



# Calyx<sup>®</sup> Webcaster<sup>®</sup> Subscription Agreement

READ THIS WEBCASTER SUBSCRIPTION AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE USING THE WEBCASTER SERVICE AND WEBCASTER DESKTOP (IF APPLICABLE). THIS AGREEMENT, BETWEEN CALYX TECHNOLOGY, INC., DBA CALYX SOFTWARE (“CALYX”) AND YOU (“SUBSCRIBER”) STATES THE TERMS OF USE AND IT CONTAINS BINDING OBLIGATIONS AND RESTRICTIONS ON SUBSCRIBER’S USE OF THE WEBCASTER SERVICE (INCLUDING ANY USE OF WEBCASTER DESKTOP), DISCLAIMERS, LIMITATIONS ON CALYX’S LIABILITY, INDEMNIFICATION OBLIGATIONS AND OTHER IMPORTANT TERMS. USE OF THE WEBCASTER SERVICE (INCLUDING ANY USE OF WEBCASTER DESKTOP) MEANS SUBSCRIBER HAS READ AND ACCEPTED THE COMPLETE TERMS OF THIS AGREEMENT.

## DEFINITION

- A. **The “Service” or “WebCaster Service”:** Through its WebCaster Service, Calyx shall assist Subscriber in designing and publishing a web site for Subscriber (“Subscriber Web Site”) for use on the Internet, and host Subscriber’s Web Site for Subscriber (“Service” or “WebCaster Service”). The terms Service or WebCaster Service also include any services, technology, products, or software, including, but not limited to, the WebCaster Desktop software, relating to or used in connection with the Service.

## TERMS AND CONDITIONS

### 1. USE OF SERVICE.

- 1.1 **License.** Subject to Subscriber’s compliance with the terms and conditions of this Agreement, during the term of this Agreement, Calyx grants Subscriber a non-exclusive, non-transferable license to use the Service.
- 1.2 **Responsibility for Service Use.** Calyx will provide Subscriber with a login and password for the purpose of updating Subscriber’s Web Site. Subscriber shall be responsible for all use of the Service under Subscriber’s login and password, whether initiated by Subscriber, or by another on Subscriber’s behalf. Subscriber is solely responsible for ensuring that Subscriber’s login and password are utilized only by Subscriber or authorized user(s) and for maintaining the confidentiality of its login and password. Calyx shall have no liability for any loss, claim, damage, or other liability that may arise from an unauthorized use of Subscriber’s login and password.
- 1.3 **Calyx Right to Change/Discontinue Service.** Calyx reserves the right to change the Service, or any of its features or design elements, or to discontinue offering the Service, at any time without prior notice.

2. **LICENSE RESTRICTIONS.** Calyx reserves all rights in the Service not expressly granted to Subscriber in this Agreement. Subscriber may not: (a) copy, modify, translate, adapt, or prepare derivative works of the Service; or (b) transfer, sublicense, lease, lend, rent, or otherwise distribute the Service to any third party. Subscriber may not disassemble, decompile, or otherwise reverse engineer the Service, in whole or in part, or otherwise attempt to derive source code or other trade secrets from Calyx, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition.
3. **OWNERSHIP.** Calyx owns and retains all rights, title, and interest in and to the Service (including, but not limited to, all proprietary design elements, technology, services, and software relating to or used in connection with the Service), and any modifications thereto, including all worldwide patent rights, copyrights, trade names, trademarks, service marks, inventions, trade secrets, know-how, and any other intellectual property rights therein. Subscriber may not delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on the Service as delivered to Subscriber. The intellectual property rights in the Service shall at all times remain the exclusive property of Calyx.
4. **SERVICE FEE.** Subscriber shall pay Calyx a monthly fee (“Monthly Fee”), as well as any other applicable fees, posted at [www.calyxsoftware.com](http://www.calyxsoftware.com), for the use of the Service.
  - 4.1 **Method of Payment.** Subscriber authorizes Calyx to charge the Monthly Fee on a recurring basis to Subscriber’s credit card.
  - 4.2 **Calyx Right to Change Fees.** Calyx reserves the right to change the Monthly Fee, or any other fees that may be charged in connection with the Service. Calyx will make reasonable efforts to announce any pricing changes via e-mail addresses provided to Calyx by Subscriber. Monthly Fees and other fees are posted at [www.calyxsoftware.com](http://www.calyxsoftware.com).
  - 4.3 **Nonpayment by Subscriber.** Calyx reserves the right to suspend access to the Service, or terminate the Service if Subscriber’s account becomes thirty (30) days past due for reasons, including, but not limited to, declined credit card charge, or lapsed credit card expiration date. Refer to Section 5.6 below for Calyx’s web site reactivation policy.
  - 4.4 **Payment Obligations.** Subscriber shall remain obligated for all Monthly Fees, or other fees, if applicable, through the date of suspension or termination. Suspension or termination of the Service shall not relieve Subscriber of the obligation to pay any fees due and outstanding. No fees will be refunded in the event Subscriber’s Service and/or Subscriber’s Web Site is suspended or terminated.

