



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 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 ACCESSING OR USING THE BASE PLATFORM (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 PROFESSIONAL SERVICES (EACH AS DEFINED BELOW) UNDER THE PROVISIONS OF THIS LICENSE AND PROFESSIONAL SERVICES AGREEMENT (THE "AGREEMENT").

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 A "PRICING SCHEDULE") 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 PROFESSIONAL SERVICES 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 OR PROFESSIONAL SERVICES TO THE CUSTOMER, AND YOU SHOULD NOT ACCEPT THE TERMS OF THIS AGREEMENT AND YOU SHOULD DISCONTINUE THE ORDER, DOWNLOAD AND/OR INSTALLATION PROCESS AND NOT REQUEST ANY PROFESSIONAL SERVICES.

1.0 ORDERING. Under this Agreement Customer may order from Jive or one of its authorized resellers (each a "Reseller") (a) licenses to Jive's standard platform software offerings ("Base Platform"), and those Modules (defined in Section 2.1(b) below) made available by Jive and/or its suppliers, (b) related support and maintenance services ("Support Services"), and/or (c) consulting, implementation or other professional services (collectively "Professional Services"). The Base Platform and any Modules acquired by Customer pursuant to Section 2.1(b) are collectively referred to as the "Solution". The specifics of each Customer order will be set forth on a Pricing Schedule that references this Agreement and is executed by both parties. Customer's execution of a Pricing Schedule constitutes a binding commitment to purchase the items described on the Pricing Schedule under the terms and conditions of this Agreement. All mutually executed Pricing Schedules are incorporated herein by reference.

2.0 SOFTWARE, LICENSE GRANTS AND RESTRICTIONS.

2.1 Versions; Module; Jive Apps Market.

(a) *Types.* Each Pricing Schedule will specify whether the Solution acquired thereunder is to be used as an Internal or External version. With a license to an "Internal" version, Customer is authorized to create and maintain a Community (defined below) for use within Customer's organization solely by authorized individual, non-concurrent users ("Users") that are (1) employees or specific individual independent contractors of Customer ("Internal Users") and (2) other users who are (i) not Internal Users (e.g. third party consultants, advisors, etc.) and (ii) are invited by Internal Users to participate in certain aspects of the Internal Community ("External Contributors"). Customer has sole discretion as to whether to permit External Contributors to access the Community and to designate those Internal Users who may invite External Contributors. With an "External" license, Customer is authorized to create and maintain a Community for use primarily by Users who are not employees or independent contractors of Customer (e.g. members of the general public). Customer will use the Solution for the intended version type set forth in the Pricing Schedule. A "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 Solution. Each license to either the External or Internal version of the Solution permits Customer to access and use the Solution in connection with a single Community.

(b) *Module.* Jive may make available to Customer certain optional functionality which may be provided as a separate stand-alone module or as a plug-in (each a "Module"). Certain Modules may require that Customer agree to additional terms, which will be mutually agreed upon in advance in writing such as in a Pricing Schedule. Any additional or separate pricing associated with a Module will be set forth in a Pricing Schedule or otherwise agreed to by the parties in writing. Certain Modules are provided on a hosted software-as-a-service basis.

2.2 License Grants.

(a) *Executable Code.* Subject to the terms of this Agreement, including the applicable license implementation described in Section 2.3 below, and during the License Term (as defined in Section 10.1), Jive grants to Customer a limited, worldwide, non-exclusive, non-transferable license, without sublicense rights (except as set forth in subsection (b) below), to (i) install (1) the Solution (in executable format and except as stated below) on Customer's server and (2) any related plug-ins or components on, as applicable, Customer's server or Users' personal computers, (ii) use and permit Users to use the Solution (including any plug-ins or components) in connection with the creation and maintenance of a Community as described in Section 2.1(a), and (iii) use and make a reasonable number of copies of any written instructions found at <https://www.jivesoftware.com/services-support/customer-support/documentation> ("Documentation"). Certain Modules are provided on a hosted software-as-a-service basis. The Solution is deemed accepted upon delivery of the license key, provided that such acceptance shall not in any way impact the warranties set forth in Section 6.1. Upon mutual execution of a Pricing Schedule, Jive will make the Solution available to Customer for download using a password protected account on Jive's website.

