JITTERBIT MASTER SUBSCRIPTION AGREEMENT (Channel)

Last updated on 08/10/2023

This Jitterbit Master Subscription Agreement (Reseller) ("Agreement") governs the supply by Jitterbit, Inc, a Delaware corporation with principal offices located at 1101 Marina Village parkway, Suite 201, Alameda, CA 94501 ("Jitterbit") and End User. By clicking a box indicating acceptance to the terms and conditions of this Agreement, by executing an Order that references this Agreement, or by proceeding with use of the Platform provided by the Authorized Reseller, the End User agrees to be bound by all terms and conditions hereof. 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 reseller, distributor, system integrator or other business partner of Jitterbit's who, pursuant to a written agreement with Jitterbit, engages in the authorized resale of a subscription to the Platform and/or resells Professional Services and/or Support Services to the End User.

1.3 "Documentation" means the online user guides and reference documentation for the Platform, as periodically updated from time to time, accessible via: https://success.jitterbit.com.

1.4 "Customer App" means the software applications and/or configurations developed by and/or on behalf of End User using available low-code application development features in the Platform.

1.5 "App User" means an individual that has been authorized by End User to use a Customer App. End User remains liable for the compliance of its App Users with this Agreement.

1.6 "Data Source" means a database server. For example, One SQL Server with any number of databases would be one data source. While one SQL Server with any number of databases with an additional SQL Server with any number of databases would be considered two data sources.

1.7 "Documentation" means the online user guides and reference documentation for the Jitterbit Platform, as periodically updated, accessible via: https://success.jitterbit.com or other URL made available by Jitterbit.

1.8 Endpoint" or "Application Connection" means each connection between the Platform and either: a) a Third Party Application or data source, or b) any unique combination of system/ IP addresses. For the avoidance of doubt, Endpoints include any Third Party Applications or data sources which are connected directly or indirectly to the Platform.

1.9 "End User" means the entity that executes an Order with the Authorized Reseller for the purchase of a subscription to the Platform and/or Professional Services and/or Support Services.

1.10 "End User Data" means all of End User's electronic data processed by the Platform, including but not limited to Personal Information.

1.11 "Order" means the ordering document entered into between End User and Authorized Reseller for the purchase of a subscription to the Platform and/or Professional Services and/or Support Services,

1.12 "Platform" means any one or more of the following products as noted on an Order (i) the generally available, self-service "Harmony" branded software platform, and/or "Vinyl" branded low-code application platform, and any other services provided online by Jitterbit including eiCloud, (ii) any Jitterbit Applications, in the edition(s) noted on the Order(s), (iii) other software, libraries, Process Templates, Recipes, features and script files, and (iv) any copies, patches, updates, upgrades, enhancements or modifications to the foregoing. "Jitterbit Applications" or "Applications" means Jitterbit and Vinyl™ brand software made available to End User by Jitterbit for installation.

1.13 Personal Information" means data relating to an identified or identifiable natural person or data considered to be personal information as defined under applicable laws, statutes, directives or regulations regarding privacy, data protection, and/or the processing of personal information ("Data Protection Law").

1.14 "Process Template" means a group of pre-built integration use cases that aims to accelerate the execution of a specific business process using numerous objects across multiple applications or systems.

1.15 "Professional Services" means Training Services, Support Services, implementation services, and other professional services that Jitterbit performs for End User as a subcontractor to the Authorized Reseller pursuant to a mutually agreed upon Order or other executed document describing the services rendered, timing and associated fees ("SOW" or "Statement of Work").

1.16 An integration recipe ("Recipe") means a single, pre-built integration project that moves End User Data in one direction between like objects across two applications or systems.

1.17 "Security Incident" means an event in which End User Data is accessed or received by an individual or entity not authorized to access or receive such information.

1.18 "Subscription Term" means the period of authorized access and/or use of the Platform set forth in the Order.

1.19 "Support Services" or "Support" means the technical support and maintenance services for the Platform described in Section 5 herein.

1.20 "Training Services" means instructional courses for the Platform.

1.21 "Third Party Application(s)" means on-premise or hosted End User or third party applications, or services that interoperate with the Platform and/or a Customer App.

