

JAMA SOLUTION

CLOUD SERVICES AGREEMENT

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 JAMA SOFTWARE, INC. ("JAMA") 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 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 JAMA, A DELAWARE CORPORATION ("WE" OR "JAMA"), AN OFFER TO OBTAIN THE RIGHT TO USE THE SOFTWARE UNDER THE PROVISIONS OF THIS SOFTWARE LICENSE 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 SOFTWARE LISTED ON THE ORDER CONFIRMATION PAGE, QUOTE, QUOTE AND/OR INVOICE (EACH A "QUOTE") WHICH JAMA 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, JAMA IS UNWILLING TO PROVIDE THE SOFTWARE OR PROFESSIONAL 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 PROFESSIONAL SERVICES.

CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS A PARTY TO THIS AGREEMENT WITH JAMA AND THAT JAMA MAY ENFORCE THESE TERMS AND CONDITIONS AGAINST CUSTOMER EVEN IF THE QUOTE (DEFINED BELOW) HAS BEEN ISSUED AND/OR EXECUTED BY A RESELLER.

1. **Ordering.** Under this Agreement Customer may order from Jama or one of its authorized resellers (a) licenses to the Jama's standard software offerings (in object code format and made available on a hosted basis unless otherwise noted) ("Solution"), (b) related maintenance and support services ("Maintenance and Support") and/or (d) consulting, implementation or other professional services ("Professional Services"). The specifics of each Customer order will be set forth on a confirmation page, quote, invoice or other ordering form that references this Agreement and is mutually agreed to by the parties in writing (each, an "Quote"). Customer's execution of an Quote constitutes a binding commitment to purchase the items described therein under the terms of this Agreement. All mutually executed Quotes are incorporated herein by reference.

2. **Provision of Solution and Restrictions.**

2.1. Provision. Subject to the terms of this Agreement and solely during the license term set forth in the Quote ("License Term"), Jama will make the Solution and the related descriptions, instructions, or other documentation provided in connection therewith ("Documentation") available to Customer upon mutual execution and delivery of an Quote. Certain components and modules of the Solution may be developed and licensed by a third party and additional terms and conditions may apply and will be specified on the Quote. In connection with providing access to the Solution, Jama will comply with the hosting requirements set forth on Exhibit A.

2.2. Implementation Types. Jama makes the Solution available for use by Customer's employees, partners, consultants, contractors and other individuals designed by Customer (each a "User") under one of several models. The type and number of licenses obtained by the Customer (including a description of the rights associated therewith) are specified in the relevant Quote.

2.3. **Restrictions:** Customer agrees not to: (a) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Solution; (b) distribute, lend, rent, sell, transfer or grant sublicenses to, or otherwise make available the Solution (or any portion thereof or information resulting therefrom) to parties other than authorized Users; (c) create modifications to or derivative works of Solution; (d) reproduce Solution except that Customer may make one archival copies of the Solution solely for backup purposes; (e) attempt to modify, alter or circumvent any license control mechanisms within the Solution; (f) use or transmit the Solution in violation of any applicable laws, including, without limitation any data privacy or data protection laws; (g) in any way access, use, or copy any portion of the Documentation or 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 any Jama products or services or (h) remove, obscure or alter any copyright notices or any name, logo, tagline or other designation of Jama displayed on any display screen within Solution (“**Jama Marks**”). Customer will not permit any party to perform any of the foregoing 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 Solution” and “commercial computer Solution 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.

2.4. **Hosting Services Terms.**

- 2.4.1. As between Jama and Customer, Customer is responsible for the substance of and permissions necessary for all information, content and data that Users upload into the Hosted Software (the “Hosted Data”).
- 2.4.2. In no event may the aggregate size of the Hosted Data exceed 100 gigabytes (“Default Capacity”). Customer may purchase additional capacity beyond the Default Capacity.
- 2.4.3. Neither Customer nor any User shall use the Hosting Services or Solution in connection with any (a) infringement or misappropriation of any intellectual property right of any third party; (b) defamation, libel, slander, obscenity, or violation of the rights of privacy or publicity of any third party; or (c) other offensive, harassing or illegal conduct. Customer shall, and will ensure that all Users shall, comply with the terms and conditions of the Acceptable Use Policies pertaining to the use of the Hosting Services and Solution as provided or made available by Jama. Jama’s current Acceptable Use Policy is located at <<http://www.jamasoftware.com/legal>>. Such policies are in-corporated herein by reference and may be amended from time to time as required by applicable law or Jama’s third party hosting provider. Jama reserves the right to take down, delete and/or block access (whether temporarily or permanently) to any Hosted Data that violates any of the provisions of this Section or in respect of which Jama receives a complaint from any person. Customer is responsible for establishing and enforcing terms of use and privacy policies applicable that govern use of the Hosting Services and Solution by Users as permitted under this Addendum and applicable law. In relation to all personal data comprised within any Hosted Data, Customer warrants that such personal data shall have been obtained and supplied to Jama in compliance with applicable data protection legislation, including Customer having obtained all necessary consents and approvals from Users that are necessary to permit Jama to provide the Solution.

