Subscriber Agreement

JOSTLE SERVICES
SUBSCRIBER AGREEMENT Last
Updated 2023 June 21

THIS JOSTLE SERVICES SUBSCRIBER AGREEMENT ("AGREEMENT") GOVERNS USE OF JOSTLE SERVICES BY A SUBSCRIBER, INCLUDING FREE AND PAID TRIALS AND SUBSCRIPTIONS. BY CLICKING THE "ACCEPT BOX", EXECUTING AN ORDER CONFIRMATION THAT REFERENCES THIS AGREEMENT, OR STARTING TO USE JOSTLE SERVICES, THE SUBSCRIBER AGREES TO ALL THE TERMS OF THIS AGREEMENT. IF THE PERSON ENTERING INTO THIS AGREEMENT IS DOING SO ON BEHALF OF AN EMPLOYER OR OTHER LEGAL ENTITY WHO WILL BE THE SUBSCRIBER, SUCH PERSON REPRESENTS HAVING THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. YOU MAY NOT ENTER INTO THIS AGREEMENT IF YOU ARE NOT OF LEGAL AGE TO FORM A BINDING CONTRACT WITH US, OR ARE OTHERWISE PRECLUDED FROM USING OR RECEIVING JOSTLE SERVICES UNDER THE LAWS OF THE COUNTRY IN WHICH YOU ARE RESIDENT OR FROM WHICH YOU INTEND TO USE JOSTLE SERVICES.

IN THE EVENT THAT AN ADDITIONAL OR NEW JOSTLE SERVICE IS INTRODUCED, OR AN EXISTING JOSTLE SERVICE IS ALTERED, THE TERMS IN THIS AGREEMENT SHALL CONTINUE TO APPLY AND SHALL BE MODIFIED ONLY TO THE DEGREE THEY ARE IN DIRECT CONFLICT WITH ANY SUPPLEMENTAL TERMS AND CONDITIONS WHICH WE WILL PRESENT TO YOU PRIOR TO YOUR USE OF SUCH ADDITIONAL OR ALTERED SERVICE.

WE MAY MAKE CHANGES TO THIS AGREEMENT OR ANY SUPPLEMENTAL TERMS FROM TIME TO TIME. WHEN WE UPDATE THIS AGREEMENT, WE WILL REVISE THE "LAST UPDATED" DATE AT THE TOP OF THE AGREEMENT AND WILL POST THE UPDATED SUBSCRIBER AGREEMENT ON OUR WEBSITE AND/OR EMAIL YOUR SYSTEM ADMINISTRATOR WHO IS RESPONSIBLE FOR MANAGING THE JOSTLE SERVICES, PRIOR TO THE CHANGES BECOMING EFFECTIVE. IF YOU USE JOSTLE SERVICES AFTER THE DATE ON WHICH THIS AGREEMENT OR SUPPLEMENTAL TERMS HAVE CHANGED, YOU ARE DEEMED TO HAVE ACCEPTED THE UPDATED AGREEMENT AND/OR SUPPLEMENTAL TERMS.

1. DEFINITIONS

"**Affiliate**" means any entity which 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 or control of more than 50% of the voting interests of the subject entity.

"**Authorized Users**" means those individuals who have a Qualifying Relationship with You, who You have permitted and authorized via Your Subscription to access and use Jostle Services, and who have been supplied password protected user identifications by You.

"**Enterprise Data**" means data, information and content about You and Your Authorized Users, including User Profiles, that is provided or entered by You, or by Your Authorized Users, when subscribing for or using Jostle Services.

"**Feedback**" means any comments, recommendations, suggestions, enhancements and other feedback provided or disclosed at any time by You, or Your Authorized Users, in any form, medium and for any purpose, relating to the functionality or features of Jostle Services or accessing, using, operating or exploiting Jostle Services.

"**Free Services**" means the Jostle Services made available by Us to You on an unpaid basis.

"**Jostle Support Center**" means the online user guide for Jostle Services, accessible at forum.jostle.us/hc, as updated from time to time.

