

SPIKESOURCE, INC. - SUBSCRIPTION AGREEMENT

This agreement ("**Agreement**") is entered into by and between SpikeSource, Inc. a Delaware corporation ("**SpikeSource**") and the user of the software, documentation and services (collectively "**Software**") provided hereunder ("**Subscriber**").

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE ACCOMPANYING SOFTWARE. BY CLICKING THE "ACCEPT" ICON BELOW OR BY USING THE ACCOMPANYING SOFTWARE, THE SUBSCRIBER CONFIRMS ITS ASSENT TO THIS AGREEMENT ("EFFECTIVE DATE"). IF THE SUBSCRIBER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT USE OR PURCHASE THE ACCOMPANYING SOFTWARE. IF THE SUBSCRIBER IS AN ENTITY AND YOU ARE ACTING ON BEHALF OF SUBSCRIBER, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUBSCRIBER.

1. Software.

SpikeSource has developed Software, distributed herewith, that includes certain third party software components ("Third Party Software"), and may include certain software developed by SpikeSource for the installation and management of the solution, all of which have been tested and certified for interoperability by SpikeSource.

2. Licenses

Grant of License. Subject to the terms and conditions of this Agreement and the Third Party Software Licenses, SpikeSource hereby grants to Subscriber during the Term of this Agreement a non-exclusive, personal and non-transferable license to: (a) install and run the Software on a server designated by Subscriber which conforms to the operating system and hardware requirements set forth in the Software description; and (b) use the Software to receive and install one (1) copy of the Software on a designated server, as well as updates to the Software which may be provided by SpikeSource.

Third Party Licenses. Subscriber agrees and acknowledges that Subscriber (a) has reviewed and understands the Third Party Software Licenses posted at <http://www.spikesource.com/license/license.html> and (b) shall abide at all times by the terms of any and all of the applicable Third Party Software Licenses.

Term. The initial Term of this Agreement shall be for a period of one (1) year following the date of installation of the Software on a server ("Term") and this Agreement may be renewed for additional one (1) year terms by payment of the then-applicable fees. In the event the Term expires without renewal, the licenses provided under this Section shall immediately terminate and Subscriber shall cease using the Software.

Reservation of Rights. All rights not expressly granted under this Agreement or the Third Party Software Licenses are reserved to SpikeSource and the licensors of the Third Party Software. By way of example but not limitation, Subscriber shall have no right to distribute, copy, or create derivative works of the Software at any time.

3. Services

Support Services. For a period of one (1) year from the Effective Date, SpikeSource shall provide support services for one (1) copy of the Software, on a designated server, pursuant to the terms provided at <http://www.spikesource.com/partner/SpikeNet-Policy.pdf>.

4. Limited Warranty

Software Limited Warranty.

For a period of ninety (90) days from the Effective Date, SpikeSource shall warrant that the Software shall be operative to the published specification, provided that such Software is used by Subscriber in accordance with the instructions provided by SpikeSource. SpikeSource does not warrant the interoperability of the Software with software that is not included in the published specifications. SpikeSource's sole obligation and Subscriber's sole remedy for any obligations of this warranty shall be to (i) deliver to Subscriber a corrected version of the Software which allows for proper installation of the Software on the designated server; or (ii) if option (i) is deemed by SpikeSource not to be commercially feasible, terminate this Agreement and refund any fees paid by Subscriber hereunder.

Subscriber agrees and acknowledges that the Software consists of Third Party Software, and that accordingly (i) SpikeSource makes no representations that any components in the Software shall be error free, and (ii) except as otherwise expressly provided herein, nothing in this Agreement shall be taken as imposing a requirement upon SpikeSource to correct any errors or otherwise make any improvements to any of the Third Party Software.

Exclusion of All Other Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE) PROVIDED BY SPIKESOURCE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR AND NON-INFRINGEMENT. NOTHING STATED IN THIS AGREEMENT WILL IMPLY THAT THE OPERATION OF ANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THOSE ERRORS WILL BE CORRECTED, EXCEPT TO THE LIMITED EXTENT PROVIDED IN THIS SECTION.

