# **SCHEDULE A2: Mobile Voice Recording (MVR)/ Message Capture Schedule**

### Definitions

* 1. In this Schedule the following words and expressions shall have the meanings set out below:

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| **“Active Recorded User(s)”** | means a mobile phone User currently activated for the Message Capture Services and/or Storage Services that has not been cancelled. |
| “**Availability**” | means, in relation to Mobile Voice recording:1. The continuity and ability of the voice recording system to make and record inbound/outbound calls.
2. The ability to successfully navigate to the landing page of the systems web interface.
 |
| “**Cloud**” | refers to the Kerv’s use of a remote Storage facility where the Mobile Call data may be stored. |
| **“Data”** | means the Customer’s data, including the data that may be considered as directly or indirectly personal data, where stored by Kerv in accordance with this Agreement and that can be viewed only by the Users. Data could represent Voice, SMS, Call details information and any and all related information including the information provided via the Mobile Capture Service. |
| **“Mobile Call”** | refers to the telephone calls and SMS made using a device that is recorded under this Agreement and provided to Kerv by the MNO. |
| **“Mobile Voice Recording” or “MVR”** | means the recording of Mobile Calls and SMS (Short Message Service) text messages from an Active Recorded User. For the avoidance of doubt, Kerv will only capture the Customer Data made available by the MNO; Movius Software and/or other third party providers such as Telemessage and Umony.  |
| **“Movius Software”** | means (i) the proprietary object code version of software of Movius installed on the Movius network, and accessed by the Customer and its User(s) via the software described in subsections (ii) and (iii) of this definition, (ii) a proprietary object code version of software of Movius comprising a client mobile application(s) which may be downloaded by Users from either the Apple Store or the Google/Android Store (each a “**Client Mobile Application**”); and (iii) a proprietary object code version of software of Movius installed on the User’s laptop or desktop. |
| **“Message/Messaging Capture”** | means the Software based Service using technologies and processes used to record and store messages from various messaging platforms, including SMS (Short Message Service), MMS (Multimedia Messaging Service) and WhatsApp messages as set out within this Schedule. |
| **“Mobile Network Operator”** or “**MNO”** | means a wireless service provider, wireless carrier, cellular company, or mobile network carrier. It is a provider of wireless communications services that owns or controls all the elements necessary to sell and/or deliver services to an end user including wireless network infrastructure, back haul infrastructure, billing, customer care and provisioning computer systems and marketing, customer care, provisioning and repair organisations. For the purposes of this Agreement, references to an MNO also include virtual mobile network operators, who operate a wireless communication network but do not own the network infrastructure.  |
| **“Retention Period”** | is the period of time that Data is stored or to be stored in accordance with an Order. |
| **“SIM”** | means the Subscriber Identity Module (SIM), which is a smart card inside a mobile device. [It carries an identification number unique to the owner, stores personal data, and prevents operation if removed](http://www.oxforddictionaries.com/us/). For clarification this definition shall also include e-SIMs. |
| “**SMS**” | means short message service, the service provided by a mobile operator that allows an end-user to exchange text messages using the dedicated application in the device. For clarification, SMS sent by the MNO in relation to operator settings are excluded from this definition. |
| **“Storage” or “Stored”** | means the recorded calls retained for the Retention Period. Calls will be stored in the Cloud or at the Customer site, as agreed by the Parties. |
| **“Storage Services”** | means the storage facility services whereby User Data is Stored for the Storage period. |
| **“User”** | means the individual(s) capable of utilising, engaged in the use of and/or receiving a Service under the Customer’s responsibility, who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2 and other sections of this Agreement. For clarification an individual will be considered a ‘*User*‘ irrespective of whether such individual(s) are employees, agents and/or independent contractors of the Customer or a customer of the Customer, where the Customer has provided access to other entities.  |

