



SUBSCRIPTION AGREEMENT (Jive Cloud)

NOTE: THIS AGREEMENT WILL ONLY APPLY TO THE EXTENT THAT NO BINDING AGREEMENT, WRITTEN OR ELECTRONIC, (THE "OTHER AGREEMENT") IS ALREADY IN PLACE BETWEEN CUSTOMER (DEFINED BELOW) AND JIVE SOFTWARE, INC. PERTAINING TO THE HOSTED SERVICE TO WHICH THIS AGREEMENT APPLIES OR RELATED PROFESSIONAL SERVICES (AS DEFINED BELOW). TO THE EXTENT THAT ANY OTHER AGREEMENT IS IN EFFECT, THEN SUCH OTHER AGREEMENT WILL GOVERN CUSTOMER'S ACCESS AND USE OF THE HOSTED SERVICE AND RECEIPT OF PROFESSIONAL SERVICES AND THIS AGREEMENT WILL NOT APPLY EVEN IF YOU ARE REQUIRED TO CLICK THE BOX AFFIRMING YOUR CONSENT TO THE TERMS OF THIS AGREEMENT.

BY COMPLETING THE ONLINE REGISTRATION FORM AND CLICKING THE "I AGREE", "CREATE" OR OTHER AUTHORIZING BUTTON, ACCESSING OR USING THE HOSTED SERVICE (AS DEFINED BELOW) WITHOUT AN APPLICABLE OTHER AGREEMENT OR BY OTHERWISE AGREEING IN WRITING TO THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU SUBMIT TO JIVE SOFTWARE, INC., A DELAWARE CORPORATION ("WE" OR "JIVE"), AN OFFER TO OBTAIN THE RIGHT TO USE THE HOSTED SERVICE AND RECEIVE PROFESSIONAL SERVICES (EACH AS DEFINED BELOW) UNDER THE PROVISIONS OF THIS AGREEMENT (THE "AGREEMENT").

BY CLICKING THE "I AGREE", "CREATE" OR OTHER AUTHORIZING BUTTON, YOU HEREBY AGREE THAT YOU HAVE THE REQUISITE AUTHORITY, POWER AND RIGHT TO FULLY BIND THE PERSON AND/OR ENTITIE(S) (COLLECTIVELY, THE "CUSTOMER") WISHING TO USE THE HOSTED SERVICE LISTED ON THE ORDER CONFIRMATION PAGE, PRICING SCHEDULE, QUOTE, INVOICE AND/OR OTHER ORDERING FORM (EACH AN "ORDER DOCUMENT") WHICH JIVE OR ONE OF ITS AUTHORIZED RESELLERS (A "RESELLER") PROVIDES OR MAKES AVAILABLE TO CUSTOMER IN CONNECTION WITH THE PURCHASE OF SUBSCRIPTIONS TO USE THE HOSTED SERVICE AND RECEIPT OF PROFESSIONAL SERVICES DESCRIBED BELOW. THE TERMS OF EACH ORDER DOCUMENT WILL SET FORTH THE SPECIFIC TERMS OF THE ORDER BUT ALL APPLICABLE TERMS AND CONDITIONS BELOW SHALL APPLY.

IF YOU DO NOT HAVE THE AUTHORITY TO BIND THE CUSTOMER OR YOU OR THE CUSTOMER DO NOT AGREE TO ANY OF THE TERMS BELOW, JIVE IS UNWILLING TO PROVIDE THE HOSTED SERVICE OR PROESSIONAL SERVICES TO THE CUSTOMER, AND YOU SHOULD NOT CLICK TO ACCEPT THE TERMS OF THIS AGREEMENT AND YOU SHOULD DISCONTINUE THE ACCESS AND USE OF THE HOSTED SERVICE AND NOT REQUEST ANY PROFESSIONAL SERVICES.

