access rights to Customer Content and to communications involving the use of the ASP Services or Software.

5. CONSENTS; CUSTOMER CONTENT

5.1 Necessary Consents. Where ASP Services are specified in the Order Form, you acknowledge and agree that the ASP Services are provided via the Internet and that you and your Authorized Users' information, including personal information, may be transferred across national borders and stored or processed in any country in the world. You are solely responsible for obtaining and maintaining any necessary consents or permissions from your Authorized Users or others whose information may be collected, recorded, processed, stored, used, disclosed, transferred, exchanged or otherwise handled as a result of, or as part of, any Customer Content or any communications involving the use of the ASP Services or Software and agree to obtain and maintain all such consents or permissions throughout the term of this Agreement. If you reside in the European Union, upon registration you will be indicating your explicit consent that the personal information you have provided may be transferred and stored in countries outside the EU, including the United States. Your personal information shall only be used in accordance with the Company's Privacy Policy at <http://www.melimu.com/privacy-and-policy-2/>

5.2 Customer Content and Data.

(i) You are solely responsible for all Customer Content, as well as for the content of any communications by you or your Authorized Users, including any communications involving the use of the ASP Services or the Software. By uploading or otherwise making available any Customer Content, you automatically grant and/or warrant that the owner has granted the Company, the perpetual, world-wide, royalty-free, non-exclusive, sublicensable, irrevocable right and license to use, reproduce, modify, publish, distribute, perform, display, and transmit the Customer Content through the Service, including use of Customer Content, courses, designs and customizations for promotional and/or marketing purposes. You also

permit any other user with access to your instance of the Service, subject to your restrictions, to access, view, store, and reproduce the Customer Content to the same extent permitted herein.

(ii) You are solely responsible for making and keeping back-up copies of Customer Content. The Company shall not be responsible or liable for the deletion or accuracy of Customer Content, the failure to store, transmit, encrypt (or otherwise secure) or receive Customer Content, or the storage, transmission, encryption (or other security) or receipt of any other communication involving the use of the ASP services or Software.

(iii) You acknowledge and agree that some information shared or communicated between you, your Authorized Users and the Company, the ASP Services or the Software occurs in an unsecured environment, is not treated as confidential, and may be intercepted and read by others. Company shall use reasonable administrative, technical and physical safeguards to protect the security, integrity and confidentiality of your Data, including personally identifiable information. Company makes no warranties or guarantees regarding the compliance of services with any specific law or regulation governing a particular type of data. You agree that you shall hold harmless and indemnify mElimu for any claims arising out of or related to your election of a configuration option, when a more secure option was made available by Company. You certify that any user designated by you to have access and authority sufficient to choose configuration options is a duly authorized and competent representative of your organization, including to bind you for such purposes, pursuant to this Agreement. Configuration options include, but are not limited to, whether to present a terms of use or privacy policy at log-in for other users, whether to enable an auto-log-on feature that allows any person with a link to access your information without any log-on requirement, and whether to allow an authorized user to “impersonate” another user. In the event of a breach of the security, integrity or confidentiality of your Data, Company shall promptly notify you and shall provide you with details about the breach, to the extent available, unless prohibited by Applicable Laws or a governmental request. Company shall only process your Data to provide or assist in the provision of the services, to perform obligations and exercise rights under this Agreement or Applicable Law, or as mutually agreed to in writing by you and Company. Company may not process your Data for any other purpose except where the identification of any particular detail or user cannot be ascertained from the data, such as certain data aggregated with the data of other users. If such incident triggers any third-party notice requirements under Laws, you agree that unless otherwise required by Law, as the owner of the personal information, you will be responsible for the timing, content, cost and method of any such notice and compliance with such Laws.

(iv) You acknowledge that the Company does not pre-screen Customer Content, but that the Company shall have the right (but not the obligation) in its sole discretion to refuse or move any Customer Content that is available through the Software and/or ASP Services. Without limiting the foregoing, the Company has the right to remove any Customer Content or your access to the Software and/or ASP Services that violates these TOS or is otherwise objectionable. You agree and acknowledge that the Company may preserve Customer Content and may disclose Customer Content if required to do so by law or in the good faith belief that any such preservation or disclosure is reasonably necessary to comply with legal process, enforce the TOS, and/or respond to claims that any Customer Content violates the rights of third parties or protect the rights, property or personal safety of the Company, its users and the public. If requested by Customer during the Term of this Agreement and to the extent available, Company will make available to you, subject to payment of a reasonable charge, a file of your Data in an industry-standard format designated by Company within thirty (30) days. After you receive such file of your Data, Company may delete such Data.

