



JET STREAM INNOVATIONS, LLC
TERMS OF SERVICE

3/14/2018

This Terms of Service Agreement is between You and Jet Stream Innovations, LLC.

Definitions. The following terms are used herein:

("JSI") means Jet Stream Innovations, LLC

("Customer"), ("You"), or ("your") refers to a party that uses JSI Hosted Services whether or not such party has entered into a Services Agreement with JSI.

The ("Parties") or ("each Party") refers collectively to You and JSI.

("Hosted Services") means online software platforms, websites, applications, and any content provided by JSI within these Hosted Services, including the tools and method and content provided by JSI to setup, support and provide training to you for these Hosted Services.

("Customer Content") means any text, data, photos, attachments, logical rules, functional options, logos, or other information that the Customer can enter into the Hosted Services system using their sign-in account for the Hosted Services.

("Term of Service Agreement") means this agreement that applies to the usage of the Hosted Services.

("Services Agreement") means an agreement other than this Terms of Service Agreement between You and JSI for other services, Hosted Services, or both. When Hosted Services are purchased using an online subscription process a Services Contract may not apply and the Services and level of services provided are defined by a subscription plan provided on a subscription website.

("Service Period") means a period of time that the Hosted Services are provided. Typically this is either monthly or annually.

("Payment Period") means the duration between payments. For example, payments for an annual Service Period can be made by monthly, quarterly or annual payment periods as agreed to.

The Parties agree as follows:

1. **Binding Agreement.** By signing a Services Agreement that incorporates this Terms Service Agreement by reference, or clicking on the "I agree", or a similar button or checkbox that is required at the time of an online purchase or subscription, or by using or accessing any of Jet Stream Innovation Hosted Services, You agree to be bound, or as a company representative, employee or agent binding your company, by this Terms of Services Agreement. You may only enter into this Terms Service Agreement if you are of the age allowed by the laws to enter into a binding contract. Generally this age is 18 years old for the People's Republic of China, 16 years old for the Netherlands, 14 years old for the United States, Canada, Germany, Spain, Australia and South Korea, and 13 years old for all other countries. If other laws govern this age requirement those laws shall apply.

2. **Services and Term of Service.** The Hosted Services, the service period, any service level agreements, and the fees for the Hosted Services are specified in a “Services Agreement, or are provided during an online subscription process for one or more Hosted Services.
3. **Use of Hosted Services.**
 - 3.1. **Usage License.** You may access and use our Services subject to this Terms of Service Agreement.
 - 3.2. **Account Access.** You are responsible for all activity that occurs via your account. Notify Customer Support immediately if you become aware of any unauthorized use of your account.
 - 3.3. **Free Non-commercial Access and Usage.** You may access and use our free services when offered, for non-commercial usage only. This does not apply to limited trial periods of 30 days or less. JSI reserves the right to terminate free usage at anytime for any reason.
 - 3.4. **Ownership.**
 - 3.4.1. You retain all rights, title and ownership to your Customer Content, including all related intellectual property rights, brand features and marks hosted on or used within the JSI Hosted Services. For the sole purpose of allowing us to provide JSI Hosted Services to You. You hereby grant Jet Stream Innovations, LLC (JSI) an irrevocable, non-exclusive, royalty-free, transferable license, with rights to host, backup or otherwise work with your Customer Content
 - 3.4.2. The intellectual property rights in and of JSI’s Hosted Service are and will remain JSI’s property or that of its licensors. JSI retains all right, title, and interest, including all related intellectual property rights, in and to JSI’s software, Hosted Services, website content, methods, intellectual property, documentation and related JSI content that we provide or expose to You.
 - 3.4.3. To the extent you provide JSI with any suggestions, information, ideas, or feedback concerning any of JSI’s Software or Hosted Services, including but not limited to, a report of any errors which you discover while using an Application or the JSI Software of the Hosted Services or any related documentation herein (“**Feedback**”), that such Feedback will be the property of JSI. You agree and hereby assign all right, title and interest in the Feedback, and the related intellectual property rights, to JSI and agree to assist JSI in protecting and enforcing these rights. This does not apply to your Customer Content.
 - 3.4.4. User-generated content can be shared by users. If You access content from other users using the JSI Hosted Services, You could come across content that you find offensive or upsetting. Your sole remedy is to simply stop viewing such content.
 - 3.4.5. You are responsible for determining the limitations that are placed on content you share. Consider carefully what you choose to share while using the Hosted Services or make public by means of email, posting, upload, transmission, granting shared access or by other means.
 - 3.4.6. You, the Customer, warrants that you have the right to use any applicable trademarks or copyrighted material used within any content that is entered into the JSI Hosted Services or provided to JSI to enter into the Hosted Services for You.
 - 3.4.7. JSI reserves the right to monitor your Customer Content and remove or disable any Customer Content that JSI, in its sole discretion, determines to be illegal, harmful,

