



## Master Subscription Agreement

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES. IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY LOGGING INTO OUR APPLICATION, CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is effective between You and Us as of the date of You accepting this Agreement.

### 1. DEFINITIONS

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Agreement**" means this Master Subscription Agreement.

"**Beta Services**" means Our services that are not generally available to customers.

"**Content**" means information obtained by Us from Our content licensors or publicly available sources and provided to You pursuant to an Order Form, as more fully described in the Documentation.

"**Documentation**" means Our online user guides, documentation, and help and training materials, as updated from time to time, accessible by login to the applicable Service.

"**Malicious Code**" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"**Marketplace**" means an online directory, catalog or marketplace of applications that interoperate with the Services.

"**Non-Giva Applications**" means a Web-based or offline software application that is provided by You or a third party and interoperates with a Service, including, for example, an application that is developed by or for You, is listed on a Marketplace, or is identified as Giva Labs or by a similar designation.

"**Order Form**" means an ordering document specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**"Purchased Services"** means Services that You or Your Affiliate purchase under an Order Form, as distinguished from those provided pursuant to a thirty-day free trial.

**"Services"** means the products and services that are ordered by You under a thirty-day free trial or an Order Form and made available online by Us, including associated offline components, as described in the Documentation. "Services" exclude Content and Non-Giva Applications.

**"User"** means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

**"We," "Us" or "Our"** means the Giva, Inc. described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

**"You" or "Your"** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

**"Your Data"** means electronic data and information submitted by or for You to the Purchased Services or collected and processed by or for You using the Purchased Services, excluding Content and Non-Giva Applications.

## **2. FREE TRIAL**

If You register on our website for a free trial (excluding optional fee based assistance during free trial), We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the thirtieth day after Your acceptance of this Agreement, or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s). Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. If You elect to use Our optional professional services for assistance with set-up, customization, training, or technical support to answer questions during a free trial, then You agree to pay Us for all professional services rendered to You at \$150/hour and according to the terms set forth in Section 6.

**ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR THIRTY-DAY FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL OR EXPORT SUCH DATA, BEFORE THE END OF THE THIRTY-DAY TRIAL PERIOD.**

NOTWITHSTANDING SECTION 9 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

Please review the on-line documentation during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

## **3. OUR RESPONSIBILITIES**

**3.1. Provision of Purchased Services.** We will (a) make the Services and Content available to You pursuant to this Agreement and the applicable Order Forms, (b) provide Our standard support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased, and (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give at least 8 hours electronic notice and which We shall schedule to the extent practicable during the weekend hours between 10:00 p.m. Friday and 3:00 a.m. Monday, Eastern Standard Time/USA; Sydney, Australia Time; Toronto, Canada Time; Frankfurt, Germany Time; and Dubai, United Arab Emirates Time (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, war, act of terror, strike or other labor problem (other than one involving Our employees), interruption of or delay in transportation, unavailability or interruption or delay in

telecommunications or third party services (including DNS propagation), failure of third party software or hardware or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of Our Service, Non-Giva Applications, denial of service attack or major Internet-wide software bug.

**3.2. Protection of Your Data.** Your Data shall be owned by You. Upon termination or upon request, We will provide a copy of Your Data in an ODCB-compliant format as soon as practicable. Your Data can be downloaded by You at any time from Our Report section of the Services.

We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing.

