

**JENKINS SOFTWARE LLC**  
**RAKNET LICENSE AGREEMENT**

This License Agreement ("Agreement"), is entered into as of the date of the last authorized signature to this Agreement (the "Effective Date") between Jenkins Software LLC, having its principal place of business at 3151 Airway Ave. Building K 105, Costa Mesa, CA 92626 ("Jenkins"), and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_. ("Licensee").

**SECTION 1: DEFINITIONS**

1. Definitions. Capitalized terms used in this Agreement shall have the following meanings:

1.1 "Documentation" shall mean all manuals provided to Licensee by Jenkins and designated as documentation which describe the form, features or operation of the Software and which are contained in a tangible medium, such as written format, tape, magnetic or other media. Documentation shall include any Updates of Documentation which Jenkins may make available to Licensee pursuant to this Agreement or any support or other agreement with Licensee.

1.2 "Error" shall have the meaning assigned to it in Section 5.1.

1.3 "Software" shall mean the computer software programs described in the Term Sheet (Exhibit A) in object code and source code (if identified in the Term Sheet as being provided in source code format to Licensee) including Updates, if any, and accompanying Documentation as specifically licensed hereunder.

1.4 "Specifications" shall mean the technical and performance specifications for the Software which are contained in and distributed with the Documentation.

1.5 "Term Sheet" shall mean the specific scope, terms, conditions, territories and other details of the specific license between Jenkins and Licensee which is attached to this Agreement as Exhibit A and incorporated herein by this reference.

1.6 "Update" shall mean subsequent releases of the Software, including error corrections, modifications, additions or enhancements to the Software, which may be made available to Licensee during the Warranty Period under this Agreement, under a separate support agreement or at the election of Jenkins otherwise under this Agreement.

1.7 "Warranty Period" shall have the meaning assigned to it in Section 5.1.

**SECTION 2: SOFTWARE LICENSE**

2.1 Grant of the Software License. Subject to the restrictions in this Agreement and the provisions of the Term Sheet, Jenkins grants to Licensee a nonexclusive, non-transferable license:

(a) To embed certain software programs specified in the Term Sheet attached hereto (the "Software") in the product(s) set forth in the Term Sheet (the "Licensee Applications");

(b) To use and modify the Software to develop, support, maintain, extend and/or enhance the Licensee Applications;

(c) To distribute the Licensee Applications on the distribution platforms set forth in the Term Sheet pursuant to terms and conditions of a license agreement (for example each "Sublicense" or "End User License Agreement") at least as protective of Jenkins as those contained in this Agreement.

2.2 Restrictions on Use.

(a) Licensee shall not distribute any portion of the Software as a stand-alone product and shall not incorporate any portion of the Software into any product that will be sold or licensed as a development tool; provided, however, that Licensee may, subject to the terms, conditions, provisions, and restrictions set forth in this Agreement (including, without limitation, those set forth in the Term Sheet). Except to the extent such additional Licensee Applications are authorized in the Term Sheet, the term "Licensee Application" does not include, and the licenses granted herein do not extend to:

any sequels, add-ons, expansion packs, or the like that Licensee may develop and provide to users for a fee or under a subscription arrangement;

sequels, add-ons, and expansion packs include, without limitation, any software (whether a stand-alone executable or otherwise) that features, uses, or accesses the Software and that is tied in some way (whether by using a franchise title or subtitle or by its inability to run on any system unless the Licensee Application has been previously loaded or installed on such system) to the Licensee Application.

(b) Jenkins has provided in Exhibit B, attached hereto and incorporated herein by this reference, the text of certain contractual modifications to Licensee's End User License Agreements (such textual modification provided by Jenkins shall be referred to herein as a "Licensee EULA Insert"). Licensee agrees that it will not provide the Licensee Application utilizing the Software in a to any End User until such End User executes, or acknowledges his or her agreement by appropriate means, an End User License Agreement, or amended End User License Agreement for existing End Users, containing provisions substantially in the form of the Licensee EULA Insert.

