

# JITTERBIT MASTER SUBSCRIPTION AGREEMENT

Last updated on 01/21/2021

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 1101 Marina Village Parkway, Suite 202, Alameda, CA 94501 ("Jitterbit"), and the entity that is the signatory to the relevant Order Form ("Customer"). By clicking a box indicating acceptance to the terms and conditions of this Agreement or by executing an Order Form that references this Agreement, Customer 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 "Customer Data" means all of Customer's electronic data processed by the Jitterbit Platform, in providing Support Services, including but not limited to Personal Information.

1.3 "Documentation" means the online user guides and reference documentation for the Jitterbit Platform, as periodically updated, accessible via: <http://success.jitterbit.com>.

1.4 "Jitterbit Applications" means downloadable Jitterbit software included in the applicable Jitterbit Platform that is made available to Customer by Jitterbit for installation on end user computers.

1.5 "Jitterbit Platform" means the generally available, self-service "Harmony"-branded software platform provided by Jitterbit, including any Jitterbit Applications, in the edition(s) noted on the relevant Order Form(s), (ii) other software, libraries, script files and process templates made available to Customer, (iii) any copies, patches, updates, upgrades, enhancements or other modifications to the foregoing.

1.6 "Order Form" means the ordering document entered into between Customer and Jitterbit or any of its Affiliates, including any addenda and supplements thereto, for the purchase of subscriptions to the Jitterbit Platform, Support Services or Professional Services, specifying the Customer's entitlement to, and applicable usage limitations for the Jitterbit Platform. The Order Form shall incorporate the terms of this Agreement and state fees payable by Customer, and any other terms and conditions relevant to the transaction.

1.7 "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").

1.8 "Professional Services" means Training Services, implementation services, and other professional services that the parties may agree Jitterbit will perform for Customer pursuant to a mutually agreed upon Order Form or Statement of Work.

1.9 "Security Incident" means an event in which Customer Data processed by Jitterbit is accessed or received by an individual or entity not authorized to access or receive such information.

1.10 "Statement of Work" or "SOW" means a mutually agreed upon document 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.

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

1.12 "Support Services" means the technical support and maintenance services for the Jitterbit Platform as described in Section 5 of this Agreement.

1.13 "Third Party Application(s)" means on-premise or hosted Customer or third party applications, or services that interoperates with the Jitterbit Platform. Each connection between the Jitterbit Platform and a Third Party Application or data source is referred to as an "Application Connection" or "Endpoint."

1.14 "Training Services" means instructional courses provided by Jitterbit regarding the Jitterbit Platform, as listed on the training pages on the Jitterbit website.

1.15 "User(s)" means an individual authorized by Customer to use the Jitterbit Platform for Customer's benefit, and for whom a user identification and password to access the Jitterbit Platform has been established. A User may include, an employee, consultant, contractor, and/or agent of Customer.

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

2.1 Trial Services. Jitterbit may permit Customer to register for a free trial of the Jitterbit Platform 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 Customer registered; (ii) the start date of the Subscription Term for purchased access to the Jitterbit Platform.

2.2 Non-GA Services. Jitterbit may invite Customer to try, at no charge, Jitterbit products or services that are not generally available to Jitterbit's customers ("Non-GA Services"). Customer 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 the "Jitterbit Platform" hereunder and are provided solely and exclusively "AS IS" with no express or implied warranty of any kind. CUSTOMER 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 CUSTOMER DATA ENTERED INTO THE TRIAL SERVICES AND/OR NON-GA SERVICES MAY BE PERMANENTLY LOST UNLESS CUSTOMER: (i) PURCHASES A SUBSCRIPTION TO THE JITTERBIT PLATFORM 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 NON-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 \$500. IF CUSTOMER 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 Platform Use Rights.

3.1 Jitterbit Platform Access and Use. Jitterbit will make the Jitterbit Platform available to Customer for the Subscription Term solely for use by Customer and its Users in accordance with the terms and conditions of this Agreement, the Documentation, and the Order Form. Use of the Jitterbit Platform by Customer and any of its Affiliates must at all

times, in the aggregate, remain within the restrictions in the Order Form. If use of the Jitterbit Platform requires Customer to install Jitterbit Applications, Jitterbit grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to use the object code form of the Jitterbit Applications internally in connection with Customer's use of the Jitterbit Platform, subject to the terms and conditions of this Agreement and the Documentation.