Exclusion of Consequential Damages. IN NO EVENT WILL EITHER PARTY, OR ANY OF THEIR AFFILIATED ENTITIES, OR ANY OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, DISTRIBUTORS, OR LICENSORS (INCLUDING, WITHOUT LIMITATION, ANY LICENSORS OF THIRD PARTY SOFTWARE) BE LIABLE TO THE OTHER PARTY AND ITS REPRESENTATIVES FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT OR ANY RELATED AGREEMENTS, ANY USE OR INABILITY TO USE ANY SOFTWARE (INCLUDING BUT NOT LIMITED TO THE THIRD PARTY SOFTWARE) PROVIDED HEREUNDER OR UNDER ANY RELATED AGREEMENTS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM.

Limitation of Liabilities. In no event will SpikeSource's aggregate liability for any damages arising out of or relating to this Agreement or any related agreement, whether in contract, tort or otherwise, exceed the fees paid during the Term.

Injunctive Relief. SpikeSource shall have the right to obtain injunctive relief in case of any breach by the Subscriber of this Agreement or any Third Party Software Licenses.

5. General

This Agreement shall be governed by the laws of the state of California, excluding its conflict of law rules. Except as granted hereunder, SpikeSource or its Licensors shall own all right, title and interest to the Software and/or Third Party Software licensed under the Agreement. The parties may not assign this Agreement without the other party's prior written consent unless there is a merger or business combination with a non-competitor of the other party and a party is not the surviving entity. Any purported transfer, assignment or delegation without prior written consent shall be null and void. Any notice to be made in connection with this Agreement shall be deemed received when delivered in person, sent by email or facsimile (with printed confirmation) or sent overnight by courier to the other party at the respective addresses. Neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction or malfunction of equipment or any consequences thereof, caused by or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or suppliers, unavailability of transportation, acts or omissions of third parties or any other causes beyond its reasonable control. The failure to enforce any right will not be deemed a waiver of such or any other right, including the right to enforce a subsequent breach of the same obligations. If any provision contained in the Agreement is or becomes invalid, illegal, or unenforceable in whole or in part, such invalidity, legality, or unenforceability shall not affect the remaining provisions and portions of the Agreement. Each party will comply with all applicable laws and regulations at its own expense, including all export and import laws and regulations. This Agreement may be amended or modified only by the written approval of both parties. This Agreement represents the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter of this Agreement. No new or additional terms and conditions may be added to this Agreement by way of a party's ordering or invoicing documentation. Sections that by their nature survive expiration or termination shall survive any expiration or termination of this Agreement. Neither party shall be deemed to be an agent of the other party and the relationship of the parties shall be that of independent contractors.

MOVABLE TYPE ENTERPRISE
END USER LICENSE AGREEMENT

This End User License Agreement (the "Agreement") with an effective date above (the "Effective Date") is a binding legal agreement between Company ("you") and Six Apart, Ltd ("Six Apart"). By selecting "I Accept" when downloading, or by installing or using the Movable Type Enterprise Software (the "Software"), you agree to be bound by the terms of this Agreement, including all Exhibits. If you do not agree to the Agreement, you may not install or use the Software.

LICENSE GRANT. You have, subject to the terms and conditions of this Agreement, a non-exclusive, nontransferable, nonrefundable, perpetual, irrevocable, world-wide, fully paid-up license to use the Software and any documentation (the "Documentation") provided in connection with the Software (the "License Grant").

1. If you are a commercial organization, you have the right to use the Software for your business purposes. For clarification, use of the Software by an incorporated entity, a partnership, or by an individual to directly or indirectly support a commercial endeavor is considered a "business purpose."

Six Apart reserves the right to determine whether your use of the Software qualifies under this Agreement. Your use of the Software is limited to a fixed number of Users and Servers, as specified in Exhibit A of this Agreement. Exhibit A may be amended from time to time upon your order of additional Users and/or Servers, which amendment will be documented by the invoice provided to you (the initial invoice, together with any subsequent invoices provided to you for user-pack upgrades or other additional services, the "Invoice").