(c) The Licensee Applications shall be distributed to End Users only in compiled executable form. Licensee shall not distribute or use the Software in any manner which may disclose the Software source code or other Jenkins proprietary information to a third party unless authorized to do so in the Term Sheet. The Software shall not be distributed, licensed or sublicensed in any manner other than as an integral part of a Licensee Application;

(d) Except as necessary to exercise its license rights herein, Licensee shall not copy, reproduce or duplicate the Software or any supporting documentation thereof, in any manner or form, in whole or in part. Licensee shall prevent any third parties from copying, reproducing or duplicating the Software and/or supporting documentation;

(e) Licensee must supply Jenkins with a registered copy of any Licensee Application that contains the Software code, at no cost to Jenkins.

**2.3** Proprietary Notices. Each copy of the Licensee Applications shall contain the same proprietary notices which appear on or in the Software as provided by Jenkins to Licensee and as otherwise reasonably required by Jenkins. Each Licensee Application will include a "splash screen" with the RakNet/Jenkins logo provided to Licensee by Jenkins. In addition, the "credits screen" and documentation to each Licensee Application distributed by Licensee shall include the following wording: "Portions of this software utilize RakNet 3.0 networking software (©2008 Jenkins Software LLC). RakNet is a trademark of Jenkins Software LLC, All rights reserved." The Jenkins Software LLC copyright notices in the Licensee Application shall include the same date as is set forth in the copyright notices that Jenkins has placed on the Software code delivered to Licensee. The Jenkins Software LLC copyright notices in the Licensee Applications shall be displayed on all packaging no less prominently displayed than those of other middleware applications used in Licensee's Applications. Any web site owned or controlled by Licensee that is dedicated to a Licensee Application will similarly display the RakNet/Jenkins Logo which will be hyperlinked to a web site designated by Jenkins.

**2.4** Support. Other than the warranty during the Warranty Period set forth in Section 5.1, Licensee is not entitled to any support or maintenance rights under this Agreement. Licensee can separately contract with Jenkins for support and maintenance pursuant to Jenkins' standard support agreement for so long as Jenkins offers support for the Software.

### **SECTION 3: PROPRIETARY RIGHTS**

**3.1** (a) Confidential Information. "Confidential Material" shall mean the specific terms of this Agreement itself, and any and all code, documentation, manuals, drawings, written guidelines, usage data, books and records, game information and quest data/text, tools, Personal Information (defined below) of customers, or other oral, written, visual, electronic and digital material (related to the Licensed Product, Licensed Materials or any aspect thereof) provided by either party which is marked as confidential, or that, by the nature of the circumstances surrounding disclosure ought, in good faith, to be treated as confidential and/or proprietary. The "Personal Information" shall mean any and all information on a specific individual, including, but not limited to, information identifying such specific individual in the form of written or electronic documents or disclosures, materials or data which are, orally or visually, disclosed by Licensee to, or otherwise acknowledged or learned by Licensor with respect to the Licensee's performance of the services described herein. The Personal Information includes information that can identify a specific individual together with other information with respect to the specific individual, even if such information can not identify the specific individual on its own.

(b) In addition to conforming to the specific security requirements above, each party shall keep the Confidential Material of the other confidential, shall not disclose any of the Confidential Information to any outside person or entity, and shall never use any of the Confidential Material other than in connection with the rights granted in this Agreement. In order to maintain the confidential nature of the other's Confidential Material, each party agrees to take security precautions of at least the same degree of care that it takes to protect its own confidential materials. Each party may disclose each specific piece of Confidential Material only to such limited group of its authorized employees and subcontractors who (a) require such information in connection with their activities contemplated by this Agreement, and, if applicable, (b) have signed any nondisclosure agreement, as may be required by the other in its ordinary course of business, which requires the employee to protect the Confidential Material to the degree the employee would protect the receiving party's own Confidential Material.

(c) For the purposes of this Agreement, "Confidential Material" shall not include any material which (a) has previously been or is being independently developed by the receiving party; (b) legitimately becomes part of information in the public domain through no fault of the receiving party or its employees; (c) becomes available to the receiving party on a non-confidential basis from a third party which, in its reasonable belief, is not, at the time such material is provided, under any conflicting legal obligation to the disclosing party; or (d) is required to be disclosed by administrative or judicial action; provided, however, that the receiving party attempts to maintain the confidentiality of such Confidential Material by asserting in such action any applicable privileges and the confidentiality provisions of this Agreement and, immediately after receiving notice of such action, notifies the disclosing party to give it the opportunity to seek other legal remedies to maintain such Confidential Material in confidence.

