



INK-it™ Subscription Agreement
v.1.0

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS OF THIS SUBSCRIPTION AGREEMENT CAREFULLY BEFORE INSTALLING, DOWNLOADING, USING AND/OR PREVIEWING THE CALYX INK-it SERVICES . THIS AGREEMENT, BETWEEN CALYX TECHNOLOGY, INC., DBA CALYX SOFTWARE (“CALYX”) AND YOU (“YOU”, “YOUR” OR “SUBSCRIBER”), STATES THE TERMS AND USE OF THE CALYX INK-it SERVICES. THIS AGREEMENT CONTAINS BINDING OBLIGATIONS AND RESTRICTIONS ON SUBSCRIBER’S USE OF THE SOFTWARE, DISCLAIMERS, LIMITATIONS ON CALYX’S LIABILITY, INDEMNIFICATION OBLIGATIONS AND OTHER IMPORTANT TERMS.

THIS AGREEMENT WAS LAST UPDATED ON JUNE 13, 2014. IT IS EFFECTIVE BETWEEN YOU AND CALYX AS OF THE DATE OF YOUR ACCEPTING THIS AGREEMENT.

1. **INTRODUCTION**

1.1 **Scope.** These terms and conditions (the “INK-it Subscription Agreement”) govern Subscriber’s use of the products and services included in the Sales Order referencing these terms. Together, the Sales Order and this INK-it Subscription Agreement constitute the “Agreement”.

1.2 **Subscriber Usage and Consent.** Subscriber shall use the INK-it Service (“Service” or “Services”) solely for its own business purposes and will not make reverse engineer any part of the Service or resell or sub-license the Service.

2. **GRANT OF LICENSE.** Subject to the terms of this Agreement, Calyx grants Subscriber a limited, revocable, terminable, nonexclusive license to use the Service solely as described in this Agreement. Calyx may, in its sole discretion, make available to Subscriber updates to the Service and related data and information, but has no obligation to do so; any updates provided by Calyx are subject to the terms of this Agreement. Except as expressly stated herein, no other rights are granted to Subscriber by implication, estoppels, or otherwise, under any patent, copyright, trade secret, trademark or other intellectual property right of Calyx or any of its licensors. Calyx recommends that Subscriber retain a copy of this License in either electronic or tangible format for your subsequent reference.

3. **LICENSE RESTRICTIONS.** Calyx reserves all rights in the Service not expressly granted to Subscriber in this Agreement. Except as expressly specified in Sections 2 (Grant of License), 4 (Payments and Fees), and 6 (Assignment), Subscriber may not: (a) copy, modify, translate, adapt, or prepare derivative works of the Service; (b) sell, license, sublicense, transfer, lease, lend, rent, publish, display, or otherwise distribute the Service to any third party; or (c) disassemble, decompile, or otherwise reverse engineer the Service, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition. To the extent any of the foregoing restrictions on reverse engineering, decompiling or other use of the Service are not enforceable under applicable law, then the restriction will apply to the greatest extent consistent with applicable law. Calyx reserves the right to modify the Service and related data and information at any time, and to change its functionality.

4. **PAYMENTS AND FEES.** Subscriber shall abide by the payment requirements established during the sale of the Service and referenced in the invoice (“INK-it Fees”).

4.1 **Method of Payment.** In the event Subscriber chooses the monthly payment option, Subscriber authorizes Calyx to charge the INK-it Fees on a recurring monthly basis to the credit card provided to Calyx by Subscriber or pursuant to ACH authorization. If payment is made pursuant to ACH authorization, Subscriber agrees not to charge back the schedule transactions with their bank without first discussing the dispute with Calyx.

4.2 **Nonpayment by Subscriber.** Calyx reserves the right to terminate this Agreement and discontinue access to the Service, if Subscriber’s account becomes thirty (30) days past due for

reasons including, but not limited to, declined credit card charge, lapsed credit card, or declined ACH.

4.3 **Payment Obligations.** Subscriber shall remain obligated for all INK-it Fees until this Agreement is terminated by Subscriber or Calyx. Termination of this Agreement shall not relieve Subscriber of the obligation to pay any outstanding fees.

4.4 **Calyx Right to Change INK-it Fees.** Calyx reserves the right to change the INK-it Fees. Calyx will make reasonable efforts to announce any pricing changes via e-mail provided to Calyx by Subscriber.

5. **OWNERSHIP.** Calyx retains ownership and all rights, title, and interest in the Service and related materials, including all worldwide patent rights, copyrights, trademarks, trade secrets, know-how and any other intellectual property rights therein, or is the recipient of a valid license thereof. Subscriber must take reasonable steps to protect Calyx's intellectual property rights. Subscriber may not delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on the Software as delivered to Subscriber.

6. **ASSIGNMENT.** Subscriber may not assign this Agreement, in whole or in part, without Calyx's prior written consent (which consent shall not be unreasonably withheld). In order to effect an assignment, Subscriber shall work cooperatively with Calyx to complete all required paperwork. Subject to the foregoing, this Agreement shall be binding on and enforceable by the parties and Subscriber's permitted assignee.

