



**JIVE SOFTWARE, INC.  
LICENSE, HOSTING AND PROFESSIONAL SERVICES AGREEMENT  
(Private Data Center)**

**NOTE: THIS AGREEMENT WILL ONLY APPLY TO THE EXTENT THAT NO BINDING AGREEMENT, WRITTEN OR ELECTRONIC, (THE "OTHER AGREEMENT") IS ALREADY IN PLACE BETWEEN CUSTOMER (DEFINED BELOW) AND JIVE SOFTWARE, INC. PERTAINING TO THE SOFTWARE PRODUCT TO WHICH THIS AGREEMENT APPLIES OR RELATED PROFESSIONAL SERVICES (AS DEFINED BELOW). TO THE EXTENT THAT ANY OTHER AGREEMENT IS IN EFFECT, THEN SUCH OTHER AGREEMENT WILL GOVERN CUSTOMER'S DOWNLOAD AND USE OF THE SOLUTION AND RECEIPT OF HOSTING SERVICES AND/OR PROFESSIONAL SERVICES AND THIS AGREEMENT WILL NOT APPLY EVEN IF YOU ARE REQUIRED TO CLICK THE BOX AFFIRMING YOUR CONSENT TO THE TERMS OF THIS AGREEMENT.**

BY COMPLETING THE ONLINE REGISTRATION FORM AND CLICKING THE "I AGREE" BUTTON, ACCESSING OR USING THE BASE SOFTWARE (AS DEFINED BELOW) WITHOUT AN APPLICABLE OTHER AGREEMENT OR BY OTHERWISE AGREEING IN WRITING TO THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU SUBMIT TO JIVE SOFTWARE, INC., A DELAWARE CORPORATION ("WE" OR "JIVE"), AN OFFER TO OBTAIN THE RIGHT TO USE THE SOLUTION AND RECEIVE HOSTING SERVICES AND/OR PROFESSIONAL SERVICES (EACH AS DEFINED BELOW) UNDER THE PROVISIONS OF THIS LICENSE, HOSTING AND PROFESSIONAL SERVICES AGREEMENT (THE "AGREEMENT").

BY CLICKING THE "I AGREE" BUTTON, YOU HEREBY AGREE THAT YOU HAVE THE REQUISITE AUTHORITY, POWER AND RIGHT TO FULLY BIND THE PERSON AND/OR ENTITIE(S) (COLLECTIVELY, THE "CUSTOMER") WISHING TO USE THE SOLUTION LISTED ON THE ORDER CONFIRMATION PAGE, PRICING SCHEDULE, QUOTE AND/OR INVOICE (EACH AN "ORDER DOCUMENT") WHICH JIVE OR ONE OF ITS AUTHORIZED RESELLERS (A "RESELLER") PROVIDES TO CUSTOMER IN CONNECTION WITH THE PURCHASE OF LICENSES TO THE SOLUTION AND RECEIPT OF HOSTING SERVICES AND/OR PROFESSIONAL DESCRIBED BELOW. THE TERMS OF EACH ORDERING DOCUMENT WILL SET FORTH THE SPECIFIC TERMS OF THE ORDER BUT ALL APPLICABLE TERMS AND CONDITIONS BELOW SHALL APPLY.

IF YOU DO NOT HAVE THE AUTHORITY TO BIND THE CUSTOMER OR YOU OR THE CUSTOMER DO NOT AGREE TO ANY OF THE TERMS BELOW, JIVE IS UNWILLING TO PROVIDE THE SOLUTION, HOSTING SERVICES OR PROESSIONAL SERVICES TO THE CUSTOMER, AND YOU SHOULD NOT CLICK TO ACCEPT THE TERMS OF THIS AGREEMENT AND YOU SHOULD DISCONTINUE THE ORDER, DOWNLOAD AND/OR INSTALLATION PROCESS AND NOT REQUEST ANY HOSTING SERVICES OR PROFESSIONAL SERVICES.