(v) Use of Anonymized Student Data. You agree that we may collect and, both during and after the term of this Agreement, use data derived from User Data for our own purposes, provided that such data will be de-identified and/or aggregated to reasonably avoid identification of a specific Authorized User or individual.

Notwithstanding anything to the contrary in this Agreement, the parties understand and agree that Company shall have the right to access and use any and all Customer Data, to which Company is provided access, in order to manage Company's data network and support and update the Software.

6. PROPRIETARY RIGHTS AND COPYRIGHT

You acknowledge and agree that the Software and ASP Service and any necessary software used in connection therewith contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You agree that title to and ownership of the Software (including all source code), ASP Services and Documentation and any modifications made thereto and all intellectual property rights therein shall at all times remain with the Company and/or its suppliers. You shall not have any right, title or ownership interest in the Software, ASP Services or Documentation except the limited right to use the Software, ASP Services and Documentation as explicitly provided in the Agreement.

Company utilizes various Open Source software under the GNU license for ASP services including moodle. You are never charged by the Company for your use of moodle or other open source software. You will comply with the terms of open source licenses such as moodle's GNU General Public License as may be currently in effect at <https://docs.moodle.org/dev/License> or a subsequent location. We are not responsible for any claims or damages that arise from the use of moodle or other open source software.

7. SUPPORT

7.1 Support Services. For the term identified in the Order Form, and thereafter as long as you continue to obtain support services from the Company pursuant to a then-current support services agreement, the Company shall provide, to such degree as the Company makes such services generally available, support services on an annual basis with respect to the Software and/or ASP Services. Support services currently include delivery of bug fixes and workarounds, and support via telephone (per the Order Form, after which the charges set out in the Order Form will apply). Where telephone support is provided, only those individuals who are responsible for providing support to your Authorized Users shall be entitled to make use of same.

7.2 Onsite Support. If, for whatever reason, support is required to be delivered by the Company from anywhere other than the offices of the Company, and you approve the delivery of that support, you shall pay the then-current applicable onsite support fees (including travel time) and the Company's reasonable travel, subsistence and other expenses incurred in connection therewith.

7.3 Company Responsibility. In providing support services the Company shall only be required to use reasonable commercial efforts to correct documented errors in the ASP Services and/or Software identified by you, which can be repeated by the Company (with your assistance if the Company so requests such assistance). Notwithstanding the forgoing, under no circumstances does the Company warrant or represent that all errors can or will be corrected.

8. FEES; EXPENSES

8.1 Fees; Payments. In consideration for the Company's performance under this Agreement, you agree to pay the Company all fees required by the Order Form, which will be due in accordance with the provisions of the Order Form, but in no event later than thirty (30) days after the date of an invoice from the Company. The Company expressly reserves the right to change the fees payable under any Order Form with respect to any renewal of such Order Form upon expiration of its then-current term. Any renewal fees of the Service shall be at the Company's then-current rates. You will pay all fees in U.S. dollars, unless otherwise noted on the Order Form. Payments shall be sent to the address indicated on the invoice.

8.2 Late Payment. You understand and agrees that late payment of such Fees shall give Company the right to suspend access to the Website, mobile apps, and the Software, and may be treated as a material breach of this Agreement for purposes of **Section 9 ("Term and Termination")**. You shall pay all reasonable costs and expenses we incur, including attorneys' fees and costs, to collect past due amounts that you owe to us. Interest may be charged on any overdue amounts at the lower of: (a) the highest permissible rate, or (b) 18% per annum, charged at 1.5% per month from the date on which such amount fell due until the date of payment, whether before or after judgment. You acknowledge that any delay in payment may result in termination or interruption of the provision of the Products and Services at our sole discretion.

