

## SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

**READ THE FOLLOWING AGREEMENT CAREFULLY! IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU. BY CLICKING ON THE “ACCEPT” OR SIMILAR ICON BUTTON, YOU ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE “DO NOT ACCEPT” OR SIMILAR ICON BUTTON OR LEAVE THE WEBSITES. IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MAY NOT PURCHASE OR USE THE LICENSED PROGRAM OR SERVICE.**

“You”, “Your” and “Subscriber” means the person, entity or company who is purchasing the Services and the Licensed Program described in this Agreement. “We”, “Our”, “Us” and “MobileSoft” means MobileSoft Technology, Inc., a Delaware corporation.

### AGREEMENT

In consideration of the mutual promises and covenants set forth in this Agreement and for such other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Subscriber and MobileSoft agree as follows:

1. **Definitions.** As used in this Agreement, the following definitions shall apply:
  - a. **“Authorized Users”** means Subscriber and its employees, agents, contractors and invitees of the Licensed Program and Services, and shall specifically exclude any person to whom Subscriber provides its User ID or Password that is not involved in the Subscriber’s business and any other person that seeks to use the User ID or Password without the written consent of MobileSoft.
  - b. **“Call-In”** means the telephone number established by MobileSoft and the interaction performed by Subscriber and MobileSoft that allows Subscriber to increase the number of User ID’s and Passwords that make the Licensed Program available to Authorized Users of Subscribers on a monthly or annual basis.
  - c. **“Checkout”** means the area of MobileSoft’s Websites that directed you to this Agreement where your purchase of the Licensed Program and Services is possible, where your payment information is displayed and entered and where you make selections of offerings available to you by MobileSoft.
  - d. **“Effective Date”** means the date that Subscriber agrees to this Agreement and is provided with access to the Licensed Program and Services.
  - e. **“Licensed Program”** means all of MobileSoft’s proprietary technology that allows its Subscriber and Authorized Users to engage in cloud based video broadcasting and conferencing, providing for customization, note taking, screen sharing, analytics, interactive tools, video email, video auto responder, storage and related features (including related software, hardware, processes, user interfaces, algorithms, know-how, techniques, and other tangible or intangible technical material or information, and specifications describing the features, functionality or operation of the Services) made available to Subscriber by MobileSoft in providing the Services to Subscriber.

f. **“Password”** means that certain code using alpha-numeric and symbol keystrokes to grant Subscriber access to the Services and Licensed Program.

g. **“Sales Taxes”** mean any sales, use, excise, value-added, consumption, goods and services, or other taxes based upon the Services or Licensed Program provided under this Agreement.

h. **“Services”** means the delivery of access to the Licensed Program to Subscriber through the Websites where the Licensed Program will be installed and executed on servers housed, operated and managed by MobileSoft or its designee and maintenance and support services and any other services or products provided by MobileSoft to Subscriber through the Licensed Program as are further described and subject to the terms of this Agreement.

i. **“User ID”** means the unique user identification code granted to Subscriber under this Agreement from time to time by MobileSoft.

j. **“Websites”** means MobileSoft’s website [www.videocontrolpanel.net](http://www.videocontrolpanel.net) or any application developed by MobileSoft that makes the Licensed Program and Service available on any platform.

2. **Subscription Services.** The Licensed Program and the Services are purchased by Subscriber as a single enterprise subscription and may be not be used by any other person other than Subscriber, and its Authorized Users during the Term of this Agreement. The Subscription for the Services is not a license of the Licensed Program, but is a subscription provided license only. Subscriber will not share, re-sell, transfer, license or sublicense any of the Licensed Program or Services, or any of its User ID or Password.

3. **MobileSoft Responsibilities.** When providing MobileSoft Services, MobileSoft shall: (i) provide to Subscriber basic support for the Services at no additional charge, (ii) respond to inquiries sent to [support@videocontrolpanel.net](mailto:support@videocontrolpanel.net), with an acknowledgement of the issue and proposed corrective action within one (1) business day.