We and You specifically agree that when You are located in the European Economic Area (“EEA”) the terms “Personal Data”, “Process”, “Data Controller”, “Special Categories of Data”, “Processing”, “Data Subject”, “Third Party Processing” and “Data Processor” will have the meanings given to them in the EU Directive 95/46 EC. In respect of Personal Data processed under this Agreement, the parties agree that You are the Data Controller and We are the Data Processor. You and We both agree to process data in accordance with the local data protection laws. In addition, the Data Processor agrees that it will only collect, process and use Personal Data for the sole purpose of performance of Our Services described hereunder and in accordance with the Data Controller’s instructions. You acknowledge that Personal Data shall not include Special Categories of Data. We shall have no liability arising from the processing of Personal Data in accordance with Your written instructions. The Data Processor shall take appropriate technical and organizational measures to adequately protect Personal Data against (i) unauthorized access, (ii) unauthorized disclosure, (iii) misuse, (iv) corruption, and (v) loss, in accordance with the requirements of the EU Directive 95/46 EC as implemented under each local law and industry best practices. The parties agree that We may subcontract the processing of Personal Data to a subcontractor (the “Subcontractor”) provided that We shall remain solely responsible for the acts and omissions of such Subcontractor. The Data Processor and its Subcontractor may transfer and/or store Personal Data within the European Economic Area (the “EEA”). The Data Processor may also transfer Personal Data to and store Personal Data in accordance with U.S. Safe Harbor requirements, provided that the Data Processor and its subcontractor are and remain Safe Harbor certified. The Data Processor shall promptly inform the Data Controller and follow up with a subsequent written notice if it becomes aware of any unauthorized or unlawful or improper processing, loss of, damage to, or destruction of any Personal Data (singly or collectively referred to as “Security Breach”).

**3.3 Our Personnel.** We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

**3.4 Beta Services.** From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered “Services” under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

**3.5 Support and Maintenance & Service Level Agreements.** We shall provide to You technical support in accordance with terms and conditions on the Service web site by clicking on “Help Center” in the upper right hand side and then clicking on the “Service Level Agreement” tab. We shall provide to You software updates, software upgrades and new versions thereto at no charge.

#### **4. USE OF SERVICES AND CONTENT**

**4.1 Subscriptions.** Unless otherwise provided in the applicable Order Form, (a) Services and Content are purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated (i.e. You will be invoiced for the highest number of licenses registered during each calendar month) for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. You are solely responsible for adding, activating and deactivating Users.

**4.2 Usage Limits.** Services and Content are subject to usage limits, including, for example, the quantities specified in Order Forms. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the Service or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Service or Content. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, You will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Our request, and/or pay any invoice for excess usage in accordance with Section 6.2 (Invoicing and Payment).

**4.3 Your Responsibilities.** You will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Us promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with the Documentation and applicable laws and government regulations, and (e) comply with terms of service of Non- Giva Applications with which You use Services or Content.

**4.4 Usage Restrictions.** You will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) access any Service or Content in order to build a competitive product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law). You shall always remain in compliance with Our Acceptable Use Policy (AUP) which has been created to promote the integrity, security, reliability and privacy of the Our Products and Services, and the most current copy can be found at the terms of use on our web site. We have the right to modify the AUP at any time and any such modification shall automatically be effective for You.

## **5. NON-GIVA PROVIDERS**

**5.1. Acquisition of Non-Giva Products and Services.** We or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-Giva applications and implementation and other consulting services. Any acquisition by You of such non-Giva products or services, and any exchange of data between You and any non-Giva provider, is solely between You and the applicable non-Giva provider. We do not warrant or support Non-Giva Applications or other non-Giva products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in an Order Form.

**5.2. Non-Giva Applications and Your Data.** If You install or enable a Non-Giva Application for use with a Service, You grant Us permission to allow the provider of that Non-Giva Application to access Your Data as required for the interoperation of that Non-Giva Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by a Non-Giva Application.

**5.3. Integration with Non-Giva Applications.** The Services may contain features designed to interoperate with Non-Giva Applications. To use such features, You may be required to obtain access to Non-Giva Applications from

their providers, and may be required to grant Us access to Your account(s) on the Non-Giva Applications. If the provider of a Non-Giva Application ceases to make the Non-Giva Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing those Service features without entitling You to any refund, credit, or other compensation.

## **6. FEES AND PAYMENT FOR PURCHASED SERVICES**

**6.1. Fees.** You will pay all fees in USA Dollar currency or as specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

**6.2. Invoicing and Payment.** You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 12.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information. We may, in our sole and absolute discretion, elect not to send You an invoice in the event that amounts then due are small. We will have the right to include any skipped amount in any subsequent invoice.

**6.3. Overdue Charges.** If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per each whole or partial calendar month that payments are late, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).