8.3 Audit. For the sole purpose of ensuring compliance with this Agreement, the Company shall have the right, at its expense, to audit your use of the Software during your normal business hours upon not less than seven (7) days' advance notice. Any such audit shall not be made more frequently than once every twelve months, provided that if any such audit reveals a material breach of this Agreement, the Company may conduct such audits on a quarterly basis until such audits confirm that the relevant breach has been cured. The cost of any such audit shall be borne by the Company unless the audit reveals that you have underpaid fees due under this Agreement in excess of 5% of the total owed for any calendar year, in which case you shall, in addition, reimburse to the Company the reasonable costs of conducting the audit.

8.4 Taxes. The fees hereunder do not include any sales, use, excise, import or export, value-added or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees levied on the delivery of any Software or the performance of the ASP Services by the Company to you. You will be responsible for payment of such applicable sales, use, excise, import or export, value-added or similar tax or interest at point of sale. All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law of any relevant governmental revenue authority then in effect. If you are required to deduct or withhold, you will promptly notify the Company of the requirement, pay the required amount to the relevant governmental authority, provide the Company with an official receipt or certified copy or other documentation acceptable to the Company evidencing payment, and pay to the Company, in addition to the payment to which the Company is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by the Company equals the full amount the Company would have received had no such deduction or withholding been required. If you are exempt from any such taxes or fees, then such taxes or fees shall not be charged to you upon the Company's receipt of a copy of your tax exemption certificate or number.

8.5 Expenses. Except as provided in these TOS or the Order Form, each party will be responsible for its own expenses incurred in rendering performance under this Agreement, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. In addition, if the Company is required by applicable law, legal process or government action or for a Customer audit to produce information, files, documents or personnel as witnesses with respect to this Agreement or the products or services provided to you by the

Company, you shall reimburse the Company for any professional time and expenses including reasonable external or internal legal costs incurred to respond to the request, unless the Company is a party to the proceeding or the subject of the investigation.

8.6 Purchase Orders. You agree that if your internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to the Company, you will timely issue such purchase order and inform the Company of the number and amount thereof. You agree that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of your obligations under this Agreement, including payment of amounts owed to the Company. If the terms of your purchase order differ from or are inconsistent with the terms of this Agreement, the terms of this Agreement will control and govern in all respect, and the parties will disregard the terms of your purchase order.

8.7 Fees after Initial Term. The Fees shall remain as stated for the initial term of this Agreement. Thereafter, and for each subsequent one (1) year period of the Term, Company may increase such Fees up to five percent (5%) annually from the prior Fees upon written notice to you given at least thirty (30) days before the end of the then current period or any other subsequent one (1) year period. Fees are calculated by Company based upon certain system resource usage assumptions ("Cloud Limits"). Where mElimu determines that you are exceeding Cloud Limits, Company shall notify you, and Company shall have the right to impose an additional commercially reasonable Fee determined by us corresponding to such excess use.

9. TERM; TERMINATION

9.1 Term. The initial term ("Initial Term") of this Agreement shall be as specified in the Order Form. Where not specified, the initial term of this agreement will be five (5) years. Where the Initial Term of this Agreement is not perpetual, unless otherwise specified in the Order Form, the term of the Agreement shall be renewed automatically for successive periods of five (5) years each (a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, unless you provide the Company, or the Company provides you, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or any subsequent Renewal Term. Each Renewal Term shall incorporate and be governed by the Company's then-current pricing.

9.2 Termination for Breach. In the event that either party materially breaches any obligation, representation or warranty under this Agreement, the non-breaching party may terminate this Agreement in its entirety, or, at the non-breaching party's option, it may terminate solely the relevant Order Form (if more than one Order Form is in effect) pursuant to which such breach has occurred, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach. Without limiting the foregoing, either party may terminate this Agreement immediately upon written notice to the other party in the event the other party materially breaches the provisions of Section 11 or the license usage restrictions in the Order Form. Notwithstanding any other provision in this Agreement, the Company may terminate this Agreement, or any portion of the licenses granted herein, immediately, without notice, if it is determined that you or your Authorized Users have failed to comply with any applicable laws.

9.3 Termination for Insolvency. Without prejudice to any other available remedies, either party may terminate the Agreement immediately upon written notice if: (i) the other party becomes insolvent, files for relief under any bankruptcy law, or makes an assignment for the benefit of its creditors generally or has a liquidator or a receiver appointed over a substantial part of its business or assets or commences to be wound up (other than for the purposes of a solvent amalgamation or reconstruction) or (ii) any other circumstances arise in any jurisdiction which entitle a Court or a creditor to appoint a liquidator, receiver,

administrative receiver or administrator or equivalent officer or make a winding up order in relation to such party.