(b) *Sublicense Rights.* Jive grants to Customer the right to sublicense the usage rights granted hereunder with respect to the Solution, subject to the terms of this Agreement, to a subcontractor to provide outsourced Professional Services to Customer in connection with Customer's authorized use of the Solution. Customer shall be liable for any breach of this Agreement by such subcontractor(s).

2.3 License Implementation Types. The Solution is available for license under the following implementations types. The relevant Pricing Schedule will designate the form of the Solution implementation the Customer will receive.

(a) *User License.* Customer may permit use of the Solution by no more than the number of Users specified in the relevant Pricing Schedule. Customer may order additional User licenses from Jive in accordance with the ordering process set forth in Section 1.0. To the extent that any licenses have been purchased and are in effect ("Existing Licenses") at the time that Customer subsequently purchases additional User licenses (collectively, "Additional Licenses"), then the License Term pertaining to the Additional Licenses shall equal the period of time remaining on the then-current License Term pertaining to the Existing Licenses so that the License Term for all licenses shall be coterminous, regardless of when purchased and subject to payment of additional Fees for such Additional Licenses, as set forth in the applicable Pricing Schedule.

(b) *User View License.* Customer may permit use of the Solution by an unlimited number of Users, but such usage shall be subject to the restrictions on the number of monthly User Views specified in the relevant Pricing Schedule.

(i) As used herein, a "User View" means each request from a Customer or its Users for a visually displayed impression of content presented by the Solution, including HTML content and asynchronous requests within the Solution

(ii) Each applicable Pricing Schedule shall set forth a table of monthly User View ranges (i.e., 0-500,000 or 500,001 to 1,000,000 monthly User Views) (each, a "User View Range") and the initial estimated fee payable by Customer for use of the Solution in connection with a single Community for the applicable License Term, (the "User View License Fee"). The User View License Fee will be based upon Customer's anticipated and designated User View Range as set forth on the Pricing Schedule ("Designated User View Range"). The User View License Fee shall be payable in advance of the initial License Term or applicable renewal License Term in accordance with Section 12.2.

(iii) On a monthly basis during the License Term, Jive shall track and make available to Customer a report summarizing the total number of actual User Views during the preceding month ("Monthly User Views").

(d) *Excess Usage.* At the end of each calendar quarter during the License Term, Jive will review Customer's current licensed User count and/or Monthly User Views, as applicable, and to the extent that Customer has exceeded the usage agreed upon in the Pricing Schedule ("Excess Usage"), Jive will invoice Customer for:

(i) the number of Users exceeding the number of licensed Users on a pro rata basis for the balance of the License Term Length. Such additional User licenses must be purchased in blocks of 25 and will be coterminous to the end of the then current License Term.

(ii) excess Fees based upon the difference between the applicable Monthly Charge for the Designated User View Range and the actual User View Range. Customer shall pay to Jive, in accordance with Section 12.2 below, all Excess Usage Fees, plus an overage charge equal to 20% of the Excess Usage Fee.

2.4 Additional 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 any portion thereof) to third parties (other than authorized Users in connection with providing access to the applicable Community), including, but not limited to, making such Solution available (i) through resellers or other distributors, or (ii) as an application service provider, service bureau, or rental source; (c) create modifications to or derivative works of the Solution; (d) reproduce the Solution except that Customer may make archival copies of the Solution solely for backup purposes; (e) attempt to modify, alter, or circumvent the license control and protection mechanisms within the Solution; (f) use or transmit the Solution in violation of any applicable law, rule or regulation, including any data privacy or data protection laws, (g) intentionally access, use, or copy any portion of the Documentation or the Solution (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 (h) remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other designation included on any display screen within the Solution ("Jive Marks"). Except for the sublicense rights granted under Section 2.2(b), 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.