1.22 "User(s)" means an individual authorized by End User to use the Platform for End User's benefit, and for whom a Platform user identification and password is established. A User may include, an employee, consultant, contractor, and/or agent of End User. End User remains liable for the compliance of its Users with this Agreement.

2. Subscription Delivery. Subject to the terms and conditions of this Agreement, during the relevant Subscription Term, Jitterbit will provide access to End User and its Users to the Platform within the scope purchased. Jitterbit will make available the applications that are identified in the ordering documentation received from the Authorized Reseller.

3. Jitterbit Platform Use Rights.

3.1 Jitterbit Platform Access and Use. Jitterbit will make the Platform available to End User for the Subscription Term for use by End User and its Users in accordance with the terms and conditions of this Agreement, the Documentation, and in accordance with the entitlements in the Order. Where entitled to use the low-code application functionality, Jitterbit grants to End User a limited, non-exclusive right to use the Platform to make, use and run Customer Apps, for internal use during the Subscription Term in accordance with the entitlements in the Order. For use of the Applications, Jitterbit grants to End User a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to use the object code of the Applications internally in connection with End User's use of the Platform, subject to any use restrictions on the Order, the terms and conditions of this Agreement and the Documentation. Unless stated in an Order, this Agreement does not extend to End User's Affiliates. If any of such Affiliates wishes to subscribe to the Jitterbit Platform, such Affiliate shall execute an Order in accordance with Section 11.6 of this Agreement. End User grants to Jitterbit a worldwide, non-exclusive, royalty-free license, to use, copy, transmit and display Customer Apps including any program code created by or for End User using the Platform as necessary for Jitterbit to perform its obligations under the Agreement.

3.2. Restrictions. End User may not: (i) license, sublicense, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit the Platform or make the Platform available to any third party other than Users; (ii) copy the Platform or any part, feature, function or user interface thereof, or create derivative works, extensions or modifications of the Platform; (iii) reverse engineer or attempt to ascertain the source code of the Platform, or use or access the Platform for the purpose of creating a competitive product; (iv) remove any product identification, proprietary, copyright, or other notices contained in the Platform; (v) use the Platform in violation of applicable law or regulation or in breach of the rights of third parties; (vi) send or store infringing, obscene, threatening, libelous, or unlawful or tortious material, including material harmful to children or violative of third party rights;
(vii) knowingly interfere with or disrupt the integrity or performance of the Platform or the data therein; (viii) attempt to gain unauthorized access to the Platform or related systems or networks.

3.3. End User shall not use the Platform with Cloud Agents to process cardholder information, health data, biometric data, and/or government-issued identification numbers. End User may not permit Jitterbit's direct competitors to access the Platform, except with Jitterbit's prior written consent. "Cloud Agents" is software hosted by Jitterbit as part of the Jitterbit Platform that implements transfer of End User Data between Third Party Applications.

3.4. End User shall be responsible for all activity occurring through its Users, App Users and its Customer Apps. End User shall abide by all applicable laws, treaties and regulations in connection with the use of the Platform and the Customer Apps, including, without limitation, those related to export control, data privacy, international communications and the transmission of technical or personal data.

3.5. Jitterbit maintains a fair use policy in relation to accessing and using the Platform. For the purpose of this policy, End User may not vary disproportionately from average reasonable use regarding the amount of CPU power, data storage and data traffic used by End User. In such event, Jitterbit shall, upon 2 weeks written notice, be entitled to temporarily limit or restrict access and/or require End User to purchase additional capacity.

3.6. End User is solely responsible for maintaining access to any Third Party Applications from applicable providers. Jitterbit shall not provide End User with any refund, credit, and is not liable for any errors, delays, downtime, or nonperformance of the Platform or any Customer App caused by: (i) Third Party Applications, or End User Data resident therein, or (ii) if End User's use of the Third Party Applications is suspended and/or terminated. End User authorizes Jitterbit, acting on End User's behalf, and based on End User's configuration of the Platform to access and transmit End User Data amongst the Platform, the Third Party Applications, and any Customer App via the Platform during the Subscription Term.