1.0 ORDERING AND APPLICABILITY.

1.1 Orders. Under this Agreement Customer may order from Jive or one of its authorized resellers (each a "Reseller") (a) subscriptions to access and use Jive's standard platform software offerings and those Add-On Services (defined in Section 2.1(b)) made available by Jive and/or its suppliers on a hosted, software-as-a-service (SaaS) basis (collectively "Hosted Service"), (b) related Support Services (defined in Section 3.0 below) and/or (c) consulting or other professional services (collectively "Professional Services"). The specifics of each Customer order will be set forth on a Order Document ("Order Document") that references this Agreement and is executed by both parties. Customer's execution of a Order Document constitutes a binding commitment to purchase the items described on the Order Document under the terms and conditions of this Agreement. All mutually-executed Order Documents are incorporated herein by reference.

1.2 Promotional Trials. Except as set forth herein, this Agreement applies to all orders made hereunder. If Jive provides to Customer any evaluation, trial or other promotional offering of the Hosted Service for a limited period ("Promotional Trial") Customer may use the Hosted Service until the earlier of (a) the end of the Promotional Trial period or (b) the start date of any paid Subscription Term (defined in Section 12.1). During any Promotional Trial periods, Sections 8.1 and 9.0 and shall not apply and Customer's use of the Hosted Service shall be "AS IS".

2.0 USE TYPES, ACCESS RIGHTS AND RESTRICTIONS.

2.1 Versions; Feature Upgrades and Modules; Jive Apps Market.

(a) *Types.* Each Order Document will specify whether the Hosted Service acquired thereunder is to be used as a Private or Public version. With a subscription to a "Private" version (also known as "Internal" or "Employee Community"), Customer is authorized to create and maintain a Community (defined below) for use within Customer's organization solely by authorized individual, non-concurrent active users ("Users") that are employees or specific individual independent contractors of Customer. With a "Public" license (also known as "External"), Customer is authorized to create and maintain a Community for use primarily by Users who are not employees or independent contractors of Customer (e.g. members of the general public). Customer will use the Hosted Service for the intended version type set forth in the Order Document. A "Community" is an online virtual community of Users that (i) contains a collective, shared repository for user, group data, and search functionality and (ii) permits access to the underlying database by only one unique instance of the Hosted Service. Each license to either the Public or Private version of the Hosted Service permits Customer to access and use the Hosted Service in connection with a single Community.

(b) *Add-On Services.* Jive may make available to Customer certain optional functionality which may be provided as a separate stand-alone module or as a plug-in (collectively "Add-On Services"). Certain Add-On Services may require that Customer agree to certain additional restrictions which will be mutually agreed upon in advance in writing such as in a Order Document. Any additional or separate pricing associated with Add-On Services will be as set forth on the Order Document or otherwise agreed to by the parties in writing.

(c) *Jive Apps Market.* Customer acknowledges and agrees that (i) the Hosted Service may allow Customer and its Users to access a hosted marketplace known as the Jive Apps Market (the "Apps Market") which allows Customer and/or Users to purchase one or more applications (each, an "App") that may be used by Users in connection with the Hosted Service, (ii) Customer may, in its sole discretion, enable or disable any or all such access to the Apps Market by Users, and (iii) each App shall be made available solely in accordance with the terms of the end user license agreement accompanying such App (the "App EULA"), which such App EULA shall supersede any conflicting terms or conditions of this Agreement with respect to Customer's and Users' access to and use of the particular App.

2.2 Provision of Hosted Service; Restrictions.

(a) *Provision of Hosted Service.* Subject to the terms of this Agreement, Jive will make the Hosted Service and the related User documentation (“Documentation”) available to Customer and its Users after mutual execution of the applicable Order Document.

(b) *Restrictions.* Except as otherwise expressly permitted under this Agreement, Customer agrees not to: (a) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Hosted Service or any portion thereof; (b) distribute, transfer, grant sublicenses to, or otherwise make available the Hosted Service (or any portion thereof) to third parties, including, but not limited to, making such Hosted Service available (i) through resellers or other distributors, or (ii) as an application service provider, service bureau, or rental source; (c) create modifications to or derivative works of the Hosted Service; (d) attempt to modify, alter, or circumvent the license control and protection mechanisms within the Hosted Service; (e) use or transmit the Hosted Service in violation of any applicable law, rule or regulation, including, without limitation, any data privacy or protection laws; (f) intentionally access, use, or copy any portion of the Hosted Service or the Documentation (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Hosted Service; or (g) remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other designation included on any display screen within the Hosted Service (“Jive Marks”). The Hosted Service is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Hosted Service is made available to U.S. Government End Users (i) only as a commercial end item and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

2.3 Implementation Types. The Hosted Service is made available under the following implementation types. The relevant Order Document will designate the form of the Hosted Service implementation Customer will receive.