9.4 Effect of Termination. Upon termination of this Agreement, all licenses granted and products or services provided under this Agreement shall immediately cease. Upon termination, you will immediately discontinue all use of materials licensed under this Agreement, and will pay to the Company all amounts due and payable hereunder. Each party: (i) will immediately cease any use of the other party's Confidential Information; (ii) will delete any of the other party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) will return to the other party or, at the other party's option, destroy, all copies of the other party's Confidential Information then in its possession. Without limiting the foregoing, upon termination of any Order Form (including upon termination of this Agreement in its entirety), the provisions of such Order Form regarding the effect of such Order Form's termination shall also apply.

9.5 Survival. The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided in this Agreement. Without limiting the foregoing, the provisions of Sections 6, 8, 9.4, 9.5, 10-15 of these TOS shall survive the termination of this Agreement for any reason.

10. PRIVACY POLICY

Because like you, we are Internet users concerned about privacy, we also are concerned about your right to privacy while accessing our websites and using the Software and ASP Services. As such, your use of the ASP Services and Software is subject to our Privacy Policy. Please take the opportunity to review our Privacy Policy at <http://www.melimu.com/privacy-and-policy-2/> which is incorporated herein by reference.

11. CONFIDENTIALITY

11.1 Nondisclosure. Each party will keep the other party's Confidential Information confidential. Specifically, each party receiving Confidential Information agrees not to disclose such Confidential Information except to those directors, officers, employees and agents of such party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. Each party acknowledges that it has all requisite authority under applicable laws to provide the other party with access to Confidential Information. Each party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances.

11.2 Notice. The receiving party will promptly notify the disclosing party in the event the receiving party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing party may reasonably request, at the disclosing party's expense, in any litigation against any third parties to protect the disclosing party's rights with respect to the Confidential Information.

11.3 Terms of Agreement. Except as otherwise provided by law, neither party shall disclose the terms of the Agreement to any third party; provided, however, that either party may disclose the terms of this Agreement to its professional advisers, or to any potential investor or acquirer of a substantial part of such party's business (whether by merger, sale of assets, sale of stock or otherwise), provided that such third party is bound by a written agreement or legal duty on terms at least as strict as those set out in this Section 11 to keep such terms confidential.

11.4 Exceptions to Confidential Treatment. Notwithstanding the foregoing, the preceding provisions of this Section 11 will not apply to information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing party without restriction. or (V) is approved for release or disclosure by the authorized users without restriction. Each party may disclose Confidential Information to the limited extent necessary: (a) to comply with the order of a court of competent jurisdiction or other governmental body having authority over such party, provided that the party making the disclosure pursuant to the order will first have given notice to the other party and made a reasonable effort to obtain a protective order; (b) to comply with applicable law or regulation requiring such disclosure; or (c) to make such court filings as may be required to establish a party's rights under this Agreement. Further, if the Company is required by applicable law, legal process or government action to produce information, files, documents or personnel as witnesses with respect to these TOS or the Services provided to you by the Company, you shall reimburse the Company for any professional time and expenses including reasonable external or internal legal costs incurred to respond to the request, unless the Company is a party to the proceeding or the subject of the investigation.

11.5 Contact Information. You hereby authorize the Company to include and use individual Customer contact information (i.e., primary contact, system administrator, billing contact, other user lists) in contact lists for emails, mailings, and faxes from the Company relating to Company-provided products and services, support, product and service matters, newsletters, user groups and events, and to provide contact information to third parties whose products or services you have purchased through the Company for the purpose of providing those products and services or support or maintenance for the products and services. You acknowledge that you have the right to provide such consent, and the Company acknowledges that it will not use or distribute the contact information except as explicitly set forth above.

11.6 Other Rights. You hereby grant to the Company the limited right to use your name, logo and/or other marks for the sole purpose of listing you as a user of the applicable Software or ASP Services in the Company's promotional materials. The Company agrees to discontinue such use within fourteen (14) days of your written request.