3.7. If End User subscribes to the Platform for creation and hosting of external-facing Customer App(s), End User will comply with, and ensure its Users' compliance with, applicable Law with respect to such Customer App(s), including any use of cookies or other tracking

technologies on such Customer App(s).

4. Uptime Commitment.

Jitterbit will use commercially reasonable efforts to make (i) the Platform hosted by Jitterbit available 99.9% of the time excluding (1) planned downtime and (2) unscheduled downtime caused by: (a) circumstances beyond Jitterbit's reasonable control (including, force majeure events, issues related to Third Party Applications, Customer Apps, End User Infrastructure, End User Data or denial of service attacks); (b) circumstances entitling Jitterbit to suspend access to the Platform under Section 12 and Section 11.2; and (c) failure to use the Platform in accordance with Sections 3.2, 3.3, and 3.4.

5. Support.

5.1. End User and Authorized Reseller shall establish, consistent with Jitterbit's agreement with the Authorized Reseller, whether End User will receive support for the Platform directly from Jitterbit ("Jitterbit-Provided Support") or from Authorized Reseller ("Reseller-Provided Support").

5.2. If Jitterbit is required pursuant to its agreement with the Authorized Reseller to provide Jitterbit-Provided Support, then Jitterbit will provide its then-current standard support services ("Support Services") as described at https://success.jitterbit.com/display/DOC/Getting+Support; which Support offerings Jitterbit may periodically update and improve. Access to Support is available at no additional charge via the Support portal at https://support.jitterbit.com. In such instance, End User agrees to log all Support Services requests directly with Jitterbit, provided that if so, agreed between End User and Authorized Reseller, Authorized Reseller may act as End User's agent for purposes of facilitating End User's receipt of Support Services as part of Jitterbit's delivery of Jitterbit-Provided Support. Jitterbit is not responsible or liable for any Support Services commitments, covenants or other representations made by Authorized Reseller pertaining Jitterbit- Provided Support that exceed Jitterbit's then-current standard offering.

Jitterbit will not materially diminish the then-current Support offerings.   For the avoidance of doubt, Support will not be provided for Process Templates and Recipes. Support is aimed at support for use of the Jitterbit Platform. Jitterbit does not support integrations and /or Customer Apps built with the Jitterbit Platform.

5.3.   Unless Jitterbit is required to provide Jitterbit-Provided Support, End User acknowledges and agrees that Support Services will be delivered by the Authorized Reseller as Reseller-Provided Support, and End User shall submit all requests for Support Services only via the Authorized Reseller. Jitterbit agrees that, consistent with its agreement with the Authorized Reseller, Jitterbit will provide second tier and/or third tier support to the Authorized Reseller (as required pursuant to Jitterbit's agreement with the Authorized Reseller) in connection with incidents logged by End User with the Authorized Reseller. Jitterbit assumes no liability to End User in connection with any Reseller-Provided Support.

6. Professional Services.

6.1. Jitterbit will perform Professional Services which Authorized Reseller contracts Jitterbit to perform for End User consistent with Jitterbit's agreement or Statement of Work with the Authorized Reseller. In the event of any delays in End User's provision of required assistance or resources, Jitterbit may adjust any agreed timetable or delivery schedule as reasonably necessary. Unless otherwise agreed, unused Professional Services hours will expire one (1) year from the relevant purchase date.

6.2.   Deliverables provided by Jitterbit in the performance of Professional Services and/or Support Services ("Deliverables") are not custom-developed "works for hire" but are based upon Jitterbit's methodologies, tools, guides, samples, services documentation, and general know-how regarding data integration, application building and configuration and API management and optimization (collectively, "Jitterbit PS IP"). Jitterbit and its licensors retain all right, title and interest in and to the Jitterbit PS IP. If a Deliverable incorporates Jitterbit PS IP, Jitterbit hereby grants to End User a non-exclusive, non-transferable right and license during the Subscription Term to use the Jitterbit PS IP solely as incorporated into that Deliverable in support of and subject to the same terms and conditions applicable to End User's authorized use of the Platform. Nothing in this Agreement shall prohibit or restrict Jitterbit and its Affiliates rights to develop, make, use, market, license or distribute products similar or competitive to those used or created by End User on the Jitterbit Platform.

