

License Agreement

Terms

This License Agreement (the "Agreement") consists of the Invoice ("Invoice") and the following terms and conditions ("Terms") and is effective as of the date stated on the Invoice (the "Effective Date"). This Agreement is entered into by and between Jotto, Inc, a Delaware Corporation having its principal place of business at 29 Usonia Road, Pleasantville, NY 10570, US ("Jotto") and the person, entity or organization listed on the Invoice (the "Licensee"). Each of Jotto and Licensee is a "party."

In consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** Capitalized terms shall have the meanings set forth or referred to in this Section, or in the Section in which they first appear in the Agreement.

"Action" means any third-party claim, suit, action or proceeding alleging that the Software infringes or misappropriates any United States patent issued on or before the Effective Date, or any copyright or trademark of that third party.

"Confidential Information" means all nonpublic or proprietary information treated as confidential by a party, including all: (a) information concerning a party's past, present and future business affairs including finances, products, services, organizational structure, internal practices, forecasts and sales; (b) unpatented inventions, ideas, methods and discoveries, trade secrets, know-how and other confidential intellectual property; (c) designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing; (d) any third-party confidential information included with, or incorporated in, any information provided by a party; and (e) all Notes prepared by or for a party or its Representatives that contain, reflect or are derived from, in whole or in part, any of the foregoing. Except as required by applicable federal, state or local law or regulation, "Confidential Information" shall not include information that, at the time of disclosure: (1) is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Agreement by the receiving party or any of its Representatives; (2) is, or thereafter becomes, available to the receiving party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (3) was known by or in the possession of the receiving party or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of the disclosing party; or (4) was or is independently developed by the receiving party, as established by documentary evidence, without reference to or use of, in whole or in part, any of the disclosing party's Confidential Information.

"Controlled Technology" has the meaning set forth in Section 5.

"Documentation" means user manuals, technical manuals and any other materials provided by Jotto, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the Software.

"Initial Term" has the meaning set forth in Section 10.1.

"Intellectual Property Rights" means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases, (d) trade secrets, know and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law, regulations or rules in any jurisdiction throughout the world.

"Legal Order" has the meaning set forth in Section 9.2.

"Loss" or **"Losses"** means damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses, including reasonable attorneys' fees, resulting from any Action that is subject to indemnification under Section 12.

"Maintenance Release" means any update or release of the Software that Jotto may provide to the Licensee from time to time during the Term, that may contain, among other things, error corrections, enhancements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software, but does not constitute a New Version.

"New Version" means any new version of the Software that Jotto may from time to time introduce and market generally as a distinct licensed product, and which Jotto may make available to the Licensee at an additional cost under a separate written agreement.

"Notes" means any notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations or other materials, in printed, electronic or other form.

“Permitted Use” means distribution and use of the Software within the Territory for recording, editing, communicating and distributing audio, video, text and other data.

“Representatives” means a party’s and its successors’ and permitted assigns’ affiliates, employees, officers, directors, partners, shareholders, agents, attorneys and third-party advisors.

“Software” means the computer programs referenced on the Order Form, together with any Maintenance Releases provided to the Licensee pursuant to this Agreement. The Software is provided in executable form (a/k/a “object code”) and not in source code or source formats.

“Term” has the meaning set forth in Section 10.1.

“Territory” means the geographic area stated on the Order Form.