#### 4. **Subscriber Responsibilities.**

a. **Generally.** When using MobileSoft’s Licensed Program and Services, Subscriber shall (i) be responsible for its own and its Authorized User’s compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of the operation of Subscriber’s own business, (iii) use commercially reasonable efforts to prevent unauthorized access to the Services and immediately notify MobileSoft promptly of any such unauthorized access or use of the User ID or Password (iv) use the Services only in accordance with this Agreement, MobileSoft’s guidelines promulgated from time-to-time, including any updates to Terms of Service or Privacy Policy, which may be posted on MobileSoft’s Websites together with applicable laws and government regulations, (v) not make the Licensed Program and Services available to anyone other than Authorized Users, (vi) not sell, resell, rent or lease the Licensed Program and Services, (vii) not interfere with or disrupt the integrity or performance of the Services, (viii) not attempt to gain unauthorized access to the Licensed Program and Services or any one or more of its related systems or networks, (ix) not create derivative works based on the Services or the Licensed Program, (x) not copy, frame or mirror any part or content of the Services or Licensed Program, (xi) not reverse engineer or decompile the Services or the Licensed Program, (xii) not access the Services or Licensed Program in order to (a) build a

competitive product or service, or (b) copy any features, functions or graphics of the Services or Licensed Program, (xiii) be responsible for implementing, maintaining and updating all necessary and proper procedures and software for safeguarding against computer infection, viruses, worms, Trojan horses and other code that manifest contaminating or destructive properties, (xiv) be solely responsible for its actions while using the Services and Licensed Program and the contents of its transmissions and (xv) not use the trademarks, tradename or proprietary logos of MobileSoft.

b. **Access and Security Guidelines.** Use of the Licensed Program and Services is conditioned on Subscriber obtaining and maintaining access to the internet, and all equipment necessary for proper operation of the Services at the Subscriber's sole cost and expense. MobileSoft shall have no liability for any loss or damage arising from the Subscriber's failure to comply with these requirements. Furthermore, Subscriber agrees during the term of this Agreement to (i) abide by all local and international laws and regulations applicable to its use of the Services and Licensed Program, including without limitation all laws regarding the transmission of data exported through the Licensed Program; (ii) not to use the Services or the Licensed Program for illegal purposes; (iii) not interfere with or disrupt Licensed Program Websites, servers, or networks connected to the Licensed Program; (iv) not probe, scan, test the vulnerability of, or circumvent any security mechanism used by, the sites, servers, or networks connected to the Licensed Program; (v) comply with all regulations, policies and procedures of networks connected to the Licensed Program.

c. **Compliance with Rights Granted.** Upon written request from MobileSoft, Subscriber will within thirty (30) days fully document and certify in writing that any and all use of the Services by the Subscriber at the time of the certification are in conformity with the terms and conditions of this Agreement.

## 5. **Intellectual Property Matters; Ownership of Intellectual Property.**

a. **Grant of Service Only.** Subscriber is hereby granted a non-transferable, non-sub-licensable limited subscription based only license during the Term of this Agreement to access and use the Services and the Licensed Program in the manner described in this Agreement.

b. **Title to Intellectual Property.** All right, title and interest in all intellectual property rights, including patent, unpatented inventions, copyright, trademark, trade secret, proprietary information source code, algorithms, concepts, techniques, methods, processes and technology used in or comprising the Licensed Program and the Services and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Subscriber relating to the Services or the Licensed Program (collectively, the "**Intellectual Property**") are owned by, and are vested in, MobileSoft (or MobileSoft's applicable licensors/suppliers). Other than as expressly set forth in this Agreement, no license or other rights in the Intellectual Property are granted to Subscriber and all such rights are hereby expressly reserved by MobileSoft. The Intellectual Property constitutes trade secrets and confidential and proprietary information of MobileSoft and its licensors, and Subscriber shall not access or use such trade secrets and information in any manner, except to the extent expressly permitted herein. Subscriber agrees not to remove or obscure any copyright, trademark or patent notices found in the Intellectual Property. Any information collected by MobileSoft from Subscriber, including design files compiled using the Licensed Program and provided by Subscriber to MobileSoft for design assistance, enhancement and troubleshooting, may be used internally at MobileSoft for the purpose of improving the future versions of the Licensed Program and other future products and ownership thereof shall remain with the MobileSoft, assignment of

any ownership on the part of Subscriber or any of its agents or representatives is hereby made to MobileSoft.