(a) *User Subscription.* Customer may permit access to the Hosted Service by no more than the number of Users specified in the relevant Order Document. Customer may order additional User subscriptions from Jive in accordance with the ordering process set forth in Section 1.0 above. To the extent that any User subscriptions have been purchased and are in effect (“Existing Subscriptions”) at the time that Customer subsequently purchases additional User subscriptions (each, an “Additional Subscription”), then the Subscription Term pertaining to the Additional Subscriptions shall equal the period of time remaining on the then-current Subscription Term pertaining to the Existing Subscriptions so that the Subscription Term for all subscriptions shall be coterminous, regardless of when purchased and subject to payment of additional Fees for such Additional Subscriptions, as set forth in the applicable Order Document.

(b) *Page View Subscription.* Under this model, Customer may permit use of the Hosted Service by an unlimited number of Users, as further described below.

(i) As used herein, a “Page View” means each request for a visually displayed impression of content presented by the Hosted Service, including HTML content and content generated by asynchronous requests within the Hosted Service.

(ii) Each applicable Order Document shall set forth the following Fees: (1) a table of monthly Page View ranges (i.e., 0-500,000 or 500,001 to 1,000,000 monthly Page Views) (each, a “Page View Range”), (2) for each Page View Range, the associated monthly charge which is determined by dividing the annual Fee by 12 (the “Monthly Charge”) and (3) the initial estimated fee payable by Customer for use of the Hosted Service in connection with a single Community for the initial Subscription Term or applicable renewal Subscription Term (the “Initial Page View Subscription Fee”). The Initial Page View Subscription Fee will be based upon Customer’s anticipated and designated Page View Range as set forth on the Order Document (“Designated Page View Range”). The Initial Page View Subscription Fee shall be payable in advance of the initial Subscription Term or applicable renewal Subscription Term within 30 days of the date of the invoice pertaining thereto. If Customer has licensed the Hosted Service for use in connection with multiple Communities, all Page Views for all Communities will be aggregated for purposes of the calculations in this Section 2.3(b).

(iii) On a monthly basis during the Subscription Term, Jive shall track and deliver or make available to Customer a report summarizing the total number of actual Page Views during the preceding month (“Monthly Page Views”). During the Subscription Term, if at any time the Monthly Page Views exceed the Designated Page View Range, Jive shall invoice Customer for excess Fees based upon the difference between the applicable Monthly Charge for the Designated Page View Range and the actual Page View Range (“Page View Overage Fee”) and Customer shall pay to Jive, in accordance with Section 13.2 below, all Page View Overage Fees, plus an overage charge equal to 20% of the Page View Overage Fees.

(iv) Upon the commencement of any renewal Subscription Term, Customer shall pay to Jive the applicable Initial Page View Subscription Fee for such renewal Subscription Term.

(c) *Add-On Services Subscriptions.* Add-On Services pricing is dependent upon the particular implementation type for the Hosted Service. Details regarding Add-On Services pricing will be as set forth in the applicable Order Document.

2.4 Bankruptcy. All rights granted pursuant to this Agreement are, for purposes of Section 365(n) of the U.S. Bankruptcy Code, deemed to be rights to “intellectual property” as defined under Section 101 of the U.S. Bankruptcy Code. In any bankruptcy or insolvency proceeding involving Jive, Customer, as recipient of such rights, will retain and fully exercise all of its rights and elections under the U.S. Bankruptcy Code, which will apply notwithstanding conflict of law principles.

3.0 SUPPORT AND MAINTENANCE. Jive offers the following levels of support and maintenance services (“Support Services”): Silver, Gold or Platinum. Silver Support Services are included without any additional charge to Customer. In the event Customer elects to upgrade to Gold or Platinum Support Services, any additional Fees required for such Gold or Platinum Support Services will be set forth on the Order Document. Jive will provide Support Services at the applicable level during the Subscription Term in accordance with the terms and conditions described at: www.jivesoftware.com/legal (the “Support Terms”), which such terms are incorporated herein by reference. Jive will implement all Updates and Upgrades (as defined in the Support Terms) to the Hosted Services.

