MOBILEOPS

Software as a Service Agreement

Effective Date: March 6, 2023

This Software as a Service Agreement (this "***Agreement***") of MobileOps, Inc. ("***MobileOps***"), which incorporates your Service Order(s), governs access and use by you ("***you***" or "***Customer***") of the SaaS Services, Professional Services, and related services (collectively, the "***Services***"). By signing a Service Order that refers to this Agreement or otherwise indicating your acceptance of this Agreement, you agree to be bound by its terms. If the SaaS Services or the Professional Services are to be accessed or used by or on behalf of an entity, the individual accepting this Agreement represents that he or she has the authority to bind that entity to this Agreement, and references to "you" or "Company" in this Agreement will refer to that entity. If you do not accept this Agreement, then you may not use the Services.

1.   DEFINITIONS

1.1   "***Account***" has the meaning given in Section 2.4.

1.2   "***Affiliate***" means a person or entity that controls, is controlled by, or is under common control with the subject entity, where "control" means direct or indirect ownership of more than 50% of the voting interests of the subject entity.

1.3   "***Applicable Laws***" means all applicable laws and regulations.

1.4   "***Aggregated Data***" means metadata, data and information related to the use of the Services by Customer and other subscribers that is aggregated and anonymized such that neither Customer nor any other customer or person is identifiable as its source. Once aggregated and anonymized, no Customer Data included in Aggregated Data will be deemed to be Customer Data.

1.5   "***Asset***" means a vessel or equipment for which Customer will use a SaaS Service.

1.6   "***Authorized Users***" means the Representatives of Customer (and, if applicable, its Affiliates) who are authorized by Customer to access and use the Services. Any restrictions on the type or number of Authorized Users will be set forth in the applicable Service Order.

1.7   "***Confidential Information***" has the meaning given in Section 7.1.

1.8   "***Customer Data***" means the information, data, and other content that is submitted to or through the Services by Customer and the Customer-specific Reports generated by a Saas Service.

1.9   "***Documentation***" means the user guides, instructions, training manuals, training videos, and similar documentation that MobileOps provides to Customer at https://docs.mobileops.app/welcome/ , within a SaaS Service, by email, or otherwise.

1.10   "***Fees***" means the fees for Services and any additional charges set forth in the applicable Service Order and this Agreement.

1.11   "***Force Majeure Event***" has the meaning given in Section 12.2.

1.12   "***Intellectual Property***" means all trade secrets, Inventions, patents and patent applications, trademarks and service marks (including any goodwill acquired in such marks), trade names, trade dress, copyrights, moral rights, rights in Inventions, 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 rights that may exist anywhere in the world.

1.13   "***Invention***" means any work of authorship, invention, know-how, device, design, algorithm, method, process, improvement, concept, idea, expression, or discovery, whether or not copyrightable or patentable and whether or not reduced to practice.

1.14   "***MobileOps IP***" means the SaaS Services (other than Customer Data), the Documentation, the deliverables for any Professional Services (other than Customer Data), MobileOps Systems, MobileOps's Confidential Information and all related Intellectual Property. For the avoidance of doubt, MobileOps IP includes MobileOps' templates used for Reports, Aggregated Data, and any data or content derived from MobileOps's monitoring of access or use of the Services.

1.15   "***MobileOps Systems***" means the information technology infrastructure and Intellectual Property used by or on behalf of MobileOps to provide the Services, including all software, hardware, systems, databases, websites, and networks, whether operated by MobileOps or a third-party service.

1.16   "***Party***" means Customer or MobileOps, as the case may be.

1.17   "***Professional Services***" means support services, implementation services, training services, and other services supplemental to the SaaS Services to be provided by MobileOps, as described in a Service Order (which may be a separate statement of work executed by Customer and MobileOps).

1.18   "***Reports***" means reports and information generated for Customer by a SaaS Service.

1.19   "***Representatives***" means a Party's Affiliates and its and their employees, directors, officers, consultants, professional advisors, representatives, or agents.

1.20   "***SaaS Service***" means a MobileOps software-as-a-service (SaaS) offering to which Customer subscribes.

1.21   "***Service Order***" means the service order, order form or other purchase document executed between Customer and MobileOps for the purchase of the Services. Each Service Order will form part of this Agreement and will be subject to the terms and conditions contained in this Agreement.

1.22   "***Services***" means the SaaS Services, the Professional Services or other services provided by MobileOps.

