



## ALEX SUBSCRIPTION AGREEMENT

Effective for Work Orders entered on or after May 5th, 2023

*Everyone at Jellyvision is excited about the opportunity to work with your organization. Here are the legal terms for our services and if you need an editable version of these terms just let us know by contacting your account manager or emailing us at [legal@jellyvision.com](mailto:legal@jellyvision.com).*

THIS ALEX SUBSCRIPTION AGREEMENT (the "Agreement") is entered into upon execution of the work order between the customer (the "Customer") and The Jellyvision Lab, Inc. ("Jellyvision. These terms and agreement shall be superseded by any custom or modified agreement negotiated by the parties.

1. **Software Subscription.** Jellyvision hereby agrees to provide access to, and use of, the ALEX® software platform (the "Software") to Customer, as described in a work order (each, an "Order") and according to the implementation schedule specified in an Order (each, a "Schedule"). Customer shall contribute plan data, trademarks, and logos ("Customer Materials") that Jellyvision will incorporate into the Software, as specified in an Order.
2. **Order.** Each Order is an integral part of this Agreement, and the parties agree upon everything in an Order as if set forth in this Agreement. To the extent of any conflict between the Agreement and an Order, such Order shall control with respect to the Software.
3. **Fees.** As consideration for the Software to be provided by Jellyvision hereunder, Customer shall pay to Jellyvision the Fees as specified in an Order. Payment is due within 30 days of receipt of invoice by Customer. Interest shall be paid on amounts not timely paid at a rate of 1.5% per month. Customer will also be responsible for any and all taxes, however designated, that are levied or based on the Agreement or an Order, except for taxes based on the net income of Jellyvision. Customer shall also be responsible for any collections fees. If Customer is exempt from such taxes, Customer will provide Jellyvision with a copy of a valid exemption certificate.
4. **Milestone Deliverables and Approvals.** Jellyvision shall deliver to Customer each deliverable for the Software in accordance with the Schedule. Customer shall accept or reject each such deliverable in accordance with the Schedule; *provided that* Customer shall use its best efforts to inform Jellyvision of any matter that could cause a deliverable to be rejected as soon as such matter is identified. Any milestone that has not been timely rejected in accord with this Section 4 by Customer shall be approved. Should Customer timely reject a deliverable, it must provide Jellyvision with a written explanation of the reasons for the rejection, a description of any errors identified, and any recommendations for corrections that would result in the deliverable being accepted by Customer when resubmitted. Jellyvision shall promptly submit or resubmit the materials to Customer which, so long as such corrections have been made and no new errors have been introduced, shall then be approved.
5. **Change Orders.** If Customer desires to modify the Software or deliverables as described in an Order, the following procedures shall apply: Customer shall in writing describe the proposed change to Jellyvision. Promptly, but in any event not more than 5 business days after receipt of such change request, Jellyvision shall submit a change order proposal to Customer for approval. Such change order will include a statement of any additional charges and any adjustments to the milestone and delivery schedule(s) resulting from the proposed change. Jellyvision shall utilize its best efforts to accommodate any change proposed by Customer in a cost effective and time efficient manner so that any increases to Customer hereunder are reasonable. In the event Customer approves Jellyvision's proposal by signing the change order, such Order will be amended to incorporate such change.
6. **Independent Contractor.** Jellyvision's relationship with the Customer will be that of an independent contractor and not that of an employee. Jellyvision will not be eligible for any employee benefits, nor will the Customer make deductions from payments made to Jellyvision for customary employer taxes, all of which will be Jellyvision's responsibility.
7. **Confidentiality.** A party ("Recipient") will treat any information provided to it by the other party ("Discloser") and designated as confidential or proprietary, or a party reasonably believes to be confidential or proprietary, at the time of disclosure to be confidential ("Confidential Information"), and will only use such Confidential Information as permitted under this Agreement. As used herein, Confidential Information shall mean ideas, samples, media, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, formulae, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the Discloser

provides regarding third parties with a substantially similar confidentiality requirement. In the case of Customer, any non-public information regarding Customer's plan data shall also be Confidential Information. The Recipient shall hold in confidence and shall not disclose any Confidential Information to any person or entity except to a director, officer, employee, outside consultant, or advisor (collectively, "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties under this Agreement for the Recipient and who are bound by a duty of confidentiality substantially similar to that herein. The obligations imposed upon Recipient shall not apply to Confidential Information which is: (a) or becomes generally available to the public through no wrongful act of the Recipient; (b) already lawfully in the possession of the Recipient and not subject to an existing agreement of confidentiality; (c) received from a third party without restriction and without breach of a prior confidentiality obligation; (d) independently developed by the Recipient without reference to the Confidential Information; or (e) released pursuant to the binding order of a government agency or a court. Notwithstanding the foregoing, Jellyvision may use aggregated and deidentified data compiled from Customer's benefit plan data and its users' use of the Software to improve the Software and provide market research and insights to third parties. Neither Customer, users, nor Customer's plan data can be identified from such aggregated data.