**1.0 ORDERING.** The Order Document will specify the Jive standard community software product offering ("Base Software"), any Modules or Feature Upgrades (each as defined below) that Customer is licensing, the number of authorized individual, non-concurrent active users ("Users") or Page Views (as defined below), if applicable, information pertaining to the related hosting services ("Hosting Services"), any consulting, configuration, customization or other professional services ("Professional Services") and all other necessary information, including whether the Solution being licensed is the "Private" version (which is designed for use solely within Customer's organization) or "Public" version (which is designed for use primarily by Users who are not employees or independent contractors of Customer. If Customer obtains a license to the Public version, then within six months after the launch of the production instance of the Base Solution at least 75% of the Users within the Virtual Community created by such instance must not be employees or independent contractors of Customer. The Base Software and any Modules and/or Feature Upgrades acquired by Customer pursuant to an Order Document are collectively referred to as the "Solution". All Order Documents are incorporated herein by reference. Following Jive's acceptance of each Order Document and Customer's payment of any initial Fees (as described in Section 13.0 below) due under such Order Document, Jive will make the Solution available to Customer for download using a password protected account on Jive's website. Jive may make available to Customer certain optional functionality or hosted services which may be provided as available features within the Base Software ("Feature Upgrade") or a separate stand-alone module ("Module"). Certain Feature Upgrades and Modules may require that the Customer agree to certain restrictions provided by Jive or a Reseller in advance which are in addition to the terms and conditions of this Agreement and Customer agrees to comply with any such restrictions agreed upon in advance in writing. Any additional or separate pricing associated with Feature Upgrades or Modules will be as set forth on the Order Document or otherwise agreed to by the parties in writing. Additionally, the Base Software may, as a Feature Upgrade and in Jive's sole discretion, allow Users to access a hosted marketplace known as the Jive Apps Market (the "Apps Market") which allows Customer and/or Users to purchase one or more applications (each, an "App") that may be used by Users within each such User's dashboard to the Base Software. Customer may, in its sole discretion, enable or disable any or all such access to the Apps Market by Users and may approve or disapprove specific Apps for use by Users within the Virtual Community. All Apps shall be made available solely in accordance with the terms of the then-current Apps Market End User License Agreement available at <http://www.jivesoftware.com/legal/> (the "Apps EULA"), which such Apps EULA shall supersede any conflicting terms or conditions of this Agreement with respect to Customer's and Users' access to and use of the Apps.

**2.0 SOLUTION, LICENSE GRANTS AND RESTRICTIONS.**

**2.1 License Grants.** Subject to the terms of this Agreement and during the applicable license term, Jive grants to Customer a limited, worldwide, non-exclusive, non-transferable license, without sublicense rights, to (a) unless otherwise expressly set forth within the Order Document, to permit Users to access, use, perform and display the Solution through the Hosting Services in connection with the creation and maintenance of (i) a single Virtual Community (as defined below) in accordance with the authorized license implementation set forth on the Order Document (as further described in Section 2.3 below) and to install and use any related client-end plug-ins or components on Users' personal computers, and (ii) if enabled by Jive, an internal development and testing environment (i.e. sandbox) which is provided "AS IS" notwithstanding any other provision of this Agreement, and (b) if permitted by Jive in its sole discretion, install and use the portions of the Solution made available in source code format solely for internal testing purposes and to create modifications for use within Customer's authorized Virtual Communities ("Customer Modification") to the Solution solely for purposes of developing bug fixes, customizations, or additional features pertaining to the Solution (and no other product or service), and (c) use and make a reasonable number of copies of any descriptions, instructions, or other documentation made available in connection with the Solution, if any ("Documentation"). For purposes of this Agreement, a "Virtual Community" is an online virtual community of Users that (i) contains a collective, shared repository for user, group data, and search functionality and (ii) permits access to the underlying database by only one unique instance of the Base Software. The Solution is deemed accepted upon Customer's receipt. Jive takes no responsibility for and neither makes nor gives any guarantees, conditions or warranties with respect to any Customer Modifications or the Solution's interoperability with such Customer Modifications. Customer agrees that neither it nor any of its affiliates shall commence any action or claim against Jive or its licensees or customers (direct or indirect) or any of their respective successors based upon such party's use of software or other intellectual property that is similar to any of the Customer Modifications but was independently developed without access to or benefit of the Customer Modifications. The foregoing covenant shall survive any termination of this Agreement. The term of each license to the Solution purchased by Customer as well as the term for the related Hosting Services will commence on the date that Customer first receives access to the Solution and will continue for the period set forth on the Order Document. Upon expiration, the license and Hosting Services term will automatically renew for successive terms of one year each at the then current Fees unless

either party provides written notice of non-renewal at least 30 days prior to the end of the then current term. The license and Hosting Services term for subsequently purchased licenses will be pro-rated so that all pre-existing and newly acquired licenses are coterminous.