4.0 SERVICE LEVELS AND RELATED MATTERS.

4.1 Customer Content.

4.1.1 Administrative Users will have the ability to review and monitor all content that is uploaded and displayed via the stored through the Hosted Service (“Customer Content”) including the ability to specify access rights to and/or remove Customer Content. Jive will not review or monitor any Customer Content. Jive shall have the right to disclose Customer Content to a third party only if required by law; provided that, to the extent permitted by law, Jive will: (a) promptly notify Customer of the order's terms and the circumstances surrounding its issuance; (b) consult in good faith with Customer regarding possible responses to the order and, if requested by Customer, make best efforts to narrow the order's scope, obtain a protective order from the court, or produce documents to the court or government body under seal with appropriate instructions regarding preservation of the Customer Content confidentiality, if applicable; and (c) if disclosure is required to prevent Jive from being subjected to contempt

sanctions or other penalties, disclose only the Customer Content that, in the opinion of counsel reasonably satisfactory to Jive, is legally required to be disclosed, consistent with a reasonable interpretation of the order.

4.1.2 Jive may collect and use data pertaining to the use of the Hosted Service (“Usage Data”). Any Usage Data collected will be anonymous without reference to the particular User. Jive may use the Usage Data for its internal research and development purposes and may disclose Usage Data in an aggregated format that in no way identifies Customer or any particular User (e.g. Jive may disclose aggregate Page Views statistics for all of its hosted customers).

4.2 Capacity. For each Community, Customer is allotted 100 gigabytes (GB) of Customer Content storage space (“Default Capacity”). Customer may purchase additional capacity beyond the Default Capacity (within a storage network area) for the particular Community in blocks of 500GB for a recurring monthly fee of \$400 for each such additional 500GB block purchased beyond the Default Capacity. The maximum size of any attachments transmitted through use of the Hosted Service is 50 megabytes.

4.3 Acceptable Use and Terms of Use. Customer will comply with and will be responsible for its Users’ compliance with all applicable laws and regulations as well as the terms and conditions of the Acceptable Use Policy (“Jive AUP”) with respect to use of the Hosted Service. The Jive AUP is found at www.jivesoftware.com/legal. The Jive AUP is incorporated herein by reference. Customer is responsible for establishing and enforcing terms of use and privacy policies applicable to use of the Hosted Service by Users as permitted under this Agreement. In relation to all personal data comprised within any Customer Content, Customer warrants that such personal data shall have been obtained and supplied to Jive in compliance with applicable data protection legislation, including Customer having obtained all necessary consents and approvals from Users that are necessary to permit Jive to provide the Hosted Service. Customer will indemnify Jive for any damages, costs, expenses (including reasonable attorneys’ fees) and any other liabilities arising from a third party claim, demand or proceeding pertaining to a breach of this Section 4.3.

4.4 Jive User Account. Jive may set up a private User account (“Private Jive Account”) to provide Jive with automated access to the Hosted Service solely for testing purposes. The Private Jive Account will be used to routinely test the material functionality of the Hosted Service to ensure that such material functionality operates properly. Neither the existence of the Private Jive Account, nor any content posted or actions taken through the Private Jive Account, will affect any performance of the Hosted Service or be viewable or known to Users other than to administrative Users. Jive will not use the Private Jive Account to post, remove or monitor any Customer Content.

5.0 PROFESSIONAL SERVICES. Jive will perform Professional Services and provide the deliverables (“Deliverables”) as described in any mutually agreed upon statement of work (“SOW”). Each SOW will include the particulars of each Professional Services engagement. In a timely manner, Customer will provide all assistance reasonably requested by Jive in connection with the Professional Services. If Customer notifies Jive in writing within 30 days after a particular Deliverable is made available to Customer that the Deliverable does not conform to the requirements of the SOW, then Jive will, as Customer’s sole and exclusive remedy and Jive’s sole liability, modify or replace the Deliverables at no cost to Customer.