8. **Ownership.** Jellyvision at all times retains complete and sole ownership of the Software, including but not limited to all programming, music, art, scripts, assets, and all other material. Notwithstanding the foregoing, Customer retains ownership of Customer Materials that it had previously created and are incorporated into the Software. Customer hereby provides a license to Jellyvision of all Customer Materials for use in the Software in connection with this Agreement. Customer hereby warrants that it has the right to provide Jellyvision with such Customer Materials for use in the Software under the terms of this Agreement.

9. **Limited Warranties.** JELLYVISION WARRANTS THAT THE SOFTWARE SHALL SUBSTANTIALLY CONFORM TO THE SPECIFICATIONS SET FORTH IN AN APPLICABLE ORDER AND THAT THE SOFTWARE WILL NOT INFRINGE ON THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY ENFORCEABLE IN THE UNITED STATES. EXCEPT FOR THE FOREGOING, THE SOFTWARE IS PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND JELLYVISION HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, AND/OR OF QUIET ENJOYMENT. JELLYVISION DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET CUSTOMER REQUIREMENTS (EXCEPT AS DESCRIBED HEREIN), THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SOFTWARE WILL BE COMPATIBLE WITH THIRD PARTY SOFTWARE.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY JELLYVISION OR A JELLYVISION REPRESENTATIVE SHALL CREATE A WARRANTY.

10. **Term and Termination.**

a. **Agreement Term.** The term of this Agreement is from the Effective Date to the one-year anniversary of the Effective Date ("Initial Term"). This Agreement shall automatically renew for subsequent one-year periods (each, a "Renewal Term") at the end of the Initial Term, or any Renewal Term unless either party shall have given the other party written notice, at least 60 days prior to the end of the Initial/Renewal Term that the first party does not wish to extend the Term of the Agreement. This Agreement shall automatically expire in the event that there is no active Order for a period greater than 12 months. Expiration of this Agreement shall not affect the term of any Order hereunder to the extent such Order specifies its own term.

b. **Software Subscription Term.** Jellyvision shall make the Software available to Customer for the period of time set forth in the applicable Order.

c. **Termination Rights.** Either Customer or Jellyvision may terminate this Agreement if the other is in material breach where such material breach is not cured within 10 business days of receipt of written notice. Customer may terminate this Agreement without cause, but all fees under any active Order shall remain owed to Jellyvision on the earlier of (a) the payment schedule set forth in the applicable Order; and (b) 30 calendar days from the date of termination.

d. **Termination Responsibilities.** Upon termination, expiration, or other cessation of this Agreement, the Customer agrees to cease use of the Software and return to Jellyvision all Jellyvision materials. Upon termination, expiration, or other cessation of this Agreement, Jellyvision agrees to return all Customer Materials to Customer.

11. **Indemnification.**

a. **Indemnification of Customer.** Jellyvision agrees to defend, indemnify and hold Customer harmless from and against any and all third party claims, damages, liability, losses, costs and expenses caused by (i) any claimed infringement of any U.S. patent right, U.S. trademark right, or U.S. copyright arising out of Customer's use of the Software; or (ii) any misrepresentation, negligent or tortious act or omission, or breach of or default under this Agreement by Jellyvision or by anyone else acting for or on behalf of Jellyvision; provided (A) that Jellyvision is promptly notified in writing by Customer of any such claim against Customer; (B) that Customer authorizes Jellyvision to assume sole control over the defense of any such claim thereafter, together with the right to settle or compromise such claim; (C) that Customer makes available to Jellyvision such information, assistance and authority as may be reasonably requested by Jellyvision in order to enable Jellyvision to defend any such claim; and (D) Customer complies with any settlement or court order made in connection with the proceeding. Jellyvision's obligations under this Section 11(a) will not apply to any actual or alleged infringement based upon any Customer content or Customer Materials contained in the Software.

b. **Indemnification of Jellyvision.** Customer agrees to defend, indemnify and hold Jellyvision and its licensors harmless from and against any and all third party claims, damages, liability, losses, costs and expenses caused by (i) any Customer-developed or Customer-approved content or Customer Materials in the Software; (ii) any incorrect information, or other alleged inaccuracies provided by Customer to Jellyvision; or (iii) any misrepresentation, negligent or tortious act or omission, or breach of or default under this Agreement, by Customer or by anyone else acting for or on behalf of Customer; provided (A) that Customer is promptly notified in writing by Jellyvision of any such claim against Jellyvision; (B) that Jellyvision authorizes Customer to assume sole control over the defense of any such claim thereafter, together with the right to settle or compromise such claim; (C) that Jellyvision makes available to Customer such information, assistance and authority as may be reasonably requested by Customer in order to enable Customer to defend any such claim; and (D) Jellyvision complies with any settlement or court order made in connection with the proceeding.