3.2. Restrictions. Customer may not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit the Jitterbit Platform, or make the Jitterbit Platform available to any third party other than Users; (ii) copy the Jitterbit Platform or any part, feature, function or user interface thereof, or create derivative works, extensions or modifications of the Jitterbit Platform, provided that the foregoing shall not limit Customer's right, within the scope noted on the Order Form, to use the relevant integration and configuration components of the Jitterbit Platform to effect system connectivity between Third Party Applications managed via the Jitterbit Platform, even if such are deemed a derivative work or extension of the Jitterbit Platform; (iii) reverse engineer or attempt to ascertain the source code of the Jitterbit Platform, or otherwise use or access the Jitterbit Platform for the purpose of creating a competitive product to the Jitterbit Platform; (iv) remove any product identification, proprietary, copyright, or other notices contained in the components of the Jitterbit Platform; (v) use the Jitterbit 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 otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (vii) knowingly interfere with or disrupt the integrity or performance of the Jitterbit Platform or the data contained therein after notice from Jitterbit and supply of relevant instructions to correct the issue; (ix) attempt to gain unauthorized access to the Jitterbit Platform or its related systems or networks, including the hosting environment; (x) transmit or process Personal Information in violation of Data Protection Laws applicable to the type of Personal Information and/or Customer's business, industry, or geographic location(s) or that of the applicable data subjects. Customer shall not use the Jitterbit Platform with Cloud Agents to process cardholder information, biometric data, or government-issued identification numbers. Customer may not permit Jitterbit's direct competitors to access the Jitterbit Platform, except with Jitterbit's prior written consent.

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

3.4. Third Party Applications. The Jitterbit Platform may be configured by Customer or its Users to interoperate with Third Party Applications. Customer is solely responsible for obtaining and maintaining access to the Third Party Applications from the applicable providers. Jitterbit is not

liable to Customer hereunder and shall not provide Customer with any refund, credit, or other compensation for any errors, delays, downtime, or nonperformance of the Jitterbit Platform caused by: (i) the Third Party Applications, or (ii) the Customer Data resident in the Third Party Applications, or (iii) Customer's subscription or license to the Third Party Applications being suspended and/or terminated. Solely as necessary for the Jitterbit Platform to execute the data transfers to and from the Third Party Applications based on Customer's implemented configurations, Customer authorizes Jitterbit, acting on Customer's behalf, to access and transmit Customer Data to and/or from the Third Party Applications via the Jitterbit Platform during the Subscription Term, subject to Jitterbit's other obligations under this Agreement incident to such transfers.

**3.5. Third Party Service Providers.** Customer may select third parties other than Jitterbit to perform implementation and other consulting services related to Customer's use of the Jitterbit Platform. Any acquisition by Customer of such non-Jitterbit services is solely between Customer 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. Customer is solely responsible for ascertaining whether such third parties providers meet Customer's needs.

#### **4. Uptime Commitment.**

Jitterbit will use commercially reasonable efforts to make (i) the Jitterbit Platform hosted by Jitterbit available 99.9% of the time ("Uptime Percentage") excluding: (1) planned downtime; and (2) 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, issues related to Third Party Applications, Customer Data or denial of service attacks); (b) circumstances entitling Jitterbit to suspend access to the Jitterbit Platform under Sections 11.4 and 12; and (c) a User's failure to use the Jitterbit Platform in accordance with section 3.2 or the Documentation.

#### **5. Support Services.**

5.1 During the Subscription Term, Jitterbit will provide Support Services as described on the Order Form and the Jitterbit website at <https://success.jitterbit.com/display/DOC/Getting+Support>. Access to Support Services for the Jitterbit Platform is available at no additional charge via <http://support.jitterbit.com>.

5.2 Jitterbit may periodically update and improve its Support Services offerings, which updates will apply to Customer at the same time they are generally made applicable to all other Jitterbit customers. Jitterbit agrees it will not materially diminish the then-current Support Services offerings.