### Overview of Services

* 1. Mobile Voice Recording may be provided on a SIM or a Software basis, dependent on the third party provider utilised; whereas Messaging Capture is a Software based Service.
	2. Kerv may provide access to the Messaging Capture Service via various different means residing on the Customers devices for example, using native messaging applications for example WhatsApp, WeCom, iMessage etc; or via dedicated applications developed by Kerv’s third party providers (for example Movius, LeapXpert, Telemessage).
	3. In the event the Customer procures SIM based recording, no applications or software are required for the MVR. The MVR Service requires a SIM to be provided by the appropriate MNO.
	4. Where a software application (for example services provided by the Supplier’s third party provider Movius) is utilised this will enable users to call, text, or send WhatsApp messages on a secure, dedicated business number. This service may include both Mobile Voice Recording and Message Capture.
	5. Storage Services may be procured by the Customer and access to the Storage facility provided, which unless specified otherwise, will be stored on the Cloud as specified in the Order. Kerv will host the Storage Services within our Cloud, unless otherwise stated and agreed on the Order.
	6. The Customer hereby acknowledges and agrees to be responsible for all use of the Services by its employees, Users, contractors and/or any other party operating under the direction of the Customer and Active Recorded Users with any relevant terms and restrictions set out in this Agreement.
	7. From time to time during the Term, the Customer may purchase additional Services from Kerv by submitting one or more Orders for Services, each will be subject to Kerv’s acceptance. Any ad-hoc Mobile Voice Recording (MVR) and/or Messaging Capture Services performed under or in relation to this Agreement, shall be deemed to incorporate these terms and conditions.

### Term & Termination

* 1. The Initial Term applied to all the Services procured under this Schedule shall be three (3) years commencing from the Service Commencement Date, save where otherwise stated in an Order. Where the Customer receives Movius Software, the term of any license to a Client Mobile Application, will begin upon the date of download by the Customer and or its User(s) or other form of delivery of the Client Mobile Application and will remain in effect thereafter until the associated Order expires.
	2. After the Initial Term this Agreement will be renewed for a Renewal Term, commencing on the immediate date following the Initial Term (the “**Renewal Date**”).
	3. After termination of an Order and/or this Agreement, the Customer may:
		1. elect to terminate only the Mobile Voice Recording and Messaging Capture Services, whilst continuing to receive Storage Services of the Data contained in the Cloud, in accordance with these terms and conditional upon payment of the Charges stipulated in the Order. For the avoidance of doubt, unless expressly agreed otherwise, the storage of data shall not exceed seven (7) years; or
		2. terminate the Mobile Voice Recording and Messaging Capture Services, whereby the Customer shall remove or delete all Data from the Cloud prior to the termination date. Should the Customer fail to remove or delete all Data from the Cloud prior to the termination date, Kerv will, in its sole discretion:
			1. invoice the Customer for Storage Services in accordance with the agreed Charges or where such are not outlined in accordance with Kerv’s then standard fees; or
			2. delete the Data from the Cloud upon sixty (60) days’ notice, pursuant to clause 10 (Data Protection) of this Agreement.
	4. Notwithstanding paragraph 3.3 above, where the Customer procures Services ultimately delivered by the third party Movius, any termination of this Agreement or an Order form, as a result of a material default will automatically terminate any outstanding Movius Services, save where otherwise agreed in writing.
	5. For the avoidance of doubt, Kerv shall be entitled to invoice the Customer for (i) Storage Services during the sixty (60) day notice period; and (ii) all reasonable costs relating to the secure deletion or removal of the Data.