2.5 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. Jive offers the following levels of Support Services: Standard Support or Platinum Program. Standard Support Services are included without any additional charge to Customer. Customer may elect to upgrade to the Platinum Program for additional Fees as set forth in a Pricing Schedule. Jive will provide Support Services at the applicable level during the License Term in accordance with the terms found at: www.jivesoftware.com/legal (the "Support Terms"), which such terms are incorporated herein by reference.

4.0 PROFESSIONAL SERVICES. Pursuant to a mutually executed statement of work ("SOW"), Jive will perform Professional Services and provide the object code, flow charts, documentation, information, reports, test results, findings, or any works and other materials developed by Jive for Customer identified as "deliverables" under the scope of an SOW ("Deliverables"). Each SOW will include the particulars of each Professional Services engagement. In a timely manner, Customer will provide all assistance reasonably requested by Jive in connection with the Professional Services. If Customer notifies Jive in writing within 30 days after a particular Deliverable is made available to Customer that the Deliverable does not conform to the requirements of the SOW, then Jive will, as Customer's sole and exclusive remedy and Jive's sole liability, modify or replace the Deliverables at no cost to Customer.

5.0 PROPRIETARY RIGHTS. As between the parties, Jive and its suppliers will retain all ownership rights in and to the Jive Marks, the Solution, the Documentation, Jive Confidential Information, all Updates and Upgrades (as defined in the Support Terms), all Modules, all Deliverables (except to the extent they include pre-existing Customer Confidential Information or intellectual property) 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. All rights not expressly licensed by Jive under this Agreement are reserved. As between the parties hereto, Customer will retain all ownership rights in and to all Customer Confidential Information, all pre-existing Customer intellectual property, and all content made available by Customer and Users through the Solution ("Community Data"). Customer's rights to the

Deliverables shall be the same as its rights to the Solution. Jive may use without limitation any suggestions, recommendations or other feedback provided by Customer regarding the Solution.

6.0 WARRANTIES AND DISCLAIMER.

6.1 Warranties. Jive warrants that (a) it will perform all Professional Services in a professional manner consistent with industry standards and practices, and (b) the Solution, as delivered and when used in accordance with the Documentation, (i) will perform in all material respects as specified in such Documentation for the first 90 days of the initial license term (as defined in the Pricing Schedule), and (ii) 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"). In the event of any breach of the warranties in subsections (a) or b(i) above, Jive shall, as its sole liability and Customer's sole remedy, diligently remedy any deficiencies 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 (1) third-party components or services (including in combination with the Solution) not provided by Jive; (2) modifications to the Solution, other than Updates or Upgrades; (3) unauthorized use or use of the Solution other than in accordance with the Documentation, (4) Viruses introduced by Customer or its agents or Users, or (5) continued use of the Solution by Customer after Jive notifies Customer, pursuant to Section 7.0, to discontinue use of the Solution due to a claim, allegation or proceeding of third party infringement and provides a non-infringing version that remains functionally equivalent (collectively, "Exclusions").

6.2 Disclaimers. THE EXPRESS WARRANTIES IN SECTION 6.1 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, OR THAT ERRORS WILL BE CORRECTED.

7.0 INDEMNIFICATION.

7.1 Jive Indemnity. 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 infringes any copyright, trademark, or misappropriates any trade secret rights to the extent any of the foregoing are recognized in the United States, Canada or any member country within the European Union. 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. If the Solution (or any component thereof) becomes, or in Jive's opinion is likely to become, the subject of an infringement claim, Jive may, at its option and expense, either (x) procure for Customer the right to continue exercising the rights licensed to Customer in this Agreement, or (y) 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 8.1 or otherwise with respect to any infringement claim based upon any Exclusions. Customer will have the right, at its own expense, to participate in the defense of any claim of infringement. This Section 7.1 states Jive's entire liability and Customer's sole and exclusive remedy for infringement or misappropriation claims and actions.