"**Jostle Services**" means the online, web-based applications and platform made available by Us, but excluding Third Party Applications.

"**Order Confirmation**" means the order document that We provide to You to confirm Your Subscription for Purchased Services.

"**Purchased Services**" means those Jostle Services that You subscribe to and purchase, as confirmed by Jostle in Your most recent Order Confirmation.

"Purchased User Accounts" means the number of User Accounts that You purchased as set out in Your Order Confirmation, being the maximum number of User Accounts that can be defined as part of Your Jostle Services.

"**Qualifying Relationship**" means a business (as opposed to personal) relationship that an individual has with an organization, arising from being its (1) employee, (2) director, (3) shareholder, (4) customer, client, consultant, advisor, contractor, agent, representative, supplier or service provider, or (5) contributor through participation on its teams, project groups, committees, working groups, clubs or similar collaborative associations.

"**Subscription Term**" means the period of time during which You have subscribed to receive Purchased Services. For Free Services and Trial Services, the Subscription Term will be the period during which We provide You access to the Free Services.

"**Taxes**" means all taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use and withholding taxes, assessable by any local, state, provincial, and federal jurisdiction or entity, excluding only taxes imposed on Our net income.

"**Terms of Use**" means the terms and conditions provided by Us that each individual must agree to be bound by before being allowed to become an Authorized User who can access and use Jostle Services, which are set out in Exhibit A and as may be modified by Us from time to time.

"**Third-Party Applications**" means online web-based applications and offline software products provided by third parties that inter-operate with or may be used in conjunction with Jostle Services.

"**Trial Services**" means those Jostle Services that You subscribe to for a limited time at no charge, solely for evaluation purposes.

"User Account" means an account that You set up within the Jostle Services under a unique name, containing the User Profile of an individual who may or may not be an Authorized User.

"**User Profile**" means personal information about an individual having a Qualifying Relationship with You, that is provided or entered when subscribing for or using Jostle Services.

"**We**" or "**Us**" or "**Our**" means **Jostle Corporation**, 1090 West Georgia Street – Suite 1000, Vancouver, BC, Canada V6E 3V7.

"**You**" or "**Your**" means the company or other legal entity entering into this Agreement, and includes any Affiliates of that company or entity as requested and granted for Your Subscription.

"**Your Subscription**" means the Trial Services, Free Services, or Purchased Services which You ordered for the Subscription Term, with limitations on the number and type of permitted User Accounts and Affiliates, and a description of any implementation and support assistance to be provided by Us.

2. TRIAL SERVICES AND FREE SERVICES

2.1 Trial Subscriptions. We may make one or more Jostle Services available to You on a trial basis as set out on Our website, free of charge, to access and use solely for evaluation purposes, during a Subscription Term that ends on the earlier of (i) the last day of the trial period that We advise, or (ii) the start date of any Purchased Services ordered by You. Trial Services are only made available based on a Subscription Term that applies to a requesting organization, and are not available through multiple Subscription Terms for individuals who are members of the same organization.

2.2 Free Services. We may make one or more Jostle Services available to You on an unpaid basis. Such Free Services shall be subject to limitations on the number of users, storage, and features as specified on our website. We may suspend, limit, or terminate the Free Services for any reason at any time upon 30 days notice. If You do not subscribe to Purchased Services within this notification period then your subscription will be terminated.

2.3 Terms and Conditions. Even though certain terms and conditions of this Agreement may refer only to Purchased Services, such provisions shall also apply to the greatest extent applicable to Your access

and use of the Trial Services or Free Services, unless they are in conflict with the provisions set out in this Section 2 (Trial Services and Free Services) in which event this Section 2 shall prevail. Additional terms and conditions that also may apply shall appear on the Trial Services page of Our website, and shall be incorporated into this Agreement by reference.

2.4 Limited Functionality. Your Subscription for Trial Services and/or Free Services may be limited in various ways as compared to the scope of available Purchased Services, such as no implementation or support assistance, limits on number of User Accounts, lesser or no security, and disabled or limited customization, functionality and features.