### Special Terms

* 1. Prior to any use of the Services the Customer hereby fully agrees to act in accordance with and fully adhere to the Suppliers third party terms of use and/or End User Licence Agreement (“**EULA**”). The Customer hereby indemnifies Kerv against any third party claims arising as a consequence of the Customer not acting in accordance with the third party terms of use and/or EULA. The terms of use for the Services set out in this Schedule shall be pursuant to the various EULA and terms of services, as set out in the links provided within this Schedule.
	2. The Customer hereby acknowledges and agrees that in using any Service provided from Kerv’s third party suppliers pursuant to this Schedule, the following terms shall apply (as appropriate and/or applicable):
		1. Telemessage: [Terms of Service](https://www.telemessage.com/terms-conditions/);
		2. Umony: [Terms of Use](https://www.smarsh.com/legal-docs/ServiceSpecificTerms-Umony-v0620.pdf);
		3. Movius: [Terms of Service](https://us.moviuscorp.net/login/tandc);
		4. LeapXpert: [Terms of Service](https://www.leapxpert.com/terms-of-service/);
		5. WhatsApp: [Terms of Service](https://www.whatsapp.com/legal/terms-of-service/?lang=en)
		6. We Chat: [Terms of Use](https://www.wechat.com/en/service_terms.html)
		7. Signal: [Terms of Use](https://signal.org/legal/#terms-of-service)
		8. Telegram: [Terms of Use](https://telegram.org/tos)
		9. Line: [Terms of Use](https://terms.line.me/line_PC_terms)
		10. Apple iMessage: [Terms of Use](https://www.apple.com/legal/sla/)
	3. The Customer acknowledges where they breach either the terms of use and/or the EULA, such will be deemed a material breach of this Agreement and such breach may result in the termination of the Services provided by Kerv’s the third party supplier.
	4. In the event the Customer seeks to evaluate Software provided by Kerv’s third party supplier Umony, such evaluation will be identified as a Proof of Concept (“**POC**”), Kerv shall facilitate the evaluation the Software. The POC shall involve Kerv providing an evaluation licence free of charge to the Customer, for a maximum period of forty five (45) days (the “**POC Period**”); to enable such evaluation. In the event, the Customer continues to use the evaluation licence post the POC Period, such use may incur Charges.
	5. Kerv shall have the right to modify, alter or improve any or all of the Services and shall have the right to discontinue specific Services. Written notice shall be given to the Customer at least forty five (45) days prior to the discontinuation of a Service.
	6. Kerv may periodically issue upgraded versions of Software which add new features and/or functionalities.
	7. In the event the Customer receives Movius Software Services; the following additional terms and conditions shall apply:
		1. The User(s) are required to download from the Apple store or the Google/Android store (or received from via another method) the Client Mobile Application needed for such Users to access and use the Software Services from their mobile device, and via the EULA posted in the Apple Store or the Google/Android Store, an example provided in paragraph 4.2.3, for the term of the subscription Services.
		2. All rights in a Client Mobile Application not expressly granted in this Schedule, or in the applicable EULA, are reserved to Kerv, as applicable;
		3. All use of the Movius Software and the subscription Services will be solely in accordance with any applicable Documentation provided by Kerv;
		4. the Movius Services may require Kerv or its third party providers to advise the Movius third party providers of the Customer’s name, address and/or with a copy of this Agreement;
		5. Customer agrees to be audited by Kerv or its third party provider (Movius) for compliance with the terms of this Agreement and the terms of the EULA, with reasonable prior notice, and Customer agrees to such disclosure and audit rights, unless the disclosure is prohibited by law and/or any governmental authority.
		6. Customer is prohibited from private‑labelling the Services unless Movius agrees to such private‑labelling.
		7. Customer shall have sole responsibility for (1) providing Kerv and its third party supplier with remote access to Customer’s network to allow Kerv to establish and maintain communications between Customer’s network and the Movius network and to troubleshoot technical issues remotely; and (2) all costs, expenses and deployment of any interconnection, installation and testing necessary to permit Customer to connect to and receive the subscription Services.
		8. The subscription Services (as accessed via a Client Mobile Application) is not intended to support or carry emergency calls to any type of hospitals, law enforcement agencies, medical care unit or any other kind of services that connect a user to emergency services personnel or public safety answering points (“**Emergency Services**”). Access to Emergency Services are provided through the User’s primary traditional wireless (mobile) SIM on the mobile device only. If a User attempts to place an emergency call, using the subscription Services, via the local emergency number, the subscription Services will dial the Emergency Services call using the User’s traditional wireless (mobile) service, if the User has such service activated. The Customer acknowledges and agrees that: (a) it is each User’s responsibility to purchase, separately from the subscription Services, traditional wireless (mobile) services that offer access to Emergency Services, and (b) the subscription Services are not a replacement for the User’s primary telephone service to access Emergency Services.