**6.4. Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 13.2 (Manner of Giving Notice), before suspending services to You. Such suspension will not relieve You from the obligation to pay amounts due and to pay for the services while You are under such suspension.

**6.5. Payment Disputes.** We will not exercise Our rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If You in good faith dispute any charges, You shall (a) timely pay all undisputed charges, and (b) on or before the Due Date, give Us written notice of the disputed amount(s) and reason(s) therefore. A "Disputed" amount is one for which You have given Us a proper written notice within 60 days following the invoice date, adequately supported by a bona fide explanation and documentation thereof. We shall review any such notice reasonably promptly. Any invoiced amount not disputed by You within 60 days following the invoice date is deemed to be correct and binding on You. We may make appropriate corrections to issued invoices at any time. You must make any claim regarding an overpayment within 60 days following the date of overpayment.

You shall pay all expenses incurred by Us in exercising any of our rights under this Agreement, or, with respect to a Payment Default, under applicable law. Such expenses shall include, without limitation, reasonable attorneys' and experts' fees, litigation costs and fees of any collection agency retained by Us.

**6.6. Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever

(collectively, “**Taxes**”). You are responsible for paying all Taxes associated with Your purchases hereunder. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

**6.7. Future Functionality.** You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

## **7. PROPRIETARY RIGHTS AND LICENSES**

**7.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title and interest in and to the Services and Content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**7.2. License by Us to Use Content.** We grant to You a worldwide, limited-term license, under Our applicable intellectual property rights and licenses, to use Content acquired by You pursuant to Order Forms, subject to those Order Forms, this Agreement and the Documentation.

**7.3. License by You to Host Your Data and Applications.** You grant Us and Our Affiliates a worldwide, limited-term license to host, copy, transmit and display Your Data, and any Non-Giva Applications and program code created by or for You using a Service, as necessary for Us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data or any Non-Giva Application or program code.

**7.4. License by You to Use Feedback.** You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.

**7.5. Federal Government End Use Provisions.** We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with 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 granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

## **8. CONFIDENTIALITY**

**8.1. Definition of Confidential Information.** “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**8.2. Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement,

and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 8.2.

**8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

**9.1. . Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**9.2. Our Warranties.** We warrant that (a) this Agreement, the Order Forms and the Documentation accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) We will not materially decrease the overall security of the Purchased Services during a subscription term, (c) the Purchased Services will perform materially in accordance with the applicable Documentation, (d) subject to Section 5.3 (Integration with Non-Giva Applications), We will not materially decrease the functionality of the Purchased Services during a subscription term, and (e) the Purchased Services and Content will not introduce Malicious Code into Your systems. For any breach of an above warranty, Your exclusive remedies are those described in Sections 12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

**9.3. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## **10. MUTUAL INDEMNIFICATION**

**10.1. Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "**Claim Against You**"), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 9.2 (Our Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii)

terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Content, a Non-Giva Application or Your breach of this Agreement.

**10.2. Indemnification by You.** You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Service or Content in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim Against Us"), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

**10.3. Exclusive Remedy.** This Section 10 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.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE MONTH PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER IN MOST RECENT 6 MONTHS HEREUNDER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

**11.2. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## 12. TERM AND TERMINATION

**12.1 Term of Agreement.** This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

**12.2. Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Order Form.

**12.3. Termination.** A party may terminate this Agreement for cause (i) 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 (ii) 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. We may terminate this Agreement with 30 days written notice if products You are using are discontinued or no longer offered by Us and We will refund to You any prepaid fees covering the remainder of the term of all Order Forms.

**12.4. Refund or Payment upon Termination.** If this Agreement is terminated by You in accordance with Section 12.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms



after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 12.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms.. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**12.5. Your Data Portability and Deletion.** Except as provided in Section 2, upon request by You made within 30 days after the effective date of termination or expiration of this Agreement, We will make the Your Data available to You for export or download as provided in the Documentation. After that 30-day period, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control as provided in the Documentation, unless legally prohibited.

**12.6. Surviving Provisions.** The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Portability and Deletion of Your Data," "Who You Are Contracting With, Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration of this Agreement.