6.0 PUBLICITY AND MARKETING. During the term of this Agreement, Customer hereby agrees that Jive may include Customer’s name and logo as a customer who uses the Hosted Service in Jive’s marketing materials. Customer and Jive agree that during the term of this Agreement they will collaborate on press releases and other joint communications surrounding Customer’s use of the Hosted Service. Jive will remove Customer’s name and logo from new marketing materials within 30 days after any termination of this Agreement. During the term of this Agreement, Jive may request Customer to serve as a reference, participate in analyst calls, provide statements for marketing purposes, and/or develop case studies on Customer’s success in using the Hosted Service. Customer agrees to respond within a reasonable amount of time to Jive for assistance with the aforementioned.

7.0 PROPRIETARY RIGHTS. As between the parties, Jive and its suppliers will retain all ownership rights in and to the Jive Marks, the Hosted Service, the Documentation, all Updates and Upgrades (as defined in the Support Terms), all Add-On Services, all Deliverables (except to the extent they include pre-existing Customer Confidential Information or intellectual property) and other derivative works of the Hosted Service and/or Documentation that are provided by Jive, and all intellectual property rights incorporated into or related to the foregoing. Customer acknowledges that the goodwill associated with the Jive Marks belongs exclusively to Jive. All rights not expressly licensed by Jive under this Agreement are reserved. As between the parties hereto, Customer will retain all ownership rights in and to all Customer Confidential Information, all pre-existing Customer intellectual property and all Customer Content. Customer’s rights to the Deliverables shall be the same as its rights to the Hosted Service. Jive may use without limitation any suggestions, recommendations or other feedback provided by Customer regarding the Hosted Service.

8.0 WARRANTIES AND DISCLAIMER

8.1 Warranties. Jive warrants that (a) it will perform all Professional Services in a professional manner consistent with industry standards and practices, and (b) the Hosted Service, as delivered and when used in accordance with the Documentation, (i) will perform in all material respects as specified in such Documentation for the duration of the Subscription Term, and (ii) will not contain, any “back door,” “time bomb,” “Trojan horse,” “worm,” “drop dead device,” “virus,” “preventative routines” or other computer software routines intentionally designed to permit unauthorized access to or use of either the Hosted Service’s or Customer’s computer systems (“Viruses”); provided that the Hosted Service does include functionality that prevents access to and use of the Hosted Service in the event that Customer fails to pay the applicable Fees when due. In the event of any breach of the warranties in subsection (a) or (b)(i) above, Jive shall, as its sole liability and Customer’s sole remedy, diligently remedy any deficiencies promptly after its receipt of written notice from Customer. Jive will not be liable to the extent that any breach of the foregoing warranties are caused by (1) any other third-party components or services (including in combination with the Hosted Service) not provided by Jive; (2) unauthorized use or use of the Hosted Service other than in accordance with the Documentation, or (3) Viruses introduced by Customer or its agents or Users (collectively, “Exclusions”).

8.2 Disclaimers. THE EXPRESS WARRANTIES IN SECTION 8.1 ARE THE EXCLUSIVE WARRANTIES OFFERED BY JIVE AND ALL OTHER CONDITIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY CONDITIONS OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, QUIET ENJOYMENT, TITLE, MERCHANTABILITY AND THOSE THAT ARISE FROM ANY COURSE OF DEALING OR COURSE OF PERFORMANCE ARE HEREBY DISCLAIMED. JIVE DOES NOT WARRANT THAT CUSTOMER’S USE OF THE HOSTED SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED.

9.0 INDEMNIFICATION. Jive will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that (a) if true, would constitute a breach by Jive of its obligations under Section 11.0 (Confidentiality) or (b) the Hosted Service infringes any copyright or trademark or misappropriates any trade secret rights recognized under applicable law. Jive will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer notifying Jive promptly in writing of such action, Customer giving Jive sole control of the defense thereof and any related settlement negotiations, and Customer cooperating and, at Jive’s reasonable request and expense, assisting in such defense. If the Hosted Service (or any component thereof) becomes, or in Jive’s opinion is likely to become, the subject of an infringement claim, Jive may, at its option and expense, either (a) procure for Customer the right to continue exercising the rights licensed to Customer in this Agreement, or (b) replace or modify the Hosted Service so that it becomes non-infringing and remains functionally equivalent. If neither of the foregoing options are, in Jive’s reasonable opinion, commercially reasonable, Jive may terminate this Agreement and

will refund to Customer a pro-rata portion of any applicable prepaid Fees. Notwithstanding the foregoing, Jive will have no obligation under this Section 9.0 or otherwise with respect to any infringement claim based upon any Exclusions. This Section 9.0 states Jive's entire liability and Customer's sole and exclusive remedy for infringement claims and actions.