1.23   "***Subscription Term***" and "***Term***" have the meanings set forth in Section 4.1.

1.24   "***Support Delegate***" has the meaning set forth in Exhibit A.

1.25   "***Third-Party Materials***" means any computer programs, technology, products, components, content or information of third parties that are made available to Customer in connection with the Services or that interoperate with a SaaS Service, including via application programming interfaces.

2. **PROVISION OF AND ACCESS TO THE SERVICES**

2.1   **Service.** MobileOps delivers software as a service ("***SaaS***") and related services on a subscription basis. Subject to Customer's compliance with this Agreement (including payment of applicable Fees), MobileOps hereby grants Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the SaaS Service(s) during the Term, solely for Customer's internal business operations. MobileOps reserves all other rights.

2.2   **SLA; Support.** Subject to the terms and conditions of this Agreement, MobileOps shall use commercially reasonable efforts to make the SaaS Services available and provide support in accordance with *Exhibit A*. MobileOps may use subcontractors to facilitate the performance of its obligations under this Agreement.

2.3   **Customer Responsibilities.** Customer is responsible for (i) ensuring that the Services are compatible with Customer's business and systems requirements; (ii) the accuracy and completeness of Customer's configuration and setup of the SaaS Services; (iii) ensuring that the information Customer provides in connection with the Services is current, accurate, and complete; and (iv) the provision, maintenance, and use of Customer's hardware, network, internet connectivity, and software; (v) the content of Customer Data and Customer communications to or through the Services. Customer shall comply with this Agreement, the applicable Documentation, Applicable Laws regarding export control or sanctioned, embargoed or blocked persons and entities, and all other Applicable Laws. Customer is responsible for all acts and omissions of its Authorized Users and Representatives and shall ensure that they comply with Customer's obligations hereunder.

2.4   **Account.** MobileOps shall enable an account (the "*Account*") for Customer and its Authorized Users to access and use the SaaS Services. Customer and Authorized Users shall protect usernames, passwords, access and Account information under their control. Customer is solely responsible for any and all activities that occur under the Account, and except to the extent caused by MobileOps's breach of this Agreement, MobileOps is not responsible for unauthorized access to the Account. Customer shall notify MobileOps immediately upon becoming aware of any unauthorized use of the Account or any other breach of security relating to the SaaS Services.

2.5   **Restrictions on Use.** Customer shall use the SaaS Services only as set forth in this Agreement and the Documentation and, except as expressly provided in this Agreement with respect to Affiliates, not for the benefit of any third party. Unless otherwise approved in writing by MobileOps, Customer shall not, and shall not allow its Representatives or any third party to: (a) copy, modify, adapt, translate or otherwise create derivative works of the SaaS Services or MobileOps IP; (b) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the SaaS Services or MobileOps Systems; (c) share, rent, lease, sell, assign or otherwise distribute access to or transfer rights in or to the SaaS Services or MobileOps Systems; (d) use the SaaS Services to operate any timesharing, service bureau, software as a service, or similar business; (e) display the SaaS Services, MobileOps IP or MobileOps Systems to any person or entity other than Authorized Users; (f) remove any proprietary notices or labels on the SaaS Services, MobileOps IP or Third-Party Materials; (g) use the SaaS Services to store, transmit or introduce any malicious code; (h) interfere with or disrupt the integrity or performance of the SaaS Services or MobileOps Systems or attempt to do so; or (i) use the SaaS Services to infringe, misappropriate or violate any intellectual property or other right of anyone.

2.6   **Updates and Discontinuing Service.** MobileOps reserves the right to update, modify or enhance the SaaS Services, including to add or change features or functionality, to maintain or support the SaaS Services, or to comply with Applicable Laws. Customer agrees that Customer has not relied on any future availability of any service offerings, technology, or enhanced features or functionality.

2.7   **Information Security.** MobileOps shall implement and maintain reasonable technical and organizational measures designed to protect Customer Data against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure or access.

2.8 **Aggregated Data.** MobileOps may create, generate and use Aggregated Data for any lawful purpose.

2.9 **Beta Features.** Notwithstanding anything to the contrary in this Agreement, MobileOps will have no liability (including in respect of warranties, indemnification obligations or service level obligations) for or related to any Service module, feature or functionality that is designated as "beta" or that is otherwise expressly identified as being for beta testing purposes or unsupported.