7.2 Customer Indemnity. Customer will defend at its own expense any action against Jive brought by a third party to the extent that the action (including but not limited to any governmental investigations, complaints, and actions) relates to Community Data, including but not limited to infringement or misappropriation any third party's intellectual property rights or violation of applicable law. Customer will pay those costs and damages finally awarded against Jive 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.

7.3 Process. The foregoing obligations are conditioned on (i) the indemnified party notifying the other party in writing of an action, proceeding, or other claim by a third party no later than 30 days after first receiving notice of such action and must provide copies of all communications, notices and/or other actions relating to the action; (ii) giving the indemnifying party sole control of the defense thereof and any related settlement negotiations, provided that such defense shall be conducted in a manner that is not adverse to the indemnified party's interests (the indemnified party may employ its own counsel at its own expense to assist it with respect to any such claim); (iii) the indemnified party's compliance with this Agreement; and (iv) the indemnified party acting in accordance with the reasonable instructions of the other party, cooperating and, upon reasonable request and at the expense of the indemnifying party, assisting in such defense.

8.0 LIMITATIONS ON LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR 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 A PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S AGGREGATE CUMULATIVE LIABILITY TO THE OTHER, IN CONNECTION WITH THIS AGREEMENT, INCLUDING THE SOLUTION, SERVICES AND INTELLECTUAL PROPERTY PROVIDED HEREUNDER SHALL NOT EXCEED, IN THE AGGREGATE AND REGARDLESS OF WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, 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. HOWEVER, THERE IS NO LIMITATION ON DIRECT LOSS, CLAIM OR DAMAGES ARISING AS A RESULT OF AN INFRINGEMENT OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS.

9.0 CONFIDENTIALITY. "Confidential Information" means, with respect to a party (the "Disclosing Party"), all non-public confidential information pertaining to such party's business, and includes Community Data. Jive and Customer will comply with this Section 9.0 when exchanging Confidential Information under this Agreement. Confidential Information will be designated and/or marked as confidential when disclosed, provided that any information that the party receiving such information (the "Receiving Party") knew or reasonably should have known under the circumstances, was considered confidential or proprietary by the Disclosing Party, will be considered Confidential Information of the Disclosing Party even if not designated or marked as such. The Receiving Party shall preserve the confidentiality of the Disclosing Party's Confidential Information and treat such Confidential Information with at least the same degree of care that Receiving Party uses to protect its own Confidential Information, but not less than a reasonable standard of care. The Receiving Party will use the Confidential Information of the Disclosing Party only to exercise rights and perform obligations under this Agreement. Confidential Information of the Disclosing Party will be disclosed only to those employees and contractors of the Receiving Party with a need to know such information. The Receiving Party shall not be liable to the Disclosing Party for the release of Confidential Information if such information: (a) was known to the Receiving Party on or before Effective Date without restriction as to use or disclosure; (b) is released into the public domain through no fault of the Receiving Party; (c) was independently developed solely by the employees of the Receiving Party who have not had access to Confidential Information; or (d) is divulged pursuant to any legal proceeding or otherwise required by law, provided that, to the extent legally permissible, the Receiving Party will notify the Disclosing Party promptly of such required disclosure and reasonably assists the Disclosing Party in efforts to limit such required disclosure.

10.0 TERM, TERMINATION AND EFFECT.

10.1 License Duration; Renewals. The term of each license to the Solution purchased by Customer will commence on the date that both parties have executed the applicable Pricing Schedule (unless a later commencement date is expressly set forth on such Pricing Schedule), and will continue for the period set forth on such Pricing Schedule, and include any renewal, as described in this Section 10.1 (collectively, the “License Term”). Each Solution license will automatically renew for the renewal period specified on the applicable Pricing Schedule, if any, or, if not specified, for a period of one year unless either party notifies the other at least 30 days prior to the commencement of the renewal term that it does not intend to renew the License Term.