5. TERM AND TERMINATION.

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

5.2 **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.

5.3 **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, or lapsed credit card expiration date.

5.4 **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. Refer to Section 5.6 for Calyx's web site reactivation policy.

5.5 **Access to Subscriber's Web Site Upon Termination.** Upon termination of this Agreement, Calyx will suspend access to Subscriber's Web Site, which will result in an error message displayed upon any attempt to access it. Thereafter, Calyx may, at Calyx's sole discretion, store Subscriber's Web Site ("Stored Web Site") for a period of time determined by Calyx. Stored Web Sites are not in any way altered by Calyx. Subscriber understands that Calyx shall have no responsibility or duty to maintain a Stored Web Site on behalf of Subscriber.

5.6 **Reactivation of Web Site.** Upon the payment of applicable fees, Calyx may permit a Subscriber to reactivate a Stored Web Site (provided that Calyx has maintained such Stored Web Site). In such cases where a Stored Web Site has been maintained and is available, the Stored Web Site will contain Subscriber's previous content.

6. AVAILABILITY OF SERVICE. The Service is accessible 24 hours a day, 7 days a week, except for scheduled maintenance, required repairs, and except for any loss or interruption of Service due to causes beyond the control of Calyx of which are not reasonably foreseeable, including, but not limited to, interruption or failure of telecommunication or digital transmission links, Internet slow-downs or failures, and unforeseen hardware or communications problems.

7. REPRESENTATIONS AND WARRANTIES OF SUBSCRIBER. Subscriber represents and warrants to Calyx that the statements contained in this Section 7 are correct and complete as of

the date of this Agreement and will be correct and complete through the term of this Agreement. Subscriber represents and warrants that: (1) this Agreement constitutes Subscriber's legal, valid and binding obligation, enforceable against Subscriber in accordance with its terms; (2) Subscriber has the power and authority to enter into this Agreement and perform the obligations hereunder and that the person executing or accepting this Agreement (electronically or otherwise) on behalf of Subscriber is empowered to do so; (3) neither the execution or acceptance of this Agreement nor the performance by Subscriber of its obligations hereunder conflicts with or violates any other agreement to which Subscriber is currently a party, or any provision of law, rule or regulation to which Subscriber is subject; and (4) Subscriber owns or has the right to use all materials contained or that will be contained in Subscriber's Web Site, including, but not limited to, all text, graphics, sound, video, programming, and scripts.