2.10 **Third Party Materials.** MobileOps is not responsible for and does not in any way endorse any Third-Party Materials. Any use of Third-Party Materials is governed by the terms and conditions of the Third-Party Materials. If Customer does not agree to abide by such terms and conditions, then Customer should not install or use such Third-Party Materials.

2.11 **Affiliates.** Only Affiliates named on the applicable Service Order (or to which MobileOps otherwise agrees in writing) may use the Services. Unless MobileOps accepts a Service Order directly from an Affiliate or otherwise agrees in writing, all use of the Services by Customer's Affiliates will be under Customer's Account, MobileOps will invoice Customer and not its Affiliates for the Services used by such Affiliates, and Customer shall pay all invoices to MobileOps. When an Affiliate of Customer uses the Services, all references to "Customer" in this Agreement relating to access or use of, or restrictions or limitations on access or use of, the Services are deemed to reference the Affiliate. Customer may be required to purchase additional training or other Professional Services to support Affiliate use.

3. SUSPENSION

MobileOps may temporarily suspend Customer's and any Authorized User's access to any portion or all of a SaaS Service (a "**Service Suspension**") if Customer is overdue in its payment obligations; or (b) MobileOps reasonably determines that (i) there is a material risk to or disruption of the security or performance of the SaaS Service or the MobileOps Systems; (ii) Customer or any Authorized User is using the SaaS Service for illegal activities or in violation of this Agreement; or (iii) Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding. During a Service Suspension, (a) Customer remains responsible for all Fees and other charges for the suspended SaaS Service; and (b) Customer will not be entitled to any compensation or credits for any period of Service Suspension, unless the suspension was due to MobileOps's error or breach of this Agreement. MobileOps will have no liability for any damage, liabilities or losses (including any loss of data or profits) that Customer or any person may incur as a result of a Service Suspension.

4. TERM AND TERMINATION

4.1 **Term of Agreement; Subscription Term.** The duration of each subscription term to a SaaS Service, as specified in the applicable Service Order, is a "**Subscription Term**." The term of this Agreement (the "**Term**") begins on the start date specified in the Service Order for the initial Subscription Term and, unless this Agreement is terminated by written agreement of the parties, will end on the date of termination or expiration of the final renewal Subscription Term.

4.2 **Automatic Renewal.** At the end of each Subscription Term, the subscription to the SaaS Service will renew automatically for an additional renewal Subscription Term of the same length, unless (i) MobileOps provides written notice of non-renewal to Customer at least 30 days before the end of the expiring Subscription Term or (ii) Customer provides written notice of non-renewal to MobileOps at least 2 weeks before the end of the expiring Subscription Term.

4.3 **Termination for Cause.** Either Party may terminate this Agreement for cause: (a) upon 2 weeks' written notice of a material breach of the other Party that remains uncured at the expiration of such notice period; or (b) immediately upon written notice if the other Party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors that is not dismissed within 60 days.

4.4 **Effect of Termination.** Upon any termination of this Agreement: (a) all of Customer's rights under this Agreement immediately terminate (with the exception of those surviving termination, as described below); (b) Customer remains liable for all fees and other obligations Customer has incurred during the Subscription Term and is not entitled to any refund; provided, however, that in the event of termination by Customer for MobileOps' material breach, MobileOps shall refund Customer a pro rata amount of any prepaid Fees for the SaaS Service(s) applicable to the unused portion of the terminated Subscription Term (excluding any Fees for Professional Services); (c) Customer shall immediately discontinue use of the SaaS Services and the MobileOps IP and, without limiting Customer's obligations under Section 7 (*Confidentiality*), Customer shall delete, destroy, or return all copies of the MobileOps IP and certify in writing to MobileOps that the MobileOps IP has been deleted or destroyed; and (d) MobileOps shall provide Customer with and/or delete or overwrite Customer Data as provided in Section 4.5 (*Return and Deletion of Customer Data*). All provisions that by their nature should survive termination of this Agreement will do so (including, by way of example and not limitation, payment obligations, indemnification obligations, and duties of confidentiality).