Definition of User. "User" means a unique login name generated or recognized by the Software. An individual whose employment with your organization has been terminated and who will no longer be using the Software does not count as a User, even if such User has logged in within the prior 90 days. The sharing of an individual login name for more than one person is prohibited.

Definition of Server: "Server" means one computer or set of computers with a single installation of the Software installed on one Computer.

RIGHTS RESERVED. Six Apart owns all rights, title and interest to the Software (including all intellectual property rights) and the Documentation and Six Apart reserves all rights to the Software and Documentation that are not expressly granted in this Agreement. You recognize and agree that nothing contained in this Agreement shall be construed as granting you any property rights, by license or otherwise, to the Software or any Documentation, or to any invention or any patent, copyright, trademark, or other intellectual property right that has been issued or that may issue, based on such Software and Documentation.

TEST SERVER INSTALLATION. You may make copies of the Software and install these copies on a number of "Non-Production" Servers. Use of the Software installed on the Non-Production Servers is restricted to testing, training, development, quality assurance, validation, backup, disaster recovery, and cannot support a direct commercial, business, educational or not-for-profit purpose. Six Apart reserves the right to determine whether your use of the Software for testing purposes qualifies under this Agreement. You must reproduce the Software in its original form and with all proprietary notices. All rights to the Software not expressly granted herein are reserved by Six Apart.

GETTING HELP. Six Apart will provide technical support services for the Software as enumerated in [Exhibit B](#).

RESTRICTIONS. You understand and agree that you will only use the Software in a manner that complies with any and all applicable laws in the jurisdictions in which you use the Software. Your use shall be in accordance with applicable restrictions concerning privacy and intellectual property rights. You may not:

- * Distribute derivative works based on the Software and/or Documentation (the distribution of plug-ins and other add-ons to the product written using APIs and other programmatic interfaces published by Six Apart are allowed);
- * Reproduce the Software and/or the Documentation except as described in this Agreement;
- * Sell, assign, license, disclose, distribute, or otherwise transfer or make available the Software and/or the Documentation, in whole or in part, or any copies of the Software in any form to any third parties;
- * Use the Software to provide hosting services to others or to provide any type of service bureau (for clarification, you cannot assess a fee, directly or indirectly, from third parties for Software authoring rights);
- * Remove or alter any proprietary notices on the Software; or
- * Alter or extend the Software to allow third parties not included in the definition or count of "Users" as set forth above from posting entries or interacting with the Software other than through the Comment feature.

FEES AND PAYMENT. You will pay (a) the Software license fees (the "License Fees") and (b) the annual maintenance and support ("M&S") fee set forth in [Exhibit A](#) or Invoices. The M&S services shall automatically renew for subsequent one year terms, and you shall automatically be invoiced for the continued M&S services, upon each anniversary of this Agreement unless you provide Six Apart written notice of your intention not to renew within thirty (30) days prior to the commencement of the next annual term. The M&S services grant you access to (a) the technical support services outlined in Exhibit A and (b) all Updates (as defined below) to the Software. All payments are due thirty (30) days following receipt of Invoice. The term of the license granted herein is not contingent upon your renewal of the M&S services. .

An "Update" of the Software is defined as that which adds minor functionality enhancements or any bug fix to the current version. This class of release is identified by the change of the revision to the right of the decimal point, i.e. X.1 to X.2. The assignment to the category of update or upgrade shall be at the sole discretion of Six Apart.

LIMITATION PERIOD. No action or claim relating to this Agreement may be instituted more than one (1) year after the event giving rise to the action or claim.