12 WARRANTY

12.1 Disclaimer of Warranty. EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN ANY ATTACHED ORDER FORM(S): (A) THE SOFTWARE AND ALL PORTIONS THEREOF, AND ANY SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT; (B) NEITHER THE COMPANY NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE OR ASP SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS YOU MAY HAVE, OR THAT THE SOFTWARE OR ASP SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE OR ASP SERVICES WILL BE CORRECTED, OR THAT THE SOFTWARE OR ASP SERVICES IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) THE COMPANY AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE SOFTWARE OR ASP SERVICES. WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE THAT THE ASP SERVICES AND/OR THE SOFTWARE ARE NOT DESIGNED

OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS (INCLUDING, OPERATION OF NUCLEAR POWER FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, SURGICAL OR MEDICAL FACILITIES, LIFE SUPPORT, OR WEAPONS SYSTEMS) AND THAT THE COMPANY SPECIFICALLY DISCLAIMS ANY EXPRESSED OR IMPLIED REPRESENTATION, WARRANTY, OR CONDITION OF FITNESS FOR SUCH PURPOSES.

12.2 Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY OR ITS LICENSORS BE LIABLE TO YOU OR ANY OF YOUR AUTHORIZED USERS FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, OR ASP SERVICES, WHETHER OR NOT THE COMPANY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA; OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). IN NO EVENT SHALL THE COMPANY'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF FEES PAID BY YOU UNDER THIS AGREEMENT FOR THE PARTICULAR SOFTWARE, AND/OR ASP SERVICE WITH RESPECT TO WHICH THE RELEVANT CLAIM AROSE DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT, OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES THE COMPANY'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

12.3 Liability Not Excluded. Nothing in this Section 12 excludes or limits the liability of the Company to you for death or personal injury caused by the negligence of the Company or any other liability which cannot be excluded by law.

12.4 Essential Basis. The parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 12 form an essential basis of this Agreement, and that, absent any such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

13. INFRINGEMENT

13.1 Company Infringement Obligations. If any third party brings a claim against you alleging that the use of the Software or ASP Services authorized under this Agreement infringes: (1) a U.S. or European patent issued prior to the Effective Date or copyright, you must promptly notify the Company in writing and make no admission in relation to such alleged infringement. In connection with any such claim and provided that you have promptly fulfilled all of the foregoing obligations and are not in material breach of the Agreement, the Company shall at its own expense and option: (i) indemnify, defend, and settle such claim, (ii) procure you the right to use the Software or ASP Services, (iii) modify or replace the Software or ASP Services to avoid infringement; or (iv) refund the applicable fee paid for the current term. In the event that the Company exercises option (i) above, it shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that the Company will keep you informed of, and will consult with any independent legal advisors appointed by you at your own expense regarding the progress of such defense.

13.2 Exceptions. The Company shall have no liability to you under Section 13.1 or otherwise for any claim or action alleging infringement or violation of applicable privacy or publicity laws based upon: (i) any use of the Software or ASP Services in a manner other than as specified by the Company, or your breach of these TOS; (ii) any combination of the Software or ASP Services with other products, equipment, software, systems or data not manufactured by the Company (including, without limitation, any software

produced by you for use with the Software) to the extent such claim is directed against such combination; (iii) the Customer Content, or the use of the Customer Content; or (iv) any modifications or customization of the Software or ASP Services by any person other than the Company (any of the foregoing, separately and collectively, "Customer Matters").

13.3 Customer Infringement Obligations. You shall, at your own expense, indemnify and, at the Company's option, defend the Company against any losses, damages or expenses (including, without limitation, reasonable attorneys' fees) arising from any claim, suit or proceeding brought by a third party against the Company arising out of a Customer Matter and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Customer Matter (any of the foregoing indemnifiable matters, each a "Company Claim"), provided that you will not settle any Company Claim unless such settlement completely and forever releases the Company with respect thereto or unless the Company provides its prior written consent to such settlement. The Company agrees (i) to provide you with prompt written notice of any Company Claim and (ii) to provide such assistance as you may reasonably request, at your expense, in order to settle or defend any such Company Claim.

13.4 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 13 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EACH PARTY, AND THE EXCLUSIVE REMEDY OF EACH PARTY WITH RESPECT TO CLAIMS BY ANY THIRD PARTY ALLEGING INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT.

