

April Leggett

From: Derrel Smith
Sent: Friday, October 16, 2020 8:54 AM
To: April Leggett
Subject: FW: attorney comments - City of Jonesboro, AR
Attachments: Avolve SaaS Agreement Exhibit 2 SOW - City of Jonesboro AR 2020-10-15 (delivered).docx; Avolve SaaS Agreement Exhibit 2 SOW - City of Jonesboro AR 2020-10-07 (delivered) - redlined 10.15.2020.docx

April,
This is the corrected copy of the agreement with Avolve. Carol said that she wanted this to be entered into LegiStar. It took out the Indemnification language that she was concerned about.

Derrel Smith

Director of Planning and Zoning
City of Jonesboro
300 S. Church
Jonesboro, AR 72401
derrel.smith@jonesboro.org
870-932-0406



Please consider the environment before printing this email

From: Philip Comer <pcomer@avolvesoftware.com>
Sent: Thursday, October 15, 2020 5:10 PM
To: Carol Duncan <CDuncan@jonesboro.org>
Cc: Derrel Smith <derrel.smith@jonesboro.org>; Jay Mayne <jmayne@avolvesoftware.com>
Subject: RE: attorney comments - City of Jonesboro, AR

Carol,
Attached are 2 copies of the SaaS Agreement: one with redlines and comments striking out the language that you requested and the other is a final version with accepted changes and ready for signature. If there are any further comments, please let us know.

Thanks again for your assistance in finalizing this Agreement.

Regards,

Philip Comer
Sales Director

(512) 431-6258
pcomer@avolvesoftware.com

From: Carol Duncan <CDuncan@jonesboro.org>
Sent: Tuesday, October 13, 2020 9:15 AM
To: Philip Comer <pcomer@avolvesoftware.com>
Cc: Derrel Smith <derrel.smith@jonesboro.org>; Jay Mayne <jmayne@avolvesoftware.com>
Subject: Re: attorney comments - City of Jonesboro, AR

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Our preference would be to strike the language in order to be confident we protect our immune status.

Thank you,
Carol

Sent from my iPad

On Oct 12, 2020, at 3:24 PM, Philip Comer <pcomer@avolvesoftware.com> wrote:

Derrel,
Below is our CFO's (Jay Mayne) response to Carol's comments regarding our SaaS Agreement for Azure.

Carol's comment:

'I have a concern about Section A 1 c of the agreement where it says we will indemnify them (toward the bottom of the paragraph). We need that changed to either be removed or say "insofar as allowable by law," at the beginning of it. I saw the language similar to that below, but could not tell if that is intended to replace the above language? It did not appear to be to me.'

As Jay mentions below, Avolve can agree to either strike the reference to the indemnification language or add the recommended verbiage in front of the agreement language. Please let us know the City's preference.

I copied both Jay and Carol if there are any further comments.

Thanks,

Philip Comer
Sales Director
(512) 431-6258
pcomer@avolvesoftware.com

From: Jay Mayne <jmayne@avolvesoftware.com>
Sent: Monday, October 12, 2020 2:49 PM
To: Philip Comer <pcomer@avolvesoftware.com>
Cc: Paul Neel <pneel@avolvesoftware.com>
Subject: RE: attorney comments - City of Jonesboro, AR

Philip,

Based upon their City Attorney's comment below, we can agree to either strike the reference to the indemnification language or add the recommended verbiage in front of the agreement language.

Best,
Jay

Jay Mayne | **Avolve Software Corporation** | CFO and VP Operations | jmayne@avolvesoftware.com |
4835 East Cactus Road, Suite 420 Scottsdale, AZ 85254 | O 480.526.8780 |

From: Derrel Smith <derrel.smith@jonesboro.org>
Sent: Thursday, October 8, 2020 2:21 PM
To: Philip Comer <pcomer@avolvesoftware.com>
Subject: FW: Updated Avolve SaaS Agreement Exhibit 2 SOW - City of Jonesboro, AR

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This is the comment from the city attorney. Also Mike says we have until 3 pm to get the fees included or it will be the next finance meeting later in the month.

Derrel Smith

Director of Planning and Zoning
City of Jonesboro
300 S. Church
Jonesboro, AR 72401
derrel.smith@jonesboro.org
870-932-0406
<image001.jpg>



Please consider the environment before printing this email

From: Carol Duncan <CDuncan@jonesboro.org>
Sent: Thursday, October 8, 2020 2:18 PM
To: Derrel Smith <derrel.smith@jonesboro.org>
Subject: Re: Updated Avolve SaaS Agreement Exhibit 2 SOW - City of Jonesboro, AR

I have reviewed those, you might have Jason look at the technical stuff, he would better be able to see an issue there than I am. I have a concern about Section A 1 c of the agreement where it says we will indemnify them (toward the bottom of the paragraph). We need that changed to either be removed or say "insofar as allowable by law," at the beginning of it. I saw the language similar to that below, but could not tell if that is intended to replace the above language? It did not appear to be to me.

Carol

Sent from my iPad

On Oct 8, 2020, at 11:54 AM, Derrel Smith <derrel.smith@jonesboro.org> wrote:

Carol,
Please see below.