### Major Version Upgrades

* 1. Kerv shall inform the Customer of new versions and shall offer to license such new versions to the Customer on the terms on which they are generally made available to Kerv.
	2. Kerv will provide the Customer with maintenance releases generally made available by its suppliers.
	3. If the Customer fails to install or permit installation of a maintenance release within one (1) month of Kerv notifying the Customer that such maintenance release is available for installation, Kerv shall have no liability in respect of any issues that arise out of use of the Software that would have been remedied by installing such maintenance release.
	4. Subject to paragraph (below) if Kerv make the Customer aware of any new version releases and the Customer decides not to acquire and permit installation of such new version, that decision shall not give rise to any right to terminate this Agreement.
	5. If Kerv has released a new version and the Customer has not, within twelve (12) months of Kerv having notified the Customer that a new version is available, acquired and permitted installation of that new Version, Kerv may refuse to provide support or maintenance of the Customer’s version of Software.

### Implementation Services

* 1. Any delivery dates for the implementation Services are estimates only and Kerv does not warrant the delivery schedule or accept any liability for late delivery. Kerv and/or its third party providers shall notify the Customer once they can access the Service. The date of such notification is referred to as “**Cutover**”.
	2. Within ten (10) Business Days of Cutover, such period known as the “**Acceptance Period**” occurring separately for each Order, the Customer shall validate that the Services substantially conforms to the relevant Order. The Customer shall be deemed to have accepted the Services if the Customer makes active use of the Services. Where the Customer fails to accept the Services within the Acceptance Period by providing written notice that the Mobile Voice Recording and/or Messaging Capture Services, failed to substantially conform to the Order (a “**Notice of Defects**”).
	3. Upon Kerv receiving a Notice of Defects within the Acceptance Period, Kerv shall make commercially reasonable efforts to:
		1. determine the source of the issues identified by the Notice of Defects; and
		2. if
		3. to the extent Kerv can reproduce or the Customer can demonstrate the issue, and
		4. the issue arises from a failure of the Services to substantially conform to the Order, Kerv will (at its discretion):

(A) repair the Services at which time a new Acceptance Period will commence in accordance with this this Schedule; or

(B) if repair is not commercially practicable, accept the cancellation of the defective Service and refund the Charge to the Customer.

* 1. Upon Kerv completing its obligations this shall be the Customer’s sole and exclusive remedy for the Service’s failure to substantially conform to the Order.
	2. The Customer shall ensure any other adjunct equipment or inter-operability requirements are met to enable and facilitate the Services procured within an Order (for example SIMs where a Software based Service is procured).
	3. If the Customer has failed to perform the Customer Obligations (as set out within this Agreement) or any third party (other than a Kerv supplier or sub-contractor) over whom Kerv has no control causes any delay in the implementation Services which results in Kerv being exposed to additional third-party costs; Kerv may make an additional Charge to the Customer to cover such additional costs.

### Service Level Agreement

* 1. The support Service offering for the Services identified within this Schedule shall be in accordance with this paragraph 7, and will be delivered to the Customer where procured and agreed in an Order.
	2. The following Service Levels (described in table 7.3) are target Service Levels whereby Kerv will use reasonable endeavours to meet such.
	3. The Customer hereby agrees in the event of any Priority 1 classified Incident, such shall be alerted to Kerv (as soon as known or reasonably aware) via phone call to:
		1. UK Toll free: 08081 642 094
		2. International: +44 2038 924 551
	4. The following table 7.3 provides the associated severity levels associated with an Incident:

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| **Severity Levels** | **Severity Description** | **Target Response Time** | **Target Resolution Time** |
| Priority 1 | An issue that has a severe impact on business or operations such that all Services are unavailable and/or or causing severe data loss or corruption. A critical issue would impact the entire platform and all users associated within it. | 15 minutes | <5 hours |
| Priority 2 | Disruption of system functionality or degradation of system performance in a production environment but not to the extent that the usability of the licensed software by all users is severely adversely affected and this significantly impacts the Customer’s business operations. | 30 minutes | <24 hours |
| Priority 3 | Minor or cosmetic error with no serious adverse impact on the usability of the licensed Software. | 120 minutes | 3 Business Days |
| Priority 4 | Error not affecting normal business operations. | 240 minutes | 5 Business Days |
| Reporting | Incident report/root cause analysis document. | 2 Business Days(Pre-liminary Incident report) | 7 Business Days(Final Incident report) |