10.0 LIMITATIONS ON LIABILITY. TO THE EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO (I) FAILURE TO PAY AMOUNTS PROPERLY OWED, (II) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, AND (III) VIOLATIONS OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER JIVE IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (B) EACH PARTY'S AGGREGATE CUMULATIVE LIABILITY TO THE OTHER, IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE AND REGARDLESS OF WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, THE TOTAL OF THE FEES ACTUALLY PAID AND THE FEES PAYABLE TO JIVE BY CUSTOMER UNDER THIS AGREEMENT DURING THE ONE YEAR PERIOD PRIOR TO THE DATE THAT SUCH LIABILITY FIRST ARISES.

11.0 CONFIDENTIALITY. "Confidential Information" means, with respect to a party (the "Disclosing Party"), all non-public confidential information pertaining to such party's business. Jive and Customer will comply with this Section 11.0 when exchanging Confidential Information under this Agreement. Confidential Information will be designated and/or marked as confidential when disclosed, provided that any information that the party receiving such information (the "Receiving Party") knew or reasonable should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party, will be considered Confidential Information of the Disclosing Party even if not designated or marked as such. The Receiving Party shall preserve the confidentiality of the Disclosing Party's Confidential Information and treat such Confidential Information with at least the same degree of care that Receiving Party uses to protect its own Confidential Information, but not less than a reasonable standard of care. The Receiving Party will use the Confidential Information of the Disclosing Party only to exercise rights and perform obligations under this Agreement. Confidential Information of the Disclosing Party will be disclosed only to those employees and contractors of the Receiving Party with a need to know such information. The Receiving Party shall not be liable to the Disclosing Party for the release of Confidential Information if such information: (a) was known to the Receiving Party on or before Effective Date without restriction as to use or disclosure; (b) is released into the public domain through no fault of the Receiving Party; (c) was independently developed solely by the employees of the Receiving Party who have not had access to Confidential Information; or (d) is divulged pursuant to any legal proceeding or otherwise required by law, provided that, to the extent legally permissible, the Receiving Party will notify the Disclosing Party promptly of such required disclosure and reasonably assists the Disclosing Party in efforts to limit such required disclosure.

12.0 TERM, TERMINATION AND EFFECT.

12.1 Subscription Duration; Renewals. The term of each subscription to the Hosted Service purchased by Customer will commence on the date that both parties have executed the Order Document under which the Customer acquires such subscription, unless a later commencement date is expressly set forth on such Order Document, and will continue for the period set forth on such Order Document, subject to adjustment pursuant to Section 2.3(a) (for User-based licenses) and any renewal, as described in this Section 12.1 (collectively, the "Subscription Term"). Each subscription will automatically renew (a) for the renewal period specified on the applicable Order Document, if any, or, if not specified, for a period of one year and (b) at the same terms and Fees applicable during the immediately preceding term unless either party notifies the other at least 30 days prior to the commencement of the renewal term that it does not intend to renew the Subscription Term upon the same terms or Fees.

12.2 Term and Termination. This Agreement shall continue in effect until terminated as set forth herein. The initial Subscription Term for each subscription purchased will be as set forth in the applicable Order Document. This Agreement or any Statement of Work, if applicable, may be terminated (a) by either party if the other party materially breaches this Agreement and does not cure the breach within 30 days after receiving written notice thereof from the non-breaching party (except that such cure period shall be five days for breaches of Sections 2 or 11.0), or (b) as set forth in Section 9.0.

