

MASTER SERVICES AGREEMENT
MOBILE COMMONS, LLC

This Master Services Agreement, including each Schedule or attachment hereto (collectively, the “**MSA**”), is between [CUSTOMER NAME] a [STATE] [TYPE OF COMPANY (e.g. corporation)], (“**Customer**”), and Mobile Commons, LLC (“**Mobile Commons**”). This MSA sets forth the general terms and conditions applicable to the Applications and Services provided by Mobile Commons to Customer. The details of Customer’s purchase of specific Applications and/or Services shall be set forth in a Sales Order, and upon execution by the parties, each such Sales Order shall be made subject to this MSA (each Sales Order together this MSA, an “**Agreement**”). The Agreement is effective as of the date the first such Sales Order was agreed to by the parties (the “**Effective Date**”). By agreeing to a Sales Order made subject to this MSA, Customer and Mobile Commons agree to be bound by the terms and conditions of this MSA.

TERMS AND CONDITIONS

1. DEFINITIONS

1.1. “**Agreement Term**” has the meaning set forth in Section 5.1, below.

1.2. “**Application**” means any software program, platform, solution suite supplied by Mobile Commons and identified in the applicable Sales Order.

1.3. “**Customer Data**” means the data, information or other content, in any form, that is loaded into an Application by or on behalf of Customer (or generated by the Application based on such information, data or content) for storage in Customer’s Instance. For the avoidance of doubt, Customer Data includes, without limitation, the following: (a) all data that is the output of Processing; (b) any copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, or otherwise derived from any Customer Data; (c) any Personal Data forming part of the Customer Data; and (d) any Customer Data generated or supplied by Customer’s subscribers, customers, or partners.

1.4. “**Documentation**” means documentation provided by Mobile Commons which describes the principles of the operation or functionality of the applicable Application, including, but not limited to, any such files that are embedded within such Application (e.g., help files).

1.5. “**Enhanced Support Services**” has the meaning set forth in the applicable Schedule.

1.6. “**Entitlements**” means the license or usage metrics and other restrictions or scope limitations applicable to Customer’s rights to any Application or Services, as detailed in this MSA and the applicable Sales Order (e.g., numbers of Users, volume of messages, the Subscription Term, etc.).

1.7. “**Intellectual Property Rights**” means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

1.8. “**Instance**” means any database provided by Mobile Commons in connection with the Services for Customer to store and manage the Customer Data.

1.9. “**Personal Data**” means any information relating to an identified or identifiable natural person.

1.10. “**Process**” or “**Processing**” means any operation or set of operations which is performed on Customer Data or on sets of Customer Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.11. “**Sales Order**” means any mutually agreed, written sales order, statement of work or similar document referencing and made subject to this MSA, executed on behalf of Mobile Commons and Customer, including its exhibits and addenda, detailing the Services, fees, and any special terms for using the Services that Customer has ordered. Each Sales Order becomes effective when executed by both Mobile Commons and Customer and is made part of this MSA as detailed in the preamble, above.

1.12. “**Schedule**” means the document attached hereto and identified as a “Schedule” which supplements this MSA and sets forth additional terms and conditions specific to the particular Application(s) or other Services to be provided by Mobile Commons. Such additional terms and conditions are incorporated into this MSA as if such terms were fully set forth herein.

1.13. “**Services**” means Mobile Commons’ provision of any Application, Subscription Services, Support Services and/or Professional Services, collectively.

1.14. “**Subscription Fees**” means any fees relating to Subscription Services (including fees for exceeding the Entitlements).

1.15. “**Subscription Services**” means the Services offerings to which Customer subscribes during a Subscription Term, otherwise subject to the Entitlements.

1.16. “**Subscription Term**” means the period of time in which Customer has the right to use or receive Subscription Services as detailed in the applicable Sales Order.

1.17. “**Support Services**” means availability, ongoing maintenance and technical support services provided by Mobile Commons for the applicable Application or Service in accordance with the maintenance and support terms detailed in the applicable Schedule.

1.18. “**Users**” means individuals authorized by Customer to use the applicable Application or Services subject to the Entitlements and who have been supplied Mobile Commons-issued user identifications and passwords by Customer. “Users” may include, but is not limited to, Customer’s, and any Customer’s Affiliate’s, employees, consultants, contractors and agents.

2. OWNERSHIP

2.1. The Services. Except for the rights and licenses provided hereunder, as between Mobile Commons and Customer, Mobile

Commons and its licensors retain all right, title, and interest to: (i) all software, products, works, and other intellectual property created, used, or provided by Mobile Commons for the purposes of the Agreement, including, but not limited to, each Application, the Services and all Documentation; and (ii) all modifications, adaptations and derivatives of, and improvements to, each Application, the Services and all Documentation. Customer shall and hereby makes all assignments necessary to provide Mobile Commons such ownership rights. Customer's sole right to the Services is as set forth in the Agreement.

2.2. Customer Data. All rights, title and interest in and to Customer Data are and shall remain the property of Customer. Customer understands that certain of Mobile Commons' Applications will not function absent Customer Data, and as such, Customer shall provide Mobile Commons, in the form and format and on the schedule specified by Mobile Commons, Customer Data and other information reasonably required for Mobile Commons' performance of its obligations under the Agreement. Subject to the terms of the Agreement, Customer hereby grants to Mobile Commons throughout the term of the Agreement (and after the term solely as reasonably necessary for the performance of Mobile Commons' post-termination obligations to Customer) the rights to use, reproduce, store, distribute, modify, cache, and transmit Customer Data via the applicable Application solely to the extent necessary for Mobile Commons to provide the Services or otherwise perform its obligations under the Agreement.