8. **WEB SITE IMPLEMENTATION/MAINTANANCE/UPDATING.** Subscriber will be solely responsible for the implementation and maintenance of Subscriber's Web Site, for all products and services offered on Subscriber's Web Site, and for updating all content, information, data, materials, products and services appearing on Subscriber's Web Site. Subscriber is solely responsible for providing its customers with any required disclosures, explanation of its services or products, and handling its own customers' inquiries or complaints arising from Subscriber's Web Site or its services or products.
9. **SUBSCRIBER'S WEB SITE COMPLIANCE/SECURITY.** Subscriber is solely responsible for ensuring that Subscriber's Web Site is in compliance with all local, state, federal or international laws, including, but not limited to, all privacy laws, and federal or state mortgage compliance laws. Calyx shall not be held liable for any claims relating to Subscriber's failure to comply with any such laws. Subscriber shall maintain the security of all credit card information or payment information received through the Service. Calyx will have no liability for any disclosure, unauthorized receipt, or use of any information relating to a customer credit card received or transmitted through the Service.

## 10. WEB SITE CONTENT/PROHIBITED ACTIVITIES

10.1 **Subscriber Responsibility.** Subscriber agrees and acknowledges that Subscriber is solely responsible for its actions, its use of the Service, and Subscriber's Web Site, including, but not limited to, any Content (as defined below) included on Subscriber's Web Site or transmitted while using the service.

10.2 **Content Restrictions.** Subscriber is solely and fully responsible for the content, information, data, materials, products and services appearing on Subscriber's Web Site, and for all other content, information, data, text, software, music, sound, photographs, graphics, video, messages, goods, products, services, and other material whether publicly posted or privately transmit-

ted using the Service (“Content”). Calyx does not review Subscriber’s Web Site or Content. However, Calyx has the right, but not the duty, in its sole discretion, and without prior notice, to refuse or remove any Content that Calyx finds objectionable or unacceptable for any reason, and may suspend access to or terminate the Service for any violation of the terms or conditions of this Agreement, or if Subscriber’s Content or domain name results in or is, or are the subject of, legal or threatened legal action (regardless of whether or not such legal action or threatened legal action are eventually determined to be with or without merit). Calyx shall also have the right in its sole discretion to suspend or terminate the Service at such time as Calyx receives what reasonably appears to be an authentic notification from a court or tribunal of competent jurisdiction.

**10.3 Specific Content Restrictions and Prohibited Activities.** Subscriber understands and agrees that the activities contained in this Section 10.3 are prohibited under the terms of this Agreement. Subscriber understands that the following is a non-exclusive list of the activities prohibited under the terms of this Agreement:

10.3.1 uploading, posting or transmitting of any Content on Subscriber’s Web Site that is unlawful, harmful, threatening, abusive, harassing, defamatory, indecent, profane, hateful; racially, ethnically or otherwise objectionable; or violates privacy, publicity or other personal rights of others;

10.3.2 uploading, posting or transmitting of any Content that violates, infringes or misappropriates the intellectual property rights of others, including patents, trademarks, service marks, trade secrets, copyrights or other proprietary rights of any party;

10.3.3 using the Service to create, upload, post or transmit any viruses, worms, Trojan horses, or for flooding, mail bombing or denial of service attacks or or transmitting any other malicious computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; and

10.3.4 engaging in activities that disrupt the use of or interfere with the ability of others to effectively use the Service.

**10.4 Bulk/Unsolicited E-mails.** Calyx prohibits the use of the Service in any manner associated with the sending, transmission, distribution, or delivery or acceptance of any unsolicited bulk and/or unsolicited e-mails (“Spam”). Subscriber may not use the Service to send Spam, nor may Subscriber use the Service to deliver Spam or cause Spam to be delivered to the Service. This prohibition extends to the sending of Spam from another service that in any way implicates the use of the Service. Subscriber may not engage in the forgery of any headers or other manipulation of identifiers in order to disguise the origin of any message sent in connection with Subscriber’s Web Site.

11. DOMAIN NAME. Subscriber can choose a domain name provided by Calyx, register a domain name with Register.com via Calyx, or register a domain name through a third party service.