7. **TERM AND TERMINATION.**

7.1 **Term.** This Agreement is effective upon Subscriber's purchase or reactivation of the Service and shall remain in full force until terminated.

7.2 **Termination for Breach.** If Subscriber breaches any of the terms or conditions set forth in this Agreement, as determined by Calyx in its sole discretion, Calyx reserves the right to terminate this Agreement.

7.3 **Termination for Nonpayment.** Calyx reserves the right to terminate this Agreement if Subscriber's account becomes thirty (30) days past due for reasons, including, but not limited to, declined credit card charge, lapsed credit card expiration date, or declined ACH.

7.4 **Cancellation by Subscriber.** Subscriber may terminate this Agreement at any time by contacting Calyx sales department at 800-362-2599. After Calyx sales department has received a request for cancellation from Subscriber, Calyx will provide Subscriber with an e-mail confirming cancellation. Cancellations made on or before the fifteenth day of the month shall effectively terminate the Service the following month. Cancellations made after the fifteenth day of the month shall terminate the Service in the second month following.

8. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, CALYX PROVIDES NO WARRANTY, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES AND CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, AND ANY WARRANTIES THAT THE SERVICE IS ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM CALYX OR ELSEWHERE, WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

9. **LIMITATION OF LIABILITY.** CALYX'S TOTAL LIABILITY TO SUBSCRIBER FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO CALYX BY SUBSCRIBER FOR THE SERVICE. IN NO EVENT WILL CALYX BE LIABLE TO SUBSCRIBER FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SERVICE, OR SERVICE PROVIDERS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT CALYX HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE FOREGOING LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

10. **INDEMNIFICATION.** Subscriber agrees that Subscriber shall, at its expense, defend, indemnify, and hold harmless, Calyx and its affiliates (including, its officers, directors, employees, agents, and attorneys) from and against any and all claims, demands, liabilities, costs, expenses (including attorney fees), losses, damages, judgments, or settlements arising or resulting from any claims, demands, actions, and other proceedings by any party, including any third party, arising out of, or relating to: (a) this Agreement; (b) Subscriber's use of the Service, and any other Calyx products or services; (c) Subscriber's use of Service Providers and their products and services; (d) any act or omission of Service Providers, and agents and employees of such Service Providers; (e) Subscriber's violation of any local, state, federal, or international laws, or breach of this Agreement; and (f) any act or omission by Subscriber, its agents and employees, for any services agreed to be performed by any third party.
11. **SUBSCRIBER USAGE AND CONSENT.** Subscriber agrees the use of Electronic Signatures is governed by the laws, policies and regulations of individual countries, regions and industries. In the event of a dispute where the law is unclear as to the treatment of electronic signatures, the parties agree the United States Electronic Signatures in Global and National Commerce Act ("ESIGN") and the Uniform Electronic Transactions Act ("UETA") shall control.
12. **GOVERNING LAW/VENUE.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to or application of conflicts of law rules or principles. The appropriate venue for any legal action shall be exclusively the state and federal courts of California.
13. **ATTORNEYS' FEES.** In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretation, its performance, or the like, the prevailing party will be entitled to reasonable attorneys' fees and expenses, court costs, and reasonable costs for expert and other witnesses attributable to the prosecution or defense of that controversy or dispute.
14. **EXPORT LAW.** Subscriber agrees to comply fully with all U.S. export laws and regulations to ensure that the Service, any technical data related thereto, or any direct product thereof, are not exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations.
15. **GOVERNMENT USERS.** The Service is "commercial computer software" and "commercial computer software documentation," as such terms is used in FAR 12.212. Any use, modification, reproduction, release, performance, display or disclosure of the Service by or on behalf of the United States Government is subject to restrictions as set forth in this Agreement. Manufacturer is Calyx Technology, Inc. dba Calyx Software, with offices at 6475 Camden Avenue, Suite 207, San Jose, CA 95120.
16. **NOTICES.** All notices or approvals required or permitted under this Agreement are required to be in writing and delivered by confirmed facsimile transmission, by overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All notices or approvals will be sent to the addresses set forth in the applicable ordering document or invoice or to such other address as may be specified by either party to the other in accordance with this Section.
17. **FORCE MAJEURE.** To the extent caused by force majeure, no delay, failure, or default will constitute a breach of this agreement.
18. **NON-EXCLUSIVE REMEDY.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

19. **WAIVER.** The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties.
20. **SEVERABILITY.** If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.
21. **ENTIRE AGREEMENT.** This Agreement is the complete and exclusive understanding and agreement between the parties regarding its subject matter, and supersedes all proposals, understandings, or communications between the parties, oral or written, regarding its subject matter.
22. **SURVIVAL.** The terms of Sections 3, 5, 8-10, 12-14, and 17-19, and any other provisions which by their nature should survive, shall survive the termination of this Agreement.
23. **ACCEPTANCE.** Subscriber agrees that Subscriber has read this Agreement and hereby accepts its terms.

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