2.3. Improvements Feedback. If Customer provides any feedback to Mobile Commons concerning the functionality and performance of any Application or Services (including identifying potential errors and improvements) (the "**Improvement Feedback**"), Customer hereby assigns to Mobile Commons all right, title, and interest in and to such Improvement Feedback, and Mobile Commons is free to use that Improvement Feedback without payment or restriction and it shall be deemed to be a derivative work of the Application or Services. Improvement Feedback expressly excludes Customer Data. Additionally, Mobile Commons may use Customer's and its Users' Services usage history, statistics and telemetry ("**Enhancement Data**") solely for Mobile Commons' internal analytical purposes related to its provision of Services, including to improve and enhance the Services. Mobile Commons may make information derived from its analysis of Enhancement Data available to its service providers on an aggregated and anonymized basis, provided that such information does not contain any Personal Data. For the sake of clarity, aggregated and anonymized data is not Confidential Information of Customer.

3. PAYMENT AND FEES

3.1. Sales Orders; Fees. Customer shall pay Mobile Commons the fees specified in the applicable Sales Order, taxes, and any other amounts owing under the Agreement in the currency specified in the applicable Sales Order. Except as otherwise expressly provided in this MSA or the applicable Sales Order, all amounts payable to Mobile Commons under the Agreement are: (i) subject to the Entitlements; and (ii) non-cancellable and non-refundable. With regard to Subscription Services, Customer shall not be entitled to any refund of fees paid or relief from fees due if the volume of Entitlements actually used by Customer is less than the Entitlements purchased, and Customer may not carry over any of the unused Entitlements to a subsequent Subscription Term.

3.2. Modifications to Entitlements. Customer may, from time to time during the Agreement Term elect to purchase rights to exceed some or all of the Entitlements (e.g., increases to the number of Users, purchases of additional messaging volume, etc.) by providing Mobile Commons with a purchase order issued against and referencing the then-current Sales Order, or, upon Mobile Commons' request, by entering into a supplemental Sales Order with Mobile Commons; provided, however, that Customer

acknowledges that certain Applications may not allow an increase of some or all elements of the Entitlements.

3.3. Invoices and Payment Terms. Subject to Section 4.4 (*Disputed Invoices*), Customer shall pay all amounts due within thirty (30) days of the date of the applicable invoice. Unless otherwise specified in a Sales Order, fees for Services shall be invoiced annually and in advance. Further, Customer acknowledges and agrees that fees for renewals of Subscription Services are due on the first day of the renewing Subscription Term and shall be invoiced in advance as set forth above. Fees for additional Services or modifications to the Entitlements shall be invoiced upon Mobile Commons' receipt of Customer's request for such purchase. Subject to Section 4.2 (*Modifications to Entitlements*), where modifications to Entitlements to Subscription Services are purchased by Customer during an active Subscription Term, such fees shall be pro-rated for the remainder of such Subscription Term. Customer may provide Mobile Commons with a purchase order number or contract control number ("**Order Number**") for invoicing for Services purchased under the Agreement. Where Customer provides such Order Number, Mobile Commons agrees that it will provide the Order Number on each invoice and that no invoice will be considered validly submitted under this Agreement without such Order Number. Whenever a purchase order is issued by Customer as provided herein, the parties agree that any such issuance is for convenience of the Customer and the terms and conditions of any such purchase orders, if any, are superseded by this MSA.

3.4. Disputed Invoices. If Customer reasonably and in good faith disputes all or any portion of any invoice, Customer shall notify Mobile Commons in writing of its objection within twenty (20) days from the date of the applicable invoice, providing a detailed description of the reasons for the objection, and shall pay the portion of the invoice, if any, which is not in dispute. If Customer does not object in a timely manner, the amount invoiced shall be conclusively deemed correct by the parties.

3.5. Late Payments. Mobile Commons shall notify Customer in writing, which may be by email, of any undisputed invoice which is thirty (30) or more days past due. In the event Customer has not promptly cured such default, then Mobile Commons may, on not less than five (5) business days' prior written notice to Customer, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of Mobile Commons' obligations to provide Services under the Agreement. In the event of Customer's default in the payment of any undisputed invoice(s) for a period in excess of sixty (60) days past due, Mobile Commons may, upon not less than ten (10) business days' prior written notice to Customer, declare the entire principal sum payable under the Agreement immediately due and payable. Further, Customer shall reimburse any costs or expenses (including, but not limited to, collection agency fees, reasonable legal fees and court costs) incurred by Mobile Commons to collect any undisputed amount past due. Amounts due to either party under the Agreement may not be withheld or offset by either party for any reason.

3.6. Taxes. Customer shall be responsible for any applicable sales, value-added, use and similar taxes, together with all customs and import duties, and similar levies and impositions ("**Taxes**") payable with respect to its acquisition of Services, or otherwise arising out of or in connection with the Agreement, other than taxes based upon Mobile Commons' personal property ownership or net income. Unless expressly specified otherwise in any Sales Order, all fees, rates and estimates exclude Taxes. If Customer has tax-exempt status, Customer shall provide written

evidence of such status with its Sales Order(s) or upon request by Mobile Commons.

4. TERM, RENEWAL AND TERMINATION

4.1. Agreement Term. This MSA shall commence upon the Effective Date and continue until each Sales Order has expired or is otherwise terminated in accordance with the Agreement (the "Agreement Term").

4.2. Subscription Term. Where Customer elects to purchase Subscription Services, the Subscription Term for such Subscription Services shall commence on the subscription start date specified in the applicable Sales Order and shall continue for the period(s) specified therein. In the event such start date or period is not specified in the Sales Order, the Subscription Term shall be one (1) year from the date of execution of such Sales Order.

4.3. Termination for Breach. In the event of a material breach of the Agreement by either party, the non-breaching party may elect to terminate the Agreement, any Sales Order (or portion thereof) affected by the breach by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. If the breach has not been cured within the period ending thirty (30) days after such notice, and if the non-breaching party provides written notice of termination to the breaching party ("Termination Notice"), then the Agreement, or any such Sales Order, shall terminate within the time period specified in the Termination Notice. If Customer terminates the Agreement or any Sales Order for breach in accordance with this Section 5.3, then Mobile Commons shall refund to Customer a pro-rata amount of any affected Subscription Services fees prepaid to Mobile Commons and applicable to the unutilized portion of the Agreement Term for the terminated Agreement, and any affected unutilized Professional Services fees prepaid to Mobile Commons. For the avoidance of doubt, Customer's failure to pay any overdue, undisputed fees within thirty (30) days of Mobile Commons notifying Customer of the overdue payment shall constitute a material breach of the Agreement.

