

## JITTERBIT MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement ("Agreement") is entered into on the date of execution of the Order Form that incorporates by reference the terms hereof (the "Effective Date") by Jitterbit Inc., a Delaware corporation with principal offices located at 1301 Marina Village Parkway, Suite 201, Alameda, CA 94501 ("Jitterbit"), and the entity that is the signatory to the relevant order Order Form ("Client"). By clicking a box indicating acceptance to the terms and conditions of this Agreement or by executing an Order Form that references this Agreement, Client agrees to be bound by all terms and conditions hereof.

### 1. Definitions

1.1 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership of control of more than 50% of the voting interests of the subject entity.

1.2 "Authorized Reseller" means a third party authorized by Jitterbit to resell one or more of the following: subscriptions to the Jitterbit Applications, Support Services, Training Services, and/or Professional Services.

1.3 "Client Data" means all of Client's electronic data processed by the Jitterbit Applications in connection with Client's use of the Jitterbit Web Management Console or a Cloud Implementation, including but not limited to Regulated Personally Identifiable Information.

1.4 "Cloud Implementation" means the deployment of the Jitterbit Agent Software and/or Jitterbit Connectors via the Hosting Environment. For clarity, Cloud Implementations never entail the permanent storage of any Client Data in either the Jitterbit Applications or the Hosting Environment, or any temporary storage except during transmittal of such Client Data to and from an Integrated Third Party Application.

1.5 "Documentation" means the online user guides and reference documentation for the Jitterbit Applications, as updated from time to time, accessible via: <http://support.jitterbit.com>.

1.6 "Hosting Environment" means the hardware, software, networks, and peripherals used by Jitterbit or its third party hosting providers to host the Jitterbit Web Management Console and the relevant Jitterbit Applications.

1.7 "Jitterbit Application(s)" means, collectively, the then-current, generally available versions of:

(a) "Jitterbit Agent Software" consisting of software that implements the transfer of Client Data between Integrated Third Party Applications based on the API policies selected by Client. Agent Software may be installed locally by Client via an On Premise Implementation ("Local Agents") or it may be hosted by Jitterbit via a Cloud Implementation ("Cloud Agents").

(b) "Jitterbit Connectors" consisting of either: (i) out-of-the box connectors to specific third party applications (such as Salesforce.com or NetSuite) ("Standard Connectors" or "Enterprise Connectors"), and/or (ii) standards-based connector protocols (such as those generically used for web services interfaces or native databases) ("Real-Time APIs"), and/or (iii) Jitterbit-supplied API gateway ("Cloud API Gateway") and/or API management functionality ("API Manager")

(c) "Jitterbit Studio Visual Designer" consisting of Jitterbit's downloadable, design and testing application.

(d) "Jitterbit Web Management Console" consisting of the portions of the Jitterbit Application hosted via the Hosting Environment that provide integration project management and User administration features and functions for Client.

(e) and any copies, updates, upgrades, enhancements and other derivative works of the foregoing are provided by Jitterbit, including the Documentation.

1.8 "Integrated Third Party Application(s)" means either on-premise or hosted Client or third party applications, excluding the Jitterbit Applications. Each connection between the Jitterbit Application and an Integrated Third Party Application is referred to as an "Application Connection" or "Endpoint."

1.9 "On Premise Implementation" means the deployment of the Jitterbit Agent Software and/or the Jitterbit Connectors on systems owned or operated by or for the benefit of Client.

1.10 "Order Form" means the ordering document that is entered into between Client and Jitterbit or any of its Affiliates, including any addenda and supplements thereto, for the purchase of subscriptions to the Jitterbit Applications, Support Services or Professional Services, which will note Client's entitlement to the relevant and mutually agreed-to components of the Jitterbit Applications such as: (i) Local Agents or Cloud Agents, (ii) Application Connections or Endpoints; (iii) Standard Connectors, Enterprise Connectors and/or Real-Time APIs, (iv) Cloud API Gateway or API Manager, (v) production, test and/or development environments, or (vi) any other mutually agreed-to limitation on use of the Jitterbit Applications.

1.11 “Regulated Personally Identifiable Information” means personally-identifiable information that consists of: (i) government-issued identification number of any kind, (ii) health, genetic, biometric record or data, (iii) financial or bank account number, credit or debit card number, with or without any required security code, access code or any personal identification number or password that would permit access to the individual’s financial account. Name, age, email address, and/or mailing address alone are not Regulated Personally Identifiable Information.

1.12 “Professional Services” means Training Services, implementation services, and other professional services that the parties may agree Jitterbit will perform for Client pursuant to a mutually agreed upon Statement of Work.

1.13 “Security Incident” means an event in which Client Data processed by Jitterbit is accessed or received by an individual or entity not authorized to access or receive such information.

