

# Mobility Server Software License Agreement – Part I

## **Purchaser Information**

Company Name:  
Contact Name:  
Address:  
City/State/Zip:  
Phone Number: Fax Number:

## **Shipping Information** (If different)

Shipping Contact Name:  
Address:  
City/State/Zip:  
Phone Number: Fax Number:

## **Billing Information** (If different)

Billing Contact Name:  
Address:  
City/State/Zip:  
Phone Number: Fax Number:

## **Products**

The agreement provides license for the following number of users:

Quantity	Description	Purchase Amount
	Mobility Server User License AWS1048	
	Roaming License MS to MS AWS1047	

## **Services**

The Ascom® Wireless Solutions License Agreement provides the following services, for a period of thirty (30) days after delivery of the product, to the Ascom certified Mobility Server System Administrator(s) (MSSA):

- Free product UPDATES, which include performance improvements and minor enhancements. Product UPDATES are identified as changes to the version number to the right of the decimal for the version number, i.e., V3.30 to V3.31.
- Free correction patches, “bug fixes”. Correction patches may be identified in the release information, i.e., CR3.31.1.
- Free Product documentation updates.
- Free access to the Ascom’s Online Help Desk
- Toll-free access to Ascom’s Customer Service Center
- Free Technical Support as described under “MAINTENANCE” in Part II of this agreement.

A software maintenance agreement may be purchased to extend these services past the thirty (30) -day warranty period. Services not included in this agreement include certification, training, custom programming, development services, on-site support and/or hardware/network support.

## MOBILITY SERVER SOFTWARE LICENSE AGREEMENT - PART II

1. **DEFINITION:** In this maintenance agreement, "Product" means Mobility Server Software Application and related documentation.

### 2. USES OF PRODUCT:

The Customer is acquiring a license and may:

- Use the Product, to the extent as defined in Part II of this Agreement, for Customer's implementation of the Product for purposes of providing wireless communications.
- Make backup copies of the Product, provided that the Customer copies all copyright notices to the backup copies.

In addition to any limitations set forth in Part II, the Customer may not:

- Make or distribute any copies of the Product except for backup purposes and as described above.
- Resell, re-license or otherwise transfer electronic, magnetic or printed versions of content created with the Product to any other organization, company, individual, or agency.
- Rent, lease, sub-license, assign or otherwise transfer (except to another PBX purchased by the customer) the Programs or the Documentation or any portion thereof or.
- Translate, modify or create derivative works of the Product or attempt to create a product which is visually or functionally similar to the Product.
- Exceed number of licensed users as stated in the Purchase Order.
- Decompile the Programs, except to the extent permitted by compulsory law.
- Translate, adapt, rearrange or otherwise alter the Programs.
- Export the Licensed Programs to any country in the event export to such country requires an export license or other governmental approval, without first obtaining the relevant approval.

4. **TERMINATION:** If either party materially breaches this License and fails to cure such a breach within 30 days of receiving written notice of such breach, or if either party goes into liquidation (voluntary or otherwise) other than for the sole purpose of reconstruction, the other party shall have the right to terminate this agreement. Upon such termination the Customer will promptly return to Ascom Wireless Solutions all copies of the Product.

5. **RIGHT TO AUDIT:** Ascom Wireless Solutions or Ascom's agent has the right to audit Customer's implementation of the Product to ensure Customer's number of users does not exceed the number of valid, paid licenses.

6. **MAINTENANCE:** Upon delivery and thirty (30) days thereafter Ascom Wireless Solutions will make available telephone assistance for an Ascom certified Mobility Server System Administrator(s) (MSSA) to support the services offered in Part I of this agreement. Ascom Wireless Solutions' current support hours are Monday through Friday, 8:00 A.M. to 5:00 P.M., Eastern Time, excluding holidays observed by Ascom Wireless. Fault resolutions or enhancements that cannot be implemented by the Customers' Ascom certified Mobility Server System Administrator (MSSA) with the assistance of Ascom Technical Services will require a scheduled and billable site visit from an Ascom Wireless Solutions representative. Services do not include support of operating system programs or other third-party programs. Ascom Wireless Solutions will provide to the Customer one (1) CD-ROM copy of the Product licensed to the Customer of all improvements and enhancements to the Product (including corrected documentation) that Ascom Wireless Solutions makes generally available to other licensors of the Product (excluding, however, programs which Ascom Wireless Solutions makes generally available as a separate product) promptly after general release. The Customer may be required to license new versions of operating system programs or

additional third-party programs, or to upgrade the computer or peripherals on or with which the Product is used, in order to utilize improvements or enhancements. Ascom Wireless Solutions will provide one (1) CD-ROM copy of the Product licensed to the Customer of any updates necessary to cause the Product to be compatible with new versions of the operating system programs for which the original Product was licensed, if Ascom Wireless Solutions makes such updates generally available to other licensors of the Product. Services are available only for the most current version of Product generally available from Ascom Wireless Solutions and, for a period of six (6) months after the date of first general release of a new version, the immediately preceding version.