4.4. Termination for Convenience. The parties acknowledge and agree that Subscription Services are priced based on upon minimum commitments throughout the applicable Subscription Term and, notwithstanding anything to the contrary in the Agreement, may not be terminated for the convenience of either party.

4.5. Suspension for Critical Threats. If Mobile Commons, acting reasonably in the circumstances then known to Mobile Commons, determines that Customer's or any of its Users' use of the Services poses an imminent threat to: (i) the security or integrity of any Customer Data or the data of any other Mobile Commons customer; or (ii) the availability of the Application to Customer or any other Mobile Commons customer (each, a "Critical Threat"), then Mobile Commons shall immediately notify Customer in writing, which may be by email. Mobile Commons may suspend Customer's and its Users' use of the Application until the Critical Threat is resolved. Mobile Commons shall cooperate with Customer to promptly restore access to the Services once it verifies that Customer has resolved the condition giving rise to the suspension.

4.6. Transition Assistance. Following the termination or expiration of a Sales Order, provided Customer makes a written request within fourteen (14) days prior to the date of termination or expiration, subject to the then-current Professional Services fees on a time and materials basis, Mobile Commons shall offer transition assistance (which may include, to the extent practicable, an export of Customer Data from the applicable Application or Instance). To the extent Mobile Commons makes available to Customer an API or other means to assist with such transition, the

API shall be Mobile Commons' Confidential Information (as defined in Section 6.1, below), and Customer is granted a personal, non-sublicensable, non-exclusive, non-transferable, limited license to use the API solely for Customer's internal use for exporting Customer's content from Mobile Commons to the new Customer system. Customer shall not (a) copy, rent, sell, disassemble, reverse engineer or decompile (except to the limited extent expressly authorised by applicable statutory law), modify or alter any part of the API, or (b) otherwise use the API on behalf of any third party. The API license shall automatically terminate in the event Customer breaches this Section 5.6 or immediately upon notice from Mobile Commons.

4.7. Survival. Sections 2 (Ownership), 4.1 (Fees), 4.3 (Invoices and Payment Terms), 4.5 (Late Payments), 4.6 (Taxes), 5.6 (Transition Assistance), 5.7 (Survival), 6 (Confidentiality), 8.5 (Bugs and Abatement; Scope), 8.6 (Disclaimer of Implied Warranties), (Mobile Commons Disclaimers), 9 (Indemnification), 10 (Limitations and Exclusions of Liability), 11 (Dispute Resolution), 12 (Publicity) and 13 (General) shall survive the termination or expiration of the Agreement.

5. CONFIDENTIAL INFORMATION

5.1. Restrictions on Use and Disclosure. Neither Mobile Commons nor Customer shall disclose to any third party any information provided by the other party pursuant to or in connection with the Agreement that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential (such information, "Confidential Information"), and shall make no use of such Confidential Information, except under and in accordance with the Agreement. The receiving party shall take reasonable precautions (using no less than a reasonable standard of care) to protect the disclosing party's Confidential Information from unauthorized access or use. Each party may disclose Confidential Information to its Affiliates and service providers, and its Affiliates and service providers may use such information, in each case solely for purposes of the Agreement. Each party shall be liable for any breach of its obligations under this Section 6 that is caused by an act, error or omission of any such Affiliate or service provider. Confidential Information includes information disclosed by the disclosing party with permission from a third party, and combinations of or with publicly known information where the nature of the combination is not publicly known. Mobile Commons' Confidential Information includes information regarding Application, Mobile Commons' processes, methods, techniques and know-how relating to identity management, user authentication or user authorization, Documentation, product roadmaps, pricing, marketing and business plans, financial information, information security information, Mobile Commons' certifications, and Personal Data of Mobile Commons personnel. Customer's Confidential Information includes its proprietary workflows and processes, systems architecture, marketing and business plans, financial information, information security information, information pertaining to Customer's other suppliers, and Personal Data of Customer's personnel. This Section 6 does not apply to Mobile Commons' obligations regarding use and protection of Customer Data; those obligations are specified in Section 7 (*Data Protection*).

5.2. Exclusions. Except with respect to Personal Data, Confidential Information does not include information that the receiving party can establish: (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party; or (iv) has been independently developed by the

receiving party without use of or reference to the disclosing party's Confidential Information.

5.3. Disclosure Required by Law. If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party's Confidential Information (a "**Disclosure Order**") then, unless otherwise required by the Disclosure Order, the receiving party shall promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party's efforts to protect its Confidential Information. Following such notification, the receiving party shall cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information.

5.4. Independent Development. The terms of confidentiality under the Agreement shall not limit either party's right to independently develop or acquire products, software or services without use of or reference to the other party's Confidential Information.

5.5. Return or Destruction. Following any termination or expiration of the Agreement or any Sales Order, each party shall: (i) immediately cease use of any Confidential Information of the other communicated for the purposes of the Agreement or such Sales Order, and (ii) within thirty (30) days of such termination or expiration, return or destroy (and, upon request, certify destruction of) all copies of any Confidential Information of the other party disclosed under the Agreement, subject to each party's customary backup and archival processes.

6. DATA PROTECTION

6.1. Regulatory and Compliance Matters. In respect of Personal Data provided to Mobile Commons by Customer in connection with the Agreement, Mobile Commons shall comply, and shall ensure that its personnel comply, with the requirements of state, federal and national privacy laws and regulations governing such Personal Data in Mobile Commons' possession or under its control and applicable to Mobile Commons' provision of Services. Customer is solely responsible for ensuring Customer's, and its Users', compliance with any legal, regulatory or similar restrictions applicable to the types of data Customer elects to Process with the Application.

6.2. Regulator Inquiries and Court Orders. If any regulator, or any subpoena, warrant or other court or administrative order, requires Mobile Commons to disclose or provide Customer Data to a regulator or to any third party, or to respond to inquiries concerning the Processing of Customer Data, Mobile Commons shall promptly notify Customer, unless prohibited by applicable law. Following such notification, Mobile Commons shall reasonably cooperate with Customer in its response, except to the extent otherwise required by applicable law.