**2.2 License Restrictions.** Except as otherwise expressly permitted under this Agreement, Customer agrees not to: (a) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Solution or any portion thereof; (b) distribute, transfer, grant sublicenses to, or otherwise make available the Solution or Customer Modifications (or any portion thereof) to third parties (other than authorized Users in connection with providing access to the applicable Virtual Community), including, but not limited to, making such Solution or Customer Modifications available (i) through resellers or other distributors, or (ii) as an application service provider, service bureau, or rental source; (c) embed or incorporate in any manner the Solution or Customer Modifications (or any element thereof) into other applications of Customer or third parties other than as authorized in applicable Documentation; (d) create modifications to or derivative works of the Solution other than Customer Modifications; (e) reproduce the Solution except that Customer may make up to two archival copies of the Solution solely for backup purposes; (f) attempt or permit any third party to attempt to modify, alter, or circumvent the license control and protection mechanisms within the Solution; (g) use or transmit the Solution in violation of any applicable law, rule or regulation, including any export/import laws, (h) in any way access, use, or copy any portion of the Solution code (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Solution or (i) remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other designation of Jive displayed on any display screen within the Solution (“Jive Marks”). Customer shall not permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions. The Solution is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (JUNE 1995), the Solution is provided to U.S. Government End Users (i) only as a commercial end item and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

**2.3 License Implementation Types.** Except with respect to the Modules or Apps, each Order Document will designate which of the following Solution license implementation types the Customer will receive: (a) *User License*: Under this licensing scheme, Customer may allow use of the Solution by no more than the number of Users specified in the relevant Order Document; and (b) *Page View License*: Under this licensing scheme, Customer may permit use of the Solution by an unlimited number of Users, as follows: (i) As used herein, a “Page View” means each request for a visually displayed impression of content presented by the Solution, including HTML content and content generated by asynchronous requests within the Solution; (ii) each applicable Order Document shall set forth the following Fees: (1) a table of monthly Page View ranges (i.e., 0-500,000 or 500,001 to 1,000,000 monthly Page Views) (each, a “Page View Range”), (2) for each Page View Range, the associated monthly charge (the “Monthly Charge”) and (3) the initial estimated Fee payable by Customer for use of the Solution in connection with a single Virtual Community for the applicable license term or renewal license term, (the “Initial Page View License Fee”). The Initial Page View License Fee will be based upon Customer’s anticipated and designated Page View Range as set forth on the Order Document (“Designated Page View Range”). The Initial Page View License Fee shall be payable in advance of the applicable license term or renewal license term within 30 days after Jive’s issuance of the relevant invoice. If Customer has licensed the Solution for use in connection with multiple Virtual Communities, all Page Views for all Virtual Communities will be aggregated for purposes of the calculations in this Section 2.3; (iii) on a monthly basis during applicable license term, Jive shall track and deliver or make available to Customer a report summarizing the total number of actual Page Views during the preceding month (“Monthly Page Views”). During the applicable license term, if at any time the Monthly Page Views exceed the Designated Page View Range, Jive shall invoice Customer for excess Fees based upon the difference between the applicable Monthly Charge for the Designated Page View Range and the actual Page View Range and Customer shall pay to Jive all such Fees, including applicable excess Monthly Charges plus a 20% overage charge, in accordance with Section 13.0 below; and (iv) upon the commencement of any renewal license term, Customer shall pay to Jive the applicable Initial Page View License Fee for such renewal license term. The license implementation type for Modules will be based on the Module being acquired and will be as set forth in the relevant Order Document and all Apps are licensed under the licensing scheme referenced in the App EULA.