WARRANTY. Six Apart warrants that during the term of this Agreement, it shall not knowingly introduce any data collection code, automated software updating services, viruses, Trojan horses, key locks, back doors, trap doors, timers, clocks, counters, or other limiting designs, instructions, routines or other harmful, disruptive or tracking components in the Software. In the event that the Software contains code in breach of this warranty, Six Apart shall use its best efforts to replace all copies of the affected Software with Software that does not contain such code. EXCEPT FOR THE FOREGOING, THE SOFTWARE IS OFFERED ON AN "AS-IS" BASIS AND NO WARRANTY, EITHER EXPRESSED OR IMPLIED, IS GIVEN. SIX APART EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. YOU ASSUME ALL RISK ASSOCIATED WITH THE QUALITY, PERFORMANCE, INSTALLATION AND USE OF THE SOFTWARE INCLUDING, BUT NOT LIMITED TO, THE RISKS OF PROGRAM ERRORS, DAMAGE TO EQUIPMENT, LOSS OF DATA OR

SOFTWARE PROGRAMS, OR UNAVAILABILITY OR INTERRUPTION OF OPERATIONS. YOU ARE SOLELY RESPONSIBLE FOR DETERMINING THE APPROPRIATENESS OF USE OF THE SOFTWARE AND ASSUME ALL RISKS ASSOCIATED WITH ITS USE.

TERM AND TERMINATION. The term of the License Grant begins on the Effective Date and, unless otherwise provided in this section, continues for a perpetual term (the "Term"). You may use the Software until the end of the Term or until either party terminates this Agreement as set forth in this section:

(a) In the event you breach any provision of this Agreement other than a breach of the "Restrictions" clause above, Six Apart shall have the right to terminate this Agreement in the event such breach is not cured within thirty (30) days notice thereof. Upon such a termination, all licenses granted to you hereunder will terminate and you will immediately uninstall and cease all use of the Software.

(b) In the event you breach any of the provisions of the "Restrictions" clause above, Six Apart shall have the right to immediately terminate this Agreement. Upon such a termination, all licenses granted to you hereunder will terminate and you will immediately uninstall and cease all use of the Software.

(c) Six Apart shall have the right to terminate this Agreement at any time upon fifteen (15) days notice. In the event of such a termination, the Term shall continue as specified in the License Grant and Six Apart shall refund to you the prorated portion of the M&S fee applicable to the unused portion of the support period.

The Sections entitled "License Grant," "Restrictions", "No Warranty," "Term and Termination", "Indemnification," "Limitation of Liability," and "General" will survive any termination of this Agreement.

INDEMNIFICATION.

(a) Except with respect to claims for which Six Apart has an indemnification obligation under Subsection (b) below, you agree to indemnify, defend and otherwise hold harmless Six Apart, its officers, directors, employees, agents and subsidiaries from and against any claim or suit brought against Six Apart relating to, or resulting from your use of the Software.

(b) Six Apart shall indemnify, defend and otherwise hold you, your officers, directors, employees, agents and subsidiaries harmless, from and against, any claim or suit brought against you that the Software, solely as furnished to you by Six Apart and excluding any Modifications (as hereinafter defined) by you, infringes a third party's intellectual property rights and will pay any costs and damages awarded against you by a court of last resort; provided, however, that (i) you promptly inform Six Apart of such claim in writing, (ii) you provide reasonable assistance to Six Apart in the defense and/or settlement of such claim or action, and (iii) Six Apart is given sole control over the investigation, preparation, defense and all settlement negotiations. Six Apart shall have the sole right to commence actions relating to an unauthorized use of the Software, and you shall provide Six Apart with reasonable assistance in such actions. Six Apart will have no liability or obligation under this Subsection (b) with respect to any suit or claim which arises from or relates to: (i) a combination of the Software with another product or service not supplied by Six Apart; (ii) any use of the Six Apart Software for purposes other than for which it was designed or any use outside the scope of the license granted hereunder; (iii) any copy of the Software or portion thereof (a) not supplied by Six Apart, (b) modified in whole or in part in accordance with your instructions or specifications, or (iv) where you continue allegedly infringing activity after being notified thereof and after being informed of modifications that would avoid the alleged infringement. For purposes of this Agreement, "**Modification**" means any extension, adaptation, revision, update, upgrade, or other change to the Software.