1.14 “Statement of Work” or “SOW” means a mutually agreed upon document executed between Jitterbit and Client that describes at a minimum: (i) the Professional Services to be rendered; (ii) the schedule for providing the Professional Services; and (iii) associated pricing. Each SOW will be subject to, and will reference this Agreement.

1.15 “Subscription Term” means either (i) the period of authorized access and/or use of the Jitterbit Applications set forth in the Order Form, or, (ii) for subscription purchases made by Client through an Authorized Reseller, the period noted in the ordering documentation between Authorized Reseller and Jitterbit that identifies Client.

1.16 “Support Services” means the services described in Section 5 of this Agreement.

1.17 “Training Services” means instructional courses provided by Jitterbit regarding the Jitterbit Applications, as listed on the training pages on the Jitterbit website.

1.18 “User(s)” means an individual authorized by Client to use the Jitterbit Applications for Client’s benefit, and for whom a user identification and password to access the Jitterbit Application has been established. A User may include, an employee, consultant, contractor, and/or agent of Client.

## **2. Trial Services and Non-GA Services.**

2.1 Trial Services. Jitterbit may from time to time, permit Client to register for a free trial of certain Jitterbit Applications at <http://www.jitterbit.com> (“Trial Services”). Trial Services will terminate on the earlier of: (i) the end of the free trial period for which Client registered; (ii) the start date of the Subscription Term for purchased Jitterbit Applications previously made available as Trial Services.

2.2 Non-GA Services. From time to time Jitterbit may invite Client to try, at no charge, Jitterbit products or services that are not generally available to Jitterbit’s customers (“Non-GA Services”). Client may accept or decline any such trial in its sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import.

2.3. Restrictions and Disclaimers. Trial Services and Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. Trial Services and Non-GA Services are not considered “Jitterbit Application” hereunder and are provided solely and exclusively “AS IS” with no express or implied warranty of any kind. CLIENT ASSUMES AND UNCONDITIONALLY RELEASES JITTERBIT FROM ALL RISKS ASSOCIATED WITH THE USE OF ANY TRIAL SERVICES AND/OR NON-GA SERVICES. Jitterbit may discontinue the Trial Services or Non-GA Services at any time in its sole discretion. Jitterbit does not promise or represent that Non-GA Services will be made generally available.

2.4 NO DATA RETENTION. ANY CLIENT DATA ENTERED INTO THE TRIAL SERVICES AND/OR NON-GA SERVICES MAY BE PERMANENTLY LOST UNLESS CLIENT: (i) PURCHASES A SUBSCRIPTION TO THE JITTERBIT APPLICATIONS AS THOSE COVERED BY THE TRIAL SERVICES; (ii) PURCHASES UPGRADED SERVICES, OR (iii) EXPORTS SUCH DATA PRIOR TO TERMINATION OF THE TRIAL SERVICES AND/OR NON-GA SERVICES.

2.5. LIMITED LIABILITY. JITTERBIT’S ENTIRE LIABILITY IN CONNECTION WITH ANY USE OF THE TRIAL SERVICES, OR NOT-GA SERVICES WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WILL NOT, AS TO ANY INDIVIDUAL CLAIM OR IN THE AGGREGATE, EXCEED \$50. IF CLIENT DOES NOT AGREE TO THE ALLOCATION OF RISK IN THIS SECTION, ITS SOLE RECOURSE IS TO IMMEDIATELY DISCONTINUE THE USE OF THE TRIAL SERVICES OR NON-GA SERVICES.

## **3. Jitterbit Application Use Rights.**

3.1 Right of Use. Subject to the payment of all applicable fees, during a Subscription Term, Jitterbit grants Client a revocable, non-exclusive, non-transferable (except in connection with a permitted assignment) right to:

(i) Access and use the Jitterbit Agent Software and/or Jitterbit Connectors, if and as implemented via a Cloud Implementation;

(ii) Install and use the Jitterbit Agent Software and/or Jitterbit Connectors, if and as implemented via an On Premise Implementation;

(iii) Install and use Jitterbit Studio Visual Designer on Client-owned or controlled computing equipment to perform

API and data transfer policy design, configuration, and testing related to the Integrated Third Party Applications, consistent with this Agreement and the Documentation;

(iv) Access and use the Jitterbit Web Management Console.