4.5 **Return and Deletion of Customer Data.**

   a. Upon Customer's written request at any time up to 90 days after termination of this Agreement, MobileOps will either: (i) provide Customer with limited access to the applicable SaaS Service(s), at no additional cost and subject to the obligations and restrictions of this Agreement, solely for the purpose of retrieving Customer Data; or (ii) provide an export file to Customer, in JSON or CSV format (or other commonly used format reasonably determined by MobileOps) of the requested Customer Data in MobileOps' possession. MobileOps may, but has no obligation to, maintain or provide Customer Data more than 90 days after termination.

   b. Upon Customer's written request at any time up to 90 days after termination of this Agreement, MobileOps shall promptly destroy or overwrite Customer Data, other than Customer Data contained in automatic computer backups or historical archives or that must be retained to fulfill obligations under this Agreement for regulatory, legal, or audit purposes, or for compliance with MobileOps's data retention policies. If Customer requests that MobileOps permanently destroy or overwrite Customer Data, Customer releases MobileOps from any claims or liability relating to that Customer Data. If Customer does not request deletion of its Customer Data, MobileOps will

destroy or overwrite Customer Data in accordance with MobileOps's document retention policies and standard backup and archival procedures, after the Customer Data is no longer reasonably necessary to fulfill obligations under this Agreement or for regulatory, legal, or audit compliance. For purposes of this Agreement, "deletion" of information means deletion, overwriting or anonymization or de-identification of data such that its source is not identifiable.

5. FEES, INVOICING AND PAYMENT

5.1 **Fees.** The Fees for the Services will be specified in the applicable Service Order. Fees for Assets and/or SaaS Services added during a Subscription Term will be prorated for the remaining portion of the Subscription Term. Except as otherwise specified in this Agreement, (i) payment obligations are non-cancelable and Fees paid are non-refundable, (ii) Customer may not reduce its commitment specified in the Service Order during a Subscription Term; and (iii) Customer is not entitled to any refund if the volume of Service (such as number of Assets) used is less than the volume specified in the Service Order, and any unused volume will not be carried over to any Renewal Subscription Term. If Customer's Assets or other use during a Subscription Term exceeds the Assets or other use specified in the Service Order, MobileOps will invoice Customer for the applicable Fees associated with the additional Assets or other use.

5.1 **Invoicing and Payment.** MobileOps will invoice Customer for Fees on the frequency set forth in the Service Order or this Agreement. Payment terms are as specified in the Service Order. Customer shall make all payments under this Agreement in United States Dollars, without offset or deduction, via the payment method specified in the Service Order (or otherwise agreed by the Parties). Payments made by check or credit card are subject to a payment method fee as specified in the Service Order.

5.2 **Late Payment.** If Customer fails to make any payment when due, without limiting MobileOps's other rights and remedies: (a) MobileOps may charge interest at the rate of 1.5% per month or, if lower, the highest rate permitted under Applicable Laws; (b) Customer shall reimburse MobileOps for all reasonable costs incurred by MobileOps in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (c) MobileOps may suspend Customer's service as provided in Section 3 (*Suspension*).

5.3 **Taxes.** All Fees and other amounts in this Agreement are exclusive of any sales, use, value-added (VAT), ad valorem, excise or other governmental taxes, duties, levies, tariffs, or charges, other than taxes based on MobileOps's net income ("***Taxes***"). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder. All payments hereunder shall be made to MobileOps without any reduction for any Taxes unless Customer provides MobileOps with a valid tax exemption certificate. If MobileOps is required to collect and remit Taxes for which the Customer is responsible under this Agreement, MobileOps will invoice Customer for such Taxes, as a separate line item, and Customer shall pay such Taxes unless Customer provides MobileOps with a valid tax exemption certificate.

5.4 **Fees for Renewal Subscription Terms.** MobileOps may increase Fees on each January 1 of the Subscription Term, in its discretion, by providing written notice (including in the form of an invoice) to Customer at least 30 days before such increase.

6. PROPRIETARY RIGHTS; FEEDBACK

6.1 **MobileOps Intellectual Property.** MobileOps and MobileOps's licensors retain and own all right, title, and interest in the MobileOps IP and all enhancements or improvements to, or derivative works of, the foregoing, including any Intellectual Property rights therein. MobileOps reserves all rights not expressly granted to Customer in this Agreement.

6.2 **Customer Intellectual Property.** Customer retains all ownership rights in Customer Data and Customer's Confidential Information, including any Intellectual Property rights therein.

6.3 **Feedback.** If Customer or any of its Representatives provides MobileOps with any comments, suggestions or recommendations about the Services or MobileOps IP ("*Feedback*"), Customer grants to MobileOps a nonexclusive, perpetual, irrevocable, fully paid-up, royalty-free, worldwide license to, with rights to transfer, sublicense, sell, use, reproduce, display, and make derivative works of, such Feedback. MobileOps is not required to use any Feedback.