11.1 **Domain Name With Calyx.** If Subscriber chooses a domain name with Calyx, Subscriber understands that the domain name is licensed to Calyx and remains the property of Calyx. When Subscriber's Service is terminated, so too will any use of such domain name through Calyx. Subscriber acknowledges and agrees that Calyx may, upon termination of this Agreement, elect, at its sole discretion, to disable and/or delete the domain name, sell the domain name, or otherwise make such domain name available to third parties. Calyx reserves the right to freeze any domain name as necessary to comply with any legal requirements or to avoid any liability.

11.2 **Domain Name With Register.com.** If Subscriber registers a domain name with Register.com via Calyx, Subscriber understands that Subscriber is subject to the specific terms, fees, conditions, policies and agreements imposed by Register.com. Calyx makes no representation or warranty of any kind concerning Subscriber's use of Register.com, including, but not limited to, the registration or renewal of a domain name for Subscriber with Register.com.

11.3 **Domain Name Through Domain Name Provider ("DNP").** If Subscriber chooses to register a custom domain name for Subscriber's Web Site through a separate DNP, Subscriber must work with such DNP to process the records required to assign the domain name to Subscriber's Web Site. It is Subscriber's sole responsibility to ensure such domain name is compatible with the Service. Subscriber shall be solely responsible for tracking and ensuring that all required renewals for Subscriber's domain name through DNP are made in a timely manner. Calyx makes no representation or warranty of any kind concerning the registration of a domain name for Subscriber through a separate DNP, or Subscriber's use of a DNP.

12. UNAUTHORIZED SERVER ACCESS. Subscriber agrees it will not attempt to compromise the security of the Services servers by any means, including, but not limited to, attempting to gain unauthorized access to restricted information on Calyx servers, or attempting to disable, cripple, or modify the Services servers. Subscriber agrees that it will not attack or attempt to gain unauthorized access to the data, computers, accounts, systems or networks of others, or attempt to penetrate security measures of Calyx or other entities' systems ("hacking"), or engage in any activity that might be used as a precursor to an attempted system penetration.

13. SUBSCRIBER COMMUNICATION. Subscriber understands and agrees that the Service may include certain communications from Calyx, such as administrative messages, renewal and billing notices, Service announcements, and notifications of operational updates, bug-fixes, or other changes that may affect or change the Service offered by Calyx and that Calyx, and that Calyx reserves the

right to send such communications via e-mail. Please note that Subscriber cannot opt out of such e-mails because these e-mails provide information critical for the operation of Subscriber's Web Site.

SUBSCRIBER HEREBY GRANTS CALYX EXPRESS WRITTEN PERMISSION TO SEND FAX AND/OR E-MAIL SOLICITATIONS OR ADVERTISEMENTS, THUS SATISFYING ANY EXPRESS WRITTEN PERMISSION REQUIREMENT.

14. CONFIDENTIALITY. Subscriber agrees that the Service contains proprietary information, including, but not limited to, trade secrets, know-how, design elements, technology, services, software, and confidential information that is the exclusive property of Calyx. During the period this Agreement is in effect and at all times after its termination, unless Subscriber has obtained written consent from Calyx, Subscriber and its employees and agents (a) may not use this information, except as necessary for the performance of this Agreement, and (b) must maintain the confidentiality of this information and not sell, license, publish, display, distribute, disclose, or otherwise make this information available to any third party.
15. DISCLAIMER OF WARRANTIES. Subscriber understands that the Internet and other various networking communication mediums are not secure, unless explicitly specified as such, and may be subject to interception, unauthorized intrusion, or loss. CALYX MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED OR STATUTORY, CONCERNING THE DATA OR INFORMATION AVAILABLE THROUGH THE SERVICE OR THE INTERNET, OR THE DISCLOSURE OF DATA OR INFORMATION DUE TO ERRORS IN TRANSMISSION, OR UNAUTHORIZED OR NEGLIGENT ACTS OF THIRD PARTIES. CALYX PROVIDES NO WARRANTY THAT THE SERVICE WILL ALWAYS BE AVAILABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, THAT ANY INFORMATION, SOFTWARE OR OTHER MATERIAL ACCESSIBLE ON THE SERVICE IS FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS, THAT THE SERVICE WILL MEET SUBSCRIBER'S REQUIREMENTS. CALYX DISCLAIMS ANY LIABILITY FOR ANY DATA OR INFORMATION THAT WILL BE TRANSFERRED EITHER TO OR FROM SUBSCRIBER OR SUBSCRIBER'S CUSTOMERS VIA THE SERVICE. THE SERVICE IS PROVIDED ON AN "AS IS" BASIS, AND CALYX DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL, OR WRITTEN), RELATING TO THE SERVICE OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