6.3. Audits and Security Assessments. Mobile Commons shall maintain compliance with industry standards and applicable governing frameworks such as Statement on Standards for Attestation Engagements (SSAE) and The International Organization for Standardization (ISO) (e.g., SSAE 16, ISO 27001 and ISO 27018) throughout the Agreement Term. Mobile Commons shall make available to Customer, annually and upon request, all information necessary to demonstrate compliance with its obligations. Mobile Commons shall allow for and contribute to audits conducted by Customer, or third-party auditor mandated by Customer, under the following parameters: (i) the Customer may elect to conduct an audit not more than once within any 12-month period at no cost to Customer. Any additional audits within the same 12-month period shall be subject to a reasonable fee; (ii) third-party auditors mandated by Customer shall enter into confidentiality agreements with Mobile Commons that are no less restrictive than those set out in this MSA; (iii) Customer provides

reasonable prior notice of such request for an audit; (iv) Customer ensures such audit shall not be unreasonably disruptive to Mobile Commons' business; and (v) neither Customers nor its auditors shall be permitted to make unaccompanied site visits or to logically access Mobile Commons' IT systems.

6.4. Data Security. Mobile Commons shall implement and maintain commercially reasonable technical and organizational security measures designed to meet the following objectives: (i) ensure the security and confidentiality of Customer Data in the custody of and processed by Mobile Commons; (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Data; (iii) protect against unauthorized access to or use of such Customer Data; and (iv) ensure that Mobile Commons' return or disposal of such Customer Data is performed in a manner consistent with Mobile Commons' obligations under items (i)-(iii).

6.5. Breach Notification. Mobile Commons shall notify Customer, without undue delay, of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data in Mobile Commons' possession or under its control (a "**Data Breach**"). Each party shall reasonably cooperate with the other with respect to the investigation and resolution of any Data Breach including, in the case of Mobile Commons, prompt provision of the following, to the extent then known to Mobile Commons: (i) the possible cause and consequences of the Data Breach; (ii) the categories of Customer Data involved; (iii) a summary of the possible consequences for the relevant Users; (iv) a summary of the unauthorized recipients of the Customer Data; and (v) the measures taken by Mobile Commons to mitigate any damage. Upon confirmation of any vulnerability or breach of Mobile Commons' security affecting Customer Data in Mobile Commons' custody and control, Mobile Commons shall modify its processes and security program, as necessary, to mitigate the effects of the vulnerability or breach upon such Customer Data.

6.6. Personal Data Collection, Processing and Transfer. Customer is solely responsible for obtaining, and represents and covenants that it has obtained or will obtain, prior to Processing by Mobile Commons, all necessary consents, licenses and approvals for the Processing, or otherwise has a valid legal basis for the Processing of, any Personal Data provided by Customer or its Users in connection with the Services. Customer may select the Personal Data it elects to input into and Process using the Application in its sole discretion; Mobile Commons has no control over the nature, scope, or origin of, or the means by which Customer acquires Personal Data Processed by the Application. If any User requests Mobile Commons to provide them with information relating to Processing of their Personal Data, or to make changes to their Personal Data, Mobile Commons shall promptly notify Customer of the request, unless otherwise required by applicable law. Customer may make changes to User data using the features and functionality of the Application. Mobile Commons shall not make changes to User data except as agreed in writing with Customer. Mobile Commons shall Process Customer Personal Data only as necessary to provide the Services, and in accordance with Customer's written instructions. This Agreement, and Customer's use of the Application's features and functionality, are Customer's instructions to Mobile Commons in relation to the Processing of Customer Personal Data. Where Personal Data is transferred from the EEA or the UK to a country for which the European Commission or UK government (or body authorized by UK government to make such a confirmation), as the case may be, has not confirmed a suitable level of data protection on the basis of an adequacy decision, the parties agree to enter into the relevant Standard Contractual Clauses.

6.7. Data Retention, Export and Deletion. Customer is solely responsible for its data retention obligations with respect to

Customer Data. Customer may export Customer Data from the Application at any time during the Agreement Term, using the Application's then existing features and functionality, at no additional charge. Mobile Commons' obligations to return Customer Data upon termination of the Agreement may be fulfilled by permitting Customer to export Customer Data as specified above. Customer may delete Customer Data on its Instances at any time. Mobile Commons shall delete Customer's Instances (and any data remaining on such Instances) upon termination or expiration of the Agreement.

6.8. Sub-Processors. Customer consents to Mobile Commons' use of sub-Processors to provide aspects of the Services, and to Mobile Commons' disclosure and provision of Customer Personal Data to those sub-Processors. Mobile Commons shall be responsible for the performance of its sub-Processors. Mobile Commons shall ensure sub-Processors are subject to contractual obligations which are the same as or equivalent to those imposed on Mobile Commons with regard to Processing of Customer Personal Data. Mobile Commons maintains a list of its sub-Processors on its company website under the Privacy page. Mobile Commons shall inform the Customer of any intended changes concerning the addition or replacement of any sub-Processor within a reasonable time prior to implementation of such change. In the event of the Customer objecting to such change, Mobile Commons shall make reasonable efforts to address the Customer's concerns (including making reasonable efforts to find an alternative sub-Processor).

7. WARRANTIES

7.1. Mutual Warranties. Each party represents and warrants to the other that:

- 7.1.1. the Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms;
- 7.1.2. no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of the Agreement; and
- 7.1.3. it shall comply with all applicable laws in connection with the performance of its obligations arising hereunder.