10.2 Term and Termination. This Agreement shall continue in effect until terminated as set forth herein. This Agreement or any SOW, if applicable, may be terminated (a) 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 2.0 or 9.0), or (b) as set forth in Section 7.1.

10.3 Effect. Upon any termination of this Agreement, without prejudice to any other rights or remedies which the parties may have under this Agreement, (a) all rights licensed and obligations required hereunder shall immediately cease; provided that Sections 2.4, 5.0 through 11.0, 14.0 and 15.0 and any other provisions with express survival language shall survive termination, (b) Customer will promptly delete and destroy all instances of the Solution in its possession or control, and (c) Customer shall pay to Jive any outstanding Fees that have accrued prior to the date of termination. Customer will have access to Community Data stored in the Solution for 30 days after expiration or termination of this Agreement for the sole purpose of copying such Community Data off the Solution.

11.0 FEES AND PAYMENT.

11.1 Fees. Subject to the terms and conditions below, all fees for licenses to the Base Platform, Modules, Support Services, and/or Professional Services (collectively, the “Fees”) will be set forth on the applicable Pricing Schedule.

11.2 Payment Terms. 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 of the date of the invoice pertaining thereto. Payments will be sent to the address included on the invoice and shall be in the currency of the United States. If Customer fails to pay all applicable Fees in accordance with this section, Jive may, in its sole discretion, suspend use of the Solution until Jive has received all outstanding Fees. Customer shall be responsible for 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 unless otherwise set forth in an SOW or Pricing Schedule.

12.0 INSURANCE. Jive, at its own expense, will maintain at a minimum the following insurance coverages: (a) Commercial General Liability Insurance with coverage in an amount equal to or greater than US\$1,000,000 per occurrence/\$2,000,000 aggregate, (b) Commercial Automobile Liability Insurance with coverage in an amount equal to or greater than US\$1,000,000 per occurrence combined single limit, (c) Worker’s Compensation Insurance with coverage complying with at least the statutory limits of coverage within the relevant state of employment, (d) Errors and Omissions Insurance with coverage in an amount equal to or greater than US\$2,000,000 per claim/aggregate and (e) Umbrella/Excess Liability Insurance with coverage in an amount equal to or greater than US\$5,000,000 per occurrence/aggregate. Jive will provide Customer with necessary documentation, including certificates of insurance, evidencing the required coverage, if requested in writing.

13.0 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. The audit will be performed during normal business hours upon not less than 15 days’ prior written notice to Customer. The 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.

14.0 USAGE DATA. Jive may collect and use data pertaining to the Customer’s use of the Hosted Service, including (a) observing and reporting to Customer on Customer’s use of the Hosted Service, (b) for its internal research and development purposes, and (c) identifying trends and publishing reports or results on its findings provided that the reports or results include aggregated data that does not identify Customer or any particular User (e.g. Jive may disclose aggregate User Views statistics for all of its hosted customers).

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 (each a “Force Majeure Event”). 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. Neither party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other party’s prior written consent except pursuant to a transfer of all or substantially all of such party’s business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Jive may subcontract to a third party any of its performance obligations under the Agreement, including obligations related to the hosting, storage, or processing of Community Data. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void. This Agreement shall be governed by the laws of the State of California, without regard to its 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 Santa Clara County, California. 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 Addenda and Pricing Schedules agreed to by the parties in writing and all expressly referenced 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. Unless otherwise expressly stated, all legal 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 official headquarters to the attention of the chief legal officer and are deemed delivered when received.

Addendum

The following terms and conditions supplement or modify the terms and conditions of the Agreement, as set out above, to the extent Customer has indicated on an applicable Pricing Schedule that Customer is subject to the laws of any of the countries (or any state of any of the countries) set out below. In the event of any inconsistencies between this Addendum and the provisions of the Agreement, this Addendum shall prevail. Unless expressly amended in this Addendum, the provisions of the Agreement shall remain in full force and effect.