(d) In the event of any termination or expiration of this Agreement, both parties shall promptly return to the other all of the other's Confidential Information in tangible form, including without limitation all copies thereof and photographs, videotapes, printouts, notes and working papers provided to it in connection therewith, including all such items, materials and information in its possession or control or in the possession or control of any person permitted access to the Confidential Information. Alternatively, each party shall certify in a writing signed by an authorized officer or representative that the foregoing have been shredded and disposed of in a secure manner.

**3.2** Title to Intellectual Property. Nothing in this Agreement constitutes, or shall be construed to constitute, any transfer of title or ownership with respect to the Software, including without limitation transfer of any copyrights, patents, trademarks, trade secrets, intellectual property, source code, improvements, enhancements, sequence, logic, structure, or other proprietary rights therein, now or hereafter existing. Licensee acknowledges that (1) the Software, and all materials furnished or produced in connection therewith, including but not limited to source code, contains trade secrets of Jenkins, entrusted by Jenkins to Licensee under this Agreement for use only in the manner expressly permitted hereby and (2) Jenkins holds all right, title and interest in and to all tangible and intangible

intellectual property contained in the Software, including all trade secrets, copyrights and other intellectual property rights pertaining thereto and Licensee shall have only the limited, revocable right to use the Software as set forth in this Agreement. All modifications, adaptations, changes, or additions made to the Software shall be the sole and exclusive property of Jenkins and shall be considered a part of the Software, including all applicable rights to patents, copyrights, trademarks and trade secrets inherent therein and appurtenant thereto. The Software is protected by copyright and contains proprietary information protected by copyright laws, intellectual property laws, international treaty provisions and other applicable laws. Licensee acknowledges that Jenkins owns all United States and international copyrights in the Software and any portions thereof. Licensee shall not do anything to infringe upon, harm or contest the validity of any intellectual property rights of Jenkins.

#### **SECTION 4: PAYMENT**

**4.1** Simultaneously with and upon full execution of this Agreement, Licensee shall pay Jenkins a nonrefundable license fee in an amount set forth in the Term Sheet.

**4.2** All late payments by Licensee shall bear interest at a rate of one and one-half percent (1.5%) per month or partial month during which any sums were owed and unpaid, or the highest rate allowed by law, whichever is lower.

#### **SECTION 5: JENKINS' LIMITED WARRANTY AND DISCLAIMER**

**5.1** (a) Software Warranty. Jenkins warrants that for a period of ninety (90) days from the Effective Date (the "Warranty Period") the Software shall materially conform to Jenkins' Specifications for the Software, as described in the Documentation. Each instance in which the Software fails to materially conform to such Specifications shall be considered an "Error". If Licensee reports to Jenkins any Errors in such Software during the Warranty Period, and provides such detail as Jenkins may reasonably require to permit Jenkins to reproduce such Errors, then, at its expense, shall use commercially reasonable efforts to modify or replace the Software, or provide Updates to correct such Errors. Customer agrees to pay Jenkins for all personnel time and expenses incurred in investigating reported Errors that are not reproducible. This Warranty shall not apply to changes or modifications made to the Software other than those made by Jenkins.

(b) Pre-production Releases. If pre-production (i.e., "alpha" or "beta") releases of Software are provided to Licensee, such copies are provided "as-is" without warranty of any kind.

**5.2** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1 ABOVE, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OR ARISING OUT OF ANY COURSE OF PERFORMANCE, CUSTOM, INDUSTRY STANDARD, OR USAGE IN TRADE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, JENKINS SPECIFICALLY DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATIONS: (i) THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS; (ii) THAT THE SOFTWARE WILL BE ERROR FREE OR FUNCTION IN AN UNINTERRUPTED MANNER; (iii) REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SOFTWARE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE IS ASSUMED BY LICENSEE. THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND CONSTITUTE THE EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. NO VERBAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY JENKINS OR ITS AGENTS, REPRESENTATIVES OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY, AND LICENSEE SHALL NOT RELY ON ANY SUCH INFORMATION OR ADVICE. THE FOREGOING DISCLAIMERS OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE LICENSE.