6.3.   For clarity, Jitterbit PS IP specifically excludes: (i) any End User Data, or (ii) any of End User's Confidential Information disclosed by End User to Jitterbit in connection with the Professional Services and incorporated into a Deliverable by Jitterbit. End User and its licensors retain all right, title and interest in and to the End User Data and the End User's Confidential Information, and Jitterbit obtains only the limited, royalty-free right to use End User Data and the End User's Confidential Information solely (a) for End User's benefit, (b) to the extent necessary to perform Professional Services and prepare the Deliverables for End User, and (c) for the period of performance of the Professional Services for which the End User Project IP is provided.

7. Training Services.

If agreed upon in an Order with Reseller, Jitterbit will provide Training Services as described at the following URL: https://success.jitterbit.com/display/DOC/Getting+Training. Jitterbit hereby grants End User a non-exclusive, non-transferable, 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 End User for so long as this Agreement is in effect.

8. Security

8.1 Information Security Program. Information Security Program. Jitterbit maintains technical, operational and procedural safeguards for the Platform as described at: https://www.jitterbit.com/security-annex-b (collectively, the "Information Security Program") which Jitterbit may periodically update. Jitterbit will not materially diminish the Information Security Program during the Subscription Term. .

8.2 End User is responsible for the security of End User's IT or cloud environment in which the Jitterbit Applications run including any End User Data passing through them, including having appropriate technical and organizational security measures to protect End User Data against accidental, unauthorized, or unlawful access, alteration, destruction or loss, and against all other unlawful forms of processing. Provided Jitterbit complies with its Information Security Program, Jitterbit is not responsible for Security Incidents caused by: (a) End User downgrading or removing default security settings or configurations of the Jitterbit Platform, (b) End User's configuration of the Jitterbit Applications in End User's IT or cloud environment, (c) Third Party Applications in End User's IT or cloud environment, or (d) App Users or Customer Apps.

8.3 Security Incidents. Jitterbit will notify End User without undue delay after becoming aware of a Security Incident. Jitterbit will respond to and take reasonable steps to mitigate the effects of a Security Incident on the Platform.

8.4 Encryption. End User Data stored in the hosted Jitterbit Platform will be encrypted by Jitterbit using industry-standard encryption methods. End User is solely responsible for encrypting and securing End User Data outside the Platform, Jitterbit is not responsible for any loss, alteration, unauthorized access or transmittal of End User Data, to the extent resulting from End User's failure to safeguard User credentials, encrypt data outside the Platform, or Jitterbit's compliance with End User system configurations and instructions including settings related to the Customer Apps.

9. End User Data.

9.1. Jitterbit's Use of End User Data. End User grants to Jitterbit, and its affiliates, a non-exclusive, royalty-free license to process the End User Data on End User's behalf as necessary for Jitterbit to (i) provide the Platform, (ii) perform Support or Professional Services, and (iii) to support, debug, and improve the Platform. The foregoing right and license shall terminate upon the earlier of (a) completion of the Support Service or Professional Service, if End User Data is processed then, (b) expiration or termination of the Subscription Term, (c) upon End User's written notice to Jitterbit. End User shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of End User Data.

9.2 End User acknowledges that it is solely responsible for the accuracy and completeness of the data provided for processing through the Jitterbit Platform and Jitterbit shall have no liability for any errors, omissions, or discrepancies arising from inaccurate, incomplete, or untimely data. In the event of any loss or damage to End User Data, End User's sole and exclusive remedy shall be for Jitterbit to use reasonable commercial endeavors to restore the lost or damaged End User Data. Jitterbit shall not be responsible for any loss, destruction, alteration or disclosure of End User Data caused by any third party or caused by End User's configuration of the Jitterbit Platform or the Customer Apps. If Jitterbit is informed by a third party of unlawful information on its servers, Jitterbit reserves the right to remove the material, including End User Data, or render it inaccessible.

9.3 Obligations of End User. The parties expressly agree that, with respect to any End User Data actually processed by Jitterbit pursuant to Section 9.1 above, Jitterbit is a data processor. End User acknowledges and agrees that End User Data may be transferred pursuant to End User's lawful instructions and configurations in the Platform. End User will ensure the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by Data Protection Laws. End User will notify Jitterbit as soon as practicable after becoming aware of any unauthorized use of any password or account or any other breach or suspected breach of security including as related to the Customer App.