2. **License Grant.** Jotto hereby grants to the Licensee a non-exclusive, non-transferable, limited license to distribute and use the Software and Documentation in the Territory during the Term, solely in accordance with the terms and conditions of this Agreement.
3. **Permitted Use.** The Licensee shall use the Software solely for its Permitted Use, except as otherwise expressly provided in this Agreement.
4. **Use Restrictions.** The Licensee shall not, and shall not permit any Representatives or third parties to, in any manner:
 - 4.1. modify, alter, amend, fix, translate, enhance or otherwise create derivative works of the Software;
 - 4.2. reverse engineer, disassemble, decompile, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part, except as and only to the extent this restriction is prohibited by law or, with respect to open source components included in the Software, under the applicable open-source software license agreements governing the use of these components;
 - 4.3. remove, disable, or otherwise create or implement any workaround to, any security features contained in the Software;
 - 4.4. remove, delete or alter any trademarks, copyright notices or other Intellectual Property Rights notices of Jotto or its licensors, if any, from the Software;
 - 4.5. copy the Software except as expressly permitted for distribution and use as stated in this Agreement. Any copy of the Software made by the Licensee:
 - (a) shall remain the exclusive property of Jotto;
 - (b) be subject to the terms and conditions of this Agreement; and
 - (c) must include all copyright or other Intellectual Property Rights notices contained in the original;
- 4.6. charge any third party for access to or use of the Software;
- 4.7. permit any for-profit entity from advertising on or in connection with the Software;
- 4.8. use the Software in violation of any federal, state or local law, regulation or rule; or
- 4.9. use the Software for purposes of competitive analysis, the development of a competing software product or service or any other purpose that is to Jotto’s commercial disadvantage.
5. **Export Regulation.** The Software, Documentation and any related technical data, and products utilizing the Software, Documentation or such technical data (collectively, **“Controlled Technology”**) may be subject to United States export control laws, including the US Export Administration Act and its associated regulations. The Licensee shall not, and shall not permit any third parties to, export, re-export or release, directly or indirectly any Controlled Technology to a jurisdiction or country to which the export, re-export or release of any Controlled Technology is prohibited by applicable federal law, regulation or rule. The Licensee shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting or re-exporting any Controlled Technology.
6. **Support.** In consideration of the fees set forth in Exhibit B of this Agreement, Jotto shall provide ten (10) hours of remote support, for the purpose of installation and customization of the Software. While Licensee may set reasonable objectives for this period of support, in no event shall Jotto be obligated to provide support beyond the ten hours referenced in this section. At the request of Licensee, and at the sole discretion of Jotto, Jotto may provide, at Jotto’s then existing hourly rate (currently \$350 per hour), additional remote support. For the avoidance of doubt, Jotto is under no duty to prepare or provide the Licensee or any other party any Maintenance Releases or New Versions, but may do so for additional fees in Jotto’s sole discretion.
7. **Fees.**
 - 7.1. **Support Fees.** In consideration of Jotto providing support services under this Agreement, the Licensee shall pay to Jotto the fees set forth the Order Form in accordance with the terms of this section.

- 7.2. **Payment Terms.** Except as otherwise stated on the applicable Order Form, the Licensee shall pay 100% of the License Fees due and owing under this Agreement on or within 30 days of the Effective Date. All payments hereunder shall be in US dollars and made by check, direct deposit or wire transfer.
- 7.3. **Late Payment.** The Licensee shall notify Jotto in writing of any dispute with any invoice, along with all relevant details regarding the dispute, within 10 days from the date of invoice. Invoices for which no such timely notification is received shall be deemed accepted by the Licensee as true and correct. All undisputed late payments shall bear interest at the lesser of the rate of 9% simple interest per year or the highest rate permissible under applicable law, calculated daily and compounded monthly. In addition to all other remedies available under this Agreement or at law, which Jotto does not waive by the exercise of any rights hereunder, Jotto shall be entitled to suspend the Licensee's use of the Software if the Licensee fails to pay any amount when due hereunder and such failure continues for 30 days following written notice thereof.
- 7.4. **Taxes.** The Licensee shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by the Licensee hereunder; provided, that, in no event shall the Licensee pay or be responsible for any taxes imposed on, or with respect to, Jotto's income, revenues, gross receipts, personnel or real or personal property or other assets.
8. **Ownership.** The Licensee acknowledges and agrees that the Software is being licensed, not sold, to the Licensee by Jotto. The Licensee further acknowledges and agrees that it shall not acquire any ownership interest in the Software under this Agreement, and that Jotto shall retain its entire right, title and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software except as expressly granted to the Licensee in this Agreement. The Licensee shall promptly notify Jotto if the Licensee becomes aware of any possible third-party infringement of Jotto's Intellectual Property Rights arising out of or relating to the Software and fully cooperate with Jotto, in any legal action taken by Jotto against third parties to enforce its Intellectual Property Rights. The Licensee shall use commercially reasonable efforts to safeguard the Software from infringement, misappropriation, theft, misuse or unauthorized access.
9. **Confidentiality.**
- 9.1. **Receiving Party Obligations.** Each party acknowledges and agrees that they each may gain access to or become familiar with the other party's Confidential Information. Except as set forth in Section 9.2, each party, as the receiving party of the other party's Confidential Information, shall:
- protect and safeguard the confidentiality of the disclosing party's Confidential Information with at least the same degree of care as the receiving party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
 - not use the disclosing party's Confidential Information, or permit it to be accessed or used, for any purpose other than to perform its obligations under this Agreement, or otherwise in any manner to the Disclosing party's detriment;
 - not disclose any such Confidential Information to any person or entity, except to the receiving party's Representatives who (1) need to know the Confidential Information to assist the receiving party, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement; (2) are informed by the receiving party of the confidential nature of the Confidential Information; and (3) are subject to confidentiality duties or obligations to the receiving party that are no less restrictive than the terms and conditions of this Agreement; and
 - be responsible for any breach of this Agreement caused by any of its Representatives.
- 9.2. **Required Disclosure.** The receiving party may disclose the disclosing party's Confidential Information pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a "**Legal Order**"), provided that the receiving party shall first make commercially reasonable efforts to provide the disclosing party with:
- prompt written notice of such requirement (unless such notice is prohibited by applicable law or regulation) so that the disclosing party may seek, at its sole cost and expense, a protective order or other remedy; and
 - reasonable assistance, at the disclosing party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.
10. **Term; Termination.**
- 10.1. **Term.** This Agreement shall commence on the Effective Date and, unless terminated earlier pursuant to any of its express provisions, shall continue thereafter for a period of one year (the