**3.2. Restrictions.** The foregoing rights in 3.1(i) and 3.1(ii) apply solely to the extent Client selects an On Premise Implementation or a Cloud Implementation, or both, as to Jitterbit Agent Software and/or Jitterbit Connector. For example, Client may elect to install the Jitterbit Agent Software via an On Premise Implementation but access the Jitterbit Connectors via a Cloud Implementation, in which case the rights in subsection 3.1 (i) shall apply to the Jitterbit Agent Software and the rights in subsection 3.1.(ii) shall apply to the Jitterbit Connectors (in either case, to the exclusion of the other license right as to the specific item). Client will access and use the Jitterbit Applications solely: (a) for Client's internal business purposes to effect the transmittal of Client Data between Integrated Third Party Applications; (b) in accordance with Documentation and applicable law; and (c) in accordance with the authorized level of functionality and quantity for purchased by Client. In its use of the Jitterbit Applications, Client will not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Jitterbit Applications available to any third party other than Users; (ii) copy the Jitterbit Applications or any part, feature, function or user interface thereof; (iii) reverse engineer or attempt to ascertain the source code of the Jitterbit Applications, or otherwise use or access the Jitterbit Applications for the purpose of creating a competitive product to the Jitterbit Applications; (iv) remove any product identification, proprietary, copyright, or other notices contained in the components of the Jitterbit Applications. In addition, with respect to the Jitterbit Web Management Console or Jitterbit Applications operated by Jitterbit via the Hosting Environment, Client shall not: (v) use the foregoing to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (vi) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (vii) interfere with or disrupt the integrity or performance of the Jitterbit Application or the data contained therein; (viii) attempt to gain unauthorized access to the Jitterbit Application or related systems or networks, including the Hosting Environment.

**3.3. Users.** Client may authorize User(s) to access and use Jitterbit Applications solely on behalf of and for Client's benefit. Client will remain liable for the compliance of Users with the terms and conditions of this Agreement.

**3.4. Integrated Third Party Applications.** The Jitterbit Applications contain features designed to interoperate with Integrated Third Party Applications. Client is solely responsible for obtaining and maintaining access to Integrated Third Party Applications from the applicable providers. Jitterbit is not liable to Client hereunder and

shall not provide Client with any refund, credit, or other compensation for any errors, delays, downtime, or nonperformance of the Jitterbit Applications caused by the temporary or permanent unavailability of the Integrated Third Party Application, or if Client terminates Client's subscription or license to the Integrated Third Party Service. If Client establishes an integration between the Integrated Third Party Application and a Jitterbit Application made available via a Cloud Implementation, Client hereby authorizes Jitterbit to access and transmit Client Data to and/or from the Integrated Third Party Application during the Subscription Term and subject to Jitterbit's other obligations under this Agreement incident to such transfer. Jitterbit is not responsible for any disclosure, modification or deletion of Client Data occurring in or caused by a Third Party Integrated Application.

**3.5. Third Party Service Providers.** Client may select third parties other than Jitterbit to perform implementation and other consulting services related to Client's use of the Jitterbit Applications. Any acquisition by Client of such non-Jitterbit services is solely between Client and the applicable provider. Jitterbit does not endorse or warrant implementation or other consulting services performed by any third party, whether or not such third parties are recommended by Jitterbit, participants of any Jitterbit partner program, and/or designated by Jitterbit as "certified" or "accredited" or other such similar reference. Client is solely responsible for ascertaining whether such third parties providers meet Client's needs.

## **4. Uptime Commitment.**

Jitterbit will use commercially reasonable efforts to make (i) the Jitterbit Agent Software and Jitterbit Connectors, if and to the extent hosted by Jitterbit as part of a Cloud Implementation, and (ii) the Jitterbit Web Management Console available 98.5% of the time ("Uptime Percentage") excluding: (1) periods during a Subscription Term in which Client is not logged into such Jitterbit Applications; (2) planned downtime; and (3) unscheduled downtime caused by: (a) circumstances beyond Jitterbit's or its contractors' reasonable control (including, but not limited to: acts of God, acts of government, flood, fire, earthquake, civil unrest, acts of terror, strike or other labor problem, hosting provider failure or delay, issues related to Third Party Integrated Applications, or denial of service attacks); (b) circumstances entitling Jitterbit to suspend access to the Jitterbit Applications under Section 12 and Section 11.4; and (c) a User's failure to use the Jitterbit Applications in accordance with the Documentation.

## **5. Support Services.**

Jitterbit will provide either: (i) basic Support Services as described at <http://support.jitterbit.com> for the Jitterbit Applications at no additional charge; or (ii) upgraded Support Services, if made available by Jitterbit and purchased by Client separately.

## **6. Professional Services.**

**6.1. Performance of Professional Services.** If mutually agreed upon between the parties in an Order Form or Statement of Work, Jitterbit will perform Professional Services as described therein. The provision of Professional Services by Jitterbit is dependent on Client providing: (a) reasonable access to relevant resources; (b) all relevant information; and (c) timely decisions and input in connection with those Professional Services. In the event of any delays in Client's provision of such assistance, Jitterbit may adjust any agreed timetable or delivery schedule as reasonably necessary.