### **13. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION**

**13.1 Applicable Governing Law and Jurisdiction.** Under this Agreement, You are contracting with Giva, Inc. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of, the State of California and the United States without regard to conflict of laws provisions thereof. Both parties hereby consent to exclusive jurisdiction in Santa Clara County, California subject to matters required to be arbitrated hereunder. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed in its entirety.

**13.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing certified mail return receipt which is required for notices of termination or indemnifiable claim, (iii) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

**13.3. No Agency.** For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other Giva company. Subject to any permitted Assignment under Section 14.4, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

### **14. GENERAL PROVISIONS**

**14.1. Export Compliance.** The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

**14.2. Anti-Corruption.** You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department at [legalcompliance@givainc.com](mailto:legalcompliance@givainc.com).

**14.3 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between You and Us regarding Your use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Our Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) Our Order Form, (2) this Agreement, and (3) the Documentation.

**14.4. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets ("Customer Change of Control Event"). If this Agreement is not assigned in connection with a Customer Change of Control Event then the surviving entity is obligated to provide written notice to US of such non assignment within 10 business days after the effective date of the Customer Change of Control Event. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.5. 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.

**14.6. Third-Party Beneficiaries.** Our Content licensors shall have the benefit of Our rights and protections hereunder with respect to the applicable Content. There are no other third-party beneficiaries under this Agreement.

**14.7. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**14.8. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

## **15. Dispute Resolution.**

**15.1 Resolve in Good Faith.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to any agreements executed by the parties promptly by negotiation between executives who have authority to settle the dispute. Any party may give to the other party written notice of any dispute not resolved in the ordinary course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity a) a statement of each party's position and a summary of arguments supporting that position, and b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 15 days after delivery of the notice, the executives of both parties shall communicate at a mutually acceptable time in an effort to resolve the dispute.

**15.2 Arbitration.** If the parties fail to settle the dispute amicably as provided in Section 15.1, then any dispute, controversy or claim arising out of or relating to any agreements executed by the parties, including the formation, interpretation, breach or termination thereof, including whether the claims asserted can be arbitrated, will be referred to and finally determined by arbitration in accordance with the JAMS Streamlined Arbitration Rules and Procedures of JAMS if Your address on Our Order Form is within the USA and the JAMS International Arbitration Rules if Your address on Our Order Form is located outside of the USA. The tribunal will consist of a sole arbitrator. The

place of the arbitration will be held in the JAMS office in San Jose, California. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The parties shall maintain the confidential nature of the arbitration proceeding and the award. This Agreement and the rights of the parties hereunder shall be governed and construed in accordance with the laws of the State of California, USA, exclusive of conflict or choice of law rules. In any arbitration arising out of or related to any agreements executed by the parties, the arbitrator may not award any incidental, indirect or consequential damages, including damages for lost profits.

**15.3 Excluded Claims.** Notwithstanding Section 15.2, claims for preliminary and final injunctive relief, other pre-judgment remedies, and claims for breach of intellectual property rights or disclosure of Confidential Information may be brought in any state or federal court located in Santa Clara County, California. Any counterclaims or cross-complaints to non-arbitrated actions must be brought in the same forum in which the action is adjudicated.

**16. Equitable Relief.** The parties agree that a material breach of this Agreement adversely affecting Our proprietary rights in the Service would cause irreparable injury to Us for which monetary damages would not be an adequate remedy, and that We shall be entitled to equitable relief in addition to any remedies We may have hereunder or at law or equity.

**17. Exclusions.** You acknowledge and agree that the ability of You to access the Service is subject to the availability of connection services to and within the Internet and to other network functions within and around the Internet and that the Internet by its nature is not fault-tolerant. Notwithstanding any other provision of this Agreement, We will not be responsible or liable for: (a) any alterations of or additions to the Service by a party other than Us, (b) use of the Service by You in a manner for which it was not designed, or (c) use of the Service by You in a configuration not set forth in the documentation for the Service or in conjunction with systems, products, or components not reasonably anticipated to be used with the Service.