Derrel Smith

Director of Planning and Zoning
City of Jonesboro
300 S. Church
Jonesboro, AR 72401
derrel.smith@jonesboro.org
870-932-0406
<image001.jpg>



Please consider the environment before printing this email

From: Philip Comer <pcomer@avolvesoftware.com>
Sent: Thursday, October 8, 2020 8:35 AM
To: Derrel Smith <derrel.smith@jonesboro.org>
Subject: FW: Updated Avolve SaaS Agreement Exhibit 2 SOW - City of Jonesboro, AR

Derrel,
The attached agreement has terms related to Microsoft Azure throughout the Agreement given that our SaaS environment will be on Azure and will need to be reviewed by your attorney, Carol Duncan. If she has any comments, please send them to me and I will forward them to our CFO and attorney for review.

Again, I apologize for sending an outdated Agreement. Please feel free to call me if you have any questions.

Regards,

Philip Comer
Sales Director
(512) 431-6258
pcomer@avolvesoftware.com

From: Philip Comer
Sent: Wednesday, October 7, 2020 5:56 PM
To: Derrel Smith <derrel.smith@jonesboro.org>
Subject: Updated Avolve SaaS Agreement Exhibit 2 SOW - City of Jonesboro, AR

Derrel,

I realized that I had sent you an outdated SaaS agreement that did not include the following clause on page 3:

- a. Third Party Service Providers and Components. Notwithstanding anything to the contrary in this Agreement or any other documents between Avolve and Customer, Customer acknowledges and agrees as follows.

1. The Avolve SAAS Solution and its component parts are protected by copyright and other propriety rights of Avolve and one or more third party software vendors (including Oracle and Open Text Corporation (“OTC”)) (all such third party vendors, including without limitation Oracle and OTC, shall be referred to herein as “third party vendors” or “third party software vendors”). Customer may be held directly responsible by such third-party vendors for acts relating to the Avolve SAAS Solution component parts that are not authorized by this Agreement. Customer’s use of such third-party software is limited to only in conjunction with Avolve SAAS Solution and Customer acknowledges that it is not allowed to modify such third-party software or use it independent from Avolve SAAS Solution. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CUSTOMER WAIVES, AND WILL CAUSE ITS USERS TO WAIVE, ALL CLAIMS AND CAUSES OF ACTION AGAINST SUCH THIRD-PARTY SOFTWARE VENDORS THAT ARISE UNDER THIS AGREEMENT.
2. If Customer purchases from Avolve hosting of the Avolve SAAS Solution on the Microsoft® Windows Azure™ platform, the terms and conditions for such cloud services as such may be updated by Microsoft Corporation from time to time, are found online on at <https://docs.microsoft.com/en-us/partner-center/agreements>. Customer should review the documents available on this website carefully to be sure that Customer reviews the appropriate customer agreement. If Customer has purchased Microsoft Cloud for US Government, review the customer agreement for Microsoft Cloud for US Government. If Customer is purchasing commercial access, the customer agreement for commercial access for the United States applies. Upon Customer's request, Avolve will provide Customer with assistance on finding and/or a copy of the appropriate Microsoft customer agreement. Customer acknowledges and agrees THAT (A) THE HOSTED SERVICES WILL BE PERFORMED SOLELY AND EXCLUSIVELY SUBJECT TO THE APPLICABLE MICROSOFT CORPORATION'S CUSTOMER AGREEMENT (the "Microsoft Customer Agreement"), (B) THAT AVOLVE DOES NOT GUARANTY MICROSOFT CORPORATION'S OBLIGATIONS PURSUANT TO THE MICROSOFT CUSTOMER AGREEMENT, AND (C) NOR CAN AVOLVE GRANT ANY WARRANTIES OR ADDITIONAL TERMS TO THE CUSTOMER AS TO THE HOSTED SERVICES UNDER THIS AGREEMENT. THE HOSTED SERVICES ARE SOLELY GOVERNED BY THE MICROSOFT CUSTOMER AGREEMENT, TO WHICH AVOVLE IS NOT A PARTY. Microsoft Corporation makes certain service level commitments to its customers, which are available online in the Microsoft Corporation's SLAs at <https://azure.microsoft.com/en-us/support/legal/sla/summary/>. If Customer desires to make a claim under the Microsoft Corporation SLAs, Customer shall submit the claim through Avolve. Avolve will escalate the claim to Microsoft Corporation for review. If Microsoft Corporation determines that a credit is due, Avolve will credit Customer the amount Microsoft Corporation has paid to Avolve for the SLA credit promptly after receiving the credit from Microsoft Corporation.

Please have your city attorney review the current SaaS Agreement so we have the latest Agreement ready for signature after City Council approval. Let me know if your attorney has any comments.

Thanks,

Philip Comer

Sales Director

(512) 431-6258

pcomer@avolvesoftware.com

<image003.jpg>

<Avolve SaaS Agreement Exhibit 2 SOW - City of Jonesboro, AR 2020-10-07 (delivered).docx>

<Avolve SaaS Agreement Exhibit 2 SOW - City of Jonesboro, AR 2020-10-07 (delivered).docx>