**6.2. Right to Use Deliverables.** Jitterbit hereby grants to Client a non-exclusive, non-transferable (except in connection with a permitted assignment) right and license during the Subscription Term to use deliverables prepared or created by Jitterbit in the course of performing the Professional Services (other than Training Materials, which are subject to Section 7 below), subject to the same terms and conditions applicable to Client's authorized use of the Jitterbit Applications. Jitterbit retains all right, title and interest in and to Jitterbit's Professional Services templates, methodologies, tools, know-how, and any modifications, enhancements or derivative works of the Jitterbit Applications, Documentation, Training Materials, and Jitterbit's Confidential Information used to deliver the Professional Services and/or incorporated into a deliverable (collectively, "Jitterbit IP"). To the extent that any of the foregoing rights in the Jitterbit IP vest in Client for any reason, Client hereby assigns and transfers without reservation or rights of reversion all of Client's right, title and interest in and to any and all of the foregoing Jitterbit IP without further compensation. Should the foregoing assignment be unenforceable, in whole or in part, for any reason, Client hereby grants Jitterbit an exclusive, irrevocable, perpetual, royalty-free, worldwide right and license to use the Jitterbit IP for any and all business purposes without further compensation or a duty of accounting to Client.

## **7. Training Services.**

If purchased by Client, Jitterbit will provide Training Services as described at the following URL: <http://training.jitterbit.com>. Jitterbit hereby grants Client a non-exclusive, non-transferable (except pursuant to a permitted assignment), royalty-free right and license to use materials provided by Jitterbit during Training Services ("Training Materials") for the training participant's internal business use only for the benefit of Client for so long as this Agreement is in effect. Except with Jitterbit's prior written permission, Client may not (i) record or film any Training Services, (ii) modify or prepare derivative works of the Training Materials, (iii) distribute the Training Materials to third parties, (iv) prepare or deliver training concerning the Jitterbit Applications.

## **8. Security.**

**8.1 Information Security Program.** In connection with the

Hosting Environment used to make the Jitterbit Applications available to Client part of a Cloud Implementation, Jitterbit will operate an information security program designed to protect Client Data processed through the Hosting Environment utilizing industry standard policies and technologies. Jitterbit will require its hosting providers to maintain a current SSAE 16 SOC 1 report (or industry-accepted successor security standard) consisting of a comprehensive internal controls assessment report covering the internal controls and information security related to its hosting services, prepared by a third party auditor. If Jitterbit and Client agree that Client Data will include patient health records as defined by HIPAA, then the supplemental terms and conditions at the URL [www.jitterbit.com/BAA](http://www.jitterbit.com/BAA) shall apply with respect to Jitterbit's processing of such data.

**8.2. Security Incidents.** Jitterbit will take prompt action to respond to any Security Incident and to prevent the further unauthorized use or disclosure of Client Data, and/or to correct the issues within the Hosting Environment, the Jitterbit Web Management Console, or the Jitterbit Application deployed via a Cloud Integration giving rise to such Security Incident. Jitterbit will notify Client promptly, but in no event later than three (3) business days from discovery, upon completing its forensic investigation related to a verified Security Event.

**8.3 Encryption.** To the extent that personally-identifiable information about a User is stored on the Jitterbit Web Management Console (excluding, in all events, Regulated Personally Identifiable Information, which shall not be uploaded by Client onto the Jitterbit Web Management Console), such identifiable data will be encrypted by Jitterbit using industry-standard encryption methods for this kind of data. To the extent that Client transmits Client Data, including any Regulated Personally Identifiable Information through any Jitterbit Application other than the Client Console, Client is solely responsible for encrypting such Client Data and/or Regulated Personally Identifiable Information, including by setting, managing, monitoring, and enforcing the applicable policies with respect to the encryption of such. Client acknowledges and agrees that Jitterbit is not responsible for any loss, alteration, or unauthorized access or transmittal of such data, to the extent that such results from Client's failure to comply with the encryption requirements in the preceding sentence.

## **9. Client Data.**

**9.1. Jitterbit's Use of Client Data.** Client grants to Jitterbit and its Affiliates a non-exclusive, worldwide, limited, revocable and royalty-free license to process the Client Data on Client's behalf solely as necessary for Jitterbit to (i) provide the Jitterbit Web Management Console and/or Jitterbit Applications deployed via a Cloud Implementation during the Subscription Term, and/or (ii) perform Support Services or Professional Services for Client. The foregoing right and license shall terminate upon the earlier of (a) completion of the Support Service or Professional Service,

if Client Data is processed in connection with the same, (b) expiration or termination of the Subscription Term, (c) termination or expiration of this Agreement, or (d) upon Client's written notice to Jitterbit to such effect.