“**Initial Term**”), and shall thereafter automatically renew for additional periods of one year each (each, a “**Renewal Term**”).

10.2. **Termination.** This Agreement may be terminated by either party on written notice to the other party:

- (a) by Jotto, if the Licensee fails to pay any amount when due hereunder;
- (b) by Jotto, if the Licensee commits a material breach of any material provision of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by the Licensee within 30 days after the Licensee’s receipt of written notice of such breach; or
- (c) by the Licensee if it chooses not to continue to use or distribute the Software.

10.3. **Effect of Termination.** The expiration or termination of this Agreement, for any reason, shall not release either party from any liability to the other party, including any payment obligation, which has already accrued hereunder. On the expiration or termination of this Agreement, for any reason, the Licensee shall:

- (a) immediately discontinue all use and distribution of the Software;
- (b) within 30 days, at Jotto’s option and at the Licensee’s expense, return to Jotto or destroy all copies of the Software, Documentation and all materials containing Jotto’s Confidential Information. This requirement applies to partial and complete copies in all forms, in all types of media and computer memory, and whether or not modified or merged into other materials; and
- (c) within 30 days, certify in writing to Jotto that all such copies and materials have been returned or destroyed, and that Licensee’s use of the Software has been discontinued.

11. **Representations and Disclaimer.**

11.1 **Mutual Representations.** Each party represents to the other party that it:

- (a) is an entity duly organized and validly existing under the laws of its jurisdiction of organization;
- (b) is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement; and
- (c) has all necessary power and authority to negotiate, execute, deliver and perform its obligations under this Agreement.

11.2 **Disclaimer.** THE SOFTWARE IS PROVIDED “AS IS” AND Jotto EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, MEDIA AND ANY OTHER SERVICES AND MATERIALS PROVIDED TO THE LICENSEE UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, Jotto PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT THE SOFTWARE WILL MEET THE LICENSEE’S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES (EXCEPT AS EXPRESSLY SET FORTH IN THE DOCUMENTATION), OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE.

12. **Indemnity.**

12.1 **Jotto’s Indemnification Obligation.** Jotto and Licensee agree that Jotto shall not indemnify the Licensee or any third party under this Agreement.

12.2 **Licensee’s Indemnification Obligation.** The Licensee shall indemnify, defend and hold harmless Jotto and its Representatives from and against any Action that is brought against Jotto or its Representatives and all related Losses that are awarded against Jotto allegedly arising out of this Agreement or its performance, or the use or distribution of the Software.