7. CONFIDENTIALITY

7.1 **Definition of Confidential Information.** "*Confidential Information*" means information disclosed by or made available by a Party (the "*disclosing Party*") to the other Party (the "*receiving Party*") in connection with this Agreement that is marked as confidential or that would reasonably be considered confidential under the circumstances. Confidential Information includes, with respect to MobileOps, non-public information regarding pricing, features, functionality and performance of the Services; and with respect to Customer and its Affiliates, all non-public Customer Data. Confidential Information does not include information that the receiving Party can demonstrate by documentation was (i) already rightfully known to the receiving Party without restriction on use or disclosure prior to the receipt of such information from or on behalf of the disclosing Party, (ii) received by the receiving Party on a non-confidential basis from a third party without a breach of an obligation to maintain its confidentiality, (iii) was or becomes generally known to the public other than by breach of this Agreement by the receiving Party or its Representatives, or (iv) independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information.

7.2 **Restrictions on Use and Disclosure.** The receiving Party shall use the Confidential Information of the Disclosing Party solely to exercise its rights or perform its obligations hereunder, to comply with Applicable Laws or as otherwise permitted under this Agreement. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's Representatives or service providers who (i) have a need to know the Confidential Information and (ii) are bound by a written agreement or other legally binding obligation of confidentiality and restricted use at least as protective as those contained in this Agreement. The receiving Party is responsible for use and disclosure of the Confidential Information by its Representatives and service providers and their compliance with the obligations of the receiving Party under this Agreement. The receiving Party shall protect Confidential Information of the disclosing Party from unauthorized access and disclosure using the same degree of care, but in no

event less than a reasonable standard of care, that it uses to protect its own Confidential Information of a similar nature.

7.3 **Disclosure Required by Law.** The receiving Party may disclose Confidential Information of the disclosing Party to the limited extent required (i) in order to comply with the order of a court, regulatory agency or other governmental body of competent jurisdiction, or as otherwise necessary to comply with Applicable Law, provided that the receiving Party shall first have given written notice to the other Party (if legally permitted to do so); or (ii) to establish a Party's rights under this Agreement, including to make required court filings. If the receiving Party is legally compelled to disclose Confidential Information of the other Party, the receiving Party may disclose only that portion of the Confidential Information that is legally required to be disclosed.

7.4 **Return of Confidential Information.** Each Party shall return, destroy or delete Confidential Information of the other Party upon written request by the other Party; provided, however, that return or deletion of Customer Data shall be governed by Section 4.5 (*Return and Deletion of Customer Data*). Notwithstanding the foregoing, a Party shall not be required to return, destroy or delete Confidential Information of the other Party that is required to perform its obligations or exercise its rights under this Agreement, that is contained in automatic computer backups or historical archives, or that must be retained for regulatory, legal, or audit purposes, or in the case of MobileOps, for compliance with MobileOps's internal data retention policy (provided that such Confidential Information shall remain subject to the provisions of this Section 7 for as long as it is retained). For purposes of this Agreement, "deletion" of information means either deletion or anonymization or de-identification such that the source of such data is not identifiable.

7.5 **Survival.** The provisions of this Section 7 will remain in effect with respect to particular Confidential Information received from the other Party during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement or after the destruction or disposal of such Confidential Information, whichever is later; provided, however, that a Party's obligations under this Section 7 with respect to any Confidential Information of the other Party that constitutes a trade secret under Applicable Laws shall survive termination of this Agreement for so long as such information continues to be a trade secret under Applicable Laws.

8. DISCLAIMER OF WARRANTIES

Except as specifically set forth in this Agreement, MobileOps makes no warranties of any kind, whether express, implied, statutory, or otherwise. Without limiting the generality of the foregoing, MobileOps does not warrant that the SaaS Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from the use of the Services. Except as expressly set forth in this section, the Services are provided "as is" and MobileOps disclaims all warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose and any warranty of non-infringement.

9. INDEMNIFICATION

Customer shall indemnify, hold harmless and defend MobileOps, its Affiliates and its and their Representatives from any and all Losses incurred as a result of any Action brought by a third party

arising out of, resulting from, based on or alleging (a) Customer's breach of this Agreement, (b) Customer's use of the Services, (c) Customer's violation of Export Control Laws or other Applicable Laws, or (d) the Customer Data.