**9.2 Obligations of Client.** The parties expressly agree that, with respect to any Client Data actually processed by Jitterbit pursuant to Section 9.1 above, Client is the data controller and Jitterbit is a data processor. Client acknowledges and agrees that Client Data may be transferred outside the country where it is located if and as necessary to effect the transfer of such Client Data as established by Client's API policies and procedures in the Jitterbit Applications, in which case Client is solely responsible for ensuring that it is lawfully entitled to transfer and authorize Jitterbit to transfer the relevant Client Data to Jitterbit so in accordance with this Agreement. Client will ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation.

**9.3. Mutual Obligations.** In addition to the above, each party to this Agreement agrees to take appropriate technical and organizational measures against unauthorized or unlawful processing, accidental loss, destruction or damage of any personal data obtained from the other party.

## **10. Virus and Malware Detection.**

Each party agrees on an ongoing basis to implement and maintain in those devices and systems used or received by such party to directly access, use or provide a Service that are in such party's possession or control, reasonable and commercially-available technical safeguards to detect and prevent the introduction of computer viruses, Trojan Horses, cancelbots, or other unauthorized computing routines designed to disable, erase, damage or corrupt software, hardware or data.

## **11. Fees, Payment, Taxes.**

**11.1. Fees.** Client will pay Jitterbit the fees set forth in the applicable Order Form and/or Statement of Work. Except as otherwise expressly specified in this Agreement or an Order Form and/or Statement of Work: (i) fees are non-cancelable and non-refundable. Except as otherwise expressly specified in an Order Form and/or Statement of Work: (ii) fees for purchased subscriptions to the Jitterbit Applications are payable annually in full, in advance; (iii) fees for Professional Services other than Training Services are due and payable upon completion of the Professional Services; (iv) fees Training Services are due and payable in full, in advance; (v) fees for upgraded Support Services will be due and payable annually in full, in advance.

**11.2. Payment Term.** Fees are due and payable thirty (30) days from the invoice date. Client agrees to provide complete and accurate billing and contact information to Jitterbit and notifying Jitterbit of any changes to such

information.

**11.3. Overdue Charges.** Without prejudice to Jitterbit's other rights and remedies, invoiced amounts not received by Jitterbit by the due date may accrue late interest at rate of 1.5 % of the outstanding balance per month (or the maximum rate allowed by applicable law if it is less).

**11.4. Suspension of Service for Non-Payment.** Without prejudice to Jitterbit's other rights and remedies, if any amount owed by Client under this Agreement is thirty (30) or more days overdue, Jitterbit may suspend Client's access and use of the Jitterbit Applications and/or performance of Support Services or Professional Services until such amounts are paid in full. Jitterbit will give Client at least ten (10) days written notice that its account is overdue, in accordance with Section 20.11 ("Notice") before exercising its suspension rights under this Section.

**11.5. Payment Disputes.** Jitterbit will not exercise its rights under Section 11.3 ("Overdue Charges") or 11.4 ("Suspension of Services for Non-Payment") for a period of thirty (30) days if Client disputes the fees reasonably and in good faith and is cooperates diligently to resolve the dispute.

**11.6. Taxes.** Jitterbit's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature. Client is responsible for timely paying all such amounts arising from the performance of this Agreement, excluding only taxes based on Jitterbit's income. If Jitterbit has the legal obligation to pay or collect such amounts for which Client is responsible under this section, the appropriate charges will be invoiced to and paid by Client unless Client provides Jitterbit with a valid tax exemption certificate authorized by the appropriate taxing authority.

**11.7 Future Functionality.** Client agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Jitterbit regarding future functionality or features.

**11.8. Affiliate Ordering.** Jitterbit and a Client Affiliate may mutually agree to execute an Order Form under which a Client Affiliate may acquire Professional Services, Support Services or Jitterbit Applications from Jitterbit. An executed Order Form between Jitterbit and Client Affiliate will constitute a separate contract between the relevant Client Affiliate and Jitterbit incorporating all the terms and conditions of this Agreement, except that the term "Client" will be construed to refer to the Client Affiliate. Any Client Affiliate directly purchasing Professional Services, Support Services or Jitterbit Applications will be solely responsible for payment, will be entitled to all of the rights and benefits afforded to Client under this Agreement.

**11.9. Ordering Through Authorized Resellers.** The provisions of this Section 11 shall not apply whenever Client purchases a subscription and/or Support Services,



Training Services or Professional Services through an Authorized Reseller. In such cases, all fees, payment terms and tax terms shall be solely as agreed to between Client and the Authorized Reseller, provided, however, that Section 11.4 above shall apply hereunder to the extent that Jitterbit receives written notification of nonpayment by Client from the Authorized Reseller.