#### **6. Professional Services.**

**6.1. Performance of Professional Services.** If mutually agreed upon between the parties in an Order Form or SOW, Jitterbit will perform Professional Services as described therein. The provision of Professional Services by Jitterbit is dependent on Customer 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 Customer's provision of such assistance, Jitterbit may adjust any agreed timetable or delivery schedule as reasonably necessary. Unless otherwise agreed in the Order Form or SOW, unused Professional Service hours will expire (1) year from the relevant purchase date.

**6.2. Right to Use Deliverables.** Customer understands and agrees that Jitterbit's Professional Services specified in the Order Form or SOW at all times pertain to the Jitterbit Platform and that Jitterbit is not a general purpose information technology provider. Therefore, deliverables provided by Jitterbit incident to the performance of Professional Services ("Deliverables") are not custom-developed "works for hire" but are based upon Jitterbit's and its third party licensors' methodologies, tools, guides, templates, samples, services documentation, and general know-how regarding API management and optimization (collectively, "Jitterbit PS IP"). While Jitterbit obtains no right, title or interest in or to any of Customer Project IP (as defined in Section 6.3 below), 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 Customer a non-exclusive, non-transferable (except in connection with a permitted assignment) 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 Customer's authorized use of the Jitterbit Platform.

**6.3. Customer Project IP.** For clarity, Jitterbit PS IP specifically excludes: (i) any Customer Data, or (ii) any of Customer's Confidential Information, including but not limited to, any information pertaining to the Third Party Applications in use by Customer, Customer's APIs or connectors, Customer's business processes or integration projects managed via the Jitterbit Platform, any data integration or business process rules pertaining to the Customer Data as managed via the Jitterbit Platform and/or Third Party Applications, or, (iii) any other Confidential Information of Customer pertaining to Customer's customers, suppliers, business, finances, operations, product or other plans, (items in (i) through (iii), collectively, "Customer Project IP"), that in each case are disclosed to Jitterbit in connection with the Professional Services, and/or described or referenced by Jitterbit in preparing a Deliverable for Customer, or incorporated into a Deliverable by Jitterbit. Customer and its licensors retain all right, title and interest in and to the Customer Project IP, and Jitterbit obtains only the limited, royalty-free right to use the Customer Project IP solely (a) for Customer's benefit, (b) to the extent strictly necessary to perform Professional



Services and prepare the Deliverables for Customer, and (c) for the period of performance of the Professional Services for which the Customer Project IP is provided.

## 7. Training Services.

If agreed upon in an Order Form, Jitterbit will provide Training Services as described in the Order Form and at the URL: <https://success.jitterbit.com/display/DOC/Getting+Training>. Jitterbit hereby grants Customer 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 Customer for so long as this Agreement is in effect. Except with Jitterbit's prior written permission, Customer 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 who are not Users participating in Training Services, (iv) prepare or deliver training concerning the Jitterbit Platform.

## 8. Security.

**8.1 Information Security Program.** Jitterbit implements technical, operational and procedural safeguards for the Jitterbit Platform as described at the URL <https://success.jitterbit.com/display/DOC/Jitterbit+Security+and+Architecture+White+Paper> (collectively, the "Information Security Program"). Customer acknowledges that Jitterbit is unable to accommodate or require its subprocessors to accommodate customer specific security policies, standards, regulations, or procedures, however, Jitterbit will only utilize subprocessors to process Customer Data who 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 Customer agree that Customer 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** Customer is responsible for the security of any Jitterbit Applications Customer runs as well as any Customer Data passing through such components. Provided Jitterbit complies with its Information Security Program, Jitterbit is not responsible for Security Incidents to the extent caused by: (a) Customer downgrading or removing default security settings or configurations of the Jitterbit Platform, (b) Customer's configuration of the Jitterbit Applications, (c) Third Party Applications. Jitterbit agrees it will not materially reduce the Information Security Program during the Subscription Term, and subject to this commitment, Jitterbit may in its discretion update and administer the Information Security Program as part of its ongoing efforts to provide industry-leading security and meet laws or regulations, including Data Protection Laws, that apply to Jitterbit specifically in its role as provider of the Jitterbit Platform.