14. DEFINITIONS

The following terms shall have the following meanings when used in the Agreement:

"ASP Services" shall mean those services, as may be amended from time to time, provided by the Company in respect of the hosting of, and access via the Internet to, the Software for the purpose of permitting you and your Authorized Users to use the Software in the manner as more particularly set out herein (for greater certainty, ASP Services are optional and are only provided when indicated on the Order Form).

"Authorized Users" means those individuals who are authorized by you to use the ASP Services, Software, or Documentation, from time to time, in the manner as more particularly set out herein.

"Confidential Information" means any non-public information disclosed by either party to the other or related to the operations of either party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, Confidential Information will be deemed to include, without limitation, information about a party's business, vendors, customers, end users, transaction data, results from any benchmarking tests or analyses related to the licensed Software and services, products, services, employees, finances, costs, expenses, financial or competitive condition, policies, and practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases and database structures, non-literal elements, capabilities and functionality, source code and object code, as well as research and development efforts, marketing and distribution efforts, licensing, cross-licensing, marketing and distribution practices, computer software programs and other information licensed or otherwise disclosed to a party in confidence by a third party, and any other non-public information that does or may have economic value by reason of not being generally known. "Confidential Information" shall also include information about the Software, ASP Services, or Documentation.

"Customer Content" shall mean all items supplied by you or your Authorized Users for inclusion in, use in association with, or uploading to the ASP Services or the Software, including all program, data, or other software files, regardless of format, documents, text, pictures, photographs, graphics, video, animation, and sound recordings.

"Documentation" shall mean, with respect to any particular Software and ASP Services, any applicable standard end user specifications and/or operating instructions provided by the Company for such

Software and ASP Services, which may be amended from time to time. Documentation does not include any sales or marketing materials.

“Effective Date” shall mean the date on which you indicated your acceptance of this Agreement by executing and returning the Order Form to the Company.

“Software” shall mean the computer programs specified in the Order Form and all related files and Documentation, or any portion thereof, as may be amended from time to time and provided or made available by the Company to you or your Authorized Users under the terms of this Agreement.

“Upgrades” means linear improvements in functionality, amendments, enhancements, or changes (but not New Versions) of the Software or the Documentation issued by the Company and made available to you during the Term.

“New Version” means any release, option, or future product of the Software that the Company licenses separately.

15. GENERAL PROVISIONS

15.1 Order of Precedence. In the event a conflict arises between these TOS and the provisions of any Order Form, these TOS will govern unless the relevant Order Form expressly provides otherwise. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of this Agreement. This means that the terms and conditions of any purchase order or payment documentation will not be binding upon either party.

15.2 Severability. Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be construed (i) to have been modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and (ii) to give effect to the intent of the parties (including, without limitation, with respect to the economic effect of the Agreement), and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

15.3 Conflict Resolution. Except with respect to controversies or claims regarding either party’s Confidential Information or proprietary rights under this Agreement, in the event any controversy or claim arises in connection with any provision of this Agreement, the parties shall try to settle their differences amicably between themselves by referring the disputed matter to their respective designated representatives for discussion and resolution. Either party may initiate such informal dispute resolution by sending written notice of the dispute to the other party, and if such representatives are unable to resolve such dispute within thirty (30) days of initiating such negotiations, either party may seek the remedies available to such party under law. Notwithstanding the foregoing, nothing in this Section 15.3 will be construed to limit either party’s rights under Sections 9 and 15.7.

15.4 Governing Law. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of New Hampshire without reference to its conflicts of law provisions, and each party irrevocably submits to the non-exclusive jurisdiction of the courts in or for New Hampshire. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act shall not apply to this Agreement.

15.5 Modification and Waiver. No modification, amendment, supplement, or other change to this Agreement, including, without limitation, changes to any Order Form will be effective unless set forth in writing and signed by duly authorized representatives of the Company and you. No waivers under this Agreement will be effective unless expressly set forth in writing and signed by a duly authorized representative of the party against whom enforcement thereof is sought. The failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of such provision or right with respect to subsequent claims

(unless expressly so stated in a valid amendment or waiver), and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

15.6 Assignment. This Agreement and your obligations may be assigned by you in whole with the prior written approval of Company to an organization that would have the same fees and payment obligations as you and is not a competitor to Company. For the purposes of this **Section 15.6 (“Assignment”)**, a change in the persons or entities who control fifty percent (50%) or more of the equity securities or voting interest of your organization shall be considered an assignment of your rights. mElimu’s rights and obligations, in whole or in part, under this Agreement may be assigned by mElimu upon notice.