**12. Right of Suspension.** In addition to the suspension rights in Section 11.4, Jitterbit reserves the right to suspend the performance of Professional Services, Support Services, and/or Client's rights to use the Jitterbit Applications: (i) for Client's violation of its obligations under Section 3.2 above; (ii) if Jitterbit determines that the security or proper function of the Jitterbit Applications as made available via the Hosting Environment may be compromised due to hacking, denial of service attacks or other activities constituting or having the potential to constitute a Security Incident; (iii) if Jitterbit receives credible legal notice that Client does not possess requisite rights to access and/or use an Integrated Third Party Application; (iv) if Jitterbit determines that Client's continued use may violate applicable law or third-party rights, or with respect to Jitterbit Applications as made available via the Hosting Environment, result in material harm to Jitterbit, Client or Jitterbit's other clients. To the extent reasonably practicable given the nature of the issue giving rise to a suspension, Jitterbit will promptly notify Client of such suspension in writing. Jitterbit shall use diligent efforts to the extent reasonably practicable to limit the suspension only to the affected portions of the Jitterbit Application and will reinstate such access as promptly as possible after verifying the issue giving rise to the suspension has been satisfactorily resolved.

### 13. Term; Termination

**13.1. Subscription Term.** This Agreement will commence upon the Effective Date and continue until the earlier of (i) expiration or non-renewal of all Subscription Terms, or (ii) termination of this Agreement pursuant to Section 13.3 below.

**13.2. Renewal.** Except as otherwise specified in an Order Form, each Subscription Term will automatically renew for successive one (1) year periods unless either party gives the other party written notice of non-renewal at least forty-five (45) days prior to the end of the then current Subscription Term. Unless otherwise agreed to in a renewal Order Form, pricing for each renewed Subscription Term will be at Jitterbit's then-current standard fees. This Section 13.2 shall not apply to purchases made by Client from an Authorized Reseller, which shall be solely as established between Authorized Reseller and Client.

**13.2. Termination for Cause.** Either party may terminate this Agreement immediately if the other party: (i) breaches any material term of this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice from the non-breaching party specifying the nature of the

breach, or (ii) makes a general assignment for the benefit of creditors, (iii) is adjudicated bankrupt, (iv) files a voluntary petition for bankruptcy or reorganization, or has a petition filed against it for an adjudication in bankruptcy or reorganization and such petition is not dismissed within sixty (60) days, or (v) applies for or permits the appointment of a receiver, trustee or custodian for any of its property or assets.

**13.4. Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (i) Client's right to access and use the Jitterbit Applications, Documentation, Training Materials, deliverables and Jitterbit IP, will terminate; (ii) the parties shall cease all use of and permanently destroy the other party's Confidential Information (except that Jitterbit shall have thirty (30) days after the effective date of termination to delete or destroy all Client Data, unless earlier deletion is requested by Client in writing or unless such deletion is legally prohibited); (iii) Jitterbit may suspend or terminate the performance of all Professional Services and/or Support Services. Client shall be solely responsible for retrieving Client Data in the Jitterbit Studio Visual Designer, Jitterbit Agent Software or Jitterbit Web Management Console within the thirty (30) day period noted herein, and may request that Jitterbit assist with the same.

**13.5. Survival.** The provisions of Sections 2.3, 2.4, 2.5, 11 (as to outstanding, undisputed fees), 13.4, 14, 15, 16.3, 17, 18 and 20 will survive any termination or expiration of this Agreement.

### 14. Confidentiality

**14.1. Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Client's Confidential Information includes all Client Data. Jitterbit's Confidential Information includes the Jitterbit Applications, Training Materials, deliverables, Documentation, and Professional Services methodologies, know-how, templates, and related documentation. Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, training and course material, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**14.2. Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but not less than reasonable care: (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 14.2.

**14.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the 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. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **15. Proprietary Rights**

**15.1. Reservation of Rights.** All rights not expressly granted by one party to the other hereunder are expressly and unconditionally reserved by such party and may not be implied by or inferred from any provision of this Agreement or by the conduct of the parties.

**15.2. Ownership.** As between Jitterbit and Client, Jitterbit will own all right, title, and interest in and to the Jitterbit Applications, Documentation, Training Materials, and Jitterbit's Confidential Information, including any customizations, modifications, adaptations, or derivative works thereto and all intellectual property rights related thereto. As between Client and Jitterbit, Client will own all right, title, and interest in and to the Client Data, Client's Confidential Information, and all intellectual property rights related thereto.

**15.3. Statistical Information.** Jitterbit may compile and use de-identified, aggregate and statistical information related to the performance of the Jitterbit Applications, provided that such information does not incorporate any Client Data, or identify either Client, or Users, or any of Client's Confidential Information.