LIMITATION OF LIABILITY. THE PARTIES EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER PARTY SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. EXCEPT FOR CLAIMS RELATED TO INFRINGEMENT, IN NO EVENT WILL

EITHER PARTY'S TOTAL CUMULATIVE DAMAGES EXCEED THE FEES YOU PAID TO SIX APART UNDER THIS AGREEMENT IN THE MOST RECENT TWELVE MONTH PERIOD.

GENERAL. The Agreement between you and Six Apart will be governed by and construed in accordance with the laws of the State of California without regard to conflict of laws principles. The Agreement constitutes the entire agreement between you and Six Apart and governs your use of the Software, superseding any prior agreements between you and Six Apart. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be changed and interpreted 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 will remain in full force and effect. The Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth therein. The parties acknowledge that the manufacture and sale of the Software is subject to the export control laws of the United States of America, including the U.S. Bureau of Export Administration regulations, as amended, and hereby agree to obey any and all such laws. You may not assign this Agreement, and any assignment of this Agreement by you will be null and void. Movable Type, the Movable Type logo, Six Apart, the Six Apart logo, and other Six Apart logos and names are trademarks of Six Apart, Ltd. You agree not to display or use these trademarks in any manner without Six Apart's prior, written permission. The section titles and numbering of this Agreement are displayed for convenience and have no legal effect.

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Terms and Conditions for the Socialtext Enterprise Appliance

This License Agreement for the Socialtext Enterprise Appliance (the 'Agreement') is made and entered into by and between you ("You") and Socialtext ("Socialtext"). This Agreement sets forth the terms and conditions under which you may license and use the Socialtext Enterprise Appliance.

1. SOCIALTEXT ENTERPRISE APPLIANCE LICENSE

1.1 LICENSE GRANT. Subject to the terms and conditions of this Agreement, and in consideration of Your payment of all applicable fees and taxes, Socialtext grants to You (and You agree to comply with) a non-sublicensable, non-transferable, non-exclusive, limited license to use: (i) certain Socialtext proprietary computer software identified as the Socialtext Enterprise Wiki in binary executable form only (the "Software"), that is installed in certain Socialtext proprietary computer hardware (the "Hardware") and (ii) certain Socialtext proprietary documentation in the form generally made available by Socialtext to its customers for use with the Products (the "Documentation"). The Software, Hardware and Documentation are collectively referred to herein as the "Product". Your use of the Products shall be restricted to creating, reading and adding content owned and controlled by you. The rights to create, read, and add content are hereby licensed to Your authorized end users. You agree to be responsible for the acts and/or omissions of any such end users in breach of the terms set forth herein.

1.2 THIRD PARTY COMPONENTS. Any third party component embedded, included or otherwise provided for use with the Products may only be used in conjunction with such Products ordered hereunder, and such we shall be subject to all the terms and conditions of this Agreement. The Products are designed for use with the equipment and accessories specified in the Documentation. Socialtext assumes no responsibility under this Agreement for obtaining or providing such equipment. You are also responsible for ensuring a proper environment and proper utilities for the computer system on which the Products will operate. Notwithstanding the foregoing, to the extent that the Products include some components that are governed by licenses including provisions prohibiting their distribution under this Agreement, those components are instead governed solely by the respective appropriate licenses. To the extent Products include some components covered by licenses requiring the provision of corresponding source code for those components, Socialtext hereby offers the provision of such source code consistent with such licenses.

2. OWNERSHIP; RESTRICTED USE. For purposes of this Agreement, "Intellectual Property Rights" means any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof now or hereafter in force and effect worldwide. All ownership rights, title, and Intellectual Property Rights in and to the Products shall remain in Socialtext and/or its licensors, except that title to the Hardware shall pass to You upon receipt of all Fees by Socialtext ("Limited Title"). Your Limited Title shall be further subject to Your return of such Hardware pursuant to this Agreement. All ownership rights, title, and Intellectual Property Rights in and to the content accessed through the Products shall be the property of the applicable content owner and may be protected by copyright and/or other applicable Laws.