### Customer’s Obligations

* 1. The Customer shall, take whatever steps necessary or advisable to ensure the Site remains in a suitable condition to allow the Implementation Services to progress in accordance with the agreed dates. This to include the provision of any required virtual infrastructure.
	2. The Customer shall obtain all permissions, licences and consents necessary for the Implementation Services at Customer Sites, and/or any other work to be carried out by Kerv. Kerv shall advise the Customer in writing if at any time Kerv become aware of any requirement for the Customer to have any such permission, licence or consents.
	3. The Customer shall at all times:
		1. conclude and maintain a valid contract with an MNO;
		2. ensure that all Active Recorded Users conduct all calls using a device with a SIM that has been enabled for the Services;
		3. ensure that the MNO operates and maintains a mobile network that is compatible with the Services;
		4. ensure all Users are adequately trained in the use and operation of the Services; Kerv will (where procured) provide the training for same;
		5. ensure that the equipment on which any User intends to access and use the Message Capture Services and its related operating environment (including mobile devices and browsers); is suitable for such access and use as described in this Agreement and/or the Order;
		6. obtain, as required by law or in accordance with the Customer’s regulatory requirements, any necessary permission, license or other necessity for the use of the Services, and/or their use by the Customer or other third party to comply with any and all laws, and regulations which may be applicable to the use of the Services or related to the Service and/or material provided by Kerv to the Customer; and
		7. comply with the Service licence terms whether set out within this Agreement, the supporting Documentation and/or an Order.
	4. Kerv shall not be liable for a failure to provide the Services due to a failure of the Customer to comply with the responsibilities set out in this Agreement. The Customer’s failure to perform its obligations under this Agreement, in a timely manner may result in additional charges.
	5. The Customer shall be solely responsible for the content of both the voice and/or data transmitted and/or carried through the resources/Services provided by Kerv. The Customer shall use the voice and/or data transmitted and/or carried in accordance with all applicable statutory or regulatory rules, regulations and guidelines. The Customer shall not use the Services for sending any data and/or messages which is/are in violation of any Applicable Law. The Customer shall be solely and wholly liable and responsible for any breach of the aforesaid obligation(s) and Kerv shall have no liability arising from such breach.

### Warranties

* 1. The Customer warrants that it will not, and will ensure that it’s Users do not:
		1. transfer to any other person or entity any of its rights to use the Services;
		2. sell, rent, sublicense or lease the Services;
		3. create any derivative works based upon the Services;
		4. copy any feature, function, design or graphic in, or reverse engineer or decompile the Services other than as expressly permitted by law;
		5. access or use the Services in order to compete with Kerv or to assist someone else to compete with Kerv;
		6. use the Services, or permit its use, in a way that violates any law or regulation;
		7. record, upload, store or stream any Data in or via the Services which Kerv reasonably considers is defamatory, threatening, abusive, offensive, infringing, discriminatory or otherwise unlawful;
		8. upload, install, program or include any virus in the Services;
		9. allow anyone to use the Services (or any part of it) other than Users; or
		10. obscure, amend or remove any copyright notice, trademark or other proprietary marking on, or visible during the operation or use of, the Services.
	2. In relation to the Active Recorded Users, the Customer undertakes that it can add Users at any time and that irrespective of when a User is added to the Service, the Customer shall be liable for all Charges in relation to the User.

**Mobile Voice Recording (Application based Services only)**

* 1. Kerv represents to the Customer that it will use commercially reasonable efforts to ensure that the Software does not contain any “time‑bombs,” “worms,” “viruses,” “Trojan horses,” “protect codes,” “data destruct keys” or other programming devices or code that might, or might be used to, access, modify, delete, damage, deactivate or disable any of Customer’s software, computer hardware, or data.
	2. Kerv does not make any warranty as to the results that may be obtained from the use of the subscription Services or Software or as to the accuracy or reliability of any information obtained through the subscription Services or the Software.