2.5 DATA LOSS. ALL ENTERPRISE DATA THAT HAS BEEN ENTERED AND ANY CUSTOMIZATIONS MADE TO JOSTLE SERVICES WHEN USING TRIAL SERVICES OR FREE SERVICES WILL BE PERMANENTLY LOST UNLESS YOU SUBSCRIBE BEFORE THE END OF THE SUBSCRIPTION TERM TO PURCHASED SERVICES WHICH ARE THE SAME AS OR AN UPGRADE TO THOSE COVERED BY THE TRIAL SERVICES OR FREE SERVICES.

2.6 EXCLUSION OF WARRANTIES: ALL TRIAL SERVICES AND FREE SERVICES ARE PROVIDED “AS-IS”, WITHOUT ANY WARRANTIES, AND SOLELY AT YOUR OWN RISK.

3. PURCHASED SERVICES

3.1 Your Subscription. A description of the Jostle Services available for purchase is set out at Our website. You may subscribe to the standard set of Jostle Services, or You may subscribe to an enhanced or customized level of Jostle Services that We may offer from time to time provided that We have the capability to supply them to You and You have the capability to implement them. We are committed to continually improving and enhancing the Jostle Services and may need to modify, add to or delete certain features and/or functionality of the Jostle Services. We will use reasonable efforts to give You advance notice of any changes that we believe may adversely impact You, but will try to ensure that the basic functionality and features of Your Purchased Services are not materially adversely affected. Your Subscription is not contingent on Our implementing any future functionality or features of Jostle Services, even if We have publicly or privately discussed or announced the intent or likelihood of such functionality or features being implemented. We shall have no obligation under this Agreement to develop or implement any new functionality or feature requested or expected by You, unless We have expressly agreed to do so pursuant to a separate written agreement.

3.2 Purchased User Accounts. Purchased Services are limited to the number of User Accounts that You purchased as specified in Your Order Form. Additional User Accounts may be bought by You during the Subscription Term provided that the added Purchased User Accounts shall terminate on the same date as the pre-existing Purchased User Accounts. You may replace an individual who has a User Account with an individual who becomes the new subject of the User Account in substitution, provided the replaced individual’s personal information is deleted from the Jostle Services.

3.3 Authorized Users. You shall manage and be responsible for ensuring the security, confidentiality and authorized use of Authorized User identifications and passwords. You shall at Our request provide to Us accurate, complete and updated information about the individuals You authorize to be Authorized Users, and We shall have the right to determine or verify this information directly through Our systems. We reserve the right, based Our reasonably held belief, to at any time deny registration of any individual as an Authorized User who does not qualify to be an Authorized User, and to revoke the registration of any individual who has continually or on multiple occasions failed to comply with the Terms of Use either as Your Authorized User or as an Authorized User of any other organization. You may not allow any person to share or use an Authorized User's Purchased User Account to access or use Jostle Services, except for the Authorized User that is the subject of the User Account.

3.4 Availability of Purchased Services. We shall use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week during the Subscription Term, except for planned downtime of which We shall give You reasonable prior electronic notice. Purchased Services are subject to unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or power, communication or Internet service provider failures or delays. We have the right to immediately suspend access to the Purchased Services, in whole or in part, and by individual Authorized User as applicable, if We determine in Our reasonably held belief that the manner of use of the Purchased Services by You or the Authorized Users, or the Enterprise Data, do not meet the requirements of or do not otherwise comply with this Agreement.

3.5 Support. We shall provide to You basic support for the Purchased Services at no additional charge, and/or upgraded support if purchased separately by You.

3.6 Services Capacity. If the access, usage and/or storage demands of Your Authorized Users exceed at any time during the Subscription Term those facilities and services normally provided by Us to Our other subscribers, then You will either arrange with Us to receive enhanced Jostle Services (which may result in additional charges), or else promptly take steps to limit the access, usage and/or storage requirements of Your Authorized Users such that they are reduced to the levels normally supplied to Our other subscribers.

3.7 Non-exclusivity of Services. Nothing in this Agreement shall preclude Us from offering the same or similar Jostle Services to any third party, including customizations and Feedback implementations, provided that We do not disclose Your Enterprise Data to such party.