You agree not to, or to allow others to: (i) adapt, alter, modify, decompile, translate, disassemble, or reverse engineer the Product or any component thereof, including without limitation, the source code and any other underlying ideas or algorithms of the Software (except to the extent applicable laws specifically prohibit such restriction); (ii) create license keys that enable the Software; (iii) copy the Software except as provided in Section 4; (iv) transfer, sublicense, loan, sell, lease or use for timesharing or service bureau purposes the Product or any component thereof; or (v) ship, divert, transship, transfer, export or re-export the Products or any component thereof into any country or use it in any manner prohibited by any export control laws, restrictions, or regulations administered by the U.S. Commerce Department, the U.S. Department of Export Administration, the U.S. Department of Treasury's Office of Foreign Assets Control, or any other applicable government agency. For the avoidance of doubt, nothing in this Agreement grants to You any rights whatsoever in or relating to the source code of the Software.

3. DELIVERY. The Products shall be delivered by the shipping method indicated on the Shipping section of the Socialtext Purchase Letter. You agree that at the time of Your receipt of any Product, You shall bear all risk of loss, theft or damage of any kind to such Product and that your failure to obtain insurance at the time of Your receipt of such Product will be at Your own risk without liability of any kind to Socialtext.

4. TERM AND TERMINATION. Subject to Your payment of all Fees for the term of the license granted herein for any Product shall commence upon the date of shipment by Socialtext ("Shipment Date") and may be terminated as set forth herein.

A party may, by written notice of default to the other party, (i) terminate this Agreement, in whole or in part, (a) if the other party materially breaches this Agreement, and the breaching party does not cure such material breach within thirty (30) calendar days after receipt of written notice of such breach; or (b) immediately following the failure to resolve the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the other party, appointment of a trustee or receiver for either party's property or business, or any assignment, reorganization or

arrangement by either party for the benefit of its creditors, Socialtext may immediately terminate this Agreement, in whole or in part, if You are in breach of Section 2 (Ownership, Restricted Use) or Section 6 (Confidential Information); or (ii) You are in material breach of this Agreement more than twice notwithstanding any cure of such breaches.

Upon termination of this Agreement, all licenses, and any other rights and services provided by Socialtext to You as set forth in this Agreement, shall cease immediately. If this Agreement is terminated for Your breach, You must immediately return the Product to Socialtext via Socialtext's authorized return shipment process for receipt by Socialtext, at which time Your Limited Title in the Hardware shall revert to Socialtext. Termination of this Agreement or any license shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve You of Your obligation to pay all fees that have accrued or are otherwise owed by You.

5. CONFIDENTIAL INFORMATION. In connection with performance of its obligations hereunder, a party (the "Discloser") may disclose to the other party certain information it considers confidential and/or proprietary ("Confidential Information") to the other party (the "Recipient") including, but not limited to, tangible, intangible, visual, electronic, present, or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs, and know-how; (d) business information, including operations, planning, marketing interests, and products; and (e) the terms of this Agreement and the discussions, negotiations and proposals related thereto.

The Recipient will only have a duty to protect Confidential Information disclosed to it by the Discloser: (1) if it is clearly and conspicuously marked as "confidential" or with a similar designation; (2) if it is identified by the Discloser as confidential and/or proprietary before, during, or promptly after presentation or communication; or (3) if it is disclosed in a manner in which the Licensor reasonably communicated, or the Recipient should reasonably have understood under the circumstances that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used. You acknowledge that the source and object code of the Software remains a confidential trade secret of Socialtext and/or its licensors and that You are not entitled to review either the object code or the source code of the Software for any reason at any time. Recipient shall not disclose or cause to be disclosed any Confidential Information of Discloser, except to those employees, agents, representatives, or contractors of the parties who require access to the Confidential Information to perform under this Agreement ("Authorized Personnel") and who are bound by written agreement: not to disclose third party confidential or proprietary information disclosed to Recipient. Furthermore, Recipient agrees to be responsible for any act and/or omission of any Authorized Personnel in breach of this Section. Recipient shall protect the Confidential Information of Discloser by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication to any unauthorized third parties. A party's Confidential Information shall not include information that: (i) is or becomes publicly available through an act or omission of Recipient; (ii) was in the Recipient's lawful possession prior to the disclosure and was not obtained by Recipient either directly or indirectly from the Discloser; (iii) is lawfully disclosed to the Recipient by a third party without restriction on Recipient's disclosure, and where Recipient was not aware that the information was the confidential information of Discloser; (iv) is independently developed by the Recipient without violation of this Agreement; or, (v) which is disclosed by Recipient as needed to comply with a court order, subpoena, or other government demand (provided that Recipient first notifies Discloser and gives Discloser the opportunity to challenge such court order, subpoena, or government demand). Each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section 6 or Section 2. If the Product is returned due to damage or defect, You will use commercially reasonable efforts to remove such Confidential Information prior to return to Socialtext.