offensive, creating liability for JSI or its service providers, or otherwise is in violation of this Terms Service Agreement or JSI operating policies.

3.4.8. JSI retains all rights not expressly granted to You under this Terms Service Agreement. You do not have any implied rights.

4. **Confidentiality.** You agree to keep confidential and not use other than in the performance of this Agreement or disclose to a third party any information of JSI that You know or reasonably should know is confidential to JSI.

JSI agrees to keep confidential and not use, other than in the performance of this Agreement, or disclose to a third party any Customer information that JSI knows or reasonably should know is confidential to You, or disclose any Customer Content that the Customer enters into the Hosted Services without prior written approval.

5. **Limitations of Service.** JSI agrees to provide the Hosted Services subject to the terms of this Terms Service Agreement and all applicable federal, state and local laws. JSI utilizes third party computing services to accomplish the Services provided. JSI reserves the right to modify its Hosted Services or use other third party services to provide the Hosted Services. Access to the Hosted Services from certain countries may be restricted or subject to applicable international and trade laws and regulations.
6. **Service Updates.** From time to time, JSI makes updates to continuously improve the Hosted Services. In addition, JSI uses third party industry recognized service providers. These third party providers also make updates from time to time. JSI will make every effort to minimize the impact of such updates on the Customer. The Customer recognizes that some changes, especially those initiated by third party providers may be unavoidable. Customer agrees to cooperate and work with JSI as JSI works to minimize the impact and resolve issues associated with such updates.
7. **Scheduled Maintenance.** JSI will make every effort to minimize scheduled maintenance downtime, limit scheduled maintenance to Sunday evenings, and provide a notification email to all users five days prior to the scheduled maintenance.
8. **Performance.** JSI's Hosted Services utilize major cloud-based providers that commit to 99.9% or better uptime. JSI is not liable for Service outages due to outages by these major providers or other outages such as power or internet outages, natural disasters, and similar causes out of our control.
9. **Storage.** The JSI Hosted Services utilizes major cloud storage providers to store your Customer Content. Although these services include backup and recovery methods we recommend that you regularly back up your Customer Content using export features. Limits on your Customer Content, such as file size, storage space, processing capacity, and other limits are set for technical or cost reasons. If these limits as defined by your Service Plan or by a Services Agreement are exceeded we may suspend your Hosted Services or features until You are within such limits, change to an acceptable subscription plan, or execute an updated Services Agreement that meets your needs.
10. **Beta Services.** We may offer "Beta Services" for a period of time for the purpose of testing and evaluation. Any such Beta Services are provided to you "as is" and without warranty of any kind and by using our Beta Services you are subject to the terms of this entire agreement. We may suspend, limit, or terminate Beta Services for any reason at any time without notice, and we will not be liable to you for damages of any kind related to your use of the Beta Services including the removal of data and content you have entered into the Service. By using Beta Services, you are under no obligation to subscribe to a paid Services plan. We may also require you to provide feedback to us about your use of the Beta Services. You agree that we own all rights to use and incorporate your feedback into our services and products, without payment or attribution to you.