#### **SECTION 6: INDEMNIFICATION**

**6.1** (a) Intellectual Property Indemnity. Subject to the limitations of liability in Section 6, Jenkins agrees to indemnify, defend and hold harmless Licensee from any costs, damages, and reasonable attorneys' fees resulting from any claims by third parties that the Software as delivered by Jenkins directly infringes any United States patent, copyright or trademark, or misappropriates any trade secret arising under the laws of the states of the United States; provided that Licensee: a) gives Jenkins prompt written notice of each such claim; b) tenders to Jenkins the defense and settlement of each such claim at Jenkins' expense; and c) cooperates with Jenkins, at Jenkins' expense, in defending or settling each such claim. If Jenkins receives notice of an alleged infringement, or if Licensee's use of the Software shall be prevented by permanent injunction, Jenkins may, at its sole option and expense: a) procure for Licensee the right to continue using the Software as provided hereunder; b) modify the Software so that it is no longer infringing; or c) replace the Software with computer software of equal or superior functional capability. If none of the foregoing is commercially reasonable, Jenkins shall have the right to terminate any affected Software license and require the return of the Software. If Jenkins terminates any Software license as described above, Jenkins shall refund the Software license fees paid therefore prorated over a straight-line three year period.

(b) Intellectual Property Indemnity Limitations. THE RIGHTS GRANTED TO LICENSEE UNDER SECTION 5.1(a) SHALL BE LICENSEE'S SOLE AND EXCLUSIVE REMEDY AND JENKINS' SOLE OBLIGATION FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT. JENKINS SHALL HAVE NO LIABILITY TO LICENSEE IF ANY ALLEGED INFRINGEMENT OR CLAIM OF INFRINGEMENT IS BASED UPON: (A) ANY MODIFIED SOFTWARE; (B) ANY LICENSEE OR THIRD PARTY APPLICATION; (C) ANY THIRD PARTY SOFTWARE INCLUDED WITH JENKINS' SOFTWARE; (D) USE OF THE SOFTWARE AS EMBEDDED IN THE LICENSEE APPLICATION AND IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES, OR SOFTWARE NOT PROVIDED BY JENKINS (BUT ONLY TO THE EXTENT THAT THE SOFTWARE ALONE WOULD NOT HAVE INFRINGED); (E) PROFESSIONAL SERVICES PROVIDED PURSUANT TO ANY AGREEMENT WITH LICENSEE IN COMPLIANCE WITH LICENSEE'S DESIGN REQUIREMENTS OR SPECIFICATIONS; (F) THE USE OF THE SOFTWARE OTHER THAN AS PERMITTED UNDER THIS AGREEMENT OR IN A MANNER FOR WHICH IT WAS NOT INTENDED;

OR (G) USE OF OTHER THAN THE MOST CURRENT RELEASE OR VERSION OF THE SOFTWARE (IF SUCH CLAIM WOULD HAVE BEEN PREVENTED BY THE USE OF SUCH RELEASE OR VERSION).

**6.2 Indemnification by Licensee.** Except with respect to Jenkins' indemnity as described in Section 5.1(a), Licensee agrees to indemnify, defend and hold harmless Jenkins, its shareholders, directors, officers, employees, agents and affiliated companies from and against any losses, costs, or damages (including reasonable attorneys' fees) in connection with any claims by third parties resulting from the use, manufacture, promotion or distribution of the Software and any software or products into which the Software is embedded by Licensee and Licensee's direct and indirect customers, provided that Jenkins gives Licensee prompt written notice of any such claim, tenders to Licensee the defense or settlement of any such claim at Licensee's expense, and cooperates with Licensee, at Licensee's expense, in defending or settling such claim.

## **SECTION 7: LIMITATION OF LIABILITY**

**7.1 Limitation of Liability.** JENKINS SHALL NOT BE LIABLE TO LICENSEE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, LAW, EQUITY OR OTHERWISE, EVEN IF JENKINS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. JENKINS' ENTIRE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT REGARDLESS OF THE FORM OF THE ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, LAW, EQUITY OR OTHERWISE, SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID BY LICENSEE TO JENKINS HEREUNDER. IN NO EVENT SHALL JENKINS BE LIABLE FOR ANY DAMAGES BASED UPON THE ACCURACY OF THE JENKINS SOFTWARE LLC OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS. LICENSEE ACKNOWLEDGES THAT JENKINS HAS SET ITS FEES, AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT.

## **SECTION 8: TERMINATION**

**8.1 Term.** Unless sooner terminated in accordance with the provisions hereof, the term of this Agreement shall commence as of the date first set forth above and shall continue indefinitely thereafter in full force and effect.