9.4. 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 Information obtained from the other party.

10. Virus and Malware Detection.

Each party agrees on an ongoing basis to implement and maintain in those devices, systems and networks used or received by such party to directly access, use or provide the software or services 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.

11.1. Fees. End User and Authorized Reseller shall mutually agree in each Order to the applicable fees and payment terms for the subscriptions to the Platform and/or Professional Services and/or Support Services purchased by End User from the Authorized Reseller.

11.2. Without prejudice to Jitterbit's other rights and remedies under this Agreement, End User understands and agrees that, if amounts owed to Jitterbit related to End User's use of the Platform are overdue for any reason, Jitterbit may, without limiting its other rights and remedies, suspend End User's access and use of the Jitterbit Platform and/or performance of Support or Professional Services until such amounts are paid in full. If End User wishes to avoid suspension in such an instance, End User may at its option, contact Jitterbit to issue

payment directly to Jitterbit on behalf of the Authorized Reseller in which case Jitterbit will credit fees received from End User against Authorized Reseller's account and will immediately restore End User's access to the Jitterbit Platform and/or performance of Support and/or Professional Services. In the event End User chooses to pay by credit card, an additional fee of 3% shall be applied to the total invoice value as a credit card processing fee. This fee is non-refundable and is intended to cover the processing charges and fees imposed on Jitterbit by credit card companies for handling of credit card transaction.

11.3. Suspension of Service for Non-Payment. If undisputed amounts owed to Jitterbit are thirty (30) or more days overdue, Jitterbit may, without limiting its other rights and remedies, suspend End User's access and use of the Platform and/or performance of Support or Professional Services until such amounts are paid in full. If End User wishes to avoid suspension in such an instance, End User may at its option, contact Jitterbit to issue payment directly to Jitterbit on behalf of Authorized Reseller, in which case Jitterbit will credit fees received from End User against the Authorized Reseller's account and will immediately restore End User's access to the Platform and/or performance of Support Services and/or Professional Services. Suspension of services shall not release End User of its payment obligations under this Agreement. Jitterbit shall not be liable to End User or to any third party for any liability, claims or expenses arising from the suspension of service for non-payment by End User.

11.4. Future Functionality. End User 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.

12. **Right of Suspension.**

Jitterbit reserves the right to suspend the performance of Professional Services, Support, and/or End User's access to the Platform: (i) for End User's violation of its obligations under Section 3.2, 3.3 and 3.4 above; (ii) if Jitterbit determines that the security or functioning of the Platform may be compromised due to hacking, denial of service attacks or a Security Incident; (iii) if Jitterbit receives legal notice that End User does not possess requisite rights to access and/or use a Third Party Application; or (iv) if Jitterbit determines End User's continued use of the Platform and/or Customer Apps may result in material harm to Jitterbit, End User or Jitterbit's other customers (and (v) Jitterbit receipt of a compliant Digital Millennium Copyright Act ("DMCA") a take-down notice. Jitterbit will promptly notify End User 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 Platform and will reinstate access promptly after verifying the issue giving rise to the suspension has been satisfactorily resolved. Jitterbit reserves the right to take any actions as needed to restrict access to or availability of any Customer App that does not comply with this Agreement or that otherwise might adversely affect Jitterbit or other Users of the Platform. Jitterbit shall not be liable to End User or to any third party for any liability, claims or expenses arising from the suspension of service under this Section 12.

13. Term; Termination.

13.1. Subscription Term Renewal. This Agreement will be in effect as of the date the Platform is first provisioned to End User, and continue, until the earlier of (i) expiration or non-renewal of all Subscription Terms, or (ii) termination of this Agreement pursuant to Section 13.2. Except as otherwise specified in an Order, each Subscription Term will automatically renew for successive one (1) year periods unless either party gives the other party written notice of non-renewal of all or parts of the entitlements set forth in an Order at least forty-five (45) days prior to the end of the then current Subscription Term. Pricing for each renewed Subscription Term will be at Jitterbit's then-current standard fees.