7.2. Mobile Commons Additional Warranties.

7.3. Mobile Commons represents and warrants to Customer that:

- 7.3.1. Non-Infringement. The Services, in the form and manner provided by Mobile Commons to Customer, shall not infringe, violate, or misappropriate the Intellectual Property Rights of any third party. Mobile Commons warrants that it has and shall maintain all necessary licenses, consents and permissions necessary for the performance of its obligations under the Agreement;
- 7.3.2. Performance Warranty. During any active Subscription Term (or such other period to which the parties may agree as detailed in a Sales Order), the Application, in the form provided by Mobile Commons, shall conform in all material respects to its applicable specifications set forth in the Documentation;
- 7.3.3. Viruses. Mobile Commons shall use commercially reasonable efforts, using applicable current industry practices, to ensure that the Application, in the form provided by Mobile Commons to Customer under the

Agreement, contains no Virus, or other similar malicious code;

7.3.4. Compliance with Law. The Services, in the form provided or made available to Customer by Mobile Commons, shall comply with all laws applicable to Mobile Commons and its provision of Services.

7.4. Performance Remedy. Subject to Mobile Commons' Support Services obligations detailed in the applicable Schedule, if the Application fails to conform to the warranty set forth in Section 8.3.2 and Customer provides written notice of the non-conformance to Mobile Commons, then, as Customer's exclusive remedy and Mobile Commons' sole obligation: Mobile Commons shall either repair or, at its option, replace the non-conforming Application or, if Mobile Commons is unable to correct the non-conformance within thirty (30) days of receipt of such written notice from Customer, Customer may terminate the applicable Services, and Mobile Commons shall refund to Customer a pro-rata amount of any Services fees prepaid to Mobile Commons and applicable to the unutilized portion of the Subscription Term for the terminated Services.

7.5. Bugs and Abatement; Scope. Without limiting the express warranties in this Section 8 or any express warranties specified elsewhere in the Agreement, Mobile Commons does not warrant: (i) that the Application or Services are completely free from all bugs, errors, or omissions, or will ensure complete security; (ii) that the Customer's use of the Services will be uninterrupted or error-free; or (iii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements. Mobile Commons shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over the Customer's or public communications networks and facilities, including the internet, and the Customer acknowledges that the Services and may be subject to limitations, delays and other problems inherent in the use of such communications facilities. The warranties in the Agreement are for the sole benefit of Customer and may not be extended to any other person or entity.

7.6. Disclaimer of Implied Warranties. Neither party makes any representation or warranty in connection with the Services, except as expressly warranted in the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY WARRANTED IN THIS SECTION 8, EACH PARTY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR IMPLIED OBLIGATION TO INDEMNIFY FOR INFRINGEMENT, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, AND ANY STATUTORY REMEDY.

8. INDEMNIFICATION

8.1. Infringement Indemnification. Mobile Commons shall defend, indemnify, save and hold harmless Customer and its officers, agents and employees, against any costs, expenses, damages finally awarded and reasonable attorneys' fees incurred in connection with any claim, demand, suit, or proceeding made or brought by a third party (a "**Third-Party Claim**") against Customer alleging that the use of any Application or Service as permitted in the Agreement infringes or misappropriates the Intellectual Property Rights of a third party.

8.2. Exclusions from Obligations. Mobile Commons shall have no obligation under Section 9.1 (*Indemnification by Mobile Commons*) for any infringement or misappropriation to the extent that it arises out of or is based upon: (a) use of an Application or Service in combination with other products or services not

provided by, or authorized in writing by, Mobile Commons if such infringement or misappropriation would not have arisen but for such combination; (b) use of an Application or Service by Customer in violation of the terms of the Agreement; (c) Customer's failure to use an Application or Service in accordance with the Documentation (or other written instructions) provided by Mobile Commons, if the infringement or misappropriation would not have occurred but for such failure; or (d) any modification of an Application or Service not made by or authorized in writing by, Mobile Commons where such infringement or misappropriation would not have occurred absent such modification.

8.3. Mitigation of Infringement Action. If Customer's use of any Application or Service is, or in Mobile Commons' reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 9.1 (*Infringement Indemnification*) then Mobile Commons shall either: (a) procure the continuing right of Customer to use the Application or Service; (b) replace or modify the Application or Service in a functionally equivalent manner so that it no longer infringes; or if, despite its commercially reasonable efforts, Mobile Commons is unable to do either (a) or (b), Mobile Commons shall (c) terminate the Agreement and refund to Customer the pro-rata amount of any fees prepaid to Mobile Commons which are applicable to the unused or undelivered portions of the Subscription Services and/or Professional Services.

8.4. Limited Remedy. This Section 9 states Mobile Commons' sole and exclusive liability, and Customer's sole and exclusive remedy, for Mobile Commons' actual or alleged breach of Section 8.3.1 (Non-Infringement), and any other actual or alleged infringement or misappropriation of third-party Intellectual Property Rights by any Application or Service.

8.5. Indemnification by Customer. Customer shall defend save and hold harmless Mobile Commons against any Third-Party Claim made or brought against Mobile Commons by a third party alleging that Customer Data or Customer's use of the Services in violation of this MSA, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Mobile Commons for any damages finally awarded against, and for reasonable attorney's fees incurred by, Mobile Commons in connection with any such Third-Party Claim.

8.6. Relief from Obligations. An indemnifying party's obligations arising under this Section 9 are expressly conditioned upon the indemnified party: (a) promptly gives the indemnifying party written notice of the Third-Party Claim; (b) providing the indemnifying party sole control of the defense and settlement of the Third-Party Claim (provided that indemnifying party may not settle any Third-Party Claim unless the settlement unconditionally releases the indemnified party of all liability); and (c) provides to indemnifying party all reasonable assistance, at indemnifying party's expense. Further, an indemnifying party shall be relieved of its responsibilities under this Section 9 for any Third-Party Claims arising solely from the actions or omissions of indemnified party, its officers, employees or agents.

8.7. Classification of Amounts. Any amounts payable by an indemnified party to a third party pursuant to a judgment, liability for which falls within the indemnifying party's indemnification obligations under the Agreement, shall be deemed direct damages.

8.8. Contributory Negligence. If the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the parties gives rise to damages for which either party is entitled to indemnification under this MSA, then such damages shall be allocated between the parties in proportion to their respective degrees of fault, negligence or willful misconduct

contributing to such damages and such indemnification shall be adjusted accordingly.

