



VAYUSPHERE XMPP COMMERCIAL SOFTWARE LICENSE AGREEMENT

This Vayusphere XMPP Commercial Software License Agreement (the “**Agreement**”), between Vayusphere, Inc., a Delaware corporation with its principal place of business at 2685 Marine Way Suite 1305, Mountain View, California 94025, United States (“**Vayusphere**”), and _____ a _____ corporation with its principal place of business at _____ (“**Customer**”), takes effect on _____ (the “**Effective Date**”).

1. **Grant of License from Vayusphere to Customer.** Subject to the terms and conditions contained in this Agreement, Vayusphere grants to Customer a non-exclusive, non-transferable, perpetual license to the software, including associated documentation, listed on **Exhibit A** (the “**Software**”). This license includes only the rights expressly granted in this Agreement, which include the right to:
 - (a) install the Software for use by no more than the number of Registered Users designated in **Exhibit A**;
 - (b) make a reasonable number of copies of the Software for backup and archival purposes only; and
 - (c) copy and distribute the documentation solely to Registered Users.
2. **Third Party Hosting.** Customer may, at its option and expense, request a third party to host the Software on its computers on Customer’s behalf. Customer is responsible for ensuring that the hosting entity complies with the terms and conditions of this Agreement and Customer is liable for any additional license fees due Vayusphere in the event that hosting entity exceeds the number of Registered Users.
3. **Proprietary Rights.** Customer acknowledges that Vayusphere owns all right, title and interest in the Software. Except as expressly provided herein, Vayusphere does not grant to Customer any other right or license, either express or implied, in the Software. Customer shall not reverse engineer, modify, adapt, translate or create derivative works based on the Software or documentation, or knowingly permit any third party to engage in the foregoing, except as specifically authorized by the terms of this Agreement. Customer may not remove or alter any copyright or trademark notices from the Software. Customer may not adopt, use or register any trademark, trade name or other marketing name of Vayusphere or any of its affiliates, nor any confusingly similar trademark, trade name or other marketing name.
4. **Deliverables and Shipping.** Vayusphere will provide to Customer one copy of the Software in electronic (downloadable) form. Shipment is F.O.B. Vayusphere.
5. **Support and Maintenance.** Vayusphere offers Support and Maintenance services for the Software under a Support and Maintenance Agreement, attached to this Agreement as **Exhibit B**. Vayusphere provides new releases and technical support of the product only upon the execution of the Support and Maintenance Agreement and payment of the annual Support and Maintenance fees specified by Vayusphere and set forth in that agreement.
6. **Professional Services.** Vayusphere offers professional services related to the Software only under a separately executed Professional Services Agreement under the terms and conditions set forth in that agreement, including scope and fees for such services.
7. **No Services Associated with License.** Unless otherwise specified in a Support and Maintenance Agreement or Professional Services Agreement executed by the parties, Vayusphere is not responsible to provide to Customer any updates, enhancements, technical help, installation, customization, training or other services.
8. **Fees and Records.** Customer agrees to pay Vayusphere the License Fees specified in **Exhibit A**. Customer further agrees to maintain accurate books and records reflecting the installation of the Software and all Registered Users. Not more than once in any calendar year, Vayusphere may retain an



independent certified public accountant who may, upon one week's written notice and during normal business hours and with minimal disruption to Customer's operations, inspect and audit Customer's records with respect to installation and use of the Software. The accountant's activities will be subject to a non-disclosure agreement between Customer and the accountant, and any information obtained by the accountant and conveyed to Vayusphere is subject to the confidentiality provisions in this Agreement. If, upon performing an audit, it is determined that Customer has underpaid Vayusphere by an amount greater than five percent (5%) of the payments due Vayusphere in the period being audited (based upon Vayusphere's then current standard license fees as published by Vayusphere), Customer will bear all reasonable expenses and costs of the audit in addition to its obligation to make full payment of license fees due.