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, is adjudicated bankrupt, (iii) files a voluntary petition for bankruptcy or reorganization, or has a petition filed against it and such petition is not dismissed within sixty (60) days, or (iv) applies for or permits the appointment of a receiver or trustee for any of its property or assets. In addition, Jitterbit may terminate this Agreement if: (a) Jitterbit does not receive timely payment of fees corresponding to End User's purchased subscriptions or services, in which case this agreement will terminate on written notice by Jitterbit to End User; (b) the agreement between Authorized Reseller and Jitterbit is terminated by Authorized Reseller for cause, in which case the Subscription Term shall be the lesser of the remaining months of the End User's then-current annual subscription, or twelve (12) months from the date of termination, for multi-year Subscription Terms; or (c) the agreement between Authorized Reseller and Jitterbit is terminated by Jitterbit for cause, in which case the Subscription Term shall continue for the remaining months of the End User's then-current annual subscription, unless otherwise agreed by Jitterbit.

13.3. Effect of Termination. Upon termination or expiration of this Agreement: (i) End User's and its Users right to access and use the Platform, Documentation, Training Materials, and End User and its Users and App Users right to access and use Customer Apps, Deliverables and Jitterbit PS 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 End User Data, unless earlier deletion is requested by End User 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. End User shall be solely responsible for retrieving End User Data in the Platform within the thirty (30) day period noted herein and may request that Jitterbit assist with the same. End User understands and agrees that the Customer Apps will not function independently of the Jitterbit Platform and accordingly exported data only includes the managed Customer data - not the Customer App structure or schema.

13.4. Survival. The provisions of Sections 11 (as to outstanding, undisputed fees), 13.3, 14, 15, 16.3, 17, 18 and 20 will survive any termination or expiration of this Agreement.

14. Confidentiality.

14.1.   "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. End User's Confidential Information includes End User Data. Jitterbit's Confidential Information includes, the Jitterbit Materials as defined in Section 15.2. Confidential Information of each party includes the terms and conditions of this Agreement and all Orders (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. 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,(iv) was independently developed by the Receiving Party, or (v) or becomes public through no fault of the Receiving Party. Confidential Information, as used herein and defined in the Agreement, does not include the residuals resulting from access to information provided under this Agreement related to Customer Apps and each party will have the right to use, disclose, reproduce, distribute and otherwise commercialize all such information without obligation or restriction of any kind. As used herein, "residuals" means information in intangible form, which is retained in the memories of a receiving party's employees who have had access to the other party's Confidential Information.

14.2. Protection of Confidential Information. 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) will not 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, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order to any third party other than the Authorized Reseller, or the Receiving Party's 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. Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided Receiving Party gives Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure. If Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which Disclosing Party is a party, and Disclosing Party is not contesting the disclosure, Disclosing Party will reimburse 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. Jitterbit owns all right, title, and interest in and to the (i) the Jitterbit name and logo, Jitterbit's other trademarks and service marks, including 'Harmony' and 'Vinyl' as applied to the Platform, (ii) the Jitterbit Platform, Jitterbit Applications, Documentation, Jitterbit PS IP, Training Materials, including any customizations, modifications, adaptations, or derivative works and all intellectual property rights thereto ("Jitterbit Materials").

15.3.   End User owns all right, title, and interest in and to the End User Data, End User name and logo and End User's other trademarks and service marks and all intellectual property rights thereto. Subject to Jitterbit's rights in any underlying Jitterbit Materials and subject to the terms of the Agreement, End User retains all rights, title, and interest in the Customer Apps developed by End User. End User understands and agrees that Jitterbit and other Jitterbit customers may make applications, solutions and/or configurations using the Jitterbit Platform which are similar to the Customer Apps and that the Customer Apps will not function independently of the Jitterbit Platform.

15.4.   Jitterbit Service Data. Jitterbit may collect and maintain "Service Data" which is data generated as a by-product of use of the Platform and Support Services. Jitterbit may collect Service Data for a number of reasons, including, but not limited to, operating or monitoring security of the Platform, providing Support, including system log and debug data, authenticating User entitlement, and/or to improve the Platform and related services.