All countries in the Europe, Middle East and Africa (EMEA) region, except for France and Germany

1. Notwithstanding Section 2.4(a), Customer may not reverse engineer or otherwise attempt to discover the source code of the Solution or any portion thereof except to the limited extent required to be permitted by mandatory applicable law notwithstanding contractual prohibition.
2. Notwithstanding any provision of the Agreement to the contrary, neither party excludes or limits its liability for (i) personal injury or death caused by its negligence, (ii) fraud or fraudulent misrepresentation, or (iii) any other liability which may not lawfully be excluded or limited.
3. In Section 8.0, the words “that such liability first arises” are replaced with the words:

“ON WHICH THE FIRST EVENT GIVING RISE TO SUCH LIABILITY ON THE PART OF SUCH PARTY OCCURS (“AGGREGATE LIABILITY CAP”). THIS MEANS THAT ONCE THE AGGREGATE LIABILITY CAP FOR A PARTY TO THIS AGREEMENT HAS BEEN REACHED, THAT PARTY SHALL (SUBJECT ONLY TO THE OTHER PROVISIONS OF THIS SECTION 8.0) HAVE NO FURTHER LIABILITY, REGARDLESS OF THE NUMBER OR SEVERITY OF LATER CLAIMS AND EVENTS THAT WOULD, BUT FOR THIS SECTION 8.0, GIVE RISE TO LIABILITY.”
4. In Section 14.0, the following is added: For the purposes hereof, “Bribery Act” means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation; and “Prohibited Act” means (a) to directly or indirectly offer, promise or give any person working for or engaged by the other party a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or reward for improper performance of a relevant function or activity in connection with the Agreement; (c) committing any offense (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract between the parties; or (iv) defrauding, attempting to defraud or conspiring to defraud a party. Each party shall not, and shall procure that any of its related parties and its personnel shall not, in connection with the Agreement, commit a Prohibited Act and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the other party, or that an agreement has been reached to that effect, in connection with the entering into of the Agreement, excluding any arrangement of which full details have been disclosed in writing to the other party before entering into of the Agreement.
5. Notwithstanding Section 15.0, The Agreement shall be governed by the laws of England. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to the Agreement shall be the courts of England.

France:

1. In Section 7.0 the words “terminate this Agreement” are replaced with the following wording:

“terminate as of right (“*de plein droit*”) without any judicial formalities”.
2. Section 8.0 is replaced with:

“NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT, FOR ANY INDIRECT DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER A PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY’S AGGREGATE CUMULATIVE LIABILITY TO THE OTHER, IN CONNECTION WITH THIS AGREEMENT, INCLUDING THE SOLUTION, SERVICES AND INTELLECTUAL PROPERTY PROVIDED HEREUNDER SHALL NOT EXCEED, IN THE AGGREGATE 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. HOWEVER, THERE IS NO LIMITATION ON DIRECT LOSS, CLAIM OR DAMAGES ARISING AS A RESULT OF AN INFRINGEMENT OF EITHER PARTY’S INTELLECTUAL PROPERTY RIGHTS OR IN CONNECTION WITH A PARTY’S INDEMNIFICATION OBLIGATIONS.”
3. In Section 10.2, the words “may be terminated” are replaced with:

“may be terminated as of right (“*de plein droit*”) without any judicial formalities.”
4. In Section 11.2, after the words “Unless otherwise agreed to in writing by the parties including in a Pricing Schedule, Customer will pay to Jive or the Reseller, as applicable, all undisputed Fees owed within 30 days of the date of the invoice pertaining thereto”, the following is added:

“In the event of failure to pay an invoice within this deadline, the unpaid amounts will give rise to the payment of late payment interest, equal to three (3) times the legal interest. Interest will begin to run on the day following the due date of the relevant invoice.”