6. WARRANTY DISCLAIMER. Socialtext and its Licensors make no warranty of any kind, whether express, implied, statutory or otherwise, including without limitation warranties of merchantability, fitness for a particular use and non-infringement. The product and services are provided by Socialtext and its Licensors "As Is". Socialtext and its Licensors do not warrant that the product or any portion thereof, are error or bug free, or that your use of the product or services will be uninterrupted. Socialtext and its Licensors assume no responsibility for the proper installation and use of the Product. Socialtext and its Licensors make no representations about any content or information made accessible by the product. The Product is not fault tolerant and is not designed, manufactured, or intended for uses such as the operation of nuclear facilities, air traffic control or life support systems, where the failure of the Product could lead to death, personal injury, or environmental damage ("High Risk Activities").

7. LIMITATION OF LIABILITY. In no Event will Socialtext and/or its licensors be liable (i) for any indirect, special, incidental, consequential, exemplary or punitive damages including, but not limited to, damages for lost data, lost profits, or costs of procurement of substitute goods or services, however caused (including but not limited to use, misuse, inability to use or interrupted use) and under any theory of liability, including but not limited to contract or tort and whether or not Socialtext was or should have been aware or advised of the possibility of such damage regardless of whether any remedy set forth in this agreement fails of its essential purpose; or (ii) for any claim attributable to errors, omissions, or other inaccuracies in the product or destructive properties of the product,. In no event shall Socialtext's and/or its Licensors' total aggregate liability under this agreement exceed the amount of fees paid by You for the product giving rise to such liability.

8. MISCELLANEOUS. This Agreement is personal to You. You may not assign or otherwise transfer Your rights or delegate Your obligations under this Agreement, in whole or in part, without the prior written consent of Socialtext. Any attempted assignment in derogation hereof shall be null and void. The parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the parties hereto. Both parties shall be responsible for performing their respective obligations as set forth herein. Upon termination, the following Sections of this Agreement will survive: 2, 4, 5, 6, 7, and 8. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal U.S. laws applicable therein, excluding its choice of law provisions, and You and Socialtext agree to submit to the personal and exclusive jurisdiction of the courts located in Santa Clara County, California.

The parties specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties. The failure of either party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches. Any notice given under this Agreement shall be in writing and in the English language and shall be delivered by certified or registered mail, postage prepaid, return receipt requested. Notices shall be deemed given upon acknowledgment of receipt. All notices to Socialtext must be sent to such address as provided at: <http://www.socialtext.com/company> or as otherwise provided in writing for such notice purposes, provided that a courtesy copy shall also be sent to the attention of the Socialtext Legal Department for all legal notices. Notices to You shall be sent to the address set forth in Address section of the Purchase Letter or to any other address You specify in writing. Neither party shall be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. You agree that this Agreement shall be construed as if both parties jointly wrote and prepared it.

This Agreement and the terms or other provisions located at any Socialtext uniform resource locators (URLs) referenced in this Agreement (which are all incorporated herein by reference), constitutes a complete, absolute integration and the entire agreement between the parties hereto relating to the subject matters of this Agreement, and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing, and all contemporaneous oral communications, and any terms contained in any related purchase order(s) or other documents pertaining to the subject matter of this Agreement shall be null and void. This Agreement may be modified only in writing signed by both parties.

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