9. **Warranty.** Vayusphere warrants to Customer that the Software will perform in accordance with the documentation for the warranty period ending thirty (30) days after delivery, provided that the Software is properly installed and used by Customer in accordance with the documentation. The entire liability of Vayusphere and the exclusive remedy of Customer for breach of the warranty is limited, at Vayusphere's option, to: (a) replacement of the Software; or (b) repair of the Software; or (c) termination of this Agreement and refund of the License Fees and other related fees paid by Customer. VAYUSPHERE DOES NOT WARRANT THAT THE USE OF THE PRODUCTS SHALL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. THE FOREGOING WARRANTIES ARE EXCLUSIVE OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. **Indemnification.** Vayusphere agrees to defend Customer and to pay any judgments, costs and expenses, or amounts paid in settlement to which Vayusphere agrees, which Customer may sustain as the result of any claim by a third party that the Software by itself and in unmodified form infringes or misappropriates such third party's copyrights, trade secrets, or U.S. or Canadian patents issued as of the Effective Date of this Agreement. Customer will indemnify and defend Vayusphere and its directors, officers, employees, representatives and agents from and against, any and all claims, losses, damages and expenses, including attorney fees, arising from a claim against Vayusphere based solely on Customer's negligence or other acts, or the negligence or other acts of Customer's agents or representatives. In the event of a claim for indemnification, the indemnified party must:
- notify the indemnifying party in writing of the suit or claim within ten (10) days after receiving notice;
 - give the indemnifying party sole authority to defend or settle the suit or claim; and
 - reasonably cooperate and assist the indemnifying party (at the indemnifying party's expense) with defense of the suit or claim.
11. **Limitations of Liability for Infringement.** If the Software becomes or in Vayusphere's opinion is likely to become the subject of a suit or claim of infringement of an intellectual property rights, Vayusphere will, at Vayusphere's option and expense:
- obtain the right for Customer to use the Software;
 - replace or modify the Software so that it becomes non-infringing; or
 - if Vayusphere is not reasonably able to do either (a) or (b), terminate this Agreement to the extent it relates to the infringing software. In the event that this Agreement is terminated under this subsection (c), Customer must cease to use the infringing Software, and Vayusphere will pay Customer, as Customer's sole and exclusive



remedy, an amount equal to the License Fees paid for the infringing Software less any cumulative amortization or depreciation of that Software by Customer on Customer's financial statements as of the date of termination.

12. **Other Limitations of Liability.** Vayusphere's liability under this Agreement is limited to the amount of License Fees paid under this Agreement. IN NO EVENT SHALL VAYUSPHERE OR CUSTOMER BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR CONTINGENT DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS INCURRED BY THE OTHER OR ANY THIRD PARTY, REGARDLESS OF WHETHER IN AN ACTION BASED ON CONTRACT, TORT OR ANY OTHER THEORY, EVEN IF THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
13. **Confidentiality.** The term "**Confidential Information**" means any information regarding the terms and conditions of this license or provided to one party by the other party marked with a proprietary, confidential or other similar notice, or any information orally disclosed to one party as proprietary by the other party and followed by a writing within thirty (30) days of such oral disclosure indicating the information was confidential. Each party shall keep confidential and not disclose to any third party to use for its own benefit, or for the benefit of any third party, any Confidential Information. "Confidential Information" does not include information that:
- (a) is or has become generally known or available through no act or failure to act by the receiving party;
 - (b) is already known or available at the time of receipt as evidenced by written records;
 - (c) is furnished to the receiving party by a third party, as a matter of right and without restriction on its disclosure;

- (d) is disclosed by written permission of the party for whom such information is confidential; or
- (e) is required to be disclosed by court order or law.

14. **Term and Termination.** This Agreement remains in effect unless earlier terminated as set forth in this section. Either party may terminate this Agreement, upon written notice, for any material breach including the failure to pay License Fees when due, that the breaching party fails to cure within thirty (30) days following written notice specifying the breach. In the event of termination of this Agreement for any cause, all rights granted by Vayusphere under this Agreement automatically revert to Vayusphere, all amounts owed by Customer to Vayusphere are immediately due and payable, and Customer must cease further use of the Software and return the Software and any copies to Vayusphere.
15. **Licenses for Additional Products and Registered Users.** Customer may license additional Vayusphere products or additional Registered Users for Software already licensed subsequent to the Effective Date of this Agreement by entering into a written amendment to this Agreement signed by both parties or by the issuance of a signed Customer purchase order indicating that the purchase is pursuant to this Agreement, provided, however, in some instances the parties may be required to execute additional license agreements for additional Vayusphere products. Upon receipt and acceptance of a Customer purchase order, Vayusphere will deliver to Customer, pursuant to the terms of this Agreement, the additional product(s) or additional Registered Users including any additional support and maintenance services fees on said subsequent licensing based on Vayusphere's then published price lists. In the event that additional products are ordered, such products shall be incorporated into the defined term Software as provided herein. Vayusphere shall Invoice Customer for additional products or additional Registered Users as provided for herein.