4. In Section 11.2, after the words “All amounts payable shall be in the currency of the United States and any and all applicable sales, use and other taxes (other than taxes based on Jive’s income) will be separately and specifically stated (and are the responsibility of Customer)”, the following is added:

“Accordingly, if any amount to be paid under this Agreement to Jive or the Reseller, is subject to any deductions or withholdings for any present or future taxes, levies, imposts, duties, fees, charges, or liabilities imposed by any competent governmental authority then the Customer must pay an additional amount to Jive or the Reseller, as the case may be, as is necessary so that the net amount actually received by Jive or the Reseller after such deduction, payment or withholding will equal the full amount stated to be payable under this Agreement”.

5. Notwithstanding Section 15.0, This Agreement shall be governed by the laws of France. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to this Agreement shall be the Commercial Court of Paris, France.

Germany:

1. In Section 2.2 (a), after the words “non-exclusive” the word “non-perpetual” is added.

2. In Section 2.3 (d) the words: “20% of the Excess Usage Fee.” are replaced with:

“8% of the Excess Usage Fee, unless the Customer proves that Jive has not incurred any damage or a lower damage.”

3. In Section 2.4, after the words “Except as otherwise expressly permitted under this Agreement” the following words are added:

“or allowed according to §§ 69d et seq. of the German Copyright Act”.

4. In Section 2.4, the following words are deleted:

“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.”

5. Section 2.5 is deleted.

6. In Section 4.0, the following words are deleted:

“If Customer notifies Jive in writing within 30 days after a particular Deliverable is made available to Customer that the Deliverable does not conform to the requirements of the SOW, then Jive will, as Customer’s sole and exclusive remedy and Jive’s sole liability, modify or replace the Deliverables at no cost to Customer.”

7. Section 6.0 is replaced with the following words:

“6.0 WARRANTIES.

6.1 Warranties. Jive warrants that (a) it will perform all Professional Services in a professional manner consistent with industry standards and practices, and (b) the Solution, as delivered and when used in accordance with the Documentation, (i) will perform in all material respects as specified in such Documentation, and (ii) 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”). In the event of any breach of the warranties in subsection (b) above, Jive shall diligently remedy any deficiencies promptly after its receipt of written notice from Customer. If the Professional Services are regarded as works in terms of §§ 631 et seq. of the German Civil Code (Bürgerliches Gesetzbuch, “BGB”), any defects in the Professional Services in terms of § 633 (2) BGB shall be remedied by Jive through either free-of-charge removal of defects (repair) or replacement, at Jive’s own discretion. If the defect cannot be remedied within a reasonable period, or if the repair or replacement has failed for other reasons, Customer may, at its discretion, either withdraw from the relevant SOW or reduce the fees for the Professional Services.

6.2 Exclusions. Jive will not be liable to the extent that any breach of the foregoing warranties are caused by (1) third-party components or services (including in combination with the Solution) not provided by Jive; (2) modifications to the Solution, other than Updates or Upgrades; (3) initial defects (§ 536a (1) Alt. 1 BGB) to the Solution, unless Jive acted intentionally, (4) unauthorized use or use of the Solution other than in accordance with the Documentation, (5) Viruses introduced by Customer or its agents or Users, or (6) continued use of the Solution by Customer after Jive notifies Customer, to discontinue use of the Solution due to a claim, allegation or proceeding of third party infringement and provides a non-infringing version that remains functionally equivalent (collectively, “Exclusions”). Any warranty claims against Jive shall expire after one year provided that Jive did not cause a defect intentionally or in case of breach of a guarantee.”

8. Section 7.0 is deleted.

9. Section 8.0 is replaced with the following words:

“For damages with respect to injury to health, body or life caused by Jive, Jive’s representatives or Jive’s agents in the performance of the contractual obligations, Jive is fully liable. Jive is fully liable for damages caused willfully or by gross negligence by Jive, Jive’s representatives or Jive’s agents in the performance of the contractual obligations. The same applies to damages which result from the absence of a quality which was guaranteed by Jive or to damages which result from malicious action of Jive. If damages, except for such cases covered by sentences 1 or 6, with respect to a breach of a contractual core duty are caused by slight negligence, Jive is liable only for the amount of the damage which was typically foreseeable. Contractual core duties, abstractly, are such duties whose accomplishment enables proper fulfillment of the Agreement in the first place and whose fulfillment a contractual party regularly may rely on. Jive’s liability based on the German Product Liability Act remains unaffected. Any further liability of Jive is excluded. The limitation period for claims for damages against Jive expires after one (1) year, except for such cases covered by sentences 1, 2 or 6.”