**6. Service Fees.**

a. **Service Fees.** In consideration of the Licensed Program and Services provided, Subscriber shall pay MobileSoft the monthly or annual fee selected by the Subscriber in the Checkout or the Call-In, plus any applicable Sales Taxes (the “**Service Fees**”). Monthly fees shall be paid on the same date of the month as the initial payment by the Subscriber, except if such date shall not exist, then on the last date of such month. Each payment for the Licensed Program and Services shall be payable in advance. All payments shall be made via Subscriber’s credit card and any changes to Subscriber’s credit card information shall be shared with MobileSoft, failure of which may result in suspension or termination of the Services and the Licensed Program.

b. **Renewal Pricing.** Services purchased by Subscriber hereunder will automatically renew on a monthly or annual basis as chosen by Subscriber through the Checkout or Call-In. Renewal pricing shall be at MobileSoft’s then current prevailing rates as posted on its Websites and shall be payable in accordance with this Section 6, unless a party terminates this Agreement pursuant to Section 7. MobileSoft may suspend Services during any period in which Service Fees remain past due and/or terminate this Agreement in accordance with Section 7. Services may be restored at MobileSoft’s sole discretion upon payment in full of past due amounts and applicable reconnection or other fees deemed reasonably necessary by MobileSoft.

**7. Term and Termination.**

a. **Term of Agreement.** This Agreement commences on the Effective Date and remains in effect until terminated as stated in this Agreement.

b. **Termination.** This Agreement may be terminated earlier in its entirety without liability to the terminating party as follows: (i) immediately by MobileSoft for failure by Subscriber to timely pay any Service Fees or any other obligation under this Agreement, (ii) by either party upon thirty (30) days written notice in the event the other party materially breaches this Agreement, which breach is not cured within said thirty (30) days, (iii) by either party upon sixty (60) days written notice, and (iv) by either party immediately upon notice upon the institution of any insolvency, bankruptcy or similar proceeding by or against the other party including an assignment for the benefit of creditors, the appointment of a receiver over assets, an attachment of assets lasting more than thirty (30) days, or the other party ceases to conduct its operations in the ordinary course of business.

c. **Effect of Termination.** Upon any termination by MobileSoft, MobileSoft shall not refund Subscriber any prepaid Service Fees as of the effective date of termination. Upon termination of the Agreement due to Subscriber’s breach, MobileSoft shall be entitled to accelerate all remaining payments due under the then remaining term. In no event shall any termination relieve Subscriber of the obligation to pay any Service Fees payable to MobileSoft for the period prior to the effective date of termination or any early termination fee. Upon termination of this Agreement for any reason, Subscriber’s right to access the Services and use the Licensed Programs shall immediately cease. The parties’ rights and obligations under Sections 4(c), 5, 7, 8, 9, 10, 11, 12, 13 and 15 of this Agreement shall survive the expiration or termination of this Agreement. MobileSoft may suspend access to or use of the Services upon breach of this Agreement by Subscriber prior to termination.

8. **No Sale of Additional Products or Services.** Nothing hereunder shall require MobileSoft to sell or Subscriber to purchase any other products or services of MobileSoft other than the Licensed Program and Services at the levels identified and selected by the Subscriber in the Checkout or Call-In. To the extent that Subscriber desires to employ or acquire additional services of MobileSoft, such transactions shall be conducted outside the scope of this Agreement and shall be documented by a separate writing or purchase order regarding such products, goods or services. Subscriber acknowledges and agrees that MobileSoft has made no promises regarding the pricing or availability of its products, goods or services and MobileSoft remains free to sell its products, goods or services to any person it desires at the times and prices deemed acceptable solely to MobileSoft.

9. **No Warranties.** MOBILESOFT MAKES NO WARRANTIES REGARDING THE SERVICES OR THE LICENSED PROGRAMS PROVIDED HEREUNDER. SUBSCRIBER ACKNOWLEDGES THAT MOBILESOFT'S SOLE OBLIGATION IS TO PROVIDE THE LICENSED PROGRAM AND SERVICES IN ACCORDANCE WITH THIS AGREEMENT. THE SERVICES AND LICENSED PROGRAM ARE PROVIDED AND ACCEPTED BY SUBSCRIBER "AS IS," WITHOUT ANY WARRANTY WHATSOEVER. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED. MOBILESOFT DOES NOT WARRANT THAT THE SERVICES OR THE LICENSED PROGRAM WILL MEET SUBSCRIBER'S REQUIREMENTS, WILL OPERATE WITHOUT INTERRUPTION, WILL BE ERROR-FREE, OR THAT ALL FAILURES OF THE LICENSED PROGRAM WILL BE CORRECTED. Where jurisdictions do not allow the exclusion of implied warranties, the liability exclusions set forth above shall be interpreted to apply to the maximum extent permissible under applicable law.