12.3 **Control of Defense.** If Jotto receives notice or otherwise becomes aware of the commencement or threatened commencement of any Action for which indemnity may be sought under this Agreement, Jotto shall promptly provide the Licensee with written notice of such Action. On receipt of such notice, the Licensee shall be entitled to, at its sole option, assume the control of the defense, appeal or settlement of such Action. Jotto shall fully cooperate with the Licensee at the Licensee’s expense in connection therewith. Jotto shall be entitled at any time to employ separate counsel to represent Jotto, but if the defense, appeal or settlement of such Action has been assumed by the Licensee, any separate counsel employed by Jotto shall be at Jotto’s sole expense.

Jotto shall not settle any Action without the Licensee's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

13. **Equitable Remedies.** The Licensee acknowledges that a breach or threatened breach of this Agreement by the Licensee or its Representatives may cause irreparable harm to Jotto for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by the Licensee or its Representatives, Jotto shall, in addition to any and all other rights and remedies that may be available at law (which Jotto does not waive by the exercise of any rights hereunder), be entitled to seek a temporary restraining order, injunction, specific performance and any other equitable relief that may be available from a court of competent jurisdiction, and the parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

14. **Limitation of Liability.**

14.1. **No Consequential or Indirect Damages.** IN NO EVENT WILL JOTTO OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE LICENSEE OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT JOTTO WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.2. **Maximum Liability.** IN NO EVENT WILL JOTTO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID OR PAYABLE TO JOTTO PURSUANT TO THIS AGREEMENT. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

17. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, and the Federal laws of the United States of America, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any other jurisdiction. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

Any controversy between the parties hereto involving any claim arising out of or relating to this Agreement shall be finally settled by one arbitrator in binding arbitration administered by the International Centre for Dispute Resolution in accordance with its current International Arbitration Rules and Optional Rules for Emergency Measures of Protection. The arbitration will be based on the submission of documents and there shall be no in-person or oral testimony. The arbitration award shall be binding on the parties, and may be entered and enforced in any court or tribunal of competent jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of such arbitrator in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The Licensee shall not withhold payment of any fees owing under this Agreement by reason of any set-off of any claim or dispute with Jotto, whether relating to the quality or performance of the Software or otherwise.

18. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally or internationally recognized courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the addresses set forth on the applicable Order Form of this Agreement (or to such other address that may be designated by a party from time to time).

19. **Miscellaneous.**

19.1. **Further Assurances.** Each party shall, on the reasonable request and at the sole cost and expense of the other party, take, execute, acknowledge and deliver all such further acts, documents and instruments necessary to give full effect to this Agreement.

19.2. **Relationship of the Parties.** Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever.

19.3. **Publicity.** Neither party shall use the other party's trademarks, service marks, trade names,

logos, symbols or brand names, or otherwise issue or release any announcement, statement, press release or other publicity or marketing materials relating to the existence or subject matter of this Agreement, or the relationship between the parties, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

19.4. **Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. In the event of a conflict between the terms, provisions and conditions contained in the body of this Agreement and the terms, provisions and conditions contained in the Order Forms to this Agreement, the term, provisions and conditions contained in the body of this Agreement shall prevail. In no event shall the provisions of any purchase order or any associated documentation used by the Licensee, constitute a binding agreement between the parties or serve to modify the provisions of this Agreement, regardless of any failure of Jotto to object to any purchase order or associated documentation.

19.5. **Assignment.** The Licensee shall not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Jotto. Any purported assignment or delegation in violation of this section shall be null and void. No assignment or delegation shall relieve the Licensee of any of its obligations hereunder. Jotto may assign its rights under this Agreement effective upon sending written notice of the assignment to Licensee.

19.6. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

19.7. **Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in

exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19.8. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

19.9. **Attorneys' Fees.** In the event that either party institutes any legal suit, action or proceeding against the other party arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs.

19.10. **Interpretation.** This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Forms referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

19.11. **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

19.12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (to which a signed PDF copy is attached) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.