10. LIMITATION OF LIABILITY

10.1 **Limitation of Liability.** EXCEPT AS PROVIDED IN SECTION 10.2, IN NO EVENT SHALL EITHER PARTY OR ITS REPRESENTATIVES HAVE ANY LIABILITY UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR THE COST OF COVER OR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR LOST DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES ARE REASONABLY FORESEEABLE; OR (B) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY THE CUSTOMER TO MOBILEOPS FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

10.2 **Exceptions.** Section 10.1(A) does not apply to claims for gross negligence or willful misconduct, breach of confidentiality obligations, infringement or misappropriation of Intellectual Property rights of the other Party or to indemnification obligations. Section 10.1(B) does not apply to gross negligence or willful misconduct, indemnification obligations, or obligations to pay Fees.

10.3 **General.** These exclusions and limitations apply even if the remedies are insufficient to cover all of the losses or damages of such Party, its Affiliates or, in the case of Customer, Authorized Users. Without these limitations, the fees for the Services would be significantly higher. Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some or all of the above exclusions or limitations may not apply and the Parties may have additional rights.

11. MODIFICATIONS

11.1 **Modification.** Subject to the restrictions set forth in this Section 11, MobileOps may modify this Agreement and post the updated version at https://www.mobileops.com/legal/saas-agreement .

11.2 **Modification Notice.** If MobileOps modifies this Agreement, it shall provide prior written notice ("*Modification Notice*") to Customer of such modifications at least 30 days prior to the effectiveness of the modifications. If modifications are necessary to comply with Applicable Laws, MobileOps is not required to provide prior notice but shall use commercially reasonable efforts to provide prior notice when practicable.

11.3 **Renewal Modification.** If the Modification Notice states that the modifications will become effective upon commencement of a renewal Subscription Term, then the modifications will become effective upon renewal. Customer may avoid the applicability of the changes only by cancelling the renewal of Customer's subscription for the SaaS Service as set forth in Section 4.2 (*Automatic Renewal*).

11.4 **Mid-Term Modification.** If the Modification Notice states that the modifications will become effective during the then-current Subscription Term, and the modifications materially and adversely affect Customer, then Customer may terminate Customer's subscription to the SaaS

Service by providing written notice to MobileOps at any time within the 30-day period following the date of the Modification Notice. Customer's termination will become effective on the later to occur of (i) the date on which Customer delivers a timely termination notice or (ii) the date on which the applicable modifications become effective, provided that, upon written request by Customer, MobileOps shall continue to provide the SaaS Service to Customer as needed to manage a reasonable transition to another vendor, not to exceed 60 days. If Customer terminates a SaaS Service subscription pursuant to this Section 11.4, then MobileOps shall refund Customer a pro rata amount of any prepaid Fees for the SaaS Service applicable to the unused portion of the terminated Subscription Term (excluding any Fees for Professional Services).

11.5 **General**. If Customer does not terminate the affected SaaS Service subscription as specified in this Section, then Customer will be bound by the modified terms beginning upon the effective date set forth in the Modification Notice.

12. MISCELLANEOUS

12.1 **Notices**. MobileOps may communicate announcements of general interest by email or by posting on its website or in the console for the SaaS Services. All legal notices or approvals required or permitted under this Agreement must be in writing and delivered by confirmed electronic mail, by overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt or, in the case of email delivery, upon confirmation. MobileOps' email address for legal notices is legal@mobileops.com and its physical address for legal notices is P.O. Box 66, Bellevue, WA 98009 (or such other address as may be specified by MobileOps to Customer in accordance with this Section); provided that Customer shall email to legal@mobileops.com a copy of any legal notice that is sent to MobileOps's physical address. Customer's email address(es) and physical address for legal notices will be those set forth in the applicable Service Order (or such other address(es) as may be specified by Customer to MobileOps in accordance with this Section).

12.2 **Force Majeure.** MobileOps shall not be liable for any failure or delay in performing its obligations under this Agreement, or for any alleged loss or damages resulting therefrom, due to natural disasters, power outages, denial of service attacks, weather, strikes, riots, war, governmental action or other reason beyond MobileOps' reasonable control (a "**Force Majeure Event**").

12.3 **Severability.** If any provision of the Agreement is determined to be invalid or unenforceable by any court, then to the fullest extent permitted by law, that provision will be deemed modified to the extent necessary to make it enforceable and consistent with the original intent of the Parties and all other provisions of the Agreement will remain in full force and effect.