- 3. **Bankruptcy.** All licenses granted pursuant to this Agreement are, for the purposes of Section 365(n) of the U.S. Bankruptcy Code (“**Code**”), deemed to be licenses of rights to “intellectual property as defined under Section n101 of the Code. In any bankruptcy or insolvency proceeding involving Jama, Customer (as licensee of such rights) will retain and fully exercise all of its rights and elections under the Code will apply notwithstanding conflicts of law principles.
- 4. **Professional Services.** If indicated in the Quote, Jama will perform Professional Services. The particulars of each Professional Services engagement (including any deliverables to be provided in connection therewith (“**Deliverables**”)) will be as set forth in Jama’s standard data sheets provided to Customer and/or one or more statements of work (each an “**SOW**”) entered into by the parties. In a timely manner, Customer will provide all assistance reasonably requested by Jama in connection with the Professional Services.
- 5. **Proprietary Rights.** As between the parties, (a) Customer and its suppliers shall retain ownership to all Customer Confidential Information, all pre-existing Customer intellectual property and all data, requirements and other content of any kind uploaded by Customer and its Users through the Solution (collectively, “**Customer Content**”), and (b) Jama and its suppliers will retain all right, title and interest in and to the Jama Marks, Solution, all Documentation, all Updates and Upgrades thereto, the 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 Jama, including any and all other intellectual property and other proprietary rights to the

foregoing. Customer acknowledges the good will associated with the Jama Marks. All rights not expressly licensed by Jama hereunder are reserved. Customer's rights to the Deliverables shall be the same as Customer rights to the Solution to which such Deliverables pertain.

6. Representations and Warranties.

6.1. Limited Performance Warranty. Jama represents and warrants that (a) it will perform all Professional Services in a professional manner consistent with industry standards and practices, (b) for the License Term (the "Solution Warranty Period") the Solution, when used as permitted under this Agreement and in accordance with the instructions in Jama's published user documentation ("Documentation"), will perform in all material respects as described in the Documentation and (c) upon delivery the Solution will not contain any time bombs or other computer Solution routines intentionally designed to permit unauthorized access to the Solution or Customer Content by a third party or to cause damage to Customer Content or Customer's systems ("Viruses"). In the event of any breach of the warranties in Sections 6.1(a) or (b) above, Jama shall, as its sole liability and Customer's sole remedy, diligently remedy any deficiencies after receipt of written notice from Customer. If Jama determines that it is unable to remedy the deficiency, Jama will refund to Customer a pro-rata portion of the license fees actually paid by Customer to Jama for the defective Solution and, in such instance, Customer's right to use that particular Solution will terminate. Jama will not be liable to the extent that any breach of the foregoing warranties are caused by (a) third-party components (including in combination with the Solution) not provided by Jama or any open source components or freeware; (b) modifications to the Solution other than Updates or Upgrades; or (c) unauthorized use or use of the Solution other than in accordance with the Documentation; or (d) Viruses introduced by Customer or its Users (collectively, "Exclusions").

6.2. Service Levels. Jama will comply with the service level requirements set forth on Exhibit A.

6.3. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, THE SOLUTION, PROFESSIONAL SERVICES, AND DELIVERABLES, ARE PROVIDED "AS IS" AND JAMA HEREBY DISCLAIMS ALL WARRANTIES, IMPLIED OR EXPRESS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS, NON-INFRINGEMENT, TITLE, ACCURACY, AND COURSE OF DEALING. Jama does not warrant that use of the Solution will be error-free or uninterrupted. During any trial, evaluation or other short-term promotional offering, the Solution is made available "AS IS" and Section 6 shall not apply.