**2.4 Bankruptcy.** All licenses granted pursuant to this Agreement are, for purposes of Section 365(n) of the U.S. Bankruptcy Code, deemed to be licenses of rights to “intellectual property” as defined under Section 101 of the U.S. Bankruptcy Code. In any bankruptcy or insolvency proceeding involving Jive, Customer, as licensee of such rights, will retain and fully exercise all of its rights and elections under the U.S. Bankruptcy Code, which will apply notwithstanding conflict of law principles.

**3.0 SUPPORT AND MAINTENANCE.** Solution support and maintenance services (“Support Services”) may be ordered at the “Standard” or “Premium” level. Pricing for such Support Services will be set forth on the Order Document; provided, however, that Standard Support Services shall be provided in connection with each subscription license for no additional cost. The terms of Standard and Premium Support Services can be found on Jive’s website at [www.jivesoftware.com/legal](http://www.jivesoftware.com/legal).

**4.0 HOSTING SERVICES.** Jive will be responsible for the provision of Hosting Services including the implementation of updates and upgrades to the Solution provided as part of Support Services. Customer’s designated administrative users (“Admin Users”) will have access to a restricted-access administrative interface feature which allows for configuration, management and monitoring of and restricting access to the Solution. Customer is solely responsible for all actions taken by Admin Users or through use of the passwords provided to such Admin Users. All data and information maintained or stored in the hosted Solution (“Hosted Data”) will be accessible via all Users in the Virtual Community unless otherwise configured by the Admin Users. Customer is responsible for the content and use of all Hosted Data and will indemnify Jive for any losses incurred as a result of such Hosted Data. Customer and its Users will not upload as part of the Hosted Data any of the following types of information and Jive assumes no liability with respect to such information: (a) information protected under the privacy or security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and (b) personally identifiable information including (i) drivers license numbers, (ii) passport numbers, (iii) social security, tax ID or similar numbers, or (v) bank, checking, credit card, debit card, or other financial account numbers. Customer and all Users will comply with Jive’s Acceptable Use Policy (located at [www.jivesoftware.com/legal](http://www.jivesoftware.com/legal)) and will otherwise use the Solution and Hosting Services in compliance with applicable laws and in a manner that does not violate or infringe any rights of any third party. Customer is responsible for establishing and enforcing terms of use and privacy policies for the Virtual Community; provided that at a minimum, such terms and policies must include the restrictions set forth in this Section 4.0. Jive may set up a private user account to provide automated access to the hosted Solution for testing purposes.

**5.0 PROFESSIONAL SERVICES.** If indicated in an Order Form, Jive will perform Professional Services. The particulars of each Professional Services engagement will be as set forth in one or more statements of work (each an “SOW”) entered into by the parties. Customer will provide all assistance reasonably requested by Jive in connection with the Professional Services. Jive will retain all right, title and interest in and to all deliverables (including any and all intellectual, property rights therein) provided under each SOW (“Deliverables”) except to the extent that they contain any information that Customer can document is its proprietary and confidential information. Customer’s rights to the Deliverables shall be the same as Customer’s rights to the Solution.

**6.0 PUBLICITY.** During the Term of this Agreement, Customer hereby agrees that Jive shall have the right, but not the obligation, to include Customer’s name and logo as a customer who uses the Solution on the Jive website and in other materials promoting the Solution.

**7.0 PROPRIETARY RIGHTS.** As between the parties, Jive will retain all ownership rights in and to the Jive Marks, the Solution (including any optional functionality), the Documentation, Deliverables, all updates and upgrades provided as part of Support Services and other derivative works of the Solution and/or Documentation that are provided by Jive, and all intellectual property rights incorporated into or related to the foregoing. Customer acknowledges that the goodwill associated with the Jive Marks belongs exclusively to Jive and, upon request, Customer will modify or cease its use of any Jive Marks. All rights not expressly licensed by Jive under this Agreement are reserved.