**8.2 Termination.**

(a) Either party shall have the right to terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice indicating the intention to terminate and specifying the nature of the breach. Failure to pay the license fees in accordance with the payment schedule set forth in THE Term Sheet is a material breach.

(b) Either party may terminate this Agreement if the other becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, if that petition or proceeding is not dismissed with prejudice within sixty (60) days after filing.

**8.3 Effect of Termination.**

(a) Licensee agrees that upon termination of this Agreement, Jenkins is discharged from any further obligations under this Agreement and Licensee's rights to possess and use the Software, and to distribute and license the Licensee Applications, shall cease as of the date of such termination.

(b) Within ten (10) days after termination, Licensee shall delete from electronic storage and memory, and destroy all portions of the Software in whatever form they exist, including those portions of Licensee Applications that include the Software and are in inventory or are otherwise unlicensed. Licensee shall further certify to Jenkins that it has complied with this Section 8.3.

(c) All licenses for the Licensee Applications previously entered into with end users shall continue in effect after termination of the Agreement.

## **SECTION 9: PUBLICITY AND NOTIFICATION**

**9.1 Notification.** Any credits, splash or similar screen, the documentation and box for the Licensee Applications may, at Licensee's discretion, display the Jenkins/RakNet logo, as well as text indicating that the Licensee Applications contain Software from Jenkins.

**9.2 Use of Licensee's Name; Reference.** Licensee hereby gives permission to Jenkins to use Licensee's name in a listing of Jenkins' customers in advertising, marketing, bid documents, or similar materials.

**9.3 With Other Middleware/Tool References.** Notwithstanding anything to the contrary contained in this agreement, Licensee may, at its discretion, display the Jenkins/RakNet logo shall be displayed in all appropriate places, including box, documentation, splash and credit screens and advertising and promotional materials, wherever the logos or identifying marks of any other development middleware or tools appear; provided, further, that the Jenkins/RakNet logo shall be displayed no less prominently than such other logos or identifying marks of similarly situated middleware tool providers.

## **SECTION 10: GOVERNMENT END USERS**

**10.1 Government End Users.** When licensing a Licensee Application to a U.S. Government End User, Licensee shall identify the Licensee Application as a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically shall

identify such item as "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), Licensee will provide Licensee Applications (including related documentation) to U.S. Government End Users: (a) only as a commercial end item; and (b) only pursuant to the requisite license agreement.

## SECTION 11: EXPORT CONTROLS

**11.1 Export Controls.** No portion of the Software, nor the documentation or underlying information with respect to any portion of the Software, may be exported, directly or indirectly, without the prior written consent, if required, by the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Department's list of Specially Designated Nations or the U.S. Commerce Department's Table of Denials.

## SECTION 12: GENERAL PROVISIONS

**12.1 Notices.** All notices delivered in connection with this Agreement must be given via a paper writing. Notices will be deemed given as of (i) the day they are delivered on paper by a nationally recognized express delivery service (such as Federal Express or DHL), addressed as set forth below; or (ii) the day they are sent by fax to the fax number set forth below, but only if (A) the receiving fax device immediately generates a message, printed by the sending fax device, that confirms receipt, or (B) receipt of the fax is confirmed by a telephone call between sender and recipient.

**To Jenkins Software LLC:**

Jenkins Software  
3151 Airway Ave. Building K 105  
Costa Mesa, CA 92626  
Attn: Kevin Jenkins  
Phone: (408) 799-3818  
Fax: 425-827-4843

**To Licensee:**

Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**12.2 Taxes.** In addition to any other payments due under this Agreement, Licensee agrees to pay, and to indemnify and hold Jenkins harmless from, any sales, use, excise, import or export, value added or similar tax or duty not based on Jenkins' net income, including any penalties and interest, as well as any costs associated with the collection or withholding thereof; and all governmental permit fees, license fees and customs and similar fees levied upon the delivery by Jenkins of the Software, which Jenkins may incur in respect of this Agreement.

**12.3 Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns only. Neither party may assign its rights or delegate its obligations under this Agreement except with the prior written consent of the other party which shall not be unreasonably withheld; provided that a party may assign this Agreement, in whole or in part, to the successor entity of a merger, sale of all or substantially all the assets or other similar sale of business transaction involving such party. Any assignment or delegation in violation of the foregoing shall be null and void.