11. **Privacy.** We respect your privacy. We do not, and have no interest in, selling, sharing, or otherwise abusing your email address, phone number or any other contact information. We collect or have access to personal information during the sign-up process or other customer communications. We collect this information only to do business with you or for internal analysis to improve our Services. All credit card payment information is handled by a leading PCI compliant processing service. We never see, store or have access to payment credentials, (credit card numbers). We use reasonable precautions to keep the personal information disclosed to us secure and only accessible to individuals trained and bound by our non-disclosure policies or third party providers that use appropriate security and privacy measures. We are not responsible for any breach of security or for any actions of any third parties that receive the information. In the event of unauthorized use of your credit card due to information collected by the PCI compliant processing service, we will cooperate with your efforts to resolve these matters with the processing service. We may also disclose personal information when required by law or in the good-faith belief that such action is necessary in order to conform to the edicts of the law or comply with a legal process served upon us.
12. **Modification.** These Terms are current as of the date set forth above. We may modify or update, these Terms of Services, or modify, update, or discontinue our Services at any time without liability to you or anyone else. We will make reasonable effort to notify you before we make changes that materially affect our practices or offerings and post information on our website(s). If we discontinue a Service in its entirety, we will provide reasonable time to download, export, and/or save your content and provide a pro rata refund for any prepaid unused fees. Material changes will become effective 10 business days after being posted on our website unless a change is required by law in which case it becomes effective immediately.
13. **Warranty.** JSI will provide the Hosted Services in a good and workmanlike manner and substantially in accordance with the services description. The JSI Hosted Services are provided to you “AS IS” and without warranty of any kind, whether express, implied, statutory, or otherwise, and JSI hereby disclaims and excludes, to the maximum extent permitted by law, all warranties, whether statutory, express, or implied, including, without limitation, the implied warranties of non-infringement of third party rights, fitness for a particular purpose, merchantability and satisfactory quality. JSI does not warrant that any of the JSI Hosted Services will meet your needs or requirements or be error-free or always available or available at any particular time or that any errors or defects will be corrected. JSI at its sole discretion will determine whether an issue is “a bug” or an enhancement. Enhancements must be authorized by separate contract agreements. JSI values all of its customers and acts promptly to provide quality products, features and services.

None of the JSI’s software or Hosted Services is fault tolerant. They are not designed, manufactured, licensed or intended for use in hazardous environments requiring fail-safe performance such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support machines, weapons systems or any other application in which its failure could lead directly to death, personal injury, or physical or environmental damage.

14. **Termination.** Unless specified otherwise in a Services Agreement between JSI and You the following termination terms and conditions apply. If a term or condition specified below is changed in a Services Agreement the other terms and conditions shall remain applicable.
 - 14.1. This Agreement remains in effect until terminated by either party. You may stop using the JSI Hosted Services or cancel your subscription at any time. Your lack of use, termination of use, or cancellation of prepaid Hosting Services does not obligate JSI to provide You a refund.
 - 14.2. We reserve the right to discontinue Hosted Services at the end of Your Service Period or a feature at any time and either one for any reason without liability or other obligation to You

- 14.3. Your access to the Hosted Services will be terminated for failure of payment as agreed. Your Customer Content will continue to be stored for 60 days after termination or failure of payment. If a payment is not received when due for a Payment Period before your Service Period ends, access to the Hosted Services may be terminated without notice, e.g. a monthly payment for an annual contractor subscription. Failure to make payments does not remove You, the Customer, from your obligation to pay for the entire Service Period as agreed. Upon receiving payment access to your account will be reestablished.
- 14.4. The Hosted Services may be terminated at any time by either Party as follows: (i) upon written notice if the other Party breaches any material term of this Terms Service Agreement or other Services Agreement and such breach remains uncorrected for thirty (30) days following written notice; or (ii) immediately, if the other Party becomes the subject of a voluntary or involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or similar action for the benefit of creditors as a consequence of debt, or if the other Party otherwise ceases or threatens to cease business.
- 14.5. Upon termination of an individual Services Agreement, this Agreement as to all other Services Agreements will continue in full force and effect. Upon termination of this Agreement in whole, all outstanding Services Agreements will be terminated immediately. Termination will be without prejudice to any rights or liabilities accrued as of the date of termination. JSI will be entitled to invoice and be paid for all services provided up to the effective date of termination, and all invoices become immediately then due and payable. Any term of this Terms Service Agreement or individual Services Agreement(s), which is intended to survive expiration or termination will survive, including, without limitation, confidentiality, restrictions on use of intellectual property, indemnity, limitations on liability and disclaimers of warranties and damages, governing law, and Customer's payment obligations accrued prior to termination.
- 14.6. **Payment and Taxes.** All Fees paid or payable for Hosted Services are non-cancellable and non-refundable. JSI may update its pricing for Hosted Service by notifying Customer by email or written notice of the updated pricing at least thirty (30) days before such changes take effect for a subsequent Service Period.