15.5. If End User voluntarily submits to Jitterbit any suggestions, ideas, enhancement requests, feedback, recommendations concerning the features and functions of the Platform ("Suggestions"), End User 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 Platform provided such Suggestions will never incorporate any End User Data or identify End User, its Affiliates, any User, or any of End User's Confidential Information.

15.6.   Jitterbit Development.   Nothing in this Agreement will prevent Jitterbit from (i) providing feedback, development assistance, or suggestions to other customers or partners that develop products and services that may compete with the Customer App; and (ii) developing, or having developed, any products or services, including products or services that compete with the Customer App. Jitterbit will have the right, solely in connection with its products and services, to use, reproduce, prepare derivative works and distribute any information provided by End User without obligation or restriction of any kind.

16. Warranties.

16.1.   Performance Warranty. Jitterbit warrants that the Platform will perform in all material respects with the functions described in the then-current Documentation. End User'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 portion of the Platform at no additional charge to End User.

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

16.3.   Disclaimer of Warranties. The Process Templates and Recipes provided with the Jitterbit Platform are provided on an "AS-IS" basis. End User agrees there are no guarantees or warranties as to the specific outcome or results that End User can expect from using Process Templates and Recipes.   EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, JITTERBIT MAKES NO WARRANTIES, REPRESENTATIONS, OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PLATFORM, OR THIS AGREEMENT, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. JITTERBIT DOES NOT WARRANT THAT THE PLATFORM, IS ERROR FREE; IS NOT SUSCEPTIBLE TO INTRUSION, ATTACK OR COMPUTER VIRUS INFECTION; NOR DOES JITTERBIT WARRANT USERS WILL BE ABLE TO ACCESS OR USE THE PLATFORM WITHOUT INTERRUPTION. JITTERBIT MAKES NO WARRANTY, REPRESENTATION, COVENANT, AND ASSUMES NO LIABILITY OF ANY KIND IN CONNECTION WITH ANY ACT OR OMISSION OF THE AUTHORIZED RESELLER.

17.   Indemnification.

17.1.   Jitterbit Indemnity. Jitterbit will defend any action brought against End User its Affiliates, and their respective employees, officers, or agents by a third party to the extent based upon a claim that the Platform, Training Materials, Documentation, Jitterbit PS IP, Deliverables (altogether "Jitterbit Technology") provided by Jitterbit to End User and used within the scope of this Agreement, infringes any intellectual property right of such third party ("Covered Claim"), and will pay any costs, damages and reasonable attorneys' fees attributable to such Covered Claim that are awarded against End User or agreed upon by Jitterbit in settlement. The foregoing indemnification obligations shall not apply to the extent the Covered Claim results from (a) the combination of the Jitterbit Technology with any software, or hardware, data or system not supplied by Jitterbit; (b) modifications or derivative works of the Jitterbit Technology by anyone other than Jitterbit or its subcontractors; (c) End User's breach of this Agreement or End User's violation of applicable law or the rights of third parties; (d) End User Data used by Jitterbit as permitted by this Agreement or from the use of Customer Apps or (e) the acts or omissions of Authorized Reseller.

17.2.   End User Indemnity. End User will defend any action brought against Jitterbit, its Affiliates, and their respective employees, officers, or agents by a third party to the extent based upon a claim arising or resulting from: (i) End User's unauthorized use or processing of the End User Data; (ii) any unauthorized use of Third Party Applications by End User, its Affiliates, or their Users or (iii) arising from Customer Apps (the "Covered Claim"), and will pay any costs, damages and reasonable attorneys' fees attributable to such Covered Claim that are awarded against Jitterbit or agreed upon by End User in settlement.   The foregoing indemnification obligations shall not apply to the extent the Covered 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 Covered Claim; (b) providing reasonable assistance and information to the indemnifying party, at the indemnifying party's expense, for the defense of the Covered Claim; and (c) allowing the indemnifying party to control the defense of any Covered Claim, 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 Covered 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 End User's use of any of the Jitterbit Technology 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 End User 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 End User's rights and Jitterbit's obligations hereunder with respect to such infringing items, whereupon Jitterbit will remit to End User any pre-paid fees for the remainder of the 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 COVERED 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, INCLUDING, BUT NOT LIMITED TO, LOSS OR CORRUPTION OF DATA, LOST PROFITS, LOSS OF USE, DAMAGES RELATED TO BUSINESS INTERRUPTION, , HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR OTHERWISE, 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.   Limitation of Liability. Jitterbit's aggregate liability for any and all damages and losses arising out of or related to this Agreement will not exceed the total amount paid or payable to Jitterbit by the Authorized Reseller for End User's unique Order or by End User hereunder in the twelve (12) months preceding the incident. 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 such liability may not be excluded or limited as a matter of applicable law.