## **8.0 WARRANTIES AND DISCLAIMER.**

**8.1 Warranties.** Jive warrants that the Solution, as delivered and when used in accordance with the Documentation, (a) will perform in all material respects as specified in such Documentation for a period of 90 days from Customer’s initial receipt of or access to the Solution, and (b) will not contain, any “back door,” “time bomb,” “Trojan horse,” “worm,” “drop dead device,” “virus,” “preventative routines” or other computer software routines intentionally designed to permit unauthorized access to or use of either the Solution’s or Customer’s computer systems (“Viruses”); provided that the Base Software does include functionality that prevents access to and use of the Solution in the event that Customer fails to pay the applicable Fees when due. In the event of any breach of the warranty in subsection (a) above, Jive shall, as its sole liability and Customer’s sole remedy, diligently remedy any deficiencies that cause the Solution to not conform to the foregoing warranty promptly after its receipt of written notice from Customer. Jive will not be liable to the extent that any breach of the foregoing warranties are caused by (i) third-party components (including in combination with the Solution) not provided by Jive or any open source components or freeware included within the Solution; (ii) modifications to the Solution; (iii) unauthorized use or use of the Solution other than in accordance with the Documentation or (iv) Viruses introduced by Customer or

its agents or Users (collectively, "Exclusions").

## 8.2

### **Disclaimer.**

THE EXPRESS WARRANTIES IN SECTION 8.1 ARE THE EXCLUSIVE WARRANTIES OFFERED BY JIVE AND ALL OTHER CONDITIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY CONDITIONS OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, QUIET ENJOYMENT, TITLE, MERCHANTABILITY AND THOSE THAT ARISE FROM ANY COURSE OF DEALING OR COURSE OF PERFORMANCE ARE HEREBY DISCLAIMED. JIVE DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SOLUTION WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ERRORS WILL BE CORRECTED OR THAT IT WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SOLUTION (INCLUDING ALL COMPONENTS THEREOF), THE SUPPORT SERVICES, THE HOSTING SERVICES, THE PROFESSIONAL SERVICES AND ALL DELIVERABLES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND.

### **9.0 INDEMNIFICATION.**

Jive will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Solution (or any component thereof owned by Jive) infringes any United States copyright or misappropriates any trade secret rights and Jive will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer notifying Jive promptly in writing of such action, Customer giving Jive sole control of the defense thereof and any related settlement negotiations, and Customer cooperating and, at Jive's reasonable request and expense, assisting in such defense. If the Solution (or any component thereof owned by Jive) becomes, or in Jive's opinion is likely to become, the subject of an infringement claim, Jive may, at its option and expense, either (a) procure for Customer the right to continue exercising the rights licensed to Customer in this Agreement, or (b) replace or modify the Solution so that it becomes non-infringing and remains functionally equivalent. If neither of the foregoing options are, in Jive's reasonable opinion, commercially reasonable, Jive may terminate this Agreement and will refund to Customer a pro-rata portion of any applicable prepaid Fees. Notwithstanding the foregoing, Jive will have no obligation under this Section 9.0 or otherwise with respect to any infringement claim based upon (i) any Exclusions, or (ii) continued use of a Point Release of the Solution (other than the then-current version of the Solution) that is more than 12 months old where "Point Release" defined as a progressing of the 1st or 2nd digit of the version release number in a three point version control system, as applicable (e.g., v3.5 to v4.0 or v4.1 to v4.2)). This Section 9.0 states Jive's entire liability and Customer's sole and exclusive remedy for infringement claims and actions

### **10.0 LIMITATIONS ON LIABILITY.**

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL JIVE BE LIABLE TO CUSTOMER, USERS OR TO ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT, INCLUDING THE SOLUTION, SUPPORT SERVICES AND INTELLECTUAL PROPERTY PROVIDED HEREUNDER, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR (A) ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER JIVE IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (B) ANY AMOUNTS IN EXCESS OF THE TOTAL OF THE FEES ACTUALLY PAID AND THE FEES PAYABLE TO JIVE BY CUSTOMER UNDER THIS AGREEMENT DURING THE ONE YEAR PERIOD PRIOR TO THE DATE THAT SUCH LIABILITY FIRST ARISES.