7. Indemnification. Jama will defend or settle, at its own expense, any claim or suit by a third party against Customer alleging that the Solution infringes any trademark, copyright, or trade secret recognized in the United States, Canada or any member country within the European Union. Jama will also pay all damages and costs that by final judgment may be assessed against Customer due to such infringement. If the Solution (or any component thereof) becomes, or in Jama's reasonable opinion is likely to become, the subject of an infringement claim, Jama may, at its option and expense, either (y) procure for Customer the right to continue exercising the rights licensed to Customer in this Agreement or (z) replace or modify the Solution so that it is non-infringing and reasonably functionally equivalent. If neither of the foregoing options are in Jama's reasonable opinion, commercially reasonable, Jama may terminate the applicable Quote and refund to Customer a pro-rata portion of the applicable prepaid subscription fees. Jama's obligation as set forth in the foregoing paragraph is expressly conditioned upon the following: (1) that Jama shall be notified promptly in writing by Customer of any claim or suit; (2) that Jama shall have sole control of the defense or settlement of any claim or suit; (3) that Customer shall cooperate with Jama in a reasonable way to facilitate the settlement or defense of any claim or suit; and (4) that the claim or suit does not arise from any combinations of Solution with non-Jama programming or devices. Jama's indemnification obligations shall not apply to the extent that any claim or liability results from any Exclusion or unsupported version of the Solution. This Section 7 states Jama's entire liability and Customer's sole and exclusive remedy for infringement claims and actions.

8. Limitation on Liability. EXCEPT FOR LIABILITY UNDER SECTION 7 ABOVE, IN NO EVENT SHALL JAMA OR ITS SUPPLIERS BE LIABLE TO CUSTOMER, USERS OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES TO BUSINESS REPUTATION, LOST BUSINESS OR LOST PROFITS), WHETHER FORESEEABLE OR NOT AND HOWEVER CAUSED, EVEN IF JAMA IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL LIABILITY OF JAMA OR ITS SUPPLIERS TO CUSTOMER, USERS OR ANY THIRD PARTY EXCEED THE FEES PAID BY CUSTOMER HEREUNDER.

9. Maintenance and Support Services. If purchased by Customer, Jama will begin providing Maintenance and Support in accordance with the terms and conditions set forth in the applicable Maintenance and Support Services Agreement made available at <<http://www.jamasoftware.com/legal>>, which such terms are incorporated herein by reference (the “Support Terms”).

10. Confidentiality.

10.1. General. Each party acknowledges that it may have access to certain confidential information of the other party concerning the other party’s business, plans, customers, technology, products and services (“Confidential Information”). Confidential Information will include, but not be limited to, each party’s proprietary Solution, technology and trade secrets and customer information, to the extent identified as confidential or proprietary, and the terms and conditions of this Agreement. Each party agrees that it will not use in any way, for its own account or the account of any third party, nor disclose to any third party (except as required by law or to the disclosing party’s attorneys, accountants and other advisors as reasonably necessary and subject to the confidentiality provisions hereof), any of the other party’s Confidential Information, whether received prior to or following the Effective Date, and will take reasonable precautions to protect the confidentiality of Confidential Information. If either party is required by a court order or other binding legal obligation to disclose Confidential Information of the other party, then it will, to the extent permitted, notify the other party and use reasonable efforts to prevent or limit the scope of such disclosure.

10.2. Exclusion. Information will not be deemed Confidential Information hereunder if such information: (i) is rightfully known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality of the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.

11. Term and Termination.

11.1. Term. This Agreement will remain in effect until terminated. The term of each license to use the Solution and related Maintenance and Support will be as set forth on the Quote. Each Solution will automatically renew for the renewal period specified in the Quote, if any, or, if not specified, for a period of one year unless one party notifies the other party at least 30 days prior to the commencement of the renewal term that it does not wish to renew.

11.2. Termination. Either party may terminate this Agreement thirty (30) days after giving written notice to the other party if the other party materially breaches any term of this Agreement and fails to cure such breach within such period after receiving written notice describing the breach from the non-breaching party.

11.3. Effect. 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 Solution); provided that Sections 2.3, 3, 5, 6.2, 8, 10, 11.3, 12, and 13 shall survive termination, and (b) Customer shall promptly pay to Jama any outstanding fees that have accrued prior to the date of termination.

12. Fees and Payment. Subject to the terms and conditions below, all fees for the Solution licenses, Hosting Services, Professional Services and/or Maintenance and Support will be set forth on the applicable Quote. Unless otherwise agreed to in writing by the parties, Customer will pay all undisputed fees owed within thirty (30) days after Jama’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 Jama’s income).