15.7 Remedies. The parties agree that any breach of sections 2, 6, 10, or 11 of this Agreement could cause irreparable injury for which no adequate remedy at law exists; therefore, the parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any breach or threatened breach of this Agreement, in addition to other remedies available to the parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Sections 9, 12 and 13. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its legal fees, court costs and other collection expenses, in addition to any other relief it may receive.

15.8 Notices. The Company may provide you with notices regarding changes to the TOS, by email, regular mail or postings on the Services or its webpages. Any other notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, sent by facsimile, or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed as set forth on the Sales Order From or to such other address as shall be given in accordance with this Section 15.8, and shall be effective upon receipt. You also understand and agree that the Software and/or ASP Services may include certain communications from the Company, including service announcements and administrative messages, and that these communications are considered part of your registration, and you will not be able to opt out of receiving them.

15.9 Force Majeure. Except with regard to payment obligations, neither party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, civil unrest, terrorist acts or inability to obtain any export or import license or other approval or authorization of any government authority.

15.10 Export Control. You shall not export or allow the export or re-export of the Software, any components thereof or any Confidential Information of the Company without the express, prior, written consent of the Company and except in compliance with all export laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, including without limitation, the Export Administration Regulations of the U.S. Department of Commerce Bureau of Export Administration (as contained in 15 C.F.R. parts 730-772), and, if applicable, relevant foreign laws and regulations.

15.11 Links. Some links on the Company websites lead to sites posted by independent site owners. Because the Company has no control over these sites, the Company is not responsible for such sites' accessibility via the Internet and does not endorse products, services, or information provided by such sites. As such, the Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with, use or reliance on you or any Authorized User or other content, goods, or services available on or through any other site. Further, the inclusion of these links does not imply that the other sites have given permission for inclusion of these links, or that there is any relationship between the Company and the linked sites. The Company is an independent operating company and reference to other companies do not imply any partnership, joint venture, or

other legal connection where the Company would be responsible for the actions of their respective owners.

15.12 Trademark Notice. Melimu, the melimu, and melimu.com, etc. are trademarks or registered trademarks of the Company, or one of its affiliates or subsidiaries, in the Republic of Kenya, Republic of India, Republic of Uganda, United States, and/or other countries. All other trademarks, service marks, trade dress, and logos used in the Company's websites and the Services are the trademarks, service marks, trade dress, and logos of their respective owners.

15.13 Interstate Nature of Communications. When you register with the Software and/or ASP Services, you acknowledge that in using the Software and/or ASP Services to send or store electronic communications (including but not limited to uploading photos and files, you will be causing communications to be sent through the Company or the Company's third party computer networks located in the United States and abroad. As a result, and also as a result of the Company's network architecture and business practices and the nature of electronic communications, even communications that seem to be intrastate in nature can result in the transmission of interstate communications regardless of where you are physically located at the time of transmission. Accordingly, by agreeing to this TOS, you acknowledge that use of the Software and/or the ASP Services results in interstate data transmissions.

15.14 Relationship. The Company and you are independent contracting parties. This Agreement shall not constitute the parties as principal and agent, partners, joint venturers, or employer and employee.

15.15 Entire Agreement. This Agreement, namely these TOS and the Order Form(s), constitutes the entire, full and complete Agreement between the parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and this Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter. This means that you may not and should not rely on any sales or marketing materials provided to it by the Company. The Company's only obligations to you related to the subject matter of this Agreement are set forth in this Agreement. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. Notwithstanding the foregoing, nothing in this Agreement shall exclude or restrict the liability of either party arising out of fraud or fraudulent misrepresentation. This Agreement, and any Order Form thereto, may be executed in counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument. Facsimile and electronically signatures will be considered original signatures and binding on the parties.

Please direct any questions or comments about the Software or ASP license to:

mElimu LLC

Attention: Legal Team

Email: askus@mElimu.com