THE TERMS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.

16. LIMITATION OF LIABILITY. IN NO EVENT WILL CALYX OR ITS EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, ATTORNEYS OR AFFILIATES, BE LIABLE TO SUBSCRIBER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR 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 SUBSCRIBER'S WEB SITE, 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. CALYX SHALL HAVE NO LIABILITY OF ANY KIND OR NATURE TO SUBSCRIBER ARISING OUT OF OR RELATED TO SUBSCRIBER'S USE OF OR INABILITY TO USE SUBSCRIBER'S WEB SITE. CALYX SHALL HAVE NO LIABILITY OF ANY KIND OR NATURE TO SUBSCRIBER ARISING OUT OF ILLEGAL CONDUCT OF THIRD PARTIES, ABUSE BY HACKERS, OR SECURITY BREACHES IN CALYX'S OR SUBSCRIBER'S SYSTEMS. 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. SUBSCRIBER AGREES THAT 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 AMOUNT PAID TO CALYX BY SUBSCRIBER FOR THE SERVICE.

THE TERMS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.

17. INDEMNIFICATION. Subscriber shall defend, indemnify, save and hold harmless Calyx from and against any and all damages, liabilities, losses, judgments, or settlements, including reasonable attorneys' fees, arising out of or relating to any claims, demands, actions and other proceedings by any third party arising out of or relating to: (1) the Service; (2) Subscriber's Web Site; (3) Subscriber's violation of any local, state, federal or international laws, or breach of this Agreement; (4) any act or omission by Subscriber, agents or employees, or any services performed or agreed to be performed by Subscriber, its agents or employees to any third-party; (5) this Agreement; (6) violation of any third party rights, including without limitation, infringement of any copyright, trademark, service mark, trade secrets, right of privacy, or publicity, or any other third party right; and (7) Subscriber's collection, distribution, dissemination, sharing, use, or sale of information about its customers or consumers to any third-party without their permission (except as permitted by applicable law). This indemnification and hold harmless provision extends to all issues associated

with Subscriber's account, including but not limited to, domain name selection and Subscriber's Web Site Content.

The terms of this section shall survive the termination of this Agreement for whatever reason.

18. **NONTRANSFERABLE.** This Agreement, and the Service provided by Calyx pursuant to this Agreement, may not be transferred, assigned or distributed, in whole or in part, without the prior written consent of Calyx, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding on and enforceable by the parties and their respective successors and permitted assigns.
19. **GOVERNING LAW.** 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.
20. **ATTORNEYS' FEES/VENUE.** 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, or arising out of or in connection with the Service, 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. The appropriate venue for any such legal action shall be exclusively the state and federal courts located in California.
21. **NOTICES.** All notices or approvals required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by overnight delivery service, or by certified mail, and in each instance will be deemed to have been made five (5) days after the date sent. Notices to Subscriber will be sent to the address on file with Calyx. Notices to Calyx shall be sent to Calyx's headquarters listed on its web site.
22. **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.
23. **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.
24. **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.

25. **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.
26. **HEADINGS:** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

©Calyx Software. All rights reserved. Calyx, Point, and Calyx WebCaster are registered trademarks of Calyx Software. Printed in U.S.A.  
8/15/2006