**15.4. Suggestions.** If Client voluntarily submits to Jitterbit any suggestions, ideas, enhancement requests, feedback, recommendations concerning the features and functions of the Jitterbit Applications ("Suggestions"), Client hereby grants Jitterbit and its Affiliates a non-exclusive, royalty-free, worldwide, perpetual, irrevocable license to freely use, disclose, and otherwise exploit such Suggestions, including by incorporating the Suggestions into future versions of the Jitterbit Applications.

## **16. Warranties**

**16.1. Performance Warranty.** Jitterbit warrants that the Jitterbit Applications will perform in all material respects with the functions described in the then-current Documentation. Should Client discover an error giving rise to a breach of the foregoing warranty, Client shall provide Jitterbit with written notice of such error no later than thirty (30) days of Client's discovery of the same. Client's sole and exclusive remedy for Jitterbit's breach of the warranty in this Section 16.1 is for Jitterbit to use commercially reasonable efforts to promptly repair or replace non-conforming Jitterbit Applications at no additional charge to Client.

**16.2. Professional Services and Support Services Warranty.** Jitterbit warrants that Professional Services and Support Services will be performed in a professional and workmanlike manner in accordance with industry standards. Client's sole and exclusive remedy for Jitterbit's breach of this provision will be Jitterbit's re-performance of applicable Professional Services or Support Services that fail to comply with this warranty at no additional charge.

**16.3. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, JITTERBIT MAKES NO WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS, OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE JITTERBIT APPLICATIONS, OR THIS AGREEMENT, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT (BUT NOT IN DEROGATION OF JITTERBIT'S OBLIGATIONS UNDER SECTION 17 BELOW), MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. JITTERBIT DOES NOT WARRANT THAT: THE JITTERBIT APPLICATIONS OR HOSTING ENVIRONMENT, ARE ERROR FREE; OR ARE NOT SUSCEPTIBLE TO INTRUSION, ATTACK OR COMPUTER VIRUS INFECTION; NOR DOES JITTERBIT WARRANT THAT USERS WILL BE ABLE TO ACCESS OR USE THE JITTERBIT APPLICATIONS WITHOUT PROBLEMS OR INTERRUPTIONS.

## **17. Indemnification**

**17.1. Jitterbit Indemnity.** Jitterbit will defend any action brought against Client by a third party to the extent based upon a claim that the Jitterbit Applications, Training

Materials, Documentation, deliverables, as provided by Jitterbit to Client and used within the scope of this Agreement, infringe any third party copyright or U.S. patent, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded against Client or agreed upon by Jitterbit in settlement. The foregoing indemnification obligations shall not apply to the extent the Claim results from (a) the combination of the Jitterbit Applications with any software or hardware not supplied by Jitterbit; (b) modifications or derivative works of the Jitterbit Applications, Training Materials, Documentation, deliverables by anyone other than Jitterbit or its subcontractors; (c) Client's breach of this Agreement or Client's violation of applicable law or the rights of third parties.

17.2. Client Indemnity. Client will defend any action brought against Jitterbit by a third party to the extent based upon a claim arising or resulting from: (i) Client's unauthorized use or processing of the Client Data; (ii) any unauthorized use of Integrated Third Party Applications by Client or Users in violation of applicable law or any third party rights, and will pay any costs, damages and reasonable attorneys' fees attributable to such actions that are finally awarded against Jitterbit or agreed upon by Client in settlement. The foregoing indemnification obligations shall not apply to the extent the Claim results from Jitterbit's breach of this Agreement or Jitterbit's violation of applicable law or the rights of third parties.

17.3. Indemnity Requirements. The indemnifying party's obligations in this Section 17 are conditioned on the indemnified party (a) giving the indemnifying party prompt notice of any such claim or action; (b) providing reasonable assistance and information to the indemnifying party, at the indemnifying party's expense, for the defense of the claim; and (c) allowing the indemnifying party to control the defense of any applicable claim or action, except that the indemnified party may engage counsel of its choice at its own expense and the indemnifying party will have no right to bind the indemnified party to terms other than the terms and conditions in this Agreement or admit liability by the indemnified party in any claim, or settlement thereof, without the indemnified party's prior written consent, which will not to be unreasonably withheld or delayed.