4. **USE OF PURCHASED SERVICES**.

4.1 Authorized Use. You may use the Purchased Services solely in association with Your normal business activities and purposes, but only in accordance with this Agreement, Our online user guidance, and any directions provided by Us, and always in conformance with all applicable laws and government regulations. You shall not loan, sell, rent, lease or charge any fee for the Purchased Services, or use the Purchased Services to provide time sharing services or a service bureau, or copy,

frame or mirror any part or content of the Purchased Services other than copying or framing on Your own intranets. We shall have the right to monitor use of the Purchased Services by You and the Authorized Users to ensure that such usage is in accordance with this Agreement.

4.2 Unauthorized Access. You shall not make the Purchased Services available to anyone other than Authorized Users. You shall use commercially reasonable efforts to prevent unauthorized access to or use of the Purchased Services, and shall notify Us promptly of any unauthorized access or use upon becoming aware of it.

4.3 Unlawful Activities. You may not use the Purchased Services to store or transmit infringing, libelous, unlawful or tortious material, or to store or transmit material in violation of privacy or other rights of any person, or to harass, abuse, stalk, threaten or impersonate any person, or as part of any criminal activities.

4.4 Systems Security and Spam. You shall not use the Purchased Services to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, or to transmit spam or phishing messages. You shall not interfere with or disrupt the integrity or performance of Jostle Services or data contained therein, or attempt to gain unauthorized access to the systems or networks that provide Jostle Services.

4.5 Compliance by Authorized Users. You shall be responsible for ensuring that each individual has accepted the Terms of Use prior to being granted access to the Purchased Services as an Authorized User, and for monitoring use of the Purchased Services and ensuring compliance by all Authorized Users with the Terms of Use.

4.6 Enterprise Data and Privacy. We have no obligation to monitor, examine or evaluate the content, accuracy, completeness, timeliness, validity, copyright compliance, legality or any other aspect of the Enterprise Data, or to screen any of the Enterprise Data. You shall be solely responsible for obtaining all authority and consents for uploading and using the Enterprise Data with the Purchased Services, the accuracy, integrity and legality of the Enterprise Data, the means by which You acquire and keep the Enterprise Data current, and the manner of use of the Enterprise Data with the Purchased Services by Authorized Users. We backup our entire database on a daily basis as protection against any disaster impacting Us. We do not provide any other backup, data recovery or reconstruction services unless explicitly specified on your Order Confirmation. To the extent that any of the User Profiles or other Enterprise Data is personal information, then We will deal with it in accordance with the linked Privacy Policy which We have adopted. We shall have the right to use anonymized data and statistics extracted from access and use by You and the Authorized Users of the Purchased Services, in any way necessary to enhance Jostle Services for the benefit of all subscribers.

4.7 Usage Limitations. Purchased Services may be subject to usage limitations, such as limits on data storage space, on the number of calls You are permitted to make for support, and on the number of API calls or other automated transactions that you are able to make. Such limitations are specified on

Our website or in the Order Confirmation. We may advise You from time to time of changes or additions to such limitations.

4.8 Subscriber's Equipment. You are solely responsible for obtaining, operating, maintaining and keeping secure, all computers, equipment and communication services required to access the Purchased Services through the Internet and to use them within Your facilities, and all expenses related thereto.

5. THIRD-PARTY APPLICATIONS

5.1 Third-Party Applications. No Third-Party Applications are required to access or use the Jostle Services, except for the recommended browsers described on Our website or the Jostle Support Centre, and any operating systems and Internet utilities required for their use. Any acquisition or use by You of third-party products or services, including Third-Party Applications, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. We will not be responsible for, and do not warrant, support or assume any liability for, any third-party products or services, whether or not We have advised that they inter-operate with or can be used in conjunction with Jostle Services. Any recommendations, references or links that We may provide to Third Party Applications, or other products or services, are provided solely as a convenience to You.