**12.4 (a) Governing Law, Mediation and Arbitration.** This Agreement shall be construed and enforced in accordance with the internal, substantive law of the California, applicable to contracts negotiated, executed, and fully performed therein, regardless of where performance of this Agreement may actually occur. For any claim submitted to arbitration, the burden of proof shall be as it would be if the claim were litigated in a judicial proceeding and the decision shall be based on the application of internal substantive California law. The Parties specifically consent to Venue in California and the application of California Law.

(b) All controversies, disputes or claims arising out of or relating to this agreement shall be determined pursuant to the mediation and arbitration procedures of JAMS, and administered by JAMS or its successor ("JAMS") in accordance with the comprehensive rules and procedures, including the optional appeal procedure, of jams ("JAMS Rules"), as modified by this agreement. The parties shall endeavor first to attempt to resolve the controversy or claim through Mediation administered by JAMS before commencing any arbitration. Mediation shall be conducted in Orange County, California, United States. Arbitration shall be conducted in under JAMS Comprehensive Arbitration Rules and Procedures if the matter in dispute is over \$250,000 or under its Streamlined Arbitration Rules and Procedures if the matter in dispute is \$250,000 or less (as applicable, the "Rules") and held in Orange County, California, United States.

(c) Arbitration shall be held before a single neutral arbitrator. The JAMS rules for selection of mediators and arbitrators shall be followed, except that the mediator or arbitrator shall be an experienced in intellectual property and software law licensed to practice law in California or a retired judge. Any appellate panel shall consist of three neutral members, subject to the foregoing requirements. Any Mediation and/or Arbitration shall be confidential (except as information may be required in any judicial proceeding brought to enforce these arbitration provisions or any award rendered hereunder).

(d) The parties shall be entitled to conduct discovery proceedings in accordance with applicable provisions of Federal Rules of Civil Procedure, except as modified by this agreement: each side may take up to a maximum of three depositions and no other discovery, except document discovery, shall be allowed. Notwithstanding the foregoing, upon a showing of good cause the arbitrator shall have the discretion to grant limited further discovery.

(e) To the extent permitted by law, the Parties waive the right to seek punitive or exemplary damages and in no event shall either party be liable for such damages. The arbitrator shall not have the authority to grant any remedies the parties have waived (including, without limitation, any waiver of compensatory, punitive or exemplary damages contained in this Agreement).

(e) Upon conclusion of any arbitration proceedings hereunder, the arbitrator shall render findings of fact and conclusions of law and a written opinion setting forth the basis and reasons for any decision he or she has reached and shall deliver such documents to each party to the agreement along with a signed copy of the award. Any arbitration award shall be final and binding upon the parties.

Judgment upon an award rendered by an arbitrator may be entered in any court or international tribunal having jurisdiction over the relevant party or its assets.

**12.5 Injunctive Relief.** It is understood and agreed that, notwithstanding the above Arbitration provisions or any other provisions of this Agreement, breach of provisions of this Agreement by Licensee related to intellectual property rights or confidentiality will cause Jenkins irreparable damage for which recovery of money damages would be inadequate, and that Jenkins shall therefore be entitled to obtain timely injunctive relief, without the necessity of posting a bond, in order to protect Jenkins' rights under this Agreement in addition to any and all other remedies available at law.

**12.6 Attorneys' Fees.** In any action or arbitration to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing Party will be entitled to recover its costs, including attorneys' fees.

**12.7 Force Majeure.** Any delay in or failure of performance by any party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by acts of God, power outages, governmental restrictions or other matters not under the control of such party and that could not be reasonably anticipated by such party.

**12.8 No Agency.** The Parties are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency or joint venture relationship between the parties.

**12.9 Waiver.** No failure or delay on the part of either party in the exercise of any right, power or remedy under this Agreement or under law, or to insist upon or enforce performance by the other party of any of the provisions of this Agreement or under law, shall operate as a waiver, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise, or the exercise of any other right, power or remedy; rather the provision, right, or remedy shall be and remain in full force and effect.

**12.10 Severability.** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

**12.11 Language, Interpretive Rules.** This Agreement is executed in the English language only. This Agreement has been fully negotiated by the Parties and will be interpreted according to the plain meaning of its terms without any presumption that it should be construed either for or against either Party. The Section headings used in this Agreement are for convenience only and are not to be used in interpreting this Agreement.