10. In Section 9.0, the following words are added:

“The Receiving Party’s obligation under this Section 9.0 shall expire five years after the term of this Agreement.”

11. In Section 11.2, after the words “30 days of the date of” the following words are added:

“Customer’s receipt of”

12. Notwithstanding Section 15.0, This Agreement shall be governed by the laws of Germany without regard to the 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 courts of Hamburg, Germany. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or enforcement of this Agreement.

All countries in the Japan and Asia Pacific (JAPAC) region

1. Section 2 of the recitals in the Agreement shall be amended to:

“BY ACCESSING OR USING THE BASE PLATFORM (AS DEFINED BELOW) WITHOUT AN APPLICABLE OTHER AGREEMENT OR BY OTHERWISE AGREEING IN WRITING TO THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU HEREBY ACCEPT ALL THE TERMS AND CONDITIONS SET OUT HEREUNDER IN THIS LICENSE AND PROFESSIONAL SERVICES AGREEMENT FOR THE RIGHT TO USE THE SOLUTION AND RECEIVE PROFESSIONAL SERVICES (EACH AS DEFINED BELOW) PROVIDED BY JIVE SOFTWARE, INC., A DELAWARE CORPORATION (“WE” OR “JIVE”) (THE “AGREEMENT”).”

2. Section 15.0 of the Agreement shall be amended as follows:

a. The following sentence shall be deleted:

“This Agreement may be executed in counterparts.”

b. The following sentence shall be added:

“A person who is not a party to this Agreement shall not be able to enforce any term in this Agreement under any laws purporting to grant such rights, which shall be excluded to the fullest extent permissible.”

c. The following sentences shall be deleted:

“This Agreement shall be governed by the laws of the State of California, without regard to its 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 Santa Clara County, California.”

and be replaced with:

“The Customer acknowledges and agrees that in the event of any breach or threatened breach of this Agreement, Jive shall be authorized and entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief in addition to any other rights or remedies to which Jive may be entitled. This Agreement shall be governed by and determined in accordance with the laws of the Republic of Singapore and the parties hereby submit to the non-exclusive jurisdiction of the courts of the Republic of Singapore.”

Brazil:

1. Section 2 of the recitals in the Agreement shall be amended to:

“BY ACCESSING OR USING THE BASE PLATFORM (AS DEFINED BELOW) WITHOUT AN APPLICABLE OTHER AGREEMENT OR BY OTHERWISE AGREEING IN WRITING TO THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU HEREBY ACCEPTS ALL THE TERMS AND CONDITIONS SET FORTH IN THIS LICENSE AND PROFESSIONAL SERVICES AGREEMENT BETWEEN JIVE SOFTWARE, INC., A DELAWARE CORPORATION (“WE” OR “JIVE”) AND CUSTOMER (THE “AGREEMENT”).”

2. The following words shall be added to the beginning of Section 8.0:

“NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, NEITHER PARTY EXCLUDES OR LIMITS ITS LIABILITY FOR (I) WILLFUL MISCONDUCT, OR (II) ANY OTHER LIABILITY WHICH MAY NOT LAWFULLY BE EXCLUDED OR LIMITED.”

3. The following words shall be added to Section 8.0:

“CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIMITATIONS SET FORTH IN THIS SECTION 8.0 ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT AND THAT IN THE ABSENCE OF SUCH LIMITATION THE PRICES AND OTHER TERMS PROVIDED FOR HEREIN WOULD BE SUBSTANTIALLY DIFFERENT.”

4. The following words shall be added to Section 15.0:

“For purposes of determining the governing law, the parties acknowledge that Jive is the proponent of this Agreement and of the business transactions embodied herein.”