7. **WARRANTIES:** Ascom Wireless Solutions warrants to the Customer that: (a) Ascom Wireless Solutions has title to, or the authority to grant licenses or sublicenses (as the case may be), to the Product; and (b) the Product, as delivered by Ascom Wireless Solutions, will not infringe any copyright or intellectual property right of any third party. Subject to notification from the Customer, Ascom Wireless Solutions will defend the Customer against claims of third parties that the Product infringes that third parties' intellectual property rights and will pay all damages and costs finally awarded in any such suit or proceeding. Notwithstanding the foregoing, Ascom Wireless Solutions will have no liability for any claim arising out of the Customer's modification of the Product (except as described in the related technical documentation), the Customer's use of the Product with or on computers, peripherals, operating system programs or applications not supported by Ascom Wireless Solutions, or the Customer's use of other than the most current version of the Product if a non-infringing version has been made generally available by Ascom Wireless Solutions, if such claim would have been avoided but for such act or omission by the Customer. These remedies are the Customer's exclusive remedies for breach of the warranties specified in this paragraph.
  
8. **LIMITED WARRANTIES:** The Customer shall inspect the Product performance after installation during the acceptance period, and shall within 30 days of delivery, give notice to Ascom Wireless Solutions of any matter or thing by reason of which the Customer may allege the Product is not in accordance with the License, or defective in material or workmanship. In the event of the Product not being in accordance with the License, or being so defective, the Customer's sole remedy shall be limited to the replacement of faulty Product material. If, within ninety (90) days after the Customer's initial receipt of the Product, the Customer notifies Ascom Wireless Solutions in writing of a failure of the Product programs to perform in accordance with the related documentation, such failure being a failure that significantly affects the Product program performance, and if Ascom Wireless Solutions is able to reproduce the non-conformity, Ascom Wireless Solutions will (i) use reasonable efforts to correct the non-conformity and provide the Customer with one (1) copy of corrected Product files or (ii) provide workarounds for the error and provide an estimate of the time at which Ascom Wireless Solutions will be able to provide corrections. Ascom Wireless Solutions will use reasonable efforts to assist the Customer in repairing any Product data files that may have been damaged or lost as a result of such non-conformity. If, after a reasonable number of attempts, Ascom Wireless Solutions is unable to make the Product perform in all material respects in accordance with the related documentation, Ascom Wireless Solutions may elect to terminate this Agreement and refund the Customer all fees paid for in this agreement.

The remedies specified in each of the above paragraphs are the Customer's sole and exclusive remedies for the respective warranty stated in that paragraph.

9. **EXCLUSION OF OTHER WARRANTIES:** EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, ASCOM WIRELESS SOLUTIONS HEREBY EXCLUDES ALL

WARRANTIES, WHETHER EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY LAW INCLUDING ALL WARRANTIES AS TO FITNESS FOR PURPOSE AND SATISFACTORY QUALITY. IN PARTICULAR, BUT WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, ASCOM WIRELESS SOLUTIONS DOES NOT WARRANT THAT THE PRODUCT WILL MEET THE CUSTOMER'S REQUIREMENTS, OR WILL OPERATE IN COMBINATION WITH OTHER PROGRAMS THAT THE CUSTOMER SELECTS, OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE.

**10. NO LIABILITY FOR CONSEQUENTIAL OR OTHER DAMAGES:** IN NO EVENT SHALL ASCOM WIRELESS SOLUTIONS WIRELESS SOLUTIONS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THIS AGREEMENT, THE USE OF OR INABILITY TO USE MOBILITY SERVER PRODUCTS OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF ASCOM WIRELESS SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION ON DAMAGES IN THIS PARAGRAPH IS INDEPENDENT OF AND IN ADDITION TO OTHER PROVISIONS IN THIS AGREEMENT RELATING TO REMEDIES OR LIABILITIES AND SHALL BE ENFORCEABLE EVEN IF SUCH OTHER PROVISIONS ARE UNENFORCEABLE OR FAIL OF THEIR ESSENTIAL PURPOSE. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

**11. ASSIGNMENT:** This Agreement or the Product provided hereunder is not assignable by Customer without the prior written approval of Ascom Wireless Solutions.

**12. ENTIRE AGREEMENT:** This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. Any representation, promise, warranty, covenant or undertaking not expressly set forth in this Agreement shall not be deemed a part of the Agreement or otherwise legally effective.

**13. OTHER:** The Customer acknowledges that the Product is protected by copyright and that all right, title and interest in and to the Product is, and remains in, Ascom Wireless Solutions and its licensors, except for the right to use the Product in accordance with this Agreement. Ascom Wireless Solutions retains all rights not expressly granted, including all rights pertaining to its name and trademarks. Nothing in this Agreement constitutes a waiver of Ascom Wireless Solutions' rights under copyright law or any other law or international treaty.

This Agreement shall be governed by and construed in accordance with the State of North Carolina without giving effect to the principles of conflict of law thereof. To the extent permitted by applicable law, any actions brought by any party with respect to this Agreement shall be brought exclusively in state or federal courts located in Wake County, North Carolina, and each party hereto hereby consents to the personal jurisdiction of such courts.

By signing below, the parties accept the terms and conditions of this Agreement effective on the later of the dates below.

**CUSTOMER**

**Ascom Wireless Solutions, Inc.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date