5.2 Disclosure of Enterprise Data. If You install or enable Third-Party Applications to inter-operate with or be used in conjunction with Jostle Services, We may allow providers of such Third-Party Applications to access the Enterprise Data as required for the inter-operation or use of such Third-Party Applications with the Jostle Services. We shall not be responsible for any disclosure, modification or deletion of the Enterprise Data resulting from any such access by Third-Party Application providers.

5.3 Availability of Third-Party Applications. Certain Jostle Services features inter-operate with services provided by third parties, and depend on the continuing availability of the API and program from such third parties for use with the Jostle Services. If these third parties cease to make their API or program available on reasonable terms for the Jostle Services, We may cease providing such Jostle Service features without entitling You to any refund, credit, or other compensation.

6. FEES AND PAYMENT

6.1 Subscriber Fees. In order to access and continue receiving the Purchased Services, You must pay all fees specified in the Order Confirmation when due from time to time. Fees are calculated and payable based on the number of Purchased User Accounts and the level of Jostle Services You purchased, and not on Your actual usage. Fees paid are non-refundable even if You cease usage of the Purchased Services during the Subscription Term. The number of Purchased User Accounts cannot be decreased during the Subscription Term. Fees for additional Purchased User Accounts added during a

Subscription Term will be charged from the beginning of the month in which they were added and for the months remaining in the Subscription Term.

6.2 Invoicing and Payment. All charges are payable in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Confirmation. If You are paying by credit card, You will provide Us with valid and updated credit card information, and authorize Us to charge such credit card for all Jostle Services listed in the Order Confirmation for the Subscription Term, any renewal subscription term(s), and any additional Purchased User Accounts added during the Subscription Term. If the Order Confirmation specifies that payment will be by a method other than a credit card, We will invoice You in advance or otherwise in accordance with the relevant Order Confirmation. Unless otherwise stated in the Order Confirmation, invoiced charges are due 30 days from the invoice date. You are responsible for Providing Us with complete and up to date billing and contact information.

6.3 Overdue Charges. If any charges are not received from You by the due date, then at Our discretion such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month (18% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

6.4 Suspension of Services. If any amount owing by You under this agreement becomes overdue, We may, without limiting Our other rights and remedies, suspend access to the Purchased Services until such amounts are paid in full.

6.5 Payment Disputes. We shall not exercise Our rights under Section 6.3 (Overdue Charges) or Section 6.4 (Suspension of Service) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.

6.6 Taxes. Our fees do not include any Taxes, and You are responsible for paying all Taxes associated with Your Purchased Services. If We have the legal obligation to pay or collect Taxes for which You are responsible, the applicable amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. We are solely responsible for paying taxes assessable against Us based on Our net income, property and employees.

7. PROPRIETARY RIGHTS

7.1 Ownership and Rights. Jostle Services contain proprietary content, information and material owned by Us and/or Our licensors, and is protected by applicable intellectual property. We own all rights, title and interest in and to the software and other technologies that are used to create the Jostle Services, including all related intellectual property rights. No rights or interests are granted to You other than the limited rights expressly granted to You to access and use the Purchased Services in accordance with this Agreement. All rights, title and interest in and to each improvement made by Us to the Jostle Services and the software and technologies that are used to create the Jostle Services,

shall be owned exclusively by Us, even if such improvement was based on Feedback provided by You or the Authorized Users.

7.2 Rights Notices. You shall not remove, obscure, or alter Our copyright notice, trademarks, or other proprietary rights notices displayed by or accessed in conjunction with or through the Jostle Services. THE SOFTWARE AND TECHNOLOGIES USED IN ASSOCIATION WITH JOSTLE SERVICES ARE COVERED BY US PATENTS #8,631,021, #8,706,723 AND #10,523,613, AND ONE OR MORE PENDING PATENT APPLICATIONS OWNED BY JOSTLE CORPORATION.

7.3 Restrictions. You shall not create any derivative works based on the Jostle Services, or use the Jostle Services or Our trade secrets or software in any way as part of, or to build, a competitive product or service.

7.4 Ownership of Enterprise Data and User Profiles. As between Us and You, You exclusively own all rights, title and interest in and to all of Your Enterprise Data, subject to the privacy and other personal information rights of individuals in their respective User Profiles.