13. Miscellaneous. Not more than once per year Jama may audit Customer’s use of the Solution to ensure that Customer is operating within the license parameters and other requirements of this Agreement. The parties are independent contractors with respect to each other. 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. 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. 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. 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 Delaware excluding its conflicts of law principles. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to this Agreement shall be the courts located in the state of either party's headquarters. 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. This Agreement includes any applicable Quotes and other terms and conditions incorporated herein by reference. 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. The terms on any purchase order or similar document submitted by Customer to Jama 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 with a copy to each party's General Counsel.

Exhibit A

Hosting Services and SLA

3.1 Admin Users. The Solution will include a restricted-access administrative interface component (“Administrative Interface”) to allow Admin Users to access the configuration and settings components of the Solution to manage, configure and monitor the Solution for Customer’s benefit. Each Admin User will be assigned a unique user identification name and password for access to and use of the Administrative Interface (“Admin User ID”). Customer shall be responsible for ensuring the security and confidentiality of all Admin User IDs. Customer acknowledges that it will be solely and fully responsible for all liabilities incurred through use (permitted or unpermitted) of any Admin User ID.

3.2 Hosted Data.

(a) As between Jama and Customer, Customer is responsible for the substance of and permissions necessary for all information, content and data that Users upload into the Hosted Software (the “Hosted Data”).

(b) In no event may the aggregate size of the Hosted Data exceed 100 gigabytes (“Default Capacity”). Customer may purchase additional capacity beyond the Default Capacity.

3.3 Acceptable Use. Neither Customer nor any User shall use the Hosting Services or Solution in connection with any (a) infringement or misappropriation of any intellectual property right of any third party; (b) defamation, libel, slander, obscenity, or violation of the rights of privacy or publicity of any third party; or (c) other offensive, harassing or illegal conduct. Customer shall, and will ensure that all Users shall, comply with the terms and conditions of the Acceptable Use Policies pertaining to the use of the Hosting Services and Solution as provided or made available by Jama. Jama’s current Acceptable Use Policy is located at <<http://www.jamasoftware.com/legal>>. Such policies are incorporated herein by reference and may be amended from time to time as required by applicable law or Jama’s third party hosting provider. Jama reserves the right to take down, delete and/or block access (whether temporarily or permanently) to any Hosted Data that violates any of the provisions of this Section or in respect of which Jama receives a complaint from any person. Customer is responsible for establishing and enforcing terms of use and privacy policies applicable that govern use of the Hosting Services and Solution by Users as permitted under this Addendum and applicable law. In relation to all personal data comprised within any Hosted Data, Customer warrants that such personal data shall have been obtained and supplied to Jama in compliance with applicable data protection legislation, including Customer having obtained all necessary consents and approvals from Users that are necessary to permit Jama to provide the Solution.

3.4 Security. Jama shall require any Hosting Facility to (i) establish and maintain appropriate technical and organizational measures to protect against accidental damage to, or destruction, loss, or alteration of Hosted Data; (ii) establish and maintain appropriate technical and organizational measures designed to protect against unauthorized access to the Hosting Infrastructure and Hosted Data; and (iii) establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Solution. Jama is not responsible for the security of Hosted Data while in transit over the Internet. As part of Hosting Services, Jama does not scan for the existence of Harmful Code within the Solution generally nor does it scan downloaded files prior to opening by the User. For purposes of this Section 3.4, “Harmful Code” means computer software routines intention-ally designed to permit unauthorized access to or use of the Solution, Hosting Infrastructure or Customer’s computer sys-tems (e.g., a “back door,” “time bomb,” “trojan horse,” “worm,” “drop dead device,” “preventative routine” or “virus”).

4. Uptime: Jama will use commercially reasonable efforts to ensure that the Solution will be available at least 99.5% of the time, as measured monthly, subject to the exclusions set forth below and also excluding scheduled downtime and any time necessary to implement any Updates, Upgrades or other modifications to the Hosted Software (“Uptime Target”). Jama will notify Licensee at least twenty-four (24) hours prior to any scheduled downtime and will use commercially reasonable efforts to minimize the effect of such maintenance on the Solution. The Uptime Target shall not apply in the event of any causes beyond the control of Jama or its hosting provider, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion, denial of service attacks, failure of the Internet generally, any actions or inactions of Licensee or any third party, or other failures.