9. LIMITATIONS AND EXCLUSIONS OF LIABILITY

9.1. Exclusion of Certain Claims. SUBJECT TO SECTION 10.3, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ANY SOFTWARE, PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER THIS AGREEMENT, ANY RELATED AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT.

9.2. Limitation of Liability. Subject to Section 10.3, neither party's maximum aggregate liability arising out of the Agreement or any related agreement shall in any event exceed the fees paid to Mobile Commons under the Sales Order giving rise to the claim during the twelve-month (12-month) period immediately preceding the aggrieved party's first assertion of any claim against the other, regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

9.3. Exceptions.

9.3.1. Sections 10.1 and 10.2 do not apply to either party's (i) willful misconduct or gross negligence, (ii) infringement or misappropriation of any of the other party's Intellectual Property Rights, (iii) personal injury (including death) or damage to real or tangible property caused by either party's negligent act or omission, (iv) liability or loss which may not be limited by applicable law.

9.3.2. Section 10.2 does not apply to (i) each party's defense and indemnification obligations, (ii) Customer's obligations to pay fees and expenses when due and payable under the Agreement, nor (iii) either party's obligations under Section 6 (Confidential Information) and/or Section 7 (Data Protection), provided, however, that except to the extent of willful misconduct or gross negligence of Mobile Commons, Mobile Commons' maximum aggregate liability under Section 7 shall not exceed three times (3X) the fees paid by Customer to Mobile Commons under the affected Sales Order in the twelve-month (12 month) period immediately preceding Customer's first assertion of its claim.

9.4. General. Each party agrees that these exclusions and limitations apply even if the remedies are insufficient to cover all of the losses or damages of such party or fail of their essential purpose and that without these limitations the fees for the Services would be significantly higher. Neither party may commence any action or proceeding under the Agreement more than two years after the occurrence of the applicable cause of action.

10. DISPUTE RESOLUTION

10.1. Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of New York without regard to conflicts of laws principles. In the event of any controversy or claim arising out of or relating to the Agreement, or its breach or interpretation, the

parties shall submit to the exclusive jurisdiction of and venue in the Federal Courts located in Brooklyn, NY.

10.2. Legal Expenses. If any proceeding is brought by either party to enforce or interpret any term or provision of the Agreement, the substantially prevailing party in such proceeding shall be entitled to recover, in addition to all other relief arising out of the Agreement, its reasonable attorneys' and other experts' (including without limitation accountants) fees and expenses.

11. GENERAL

11.1. Relationship. Mobile Commons shall be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of its obligations under the Agreement.

11.2. Affiliates. This MSA sets forth the general terms and conditions under which Mobile Commons will provide Services to Customer and its Affiliates. Sales Orders may be entered into under this MSA by Mobile Commons or any Mobile Commons Affiliate, and by either the entity designated above as "Customer" or any of Customer's Affiliates. In such event, the entity executing a Sales Order in the position of the Services provider shall be considered "Mobile Commons" and the Services recipient shall be considered "Customer" for all purposes of the resulting Agreement; and such Agreement shall be considered a two-party agreement between "Mobile Commons" and such "Customer".

11.3. Compliance with Laws. Each party shall comply with all laws and regulations applicable to it, including export control laws and embargoes. Neither party shall have any liability to the other for any non-performance of their obligations under the Agreement to the extent that the non-performance is mandated by applicable law. Each party represents and warrants to the other that neither it nor its Affiliates, nor any of its or their users, officers or directors, are persons, entities or organizations with whom the other party is prohibited from dealing (including provision of software, products or services) by virtue of any applicable law, regulation, or executive order.

11.4. Equitable Relief. Each of Customer and Mobile Commons acknowledges that damages may be an inadequate remedy if the other violates the terms of the Agreement pertaining to protection of a party's Intellectual Property Rights, Confidential Information or Personal Data. Accordingly, each of them shall have the right, in addition to any other rights each of them may have, to seek in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in the Agreement.

11.5. Assignability. Neither party may assign performance of the Agreement or any of its rights or delegate any of its duties under the Agreement without the prior written consent of the other party; provided, however that either party may assign its rights and obligations under the Agreement to any of its Affiliates, or to any entity into or with which it is merged, or that acquires all or substantially all of its assets, upon notice to the other party. Subject to the foregoing restriction on assignment, the Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

11.6. Insurance. Each party shall, at its own cost and expense, procure and maintain in full force and effect during the Agreement Term, policies of insurance, of the types and in the minimum amounts reasonably necessary and appropriate in its industry to perform its respective obligations under the Agreement, with responsible insurance carriers duly qualified in those states (locations) where the Services are to be performed or used. Upon a party's request, the other party shall provide its certificate of insurance.

11.7. Notices. Any notice or report required or permitted to be given or made under the Agreement by either party shall be in English, in writing and be deemed to have been fully given and received (i) when delivered personally; (ii) when sent by confirmed facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of such receipt; or (v) to the extent expressly permitted in the Agreement, one (1) day after being sent via email. Notices shall be sent to the parties at the addresses set forth in this MSA or such other address as a party may specify in writing to the other. All notices to Mobile Commons must be made to the address(es) listed below and all notices to Customer must be made to the mailing or email address of Customer's primary contact with Mobile Commons.

Mobile Commons notice address:

ATTN: General Counsel
32 Court St Ste 904
Brooklyn, NY, 11201
legal@mobilecommons.com

To inform Customer of changes to the Services, or for other matters of importance (e.g., notifications regarding upcoming scheduled maintenance), Mobile Commons may broadcast messages through the Application or post messages on Mobile Commons' web site. In each such event, Mobile Commons shall inform Customer of the broadcast by e-mail.

11.8. Business Continuity and Disaster Recovery. During any Subscription Term, Mobile Commons shall comply with its then current applicable Business Continuity and Disaster Recovery Plans. Mobile Commons shall test such plans at least once a year. Mobile Commons shall provide Customer with summaries of such plans and test results upon written request. Mobile Commons may not modify such plans to provide materially less protection to Customer without Customer's prior written consent, which may not be unreasonably conditioned or withheld.