12. **Limitation of Liability.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS, LOSS OF GOODWILL), PUNITIVE, OR EXEMPLARY DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF THE FOREGOING. EXCEPT FOR LIABILITY ARISING UNDER SECTION 7 ("CONFIDENTIALITY"), SECTION 8 ("OWNERSHIP"), AND SECTION 11 ("INDEMNIFICATION"), GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM LIABILITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR AN ORDER SHALL NOT EXCEED THE AMOUNTS PAID OR INVOICED FOR THE CURRENT 12 MONTH PERIOD. THE PARTIES AGREE THAT THE LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM IN WHICH SUCH CLAIMS ARE BASED (WHETHER IN CONTRACT, TORT, OR OTHERWISE) AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES.

13. **General.**

a. **Waiver and Modification.** No waiver or modification of the Agreement will be effective unless in writing and signed by the party against whom such waiver or modification is asserted. Waiver by either party in any instance of any breach of any term or condition of this Agreement will not be construed as a waiver of any subsequent breach of the same of any other term or condition. None of the terms or conditions of this Agreement will be waived by course of dealing or trade usage.

b. **Notices.** All notices and demands will be in writing and will be delivered at the address of the receiving party set forth in this Agreement (or at such different address as may be designated by such party by written notice to the other party). All notices or demands will be delivered by international overnight courier, electronic mail, or certified or registered airmail, return receipt requested, and will be complete upon receipt. If a party has changed its address without informing the other, the notice will be deemed to have been given and received 7 days following the postmarked date.

c. **Data Backup.** The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. JELLYVISION HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA OR AUTHORIZED USER DATA.

d. **Dispute Resolution.** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, U.S.A., excluding principles of conflicts of law. The United Nations Convention on the International Sale of Goods shall not apply to the transactions contemplated by this Agreement. All disputes pertaining to this Agreement shall be decided by a state or federal court located in Chicago, Illinois, and each party hereto hereby consents to personal jurisdiction in such courts. In the event any litigation is brought by either party in connection with this Agreement, the prevailing party will be entitled to recover from the other party all the costs, reasonable attorneys' fees and other expenses incurred by such prevailing party in the litigation.

e. **Severability.** In the event that any provision of this Agreement is held by a court to be unenforceable, the provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement will remain in full force and effect.

f. **Cumulative Remedies.** Except as may be specifically set forth in this Agreement with respect to certain matters, the rights and remedies of either party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies provided under this Agreement or now or hereafter provided by law.

g. **Force Majeure.** Neither party shall be in default hereunder, nor shall it hold the other party responsible, for any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control including, but not limited to: earthquake, flood, fire, storm or other natural disaster, epidemic, accident, explosion, casualty, act of God, lockout, strike, labor controversy or threat thereof, riot, insurrection, civil disturbance or commotion, boycott, disruption of the public markets, war or armed conflict (whether or not officially declared), sabotage, act of a public enemy, embargo, delay of a common carrier, or any change in or the adoption of any law, ordinance, rule, regulation, order, judgment or decree; *provided* that the party relying upon this Section 13(f): (i) shall have given the other party written notice thereof promptly and, in any event, within 5 days of discovery thereof; and (ii) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the *force majeure* upon which such notice is based.

h. **Suggestions/Improvements to Software.** Notwithstanding anything to the contrary herein, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by Customer regarding Software or other Jellyvision materials provided to Customer shall be owned by Jellyvision, and Customer hereby assigns any such rights to Jellyvision. Nothing in this Agreement shall preclude Jellyvision from using in any manner or for any purpose it deems necessary, the know-how,

techniques, or procedures acquired or used by Jellyvision in the provision of any Software hereunder.

i. **Assignment.** Either party may assign its rights and/or obligations under this Agreement, provided that, even in the event of such assignment, each party remains ultimately responsible for its rights and/or obligations in the event of default by its assignee.

j. **No Third Party Beneficiaries.** Nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

k. **Survival.** The parties hereby agree that the following provisions shall survive the expiration or early termination of this Agreement: (i) Section 7, 8, 10(c), 10(d), 11, 12, and 13 of this

Agreement; and (ii) any section of a then-active Order that a party would reasonably believe should survive.

l. **Entire and Sole Agreement.** This Agreement, the Order(s) hereunder, including any Exhibits thereto, constitutes the entire and sole agreement of the parties pertaining to the subject matter hereof, and supersedes in their entirety any and all prior written and oral agreement (including, but not limited to, oral negotiations) with respect to such subject matter hereof.

m. **End User Terms of Use.** The relationship between Jellyvision and Customer's end users is spelled out in the ALEX Terms of Service located at [www.jellyvision.com/tos](http://www.jellyvision.com/tos) (or the then-current URL as determined by Jellyvision). The Terms of Service do not modify or supersede the terms of this Agreement and only specify the rights and obligations of Jellyvision and the end users to one another.