7.5 Feedback. You hereby grant Us a perpetual, royalty-free, paid-up, worldwide, transferable, sub-licenseable, irrevocable right and license to use for any purpose, incorporate into Jostle Services and/or make available to any person, all Feedback provided by You, including Users.

7.6 US Government End User Provisions. We provide the Jostle Services, including related software and technology, for US federal government end use solely as “Commercial Items” in accordance with the following. Government technical data and software rights related to the Jostle Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with Federal Acquisition Regulation (“FAR”) 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract.

8. CONFIDENTIALITY

8.1 Definition. As used in this Agreement, ” Confidential Information” means all confidential information disclosed by a party (” Disclosing Party”) to the other party (” Receiving Party”), whether orally, in writing, by visual representation, delivery of items, or granting access to the information, 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. Your Confidential Information includes the Enterprise Data, and Our Confidential Information includes Jostle Services. The terms and conditions of all Order Confirmations are deemed to be Confidential Information. Confidential Information shall not include any information that (i) is or becomes generally known to the public

without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) is independently developed by the Receiving Party.

8.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) to not disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by confidentiality obligations with the Receiving Party containing protections no less stringent than those herein.

8.3 Protection of Enterprise Data. We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Enterprise Data. Upon prior arrangement, We will provide You with the opportunity to visit our facilities and review the ways We manage and secure the Enterprise Data on your behalf. We shall not modify the Enterprise Data or access the Enterprise Data except (i) to provide the Purchased Services, (ii) to prevent or address service or technical problems, (iii) as required for customer support matters, or (iv) with your prior approval. We will attempt to notify You as soon as reasonably possible after We become aware of an actual or suspected breach of the security of the Enterprise Data stored by Us.

8.4 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. 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 access to such Confidential Information.

8.5 Personal Data of European Union Individuals. To the extent that the Enterprise Data includes data that would be subject to the General Data Protection Regulation ("GDPR") of the European Union ("EU"), the terms of the Data Processing Addendum at https://www.jostle.me/uploads/security/Jostle-Corporation_data-processing-addendum.pdf ("DPA") are hereby incorporated by reference.

9. WARRANTIES AND DISCLAIMERS

9.1 Our Warranty. We warrant that the Purchased Services shall during normal use within Your Subscription Term, conform substantially to the material specifications described on the Jostle Support Center, subject to the provisions of this Agreement. We do not warrant that the Purchased Services will meet all of Your or the Authorized Users' requirements, that they will be uninterrupted

or error-free, that any specific functionality or feature of the Jostle Services will always continue to be made available, that all defects in the Jostle Services will be corrected, or that the Jostle Services will be compatible or work with any Third-Party Applications or services.

9.2 Remedies. For any breach of Our warranty, Your exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination).

9.3 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PURCHASED SERVICES, ARE PROVIDED "AS IS" AND WE MAKE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE PURCHASED SERVICES, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

10. MUTUAL INDEMNIFICATION

10.1 Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding (" Claim") made or brought against You by a third party alleging that the use of the Purchased Services in accordance with this Agreement infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against You, and for reasonable attorney's fees incurred by You, in connection with any such Claim, provided that You promptly give Us written notice of the Claim, give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability) and provide to Us all reasonable assistance at Our expense.

10.2 Indemnification by You. You shall defend Us against any Claim made or brought against Us by a third party alleging that the Enterprise Data, or Your use of the Jostle Services in violation of this Agreement, infringes or misappropriates the rights of a third party or violates applicable law, and shall indemnify Us for any damages finally awarded against, and for reasonable attorney's fees incurred by Us, in connection with any such Claim, provided that We promptly give You written notice of the Claim, give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally release Us of all liability), and provide to You all reasonable assistance at Your expense.