11.9. Force Majeure. If the performance of the Agreement is adversely restricted or if either party is unable to conform to any warranty or obligation by reason of any Force Majeure Event then, except with respect to obligations to pay any fees or expenses and to obligations under Section 13.9 above (*Business Continuity and Disaster Recovery*), the party affected, upon giving prompt written notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected shall use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties shall proceed whenever such causes are removed or cease. "**Force Majeure Event**" means any failure or delay caused by or the result of causes beyond the reasonable control of a party or its service providers that could not have been avoided or corrected through the exercise of reasonable diligence, including natural catastrophe, internet access or related problems beyond the demarcation point of the party's or its applicable infrastructure provider's facilities, state-sponsored malware or state-sponsored cyber-attacks, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war, or other similar occurrence. If a party fails to perform its obligations as a result of such restriction for a period of more than thirty (30) days, then the other party may terminate the affected Services without liability.

11.10. Waiver. The waiver by either party of any breach of any provision of the Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with the Agreement shall not be a waiver of such party's right to demand strict compliance in the future, nor shall the same be construed as a novation of the Agreement.

11.11. Severability. Should any term and condition of the Agreement be declared illegal or otherwise unenforceable, it shall be severed from the remainder of this MSA, or the relevant portion of the Agreement, without affecting the legality or enforceability of the remaining portions of the Agreement.

11.12. Counterparts. Each portion of the Agreement (e.g., this MSA and each Sales Order) may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing the Agreement, a facsimile copy or a ".pdf" image delivered via email of an executed copy of any such portion of the Agreement signed by an authorized signatory (manuscript signature or using electronic signature) shall be deemed an original.

11.13. Entire Agreement. This MSA, together with the Sales Order, constitutes the entire agreement between the parties hereto regarding Customer's use of each Application and receipt of all Services and supersedes and replaces all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the provision and use of the Services. In the event of a conflict between the terms and conditions of this MSA and any Sales Order, the terms and conditions of this MSA shall prevail except to the extent the conflict

pertains to product or service description (e.g., type, quantity, usage volume) or pricing information, in which case the terms of the Sales Order shall prevail. No usage of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement, or alter the terms of the Agreement. The Agreement may be changed only by a written agreement signed by an authorized signatory of the party against whom enforcement is sought; any additional, supplementary or conflicting terms supplied by either party (whether in hard copy or electronic form), including those contained on or within any invoice, purchase order, or standard terms of purchase, or any click-through license agreement or terms of use, are specifically and expressly rejected by each party.

11.14. Anti-Corruption. Each party agrees and acknowledges that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees, contractors or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If either party learns of any violation of the above restriction, such party shall use reasonable efforts to promptly notify the other party.

11.15. Third Parties. Except as expressly set forth in the Agreement, no provisions of the Agreement are intended nor shall be interpreted to provide or create any third-party beneficiary rights or any other rights of any kind in any other party. If the law governing the Agreement is English law, then a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereby agreed to be bound by the terms of the Agreement.

Mobile Commons, LLC

By_____

Name:

Title:

[CUSTOMER]

By_____

Name:

Title:

EXHIBIT A
STANDARD MAINTENANCE AND SUPPORT TERMS AND CONDITIONS

These Standard Maintenance and Support Terms and Conditions are made a part of and incorporated into the terms of the Software-as-a-Service Schedule to which this Exhibit A attached. All capitalized terms not defined herein shall have the meaning ascribed to them elsewhere in the Agreement.

1. Response Times and Commitments:

Mobile Commons attempts to respond to and resolve all issues in a timely manner, however issues impacting Customer's production systems take priority and are classified by Severity Level in accordance with the following:

Severity Level	Definition	Response Time	Commitment
Cloud Incident ("Outage")	Mobile Commons' cloud service is unavailable and/or inaccessible for all Users.	1 Hour (24/7/365)	(24/7/365) triage with hourly status updates; Immediate and continuous effort to restore service;
1 – Urgent	Production system Defect that prevents business critical work from being done, no Workaround exists, and Defect impacts most Users; Defect causes a material loss of Customer Data in production system; or Security-related Defect.	1 Business Hour	Business Hour triage with daily status updates (M-F); Immediate and continuous effort within business hours to resolve the Defect or provide a Workaround;
2 – High	Production system Defect that prevents business critical work from being done and a Workaround exists; or Defect violates the material specifications in the Documentation and impacts Customer's production system.	4 Business Hours	Business Hour triage with regular status updates (M-F); Mobile Commons shall use reasonable efforts to resolve the Defect as rapidly as practical, but no later than the next Update after reproduction of the Defect.
3 – Normal	All other Defects.	1 Business Day	Business Hour triage with regular status updates (M-F); Defects shall be addressed in Mobile Commons' normal Update

2. Mobile Commons Support Services Scope & Availability:

- i. **Support Services Defined.** Support Services shall consist of assistance to Customer with respect to:
 - a. Guidance regarding proper use of the Application;
 - b. Application Defect verification, reporting, tracking and resolution; and
 - c. Application licensing assistance.
- ii. **Support Services Availability.** Unless otherwise agreed upon in writing, Support Services shall be available:
 - a. Service Outage: 24/7/365 via phone and online community (email excluded); and
 - b. Severity 1/2/3: Unless otherwise agreed by the parties in a signed writing, 9:00 am to 6:00 pm, Eastern Time, Monday through Friday, excluding holidays (the "**Business Hours**") via phone, email and online community.

3. Mobile Commons Support Limitations:

- i. **Support Limitations.** Support Services do not include:
 - a. Application training, design or configuration assistance;
 - b. Support for applications, hardware and dependent technology not supplied by Mobile Commons;
 - c. Support for issues resulting from Customer's negligence or failure to use the Application per Mobile Commons' instructions or recommendations;
 - d. Development support for API/SDK usage;
 - e. Support of custom development not supplied by Mobile Commons; or
 - f. Product installation and upgrade assistance.
- ii. **Customer Defects.** If Customer notifies Mobile Commons of a problem and Mobile Commons correctly determines that the problem is due to Customer's incorrect or improper use of the Application or failure to comply with the Standard Support Terms

or the MSA (as opposed to a Defect in the Application), the resolution of such problem is not covered by Mobile Commons' Support Services. However, Mobile Commons may provide Professional Services to address or cure the problem in accordance with the terms of the Agreement.