17.4. Additional Infringement Remedy. If Client's use of any of the Jitterbit Applications, Training Materials, Documentation or deliverables hereunder is, or in Jitterbit's opinion is likely to be enjoined pursuant to Section 17.1 above, then Jitterbit may, at its sole option and expense: (a) procure for Client the right to continue using the infringing items under the terms of this Agreement; (b) replace or modify the infringing items so that they are non-infringing and substantially equivalent or better in function to that of the enjoined items; or (c) if options (a) and (b) above cannot be accomplished despite Jitterbit's commercially reasonable efforts, then Jitterbit may terminate Client's rights and Jitterbit's obligations hereunder with respect to such infringing items and remit to

Client the pro-rata portion of pre-paid fees received by Jitterbit for the remaining Subscription Term.

17.5. Sole Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 17 SET FORTH THE INDEMNIFYING PARTY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO THE APPLICABLE INDEMNIFIABLE CLAIMS.

## **18. Limitation of Liability and Exclusion of Damages.**

18.1. Indirect Damages Exclusion. In no event will either party be liable for any special, punitive, exemplary, indirect, incidental, cover or consequential damages, or for lost data, lost profits, or damages related to business interruption, even if the party knew or should have known of the possibility of such damages, arising out of or relating to this Agreement. The foregoing disclaimer will not apply to the extent prohibited by law.

18.2. Direct Damages. Except for Client's violation of Jitterbit's intellectual property rights, neither party's aggregate liability arising out of or related to this Agreement will exceed the total amounts received by Jitterbit from either Client or Authorized Reseller, as applicable, in the twelve (12) months preceding the claim in connection with Client's use of the Jitterbit Applications or receipt of Professional Services, Training Services or Support Services, in each case as such give rise to the claim. The above limitation will apply whether an action is in contract or tort and regardless of the theory of liability, but will not apply to the extent that fees owed to Jitterbit exceed the limitation.

18.3. Basis of Bargain. The parties acknowledge that the terms of this Section 18 reflect the allocation of risk set forth in this Agreement and that the parties would not enter into this Agreement without these limitations of liability.

19. **Marketing**. Unless otherwise set forth in an Order Form, and subject to Client's prior approval, Jitterbit may identify Client as a customer in a press release, marketing materials, and on its website-using Client's name and logo and subject to Client's then-current trademark or logo usage guidelines provided to Jitterbit. If requested by Jitterbit, Client agrees to provide a quote for a Jitterbit press release within thirty (30) days of the Effective Date.

## **20. Miscellaneous**

20.1. Export Compliance. The Jitterbit Applications may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Client will not permit Users to access or use any the Jitterbit Applications in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.



20.2. Government Users The Jitterbit Applications are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of these components by the U.S. Government will be governed solely by the terms of this Agreement.

20.3. Force Majeure. Neither party will be liable to the other for any loss, damage, delay or breach in performing any obligations hereunder to the extent resulting from any cause or event beyond the control of the party being released hereby, including acts of God, third parties and acts or omissions of civil or military authorities.

20.4 Non-waiver; Remedies Cumulative. Failure or delay by a party to enforce any provisions of this Agreement will not be construed as a waiver of such party’s rights under this Agreement or prejudice such party’s right to take subsequent action. Except as expressly stated herein, all remedies are cumulative, and the exercise of any express remedy by either party does not by itself waive such party’s right to exercise its other rights and remedies available at law or in equity.

20.5 Severability. If any provision hereof is found invalid or unenforceable pursuant to judicial decision, the remainder of this Agreement will remain valid and enforceable according to its terms.

20.6 Enforcement. The prevailing party will have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys’ fees incurred in enforcing this Agreement.

20.7 Assignment. Each party may on written notice assign this Agreement without the other party’s written consent to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination by Client as a result of Jitterbit’s competitive assignment, Jitterbit will refund to Client any prepaid fees covering the remainder of the Subscription Term. Subject to the foregoing, any other assignment to this Agreement will be null and void, and any permitted

assignments will be binding and inure to the benefit of the parties, their respective successors and permitted assigns.

20.8 Amendments. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by a duly authorized representative of each party to this Agreement. No provision of any purchase order or other business form employed by Client will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

20.9. Independent Contractors. The relationship between the parties created by this Agreement is that of independent contractors and neither party will have any authority to create any obligation on behalf of the other.

20.10. Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act (UCITA). The jurisdiction and venue for actions related to the subject matter hereof shall be the California state and United States federal courts located in or nearest to Alameda County, CA, and both parties irrevocably consent to such personal jurisdiction of such courts.

20.11 Notice. Legal notice to either party will be sent in writing to the address shown on the first page of this Agreement. All legal notices will be sent by certified mail or nationally recognized overnight courier service.

20.12 No Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies to any third parties.

20.13 Electronic Signatures; Counterparts. This Agreement may be executed by electronic signature and in counterparts, which, when taken together, will be deemed to constitute one and the same original Agreement.

20.14 Entire Agreement. This Agreement (together with all Order Forms, Statements of Work herein) contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior arrangements relating thereto.