12.4 **Assignment**. This Agreement is not assignable, transferable or sublicensable by Customer except with MobileOps' prior written consent.

12.5 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic, or oral communications, representations, agreements, or understandings between the Parties with respect thereto. Except as specified in Section 11 (*Modification*), the Agreement may not be modified or amended except by a written instrument executed by both Parties. In case of inconsistency between this Agreement and the Service Order, this Agreement will control.

12.6 **Remedies; Waiver.** Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

12.7   **Independent Contractor.** The Parties are independent contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither Party has any authority to bind the other Party.

12.8   **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of Washington, and federal laws applicable therein. without regard to or application of conflict of laws rules or principles. The state courts, and to the extent they have jurisdiction, the federal courts located in King County, Washington, will be the exclusive venue for resolution of any dispute arising out of this Agreement or any action relating to the enforcement of any provisions of this Agreement. Each Party hereby consents to personal jurisdiction in any such action and waives any objection that the applicable court does not have personal jurisdiction over such Party or that a more convenient form exists. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS AGREEMENT.

12.9   **Publicity.** Unless a Party has provided written instructions to the contrary to the other Party, either Party may include the name or logo of the other Party (or its Affiliates, if applicable) in lists of customers or vendors. Except as set forth in this Section, neither Party shall issue or release any press release or other announcement relating to the Agreement.

12.10 **Government Use.** If the use of a SaaS Service is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the Government's rights in the SaaS Service, including its rights to use, modify, reproduce, release, perform, display or disclose the SaaS Service or Documentation, will be subject in all respects to the commercial license rights and restrictions provided in the Agreement.

12.11 **Equitable Relief.** Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 7 (*Confidentiality*) or, in the case of Customer, under Section 2.5 (*Restrictions on Use*), may cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to seek equitable relief without any requirement to post a bond or other security. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

Exhibit A to Software as a Service Agreement
Service Levels and Support

1. **Service Availability.** MobileOps will use commercially reasonable efforts to make the SaaS Service Available, excluding the time that the SaaS Service is unavailable during any Excluded Event, at least 99.8% of the time per day (average over the calendar month). "*Available*" means the SaaS Service is available and operable for access and use by Customer and its Authorized Users over the Internet and performing in material conformity with the applicable Documentation.

2. **Exceptions.** No period of Service downtime, performance degradation or inoperability will be included in calculating Availability to the extent that such downtime, degradation or inoperability is due to any of the following ("*Excluded Events*"):

    a. Scheduled or emergency maintenance;
    b. use of the SaaS Service by Customer or its Authorized Users other than in compliance with this Agreement;
    c. any suspension or termination of Customer's or any Authorized Users' access to or use of the SaaS Service as permitted by this Agreement;
    d. power outages, delays or failures in Internet access, network congestion, ISP malfunctions, or related problems beyond the demarcation point of the SaaS Service;
    e.   problems caused by MobileOps' data center provider or Customer's network connectivity, website, systems or information technology infrastructure;
    f. denial of service attacks or viruses or other malicious code (unless MobileOps fails to implement commercially reasonable threat management solutions or the service level deficiency resulted from MobileOps"s failure to property update such solutions); or
    g. Force Majeure Events.

3. **Maintenance Windows.** MobileOps will make commercially reasonable efforts to announce scheduled maintenance at least 5 days in advance. In the case of emergency maintenance, MobileOps will make commercially reasonable efforts to announce such emergency maintenance at least 24 hours in advance but in no event less than 6 hours prior to such maintenance.

4. **Unavailability of Service.** If Customer experiences a Service outage and is unable to access the SaaS Service, Customer can notify MobileOps of the service outage. MobileOps will determine whether the outage is within MobileOps' reasonable control and, if so, will use commercially reasonable efforts to restore Customer's access to the SaaS Service. MobileOps will have no other liability to Customer for any outage, degradation or inoperability of the SaaS Service, including failure to achieve the Availability percentage specified in Section 1.

5. **Support**

    a. MobileOps will provide technical support via email (support@mobileops.com) 24/7 and will provide technical support via telephone (866-610-9150) from 7am to 5pm PT Monday to Friday, excluding holidays observed in the United States.

b. Customer must designate a maximum of two delegates/superusers who can request and interact with MobileOps regarding support ("***Support Delegates***").