- iii. **Release Support Period.** Mobile Commons shall support a release of the Application if such release (a) was made generally available during the previous twelve months; and (b) is no more than one major release (e.g. 2.0 to 3.0) behind the most current release of the Application. Other versions of the Application shall not be supported unless Mobile Commons and Customer mutually agree otherwise in writing. Major release upgrades are not included in the standard fees and must be purchased separately. Customer acknowledges that Mobile Commons' obligations hereunder apply only to production versions of the Application.
- iv. **Third Party Products.** Support Services do not cover the operation or use of third-party hardware or software or an Application modified by any party other than Mobile Commons or used in any manner in violation of the MSA or inconsistent with the Documentation.
- v. **Data.** If Customer has a license to use and host an on-premise Application, Customer is encouraged to backup data often and to always do so prior to accessing any Update. Mobile Commons shall have no responsibility for loss of or damage to Customer's data, regardless of the cause of any such loss or damage.

4. Customer Obligations:

- i. **First Level Support/Single Point of Contact.** All communications relating to Support Services shall be supervised, coordinated, and undertaken by no more than two designated contact persons per Customer work-shift who shall act as a single point of contact between Customer and Mobile Commons. Each contact must possess or, at Customer's expense, acquire the necessary expertise and training to diagnose and resolve Defects with direction by Mobile Commons.
- ii. **Pre-Call Procedures.** Prior to requesting Support Services from Mobile Commons, Customer shall comply with all published operating and troubleshooting procedures for the Application. If such efforts are unsuccessful in eliminating the Defect, Customer shall then promptly notify Mobile Commons of the Defect. Customer shall confirm that the following conditions are met prior to contacting Mobile Commons for Support Services:
 - a. **Reproduction.** If possible, the situation giving rise to the Defect is reproducible in a single supported Application;
 - b. **Support Representative.** The Customer contact has the technical knowledge regarding the Application and any other software or hardware systems involved, and in the facts and circumstances surrounding the Defect;
 - c. **Access.** Customer's system, including all software and hardware, is available to the Customer contact without limit during any telephone discussions with Mobile Commons support personnel; and
 - d. **Cooperation.** The Customer contact shall follow the instructions and suggestions of Mobile Commons' support personnel when servicing the Application.
- iii. **Remote Connection.** If appropriate, Customer shall cooperate with Mobile Commons to allow and enable Mobile Commons to perform support services via remote connection using standard, commercially available remote connection software. Customer shall be solely responsible for instituting and maintaining proper security safeguards to protect Customer's systems and Customer Data.
- iv. **Updates.** Customer acknowledges and agrees that Updates provided by Mobile Commons pursuant to these Standard Support Terms may, in Mobile Commons' sole discretion, require additional training of Customer's personnel. Such training shall be performed in accordance with the terms of the Agreement.
- v. **Disclaimer.** Mobile Commons shall not be responsible to provide Support Services, Updates, or any other maintenance and support to the extent that Defects arise because Customer (a) misuses, improperly uses, misconfigures, alters, or damages the Application; (b) uses the Application with any hardware or software not supplied or supported by Mobile Commons; (c) uses the Application at any unauthorized location, if any; (d) fails to access an Update to the Application if such Update would have resolved the Defect; or (e) otherwise uses the Application in a manner not in accordance with the Documentation, these Standard Support Terms or the MSA.

5. Software as a Service Availability:

- i. **Availability Requirement.** Mobile Commons shall make the Application Available, as measured on a 24 hours per calendar day basis over the course of each calendar month during the Initial Term and each Renewal Term and any additional periods during which Mobile Commons does or is required to provide the Application (each such calendar month, a "Service Period"), at least 99.9% of the time, excluding only the time the Application is not Available solely as a result of one or more Exceptions (the "Availability Requirement"). "Available" means the Application is available and operable for access and use by Customer and its Users over the Internet.
- ii. **Exceptions.** No period of Application degradation or inoperability shall be included in calculating Availability if such downtime or degradation is directly caused by any of the following ("Exceptions"):
 - a. Customer's or any of its Users' use of the Application in a manner inconsistent with the Documentation;
 - b. failures of Customer's or its Users' Internet connectivity not caused by Mobile Commons;

- c. Internet or other network traffic problems other than problems arising in or from networks actually provided or controlled, or required to be provided or controlled, by Mobile Commons; or
 - d. Scheduled Downtime.
- iii. **Scheduled Downtime**. Mobile Commons shall notify Customer and its Users with whom Mobile Commons has communicated at least 72 hours in advance of all scheduled downtime of the Application in whole or in part ("**Scheduled Downtime**") (a) not be scheduled between the hours of 8 a.m. and 9 p.m., Eastern Time, Monday-Friday (unless otherwise agreed by the parties in a signed writing), and (b) occur more frequently than 15 hours per calendar month.
- iv. **Recovery Objectives**. Mobile Commons shall maintain a recovery time objective of 24 hours and recovery point objective of 4 hours.

6. **Definitions:**

- i. "**Defect**" means a failure of the Application to substantially conform to the functional specifications set forth in the Documentation (as defined in the MSA entered into between Customer and Mobile Commons).
- ii. "**Updates**" means a subsequent release of the Application that Mobile Commons makes generally available to its supported customers, as indicated by a version number increase to the right of the first decimal point (e.g., 2.1 to 2.2). Updates shall not include any other releases of the Application (e.g., 2.5 to 3.0) or any other products that Mobile Commons, in its sole discretion, licenses separately for an additional fee.
- iii. "**Workaround**" means a modification or "patch" for a particular version of the Application, which may be of a temporary or interim nature, to help cure or avoid a Defect.
- iv. "**Service Level**" means the certain level of Support Services (e.g., Standard, Gold or Platinum) that has been selected by the Customer on the Sales Order.