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 Quote 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 2.3(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. 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.
4. Notwithstanding Section 13, 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, the words “terminate this Agreement” are replaced with the words: “terminate as of right (“de plein droit”) without any judicial formalities”.
2. Section 8 is replaced with the words: “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 JAMA 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 A BREACH OF SECTION 10.0 OF THIS AGREEMENT, OR IN CONNECTION WITH A PARTY’S INDEMNIFICATION OBLIGATIONS.”
3. In Section 11.2, the words “may be terminated” are replaced with the words “may be terminated as of right (“de plein droit”) without any judicial formalities.”
4. In Section 12, after the words “Unless otherwise agreed to in writing by the parties including in a Pricing Schedule, Customer will pay to Jama or the Reseller, as applicable, all undisputed Fees owed within 30 days of the date of the invoice pertaining thereto”, the following words are 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.”

5. In Section 12, replace 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 Jama’s income) will be separately and specifically stated (and are the responsibility of Customer)”, with the following: “All amounts payable shall be in the currency dictated by Jama or its resellers and any and all applicable sales, use and other taxes (other than taxes based on Jama’s income) will be separately and specifically stated (and are the responsibility of Customer). Accordingly, if any amount to be paid under this Agreement to Jama 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 Jama or the Reseller, as the case may be, as is necessary so that the net amount actually received by Jama or the Reseller after such deduction, payment or withholding will equal the full amount stated to be payable under this Agreement”.

6. Notwithstanding Section 13.0, 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 2.1, after the words “Jama grants to Customer a” the word “non-perpetual” is added.

2. In Section 2.3, 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”.

3. In Section 2.3, 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.”

4. 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 shall be remedied by Jama through free-of-charge removal of defects (repair) or replacement. 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.

5. In section 6.1, the following words are added: “Any warranty claims against Jama shall expire after one year provided that Jama did not cause a defect intentionally or in case of breach of a guarantee.”

6. Section 8 is replaced with the following words: “For damages with respect to injury to health, body or life caused by Jama, Jama’s representatives or Jama’s agents in the performance of the contractual obligations, Jama is fully liable. Jama is fully liable for damages caused willfully or by gross negligence by Jama, Jama’s representatives or Jama’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 Jama or to damages which result from malicious action of Jama. If damages, except for such cases covered by sentence no. 1 or sentence no. 4, with respect to a breach of a contractual core duty are caused by slight negligence, Jama 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. Jama’s liability based on the German Product Liability Act remains unaffected. Any further liability of Jama is excluded. The limitation period for claims for damages against Jama expires after one (1) year, except for such cases covered by sentences 1, 2 or 4.”

7. In Section 10, the following words are added: “The Receiving Party’s obligation under this Section 10 shall expire five years after the term of this Agreement.”

8. In Section 11.2 after the words “30 days of the date of” the following words are added: “Customer’s receipt of”

9. Notwithstanding Section 13, this Agreement shall be governed by the laws of Germany. 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.

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

1. Section 2 of the recitals in the Agreement shall be amended to: “BY COMPLETING THE ONLINE REGISTRATION FORM AND CLICKING THE “I AGREE” BUTTON, ACCESSING OR USING THE SOFTWARE (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 AGREEMENT

FOR THE RIGHT TO USE THE SOFTWARE AND RECEIVE PROFESSIONAL SERVICES (EACH AS DEFINED BELOW) PROVIDED BY JAMA SOFTWARE, INC., A DELAWARE CORPORATION (“WE” OR ”JAMA”) (THE “AGREEMENT”).”

2. Section 13 of the Agreement shall be amended as follows:

- a. The following sentence shall be added to Section 13: “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.”
- b. The following sentences shall be deleted from Section 13: “This Agreement shall be governed by the laws of the State of Oregon, 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 the jurisdiction of the headquarters of either party.” and be replaced with: “The Customer acknowledges and agrees that in the event of any breach or threatened breach of this Agreement, Jama 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 Jama 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.”

South America:

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

“BY COMPLETING THE ONLINE REGISTRATION FORM AND CLICKING THE “I AGREE” BUTTON, ACCESSING OR USING THE SOFTWARE 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 FORTH IN THIS AGREEMENT BETWEEN JAMA SOFTWARE, INC., A DELAWARE CORPORATION (“WE” OR “JAMA”) AND CUSTOMER (THE “AGREEMENT”).”

2. The following words shall be added to the beginning of Section 8: “NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, NEITHER PARTY EXCLUDES OR LIMITS ITS LIABILITY FOR (I) GROSS NEGLIGENCE OR 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: “CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIMITATIONS SET FORTH IN THIS SECTION 8 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 13: “For purposes of determining the governing law, the parties acknowledge that Jama is the proponent of this Agreement and of the business transactions embodied herein.”