12.3 Effect. Upon any termination of this Agreement, without prejudice to any other rights or remedies which the parties may have under this Agreement, (a) all subscriptions, rights and obligations hereunder shall immediately cease; provided that Sections 7.0, 9.0 through 13.0 and 16.0 and any other provisions with express survival language shall survive termination, and (b) Customer shall pay to Jive any outstanding Fees that have accrued prior to the date of termination. Customer will have access to Customer Content stored in the Hosted Service during the Subscription Term and for 30 days thereafter ("Post-Termination Period"). Customer's access during the Post-Termination Period will be solely as necessary to permit Customer to transition the Customer Content to an alternative solution or other location.

13.0 FEES AND PAYMENT.

13.1 Fees. Subject to the terms and conditions below, all fees for subscriptions to the Hosted Service and Professional Services (collectively, the "Fees") will be set forth on the applicable Order Document.

13.2 Payment Terms. Unless otherwise agreed to in writing by the parties including in a Order Document, Customer will pay to Jive or the Reseller, as applicable, all undisputed Fees owed within 30 days of the date of the invoice pertaining thereto. Payments will be sent to the address included on the invoice. All amounts payable shall be in the currency of the United States and specifically exclude (and Customer is responsible for) any and all applicable sales, use and other taxes, (other than taxes based on Jive's income). Each party is responsible for its own expenses under this Agreement unless set forth in an SOW or Order Document.

14.0 INSURANCE. Jive, at its own expense, will maintain at a minimum the following insurance coverages: (a) Commercial General Liability Insurance with coverage in an amount equal to or greater than US\$2,000,000 per occurrence combined single limit, (b) Commercial Automobile Liability Insurance with coverage in an amount equal to or greater than US\$1,000,000 per occurrence combined single limit, (c) Worker's Compensation Insurance with coverage complying with at least the statutory limits of coverage within the relevant state of employment, (d) Errors and Omissions Insurance with coverage in an amount equal to or greater than US\$2,000,000 per occurrence combined single limit and (e) Umbrella/Excess Liability Insurance with coverage in an amount equal to or greater than US\$5,000,000 per occurrence combined single limit. Jive will provide Customer with necessary documentation, including certificates of insurance, evidencing the required coverage, if requested in writing.

15.0 AUDIT. Not more than once each year, Jive will have the right to perform an audit to verify that Customer is using the Hosted Service in compliance with this Agreement. The audit will be performed during normal business hours upon not less than 15 days' prior written notice to Customer. The audit will be conducted at Jive's sole cost and expense and will be subject to reasonable security and access restrictions. Customer will be permitted to have Customer personnel present during the audit. If an audit conducted under this Section discloses that Customer has underpaid by more than 5% any license Fees payable under this Agreement during the period covered by the audit, Customer will pay Jive the amount of that underpayment and, in addition, will reimburse Jive's reasonable and actual costs for that audit.

16.0 MISCELLANEOUS. The parties are independent contractors with respect to each other, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, agency relationship or a joint venture between the parties. Each party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by reason of any occurrence or contingency beyond its

reasonable control, including but not limited to acts of God, earthquake, labor disputes and strikes, riots, war and governmental requirements (each a "Force Majeure Event"). The obligations and rights of the party so excused will be extended on a day to day basis for the duration of the Force Majeure Event. This Agreement applies to each party's users, representatives, officers, agents, employees and associated individuals. The terms of this Agreement shall be binding on the parties, and all successors to the foregoing. Neither party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other party's prior written consent except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void. All modifications to or waivers of any terms of this Agreement must be in a writing that is signed by the parties hereto and expressly references this Agreement. This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws rules. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to this Agreement shall be the state or federal courts located in Santa Clara County, California. Each party waives any objection (on the grounds of lack of jurisdiction, forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or enforcement of this Agreement. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. This Agreement includes any Order Documents and/or SOWs agreed to by the parties in writing and all expressly referenced documents. Collectively the foregoing constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications, including, without limitation, any quotations or proposals submitted by Jive. The terms on any purchase order or similar document submitted by Customer to Jive will have no effect and are hereby rejected. Unless otherwise expressly stated, all legal notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at its official headquarters to the attention of the chief legal officer and are deemed delivered when received. This Agreement may be executed in counterparts.