### **11.0 CONFIDENTIALITY.**

The Solution and all trade secret information incorporated therein or derived, directly or indirectly, therefrom are confidential information of Jive. Customer shall keep in confidence and trust and not disclose or disseminate, or permit any employee, agent or other party working under Customer's direction to disclose or disseminate, the substance of any such confidential information of Jive. The commitments in this Agreement will not impose any obligations on Customer with respect to any portion of the received information which, as evidenced by independent documentation: (a) is now generally known or available or which hereafter, through no act or failure to act on Customer's part, becomes generally known or available; or (b) is rightfully known to Customer at the time of receiving such information. Customer acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure or use of Jive's confidential information and that Jive may seek, without waiving any other rights or remedies, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

### **12.0 TERM, TERMINATION AND EFFECT.**

This Agreement shall continue in effect until terminated as set forth herein. The applicable license term and Hosting Services term for each license purchased will be as set forth in the applicable Order Document. This Agreement may be terminated by either party if the other party materially breaches this Agreement and does not cure the breach within 30 days after receiving written notice thereof from the non-breaching party (except that such cure period shall be five days for breaches of Sections 2 or 13). Additionally, a particular Order Document may be terminated by Jive in the event that Customer fails to pay applicable Fees when due. Upon any termination of this Agreement, without prejudice to any other rights or remedies which the parties may have, (a) all rights licensed and obligations required hereunder shall immediately cease (including Customer's and Users' right to access and use the hosted Solution); provided that Sections 2.2, 7.0, 9.0 through 12.0 and 15.0 shall survive termination, (b) Customer will promptly delete and destroy all instances of the Solution in its possession or control (if any), and (c) Customer shall pay to Jive any outstanding Fees that have accrued prior to the date of termination.

### **13.0 FEES AND PAYMENT.**

Subject to the terms and conditions below, all fees for the Solution licenses, Hosting Services, Professional Services and/or Support Services will be set forth on the applicable Order Document ("Fees"). Unless otherwise agreed to in writing by the parties, Customer will pay to Jive or the Reseller, as applicable, all undisputed Fees owed within 30 days after Jive's issuance of an invoice pertaining thereto. Payments will be sent to the address included on the invoice. All amounts payable shall be in the currency of the United States and specifically exclude (and Customer is responsible for) any and all applicable sales, use and other taxes, (other than taxes based on Jive's income). Each party is responsible for its own expenses under this Agreement.

### **14.0 AUDIT.**

Not more than once each year, Jive will have the right to perform an audit to verify that Customer is using the Solution in compliance with this Agreement. That audit will be performed during normal business hours upon not less than 15 days' prior written notice to Customer. That audit will be conducted at Jive's sole cost and expense and will be subject to reasonable security and access restrictions. Customer will be permitted to have Customer personnel present during the audit. If an audit conducted under this Section discloses that Customer has underpaid by more than 5% any license Fees payable under this Agreement during the period covered by the audit, Customer will pay Jive the amount of that underpayment and, in addition, will reimburse Jive's reasonable and actual costs for that audit.

### **15.0 MISCELLANEOUS.**

The parties are independent contractors with respect to each other, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, agency relationship or a joint venture between the parties. Each party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to acts of God, earthquake, labor disputes and strikes, riots, war and governmental requirements. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay. This Agreement controls the actions of all party representatives, officers, agents, employees and associated individuals. The terms of this Agreement shall be binding on the parties, and all successors to the foregoing. Customer will not assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without Jive's prior written consent. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void. All modifications to or waivers of any terms of this Agreement must be in a writing that is signed by the parties hereto and expressly references this Agreement. This Agreement shall be governed by the laws of the State of Oregon, without regard to Oregon conflict of laws rules. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to this Agreement shall be the state or federal courts located in Multnomah County, Oregon. Each party waives any objection (on the grounds of lack of jurisdiction, forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or enforcement of this Agreement. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. This Agreement includes any applicable Order Documents. Collectively the foregoing constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications, including, without limitation, any quotations or proposals submitted by Jive. The terms on any purchase order or similar document submitted by Customer to Jive will have no effect and are hereby rejected. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at its main corporate headquarters and sent to the attention of such party's Chief Executive Officer.

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