10.3 Exclusive Remedy. This Section 10 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section 10.

11. LIMITATION OF LIABILITY

11.1 LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE INCIDENT.

11.2 EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFIT, REVENUE OR ANY OTHER LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE PURCHASED SERVICES OR ANY DEFECTS IN THE PURCHASED SERVICES, OR THE COST OF RECREATING OR REPLACING LOST OR CORRUPTED DATA, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. TERM AND TERMINATION

12.1 Term of Agreement. This Agreement commences on the date You accept it and continues in full force and effect during the applicable Subscription Term, subject to earlier termination in accordance with this Agreement.

12.2 Renewal. Except as otherwise specified in the applicable Order Confirmation, if this Agreement is for Purchased Services, it shall automatically renew on its anniversary date for one year, unless either party gives the other notice of non-renewal at least 30 days before the end of the then current Subscription Term. The pricing for the Purchased Services during any renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 45 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

12.3 Termination for Cause. A party may terminate this Agreement for cause upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.4 Refund or Payment upon Termination. Upon any termination for cause by You which is not bona fide disputed by Us, We shall refund You any prepaid fees covering the remainder of the Subscription Term after the effective date of termination. Upon any termination for cause by Us which is not bona fide disputed by You, You shall pay any unpaid fees covering the remainder of the Subscription Term after the effective date of termination.

12.5 Maintaining Enterprise Data. After the effective date of termination of Your Subscription for Purchased Services, We will retain the Enterprise Data for a maximum period of 30 days to allow You to reactivate Your Subscription for Jostle Services. After such 30-day period, We shall have no obligation to maintain or provide any of the Enterprise Data and shall thereafter, unless legally prohibited, delete all of the Enterprise Data in Our systems or otherwise in Our possession or under Our control.

12.6 Survival. Sections 2.5 (Data Loss), 2.6 (Exclusion of Warranties), 6 (Fees and Payment), 7 (Proprietary Rights), 8 (Confidentiality), 9 (Warranties and Disclaimers), 10 (Mutual Indemnification),

11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Maintaining Enterprise Data), 12.6 (Survival) and 13 (General) shall survive any termination or expiration of this Agreement.

13. GENERAL

13.1 Governing Law. This Agreement shall be governed by the laws of the Province of British Columbia, Canada, excluding its conflict of laws provisions.

13.2 Notice. Except as otherwise specified in this Agreement, all notices, consents, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon the day of personal delivery, the third business day after mailing, the second business day after sending by confirmed facsimile, or the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the administrator designated by You for Your Subscription, and notices from You to Us must be given by such administrator.

13.3 Venue. Any claim or dispute between You and Us that arises in whole or in part from this Agreement or the Jostle Services shall be decided by a court of competent jurisdiction located in the Province of British Columbia, Canada which shall have exclusive jurisdiction for such claim or dispute.

13.4 LIMITATION PERIOD. ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE JOSTLE SERVICES MUST COMMENCE WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

13.5 Waiver of Jury Trial. Each party waives any right to jury trial in connection with any legal action or litigation in any way arising out of or related to this Agreement or the Jostle Services.

13.6 Export Compliance. Each party shall comply with the export laws and regulations of the applicable jurisdictions in providing, accessing and using the Jostle Services.

13.7 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

13.8 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

13.9 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right, power or remedy under this Agreement shall constitute a waiver of that right, power or remedy. Other than as expressly stated in this Agreement, the remedies provided are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

13.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction in any country to be invalid or unenforceable, such provision shall be changed and interpreted in such

country so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.

13.11 Assignment. Neither party may assign or transfer any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld), and any such attempted transfer or assignment without consent shall be null and void. Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Confirmations), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. A party's sole remedy for any purported assignment by the other party in breach of this provision shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.12 Amendment. Except as may be otherwise provided in this Agreement, no modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted.

13.13 Customer Reference. We shall have the right to disclose You as a customer that is using Jostle Services.

13.14 English Language. This Agreement is in the English language only, which language shall be controlling in all respects, and any versions in any other language shall not be binding on the parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

13.15 Entire Agreement. This Agreement, including all exhibits and addenda and the Order Confirmation, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No terms or conditions stated in Your purchase order or other order documentation (excluding the Jostle Order Confirmation) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.