**8.3 Security Incidents.** Jitterbit will take prompt action to respond to any Security Incident and to prevent the further unauthorized use or disclosure of Customer Data, and/or to correct the issues within the Jitterbit Platform giving rise to such Security Incident. Jitterbit will notify Customer without undue delay, but in no event later than three (3) business days (unless earlier notification is required under applicable Data Protection Laws) after completing its forensic investigation related to a verified Security Incident.

**8.4 Encryption.** To the extent that Personal Information about a User is stored on the Jitterbit Platform hosted by Jitterbit, such Personal Information will be encrypted by Jitterbit using industry-standard encryption methods. Customer is solely responsible for encrypting Customer Data outside the portions of the Jitterbit Platform hosted by Jitterbit. Customer 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 either Customer's failure to comply with the encryption requirements in the preceding sentence, or Jitterbit's compliance with Customer system configurations and instructions with respect to the Personal Information.

## 9. Customer Data.

**9.1 Jitterbit's Use of Customer Data.** Customer grants to Jitterbit and its Affiliates a non-exclusive, limited, revocable and royalty-free license to process Customer Data on Customer's behalf as necessary for Jitterbit to (i) provide the Jitterbit Platform to Customer, (ii) perform Support Services, and Professional Services for Customer and (iii) to support, debug, and improve the Jitterbit Platform. The foregoing right and license shall terminate upon the earlier of (a) completion of the Support Service or Professional Service, if Customer 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 Customer's written notice to Jitterbit to such effect.

**9.2 Obligations of Customer.** The parties expressly agree that, with respect to any Customer Data actually processed by Jitterbit pursuant to Section 9.1 above, Customer is the data controller and Jitterbit is a data processor. Customer acknowledges and agrees Customer Data may be transferred pursuant to Customer's instructions, including outside the country where the Customer Data is located, if and as necessary to effect the transfer of such Customer Data pursuant to Customer's configuration of the Jitterbit Platform. Customer 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 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, systems and networks used or received by such party to directly access, use or provide the Jitterbit Platform or Professional 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, Taxes.**

11.1. Fees. Customer will pay Jitterbit the fees set forth in the applicable Order Form and/or SOW. Except as otherwise expressly specified herein or in an Order Form and/or SOW: (i) fees are non-cancelable and non-refundable; (ii) fees for subscriptions to the Jitterbit Platform, fees for Training Services, and upgraded Support Services are payable annually in full, in advance; (iii) fees for Professional Services are due and payable as provided in the Order Form or SOW, or if not applicable, upon completion of the Professional Services.

11.2. Payment Term. Fees are due and payable thirty (30) days from the invoice date. Customer 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 Customer under this Agreement is thirty (30) or more days overdue, Jitterbit may suspend Customer's access and use of the Jitterbit Platform and/or performance of Support Services or Professional Services until such amounts are paid in full. Jitterbit will give Customer 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 Customer disputes the fees reasonably and in good faith and 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. Customer 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 Customer is responsible under this section, the appropriate

charges will be invoiced to and paid by Customer unless Customer provides Jitterbit with a valid tax exemption certificate authorized by the appropriate taxing authority.

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

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 Customer's rights to use the Jitterbit Platform: (i) for Customer's violation of its obligations under Section 3.2 above; (ii) if Jitterbit determines that the security or proper functioning of the Jitterbit Platform 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 Customer does not possess requisite rights to access and/or use an Third Party Application; (iv) if Jitterbit determines that Customer's continued use may result in material harm to Jitterbit, Customer or Jitterbit's other Customers. To the extent reasonably practicable given the nature of the issue giving rise to a suspension, Jitterbit will promptly notify Customer 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 Platform 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; Renewal. 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 13.2 below. 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.

**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.

**13.3. Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (i) Customer's right to access and use the Jitterbit Platform, Documentation, Training Materials, Deliverables and Jitterbit PS 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 Customer Data, unless earlier deletion is requested by Customer 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. Customer shall be solely responsible for retrieving Customer Data in the Jitterbit Platform within the thirty (30) day period noted herein, and may request that Jitterbit assist with the same.