10. **Limitation of Liability.** MOBILESOFT SHALL NOT BE LIABLE TO SUBSCRIBER, AUTHORIZED USERS OR ANY THIRD PARTIES FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS, LOSS OF PROFIT, LOSS OR CORRUPTION OF DATA, INTERRUPTION OF BUSINESS, LOSS OF GOODWILL, INJURY, DEATH OR ANY AND ALL OTHER SIMILAR DAMAGES OR LOSS WHETHER IN CONTRACT, TORT, PRODUCT LIABILITY, OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE USE OF THE SERVICES OR THE LICENSED PROGRAM EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL MOBILESOFT LIABILITY HEREUNDER TO SUBSCRIBER OR A THIRD PARTY, FROM ANY CAUSE OF ACTION WHETHER IN CONTRACT, TORT, INDEMNITY OR OTHERWISE, EXCEED THE AMOUNTS PAID TO MOBILESOFT FOR THE SERVICES HEREUNDER GIVING RISE TO THE CLAIM IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO THE CLAIM. THIS IS SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY FOR A BREACH OF THIS AGREEMENT BY MOBILESOFT. Furthermore, MobileSoft shall not be liable for any loss resulting from a cause over which MobileSoft does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines; telephone or other connectivity problems; bugs, errors, configuration problems or incompatibility of computer hardware or software; failure or unavailability of Internet access; problems with Internet service providers or other equipment or services relating to Subscriber's or Authorized Users computers; problems with intermediate computer or communications networks; problems with data transmission, telephone or telephone service; or unauthorized access, theft, operator errors, acts of God, severe weather, earthquakes or labor disputes; or for any damage to Subscriber computer, software, modem, telephone or other property resulting from Subscriber's or its Authorized User's use of the Services or the Licensed Program.

11. **Infringement.** If the Services or Licensed Program becomes, or in MobileSoft opinion are likely to become, the subject of any infringement or misappropriation claim or action, MobileSoft will, at MobileSoft sole option and expense (a) procure the right for Subscriber to continue using the Services or Licensed Program, (b) replace or modify the Services or Licensed Program so it becomes non-infringing while remaining functionally equivalent, or (c) if option (a) or (b) is not reasonably available in MobileSoft judgment, MobileSoft may terminate the Services or Licensed Program. MobileSoft will have no liability for any claim or action based upon (i) the combination, operation, or use of the Services or Licensed Program with hardware, software, or other items not supplied by MobileSoft, (ii) any alteration of the Services or Licensed Program by Subscriber or a third party or any deviation from the Licensed Program by such persons, or (iii) any modification of the Services or Licensed Program made by MobileSoft pursuant to specifications, requirements, or designs provided by Subscriber, all of which shall be Subscriber's sole and exclusive remedy for any type of claim described in this Section.

12. **Indemnification.** Subscriber agrees to indemnify MobileSoft and its parent, subsidiaries, affiliates, officers, managers, governors, directors, shareholders, members, employees, agents and representatives (the "**Indemnified Parties**") and hold them harmless from any and all claims and expenses, including attorneys' fees, arising from use of the Services, including without limitation, any and all fraudulent transactions involving Subscriber. By using the Services, the Subscriber hereby agrees to release the Indemnified Parties from any and all claims, demands, debts, obligations damages (actual or consequential), costs, and expenses of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, disclosed or undisclosed.

13. **Confidentiality.** Each party shall have access to information that is confidential to the other party ("**Confidential Information**") including but not limited to with respect to MobileSoft, the Licensed Program and the Services, and any other information which is not otherwise readily available in the public domain and specifically including all information marked "confidential", and the pricing terms of this Agreement. The parties agree (i) not to make each other's Confidential Information available to any third party, (ii) not to use each other's Confidential Information except to perform this Agreement, (iii) to hold each other's Confidential Information in confidence during the term of this Agreement and thereafter, and (iv) no adequate remedy at law exists for breach of this Section 13 and any such breach would cause irreparable harm to the non-breaching party whom shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it has at law or otherwise. Either party may make such disclosures as may be necessary by reason of legal, accounting or regulatory requirements beyond either party's reasonable control provided the receiving party gives the disclosing party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. Confidential Information shall not include information that (a) is in the public domain through no act or omission of the other party, (b) was in the other party's lawful possession prior to the disclosure, (c) is lawfully disclosed to the other party by a third party without restriction on disclosure, or (d) is independently developed by the other party.