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.** Jitterbit will not issue any press release or other public announcement or engage in the external use of End User's name or logo without End User's prior written consent.

20. **Miscellaneous**

20.1. Export Compliance. Each party will comply with all export, import, anti-corruption, and anti-boycott, laws applicable to such party in its performance under the Agreement, including but not limited to all applicable import, export control, anti-corruption and anti-boycott laws and regulations of the United States, the United Kingdom and/or the European Union. Each party represents that it is not named on anyThe Platform 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. End User will not permit Users to access or use any the Jitterbit Platform in a U.S.-embargoed country, or in violation of any U.S. export law or regulation. Each party agrees to comply in all material respects with the Bribery Act 2010, the U.S. Foreign Corrupt Practices Act,15 U.S.C. §78dd-2 and all other laws dealing with antibribery, extortion and kickbacks, to the extent applicable hereunder.

20.2. Government Users. The Jitterbit Platform is provided for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Products include only those rights customarily provided to the public as defined in this Agreement. The Platform is "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), and FAR 12.211 (Technical Data), 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. If a government agency has a need for rights not granted under the terms of this Agreement, it must negotiate with Jitterbit to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable 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. Deployment Verification. End User is responsible for monitoring that its usage of the Platform is within the limits as set forth in an applicable Order. Jitterbit has the right to verify End User's deployment and use of the Platform for compliance with the terms of this Agreement and the applicable Order. End User will cooperate in providing information and commercially reasonable assistance to Jitterbit in verifying End User's usage and compliance. If End User's use of the Platform is found to be greater than contracted for ("Overage"), End User will be invoiced for the Overage for the remainder of the then-current Subscription Term. The additional use entitlements covering the Overage shall be considered part of the then current Order and will renew in accordance with Section 13.1. . If the resulting adjustments to the Subscription Fees owed by End User are greater than five percent (5%) of the Subscription Fees paid by End User under this Agreement, End User will pay the expenses associated with such audit in addition to the additional license and support fees

20.5. References to Jitterbit weblinks or URLs shall include successor weblinks, in the case where weblinks or URLs have been updated or moved by Jitterbit.

20.6. 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.

20.7. 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.

20.8. 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.

20.9. 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 End User as a result of Jitterbit's competitive assignment, Jitterbit will refund to End User 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.

20.10.   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 on-line portal, purchase order or other business form

employed by End User 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. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order, (2) this Agreement.

20.11   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.

20.11 Governing Law; Venue. This Agreement shall be governed by the laws of (i) the State of California and the United States without regard to conflicts of laws provisions thereof, if End User is headquartered in the United States or Canada, (ii) Brazil, if End User is headquartered in Latin America (iii) State of Victoria, Australia, if End User is headquartered in Australia, New Zealand, or in any country in Asia Pacific, including Japan, or (iv) the Netherlands, if End User is headquartered in any other country in Europe, or in the Middle East or Africa. In each case, laws shall apply without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act (UCITA). All disputes with respect to this Agreement shall be heard exclusively in the courts located in (i) San Francisco, California (State or Federal Courts), if End User is headquartered in any country in the Americas, (ii) San Paulo, Brazil, if End User is headquartered in Latin America (iii) Melbourne, Australia if End User is headquartered in Australia, New Zealand, or in any country in Asia Pacific, including Japan or (iv) Amsterdam, the Netherlands, if End User is headquartered in any other country in Europe, or in the Middle East or Africa. The parties each consent to the jurisdiction and venue of such courts.

20.12   Notice. Legal notice to either party will be sent in writing to the address shown on the first page of this Agreement or an Order. Except as set forth in this Agreement, all legal notices will be sent by certified mail or nationally recognized overnight courier service.

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

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