**13.4. Survival.** The provisions of Sections 2.3, 2.4, 2.5, 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. 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. Customer's Confidential Information includes all Customer Data and Customer Project IP. Jitterbit's Confidential Information includes the Jitterbit Platform, Jitterbit PS IP, Training Materials, and the 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, (iv) was independently developed by the Receiving Party, or (v) or becomes public through no fault of 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.** Jitterbit owns all right, title, and interest in and to: (i) the Jitterbit name and logo, Jitterbit's other trademarks and service marks, including 'Harmony' as applied to the Jitterbit Platform, (ii) the Jitterbit Platform, Documentation, Jitterbit PS IP, Training Materials, and Jitterbit's Confidential Information, including any customizations, modifications, adaptations, or derivative works, and all intellectual property rights thereto. Customer owns all right, title, and interest in and to the Customer name and logo, Customer's other trademarks and servicemarks, Customer Data, the Customer Project IP, and Customer's Confidential Information, including any customizations,

modifications, adaptations, or derivative works, and all intellectual property rights thereto.

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

15.4. Suggestions. If Customer voluntarily submits to Jitterbit any suggestions, ideas, enhancement requests, feedback, recommendations concerning the features and functions of the Jitterbit Platform ("Suggestions"), Customer 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 Platform, provided such Suggestions will never incorporate any Customer Data or identify Customer, its Affiliates, any User, or any of Customer's Confidential Information, or be displayed in any way that permits such identification.

## 16. Warranties

16.1. Performance Warranty. Jitterbit warrants the Jitterbit Platform will perform in all material respects with the functions described in the then-current Documentation. Should Customer discover an error giving rise to a breach of the foregoing warranty, Customer shall provide Jitterbit with written notice of such error no later than thirty (30) days of Customer's discovery of the same. Customer'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 Platform at no additional charge to Customer.

16.2. Professional Services and Support Services Warranty. Jitterbit warrants that: (a) Professional Services and Support Services will be performed in a professional and workmanlike manner in accordance with industry standards and (b) the Deliverables will conform to the descriptions in the governing SOW. Customer'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 PLATFORM, 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 PLATFORM 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 PLATFORM WITHOUT PROBLEMS OR INTERRUPTIONS.

## 17. Indemnification

17.1. Jitterbit Indemnity. Jitterbit will defend any action brought against Customer, its Affiliates, and their respective employees, officers, or agents by a third party to the extent based upon a claim that the Jitterbit Platform, Training Materials, Documentation, Jitterbit PS IP, Deliverables (altogether "Jitterbit Technology"), as provided by Jitterbit to Customer and used within the scope of this Agreement, infringes any intellectual property right of such third party (the "Covered Claim") and will pay any costs, damages and reasonable attorneys' fees attributable to such Covered Claim that are awarded against Customer 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, 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) Customer's breach of this Agreement or Customer's violation of applicable law or the rights of third parties; (d) Customer Project IP used by Jitterbit as permitted by this Agreement.

17.2. Customer Indemnity. Customer 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) Customer's unauthorized use or processing of the Customer Data; (ii) any unauthorized use of Third Party Applications by Customer, its Affiliates, or their Users (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 Customer 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 Customer's use of any of the Jitterbit Technology 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 Customer 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 or Customer may terminate Customer's rights and Jitterbit's obligations hereunder with respect to such infringing items, whereupon Jitterbit will remit to Customer 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, 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. Neither party's aggregate liability arising out of or related to this Agreement will exceed the total amount paid by Customer 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 that fees owed by Customer 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.** Jitterbit may identify Customer as a customer in a press release, marketing materials, and on its website using Customer's name and logo. Customer agrees to provide a quote for a Jitterbit press release within 30 days of the Effective Date.

## 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 any U.S. government denied-party list. Customer 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 Act) and the U.S. Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2 ("FCPA") and all other laws dealing with antibribery, extortion and kickbacks, to the extent applicable to such party in its performance under this Agreement.

20.2. Government Users. The Jitterbit Platform is "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 Customer as a result of Jitterbit's competitive assignment, Jitterbit will refund to Customer 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 Customer 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 Form, (2) this Agreement.

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 (i) the State of California and the United States without regard to conflicts of laws provisions thereof, if Customer is headquartered in any country in the

Americas, (ii) Australia, if Customer is headquartered in Australia, New Zealand, or in any country in Asia Pacific, including Japan, (iii) England, if the Customer is headquartered in the United Kingdom, or (iv) the Netherlands, if Customer 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).

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, 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.