14. **Notices.** Except as otherwise specified in this Agreement, all notices hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) the first business day after sending by email (provided email shall not be sufficient for notices of termination). Notices to Subscriber shall be addressed to the information provided by Subscriber in the subscription process and contact information provided to MobileSoft. All notices shall be sent to MobileSoft at [support@videocontrolpanel.net](mailto:support@videocontrolpanel.net).

15. **General Provisions.**

a. **Entire Agreement; Counterparts.** This Agreement, together with the attached Schedules which are incorporated hereto by reference, constitutes the entire understanding and agreement between MobileSoft with respect to the subject matter hereof and supersedes all proposals and prior agreements and understandings, oral or written, and any other communications between the parties regarding the subject matter hereof. This Agreement may be signed in counterparts and each part together shall constitute one and the same Agreement. A faxed or email signature page or any copy shall be deemed an original for purposes of enforcement of this Agreement.

b. **Electronic Copies/Reproduction Deemed an Original.** Subscriber and MobileSoft may electronically store and preserve this Agreement. Any reproduction of this Agreement containing a replication of both parties' asset to this Agreement and derived from either party's electronic storage system will be deemed to be original and authentic, and may serve in the place of the original signed document for all purposes.

c. **Assignment.** This Agreement may not be assigned by Subscriber without the prior written consent of the MobileSoft. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns.

d. **No Amendment or Waiver.** No provision of this Agreement will be deemed waived, amended or modified unless made in writing and signed by both parties. No waiver of rights shall constitute a subsequent waiver of any rights whatsoever. The failure of either party to enforce any provision hereof shall not constitute the waiver of such provision.

e. **Severability.** The provisions of this Agreement are severable and any provision determined to be void or unenforceable shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of this Agreement and such invalid provision shall be replaced with an enforceable provision which achieves to the greatest extent possible the parties' original intent.

f. **Governing Law; Venue; Waiver of Jury Trial.** This Agreement shall be governed by the State of Minnesota without regard to conflicts of law principles. All legal action or proceedings with respect to this Agreement shall be brought in the Fourth Judicial District, Hennepin County, State of Minnesota, and Subscriber hereby irrevocably submit to the jurisdiction of such court and irrevocably waives any and all objections that Subscriber may have as to jurisdiction or venue in such court. Each party hereby waives any right to jury trial in connection with any action or proceedings in any way arising out of or related to this Agreement. Subscriber will be liable for all costs and expenses, including reasonable attorneys' fees incurred by MobileSoft to collect Service Fees or otherwise enforce the terms of this Agreement.

g. **Publicity.** Subscriber hereby authorizes and permits MobileSoft to use Subscriber's name in MobileSoft customer lists and other promotional materials naming Subscriber as a customer of MobileSoft Services and Licensed Program.

h. **Independent Contractor.** No persons furnished by either party for purposes of fulfilling such party's obligations under this Agreement shall be considered the other party's employees or agents, and each party shall be responsible for its own and its employees' compliance with all laws, rules and regulations involving employment of labor, working

conditions, payment of wages and payment of taxes, such as unemployment, social security and other payroll taxes, including applicable contributions from such persons when required by law, it being understood that any work or Services provided hereunder are as an independent contractor and not as partners or joint venturers. This Agreement does not make either Party the agent or legal representative of the other for any purpose whatsoever. Neither Party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party. The Services provided hereunder are not a “work for hire” and MobileSoft reserves all of its rights with respect to the Licensed Program.

i. **Headings.** The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

By clicking the icon button stating “I agree”, “I accept”, “Agree”, “Accept” or words of similar import, and any communication of assent or Agreement pursuant to a Call-In, which may or may not be recorded, Subscriber agrees, accepts and consents to the terms and conditions of this Agreement and shall be deemed an acknowledgement that Subscriber has read, understands and agrees to be bound by the terms and conditions of this Agreement and Subscriber acknowledges receipt of a copy of this Agreement. If Subscriber does not click the icon button stating “I agree”, “I accept”, “Agree”, “Accept” or words of similar import or does not agree to changes in a Call-In, the Licensed Program and Services will not be provided to Subscriber by MobileSoft or may not be otherwise altered or amended in the case of a Call-In.