### Security

* 1. The Customer acknowledges that this Service will record all actions and changes made by registered Users onto a retrievable audit trail.

### Charges

**Mobile Voice Recording Charges (SIM based Services only)**

* 1. The Charges invoicing profile applicable to the Services, shall be as set out within the Order form.
	2. The set up Charges for the number of Users (as set out in the Order) will be invoiced up to thirty (30) days post the Cutover. The invoice shall be in arrears for 100% of the set up Charges, as set out in the Order form. Any additional Users will incur a set up Charge and attract a recurring Charge.
	3. The Charges associated with the Users stated in the Order form is the Minimum Commitment. Irrespective of whether the Services are fully used or not, the Minimum Commitment shall be due and payable.
	4. Any additional User added above the Minimum Commitment of Users, shall be invoiced (monthly in arrears), at the same Charge set out on the Order form, commencing from the month post the go live date for the additional users. For clarification, where additional Users are added, the invoice for such shall be captured within the same invoice as that for the Minimum Commitment.
	5. Kerv will receive a monthly report detailing the number of active recorded numbers in the previous month. For the purpose of invoicing, each of these shall be considered as an Active Recorded User and will incur Charges as such, irrespective of whether the User was active for part of the month.

**Mobile Voice Recording Charges (Application/Software based Services only)**

* 1. All Charges paid by the Customer for Services are nonrefundable.
	2. The preceding paragraphs (11.1 - 11.4) shall apply equally to the MVR (application based Services) save for the amendments below:
		1. Pursuant to paragraph 11.4, any additional Users added above the Minimum Commitment shall be invoiced as set out in an Order form and/or the associated Documentation.
		2. Paragraph 11.5 will not apply to all MVR application based Services.

**Messaging Capture Services**

* 1. Set up Charges shall be invoiced upon the Order forms signature, unless otherwise set out in the Order form.
	2. Recurring Charges shall be payable annually in advance from Cutover, unless otherwise set out in the Order form.
	3. Any Overage Charges shall be payable in arrears.
	4. The preceding paragraphs (11.1 - 11.4) shall apply equally to the Message Capture Services, save for the amendments below:
		1. Pursuant to paragraph 11.4, any additional Users added above the Minimum Commitment shall be invoiced as set out in an Order form and/or the associated Documentation.
		2. Paragraph 11.5 will not apply to all Message Capture Services.

### Cease Notification Process

* 1. Subject to the Data Protection provisions set out in this Agreement, in the event the Customer ceases a Service as a whole, Kerv shall remove all data from its systems in relation to the Customer and the Service within six (6) months of the agreed cease date. In the event, the transition of data is required by the Customer, such may be subject to a management fee to continue storage of the data and a transition fee for such.

### Sale/Supply of Goods

* 1. Where Customer procures goods (including adjunct items), from Kerv the following provisions shall apply:
		1. In the event the goods are agreed to receive support and/or maintenance Services and no Service Commencement Date is identified on the Order, for the commencement of such Services; the date upon which support and/or maintenance Services commence shall be the Service Commencement Date, on a per item basis. For clarification each deliverable may have differing Service Commencement Dates.
		2. Goods not supplied by Kerv will only be taken into support upon Kerv confirming such is possible and upon Kerv’s maintenance acceptance tests being completed.
		3. Any delivery dates for goods are estimates only and Kerv does not warrant the delivery schedule or accept any liability for late delivery.
		4. Kerv shall supply, install and configure the goods as set out in an Order.
	2. Where any goods becomes End of Life, the Customer agrees that Kerv shall at its option: (a) cease support on such goods after serving reasonable notice to the Customer; or (b) continue to provide support on a reasonable endeavours basis. Where such support continues, replacement items will only be provided where Kerv has such in stock. In no event will enhancements, upgrades or new software be provided on such items, unless otherwise agreed.
	3. The Customer agrees that any Service Levels shall not apply to such goods that become End of Life.

End.