**12.12 Survival.** Sections 1, 3, 5, 6, 7, 9, 11 and 12 shall survive any termination or expiration of this Agreement.

**12.13 Mutual Warranty.** Each party hereby represents and warrants that (a) this Agreement has been duly and validly executed and delivered by such party and constitutes a legal and binding obligation of such party, enforceable against such party in accordance with its terms; (b) such party has all necessary power and authority to execute and perform in accordance with this Agreement; and (c) such party's execution, delivery and performance of this Agreement will not conflict with or violate any provision of law, rule or regulation to which such party is subject, or any agreement or other obligation directly or indirectly applicable to such party or binding upon its assets, whether or not such agreement was known to the other party prior to execution of this Agreement.

**12.14 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument and facsimile or scanned signatures will be treated as originals for all purposes.

**12.15 Entire Agreement.** This Agreement together with the Term Sheet and any additional Exhibits hereto completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written Amendment or additional Term Sheet signed on behalf of Jenkins and Licensee by their duly authorized representatives.

IN WITNESS WHEREOF, this Agreement has been duly executed by authorized representatives of Jenkins and Licensee as of the Effective Date.

JENKINS SOFTWARE, LLC

LICENSEE:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**TERM SHEET**

**Single Game/Per Platform**

This Term Sheet supersedes the terms of the RakNet License Agreement to which it is attached. All remaining terms of the RakNet License Agreement not specifically modified by this Term Sheet remain in full force and effect.

Licensed Software: RakNet version 3.x

Licensee Application: \_\_\_\_\_

Distribution Platforms: \_\_\_\_\_

Additional Terms:

1. This License is for RakNet version 3.x only, including any upgrades to version 3.x. If Licensee wishes to acquire future versions of the RakNet software (for example RakNet version 4.0) the parties agree to negotiate in good faith for such subsequent license or to amend this License Agreement with a subsequent additional Term Sheet.
2. This License is for the above designated Licensee Application(s) per platform and includes any updates and additional content to the Licensee Application(s) provided to Licensee's End Users at no additional charge.
3. This License specifically excludes any expansions or sequels that are sold separately or in addition to the Licensee Application(s) identified above which must be the subject of a subsequent License Agreement or additional Term Sheet to this License Agreement.

License Fee: \$100

JENKINS SOFTWARE, LLC

LICENSEE:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT B

### Licensee EULA Insert

**NOTE:** Bracketed terms to be modified by Licensee to conform to terms in the respective End User License Agreements.

\*\*\*\*\*

[1User] agrees to comply with all requirements imposed upon [Licensee] by third party service providers and licensors, including, without limitation, Jenkins Software LLC.

[1User] acknowledges and agrees that you are not a third party beneficiary of any agreements between [Licensee] and its third party service providers and licensors, including, without limitation, Jenkins Software LLC.

[User] acknowledges and agrees that Jenkins Software LLC is and shall be a third party beneficiary of this EULA.

[User] acknowledges and agrees that no claim, action, or demand shall lie against Jenkins Software LLC with respect to any loss, cost, liability, damages, or expense arising out of or related to this EULA or the Game. For purposes of clarity, [User] shall not file any suit or bring any cause of action against Jenkins Software LLC with respect to this EULA or the Game.

[User] acknowledges that Jenkins Software LLC has not made any warranties to [User] with respect to the Game, that Jenkins Software LLC expressly disclaims implied warranties of merchantability or fitness for a particular purpose, and that Jenkins Software LLC has no obligation to honor any warranties that [Licensee] may provide to [User] in this EULA or otherwise.

Neither [User] nor any of your agents or consultants shall assign, sublicense, transfer, reproduce, copy, modify, disassemble, decompile, or otherwise reverse engineer any portion of the RakNet components provided with the Game; provided, however, that [User] may make results and/or proceeds available, at no charge or fee (i.e., you may not charge a license or other fee for such results and/or proceeds), to other properly licensed end users of the Game.

[User] shall adhere to all applicable laws, regulations and rules relating to the export of technical data and shall not export or re-export any technical data, any products received from [Licensee], or the direct product of such technical data to any proscribed country listed in such applicable laws, regulations and rules unless properly authorized.