16. **Payment Terms.** All fees under this Agreement and Exhibits are due and payable in U.S. Dollars 30 days from the invoice date. Any invoice remaining unpaid for more than 30 days from invoice date shall accrue interest at the rate of the lesser of 1 ½ % per month or the highest rate allowed by law.
17. **Export Restrictions.** The Software may be subject to U.S. or other international export control laws and regulations. Customer shall not directly or indirectly export or transmit the Software (a) to any country to which such export or transmission is restricted by any applicable U.S. regulation or statute without the prior written consent of the Bureau of Industry and Security of the United States Department of Commerce, the Department of Defense, State Department, or such other governmental agency as may have jurisdiction over such export or transmission; (b) in any manner to anyone to whom Customer knows or have reason to believe will utilize the Software in the design, development, or production of nuclear, chemical, or biological weapons; (c) to anyone who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government; or (d) to any country to which such export or transmission is restricted by any applicable regulation or statute. Customer represents and warrants that you are not located in, under the control of, or a national or resident of any such country or on any such list.
18. **Survival.** The following sections shall survive the termination of this Agreement for any cause: 3, 10 through 29.
19. **Governing Law and Venue.** This Agreement is governed by the laws of the State of California, without giving effect to its conflicts of law doctrine. Any action or proceeding against any of the parties relating to or arising from this Agreement or the parties' relationship must be brought and enforced exclusively in the state and federal courts located in Santa Clara County, California.
20. **Notice.** All notices or other communications under this Agreement must be in writing and will be effective upon personal delivery, delivery by overnight delivery service or three days following deposit in the United States Mail (certified or registered mail, postage prepaid, return receipt requested), to the addresses set forth above, which may be changed from time to time by giving written notice to the other party.
21. **Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. Customer may not assign this Agreement without the prior written approval of Vayusphere, and any assignment or transfer without consent is void.
22. **Counterparts.** This Agreement may be executed and delivered by original signature or facsimile, and in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one agreement.
23. **Headings.** The section headings contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.
24. **Severability.** Wherever possible each provision of this Agreement is to be interpreted in such a manner as will be effective and valid under applicable law, but if any provision of this Agreement is invalid under applicable law, that provision will be ineffective only to that limited extent, without invalidating the remainder of that provision or other provisions of this Agreement.
25. **Amendment.** This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.
26. **Construction.** In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. All words used in this Agreement will be construed to be of such gender or



number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms and the singular and plural each include the other.

- 27. **Waiver.** Neither party shall be deemed, by any act or omission, to have waived any of its rights or remedies under this Agreement unless the waiver is in writing and signed by a duly authorized representative of the waiving party. Waiver as to one event shall not be construed as waiver of any right or remedy as it relates to any other event.
- 28. **Publicity.** During the term of this Agreement, the parties may engage in co-marketing and publicity programs, including advertisements in trade and other publications. The parties agree to allow the use of each other's names and official logos for promotional and publicity purposes including, without limitation, on press announcements, marketing collateral and media kits, and listings on web pages.

- 29. **Force Majeure.** Neither party is responsible for any losses resulting if the fulfillment of any terms or provisions of this Agreement is delayed or prevented by any cause not within control of the party whose performance is interfered with, and which by the exercise of reasonable diligence that party is unable to prevent, including but not limited to revolution or other disorders, wars, acts of enemies, strikes, floods, acts of God.
- 30. **Entire Agreement.** This Agreement together with its schedules and the exhibits constitute the entire agreement and understanding of the parties relative to the subject matter of this Agreement. The parties have not relied upon any promises, representations, warranties, agreements, covenants, or undertakings, other than those expressly set forth in this Agreement. This Agreement replaces and supersedes any and all prior oral or written agreements, representations and discussions relating to such subject matter.

The parties have executed this Agreement as of the date first written above.

Vayusphere, Inc.

BY

Signature: _____

Name: _____

Title: _____

Date: _____

Customer: _____

BY

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT A

SOFTWARE

SKU	Product Description	Number of Registered Users	License Fee per User	Total License Fee

A Registered User is any account with a unique XMPP login ID.

Email address for instructions of electronic delivery of software: _____

Check here if Customer would like a copy of the software on CD (may incur additional taxes based on relevant laws).

Purchase order number _____

Signed purchase order exception form attached

Bill to Address:

Ship to Address (If requesting a CD)

Name

Name

Address

Address

City, State and Postal Code

City, State and Postal Code

Telephone Number

Telephone Number