Customer is responsible for all taxes, customs duties, import fees or other similar charges, and all other mandatory payments imposed by government entities with respect to the Hosted Services or other Services Agreements, excluding tax imposed on JSI's net income and withholding taxes (subject to the condition of providing withholding tax payment receipts, as set forth below). JSI will bill applicable taxes as a separate item on Customer's invoice and will not include them in the Fees. If a transaction is exempt from tax, Customer will provide JSI with a valid exemption certificate or other evidence of such exemption in a form acceptable to JSI. If Customer is required by law to withhold any tax from the payment, Customer will provide to JSI original or certified copies of all tax payment receipts or other evidence of payment of taxes by Customer with respect to transactions under this Agreement. If Customer fails to provide JSI with such tax payment receipts, if applicable, then Customer will reimburse JSI for any fines, penalties, taxes and other governmental agency charges resulting from such failure.

15. **Limitation Of Liability And Indemnity**

- 15.1. IN NO EVENT WILL JSI BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY), OR OTHERWISE.
- 15.2. JSI'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE FEES, IF ANY, PAID BY YOU TO JSI UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS WILL APPLY TO

THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER JSI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

15.3. You shall indemnify and hold harmless JSI and its, managers, employees and agents from and against liabilities, costs, losses, damages, judgments, expenses (including attorneys' fees and costs of experts and costs of appeals) arising out of or in connection with any and all of the following: (a) any allegation that any of the Applications, Brand Features and Marks or Customer Content infringe, misappropriate or violate any intellectual property right, (b) any actions taken by the Customer's clients and users of the Customer's hosted applications, (c) any violation of this Terms Service Agreement, including, without limitation, any breach of any representations or warranties contained herein, (d) your provision or distribution of any Customer Content, (e) your use of any JSI Software or receipt of the Hosted Services, (f) any activity relating to your account, (g) any violation of a third party app store's contracts, policies or procedures; or (h) any failure of You to have all necessary rights and licenses for content you enter, or have JSI enter for you, into the Hosted Services, (i) any allegations or action relating to the accuracy or fitness for use of content within the Hosted Services including content developed by the customer including their employees or agents, content developed by other third parties, or content developed by JSI.

16. General.

- 16.1. JSI has the right to subcontract the performance of the Services to third parties, provided that JSI remains responsible for the contractual obligations according to this Terms Service Agreement and any Services Agreement(s).
- 16.2. All notices of breach, termination or the like will be in writing and addressed to the receiving Party's current business contact, if known, to the party's address as listed in the Services Agreement, as updated by either party in writing, or for online subscriptions account to the email address associated with the Customer's account. Notices shall be effective upon receipt and shall be deemed received as follows: (i) if personally delivered by courier or emailed, when delivered, or (ii) if mailed by first class mail, or the local equivalent, on the fifth business day after posting with the proper address.
- 16.3. Customer may not assign the rights granted hereunder or within a Services Agreement, in whole or in part and whether by operation of contract, law or otherwise, without JSI's prior written consent. Such consent will not be unreasonably withheld or delayed.
- 16.4. Each party will be excused from performance, other than payment obligations, for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, due to unforeseen circumstances or to causes beyond such party's reasonable control including but not limited to war, strike, riot, crime, acts of God, or utilities and internet outages or shortage of other infrastructure resources required to deliver the Hosted Services.
- 16.5. This Agreement shall be governed by and construed under the laws of the State of Washington.
- 16.6. All claims and disputes arising under or relating to this Terms Service Agreement or other Services Agreement(s) are to be settled by binding arbitration in the state of Washington or another location mutually agreeable to the Parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact. Any such arbitration shall be conducted by a mutually agreed upon arbitrator experienced in the information technology industry and shall include a written record of the arbitration hearing. An award of arbitration may be confirmed in a court of competent jurisdiction.
- 16.7. All costs and expenses of arbitration shall be borne by the parties equally. Each Party shall bear all costs and expenses (including those of its own counsel, discovery, experts and witnesses) involved in preparing and presenting its case.

- 16.8. If any provision of the Agreement is found partly or wholly illegal or unenforceable, such provision will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions will remain in full force and effect. A waiver of any breach or default under the Agreement will not constitute a waiver of any other right for subsequent breach or default. No person other than a Party to the Agreement will be entitled to enforce any term of it except as expressly provided herein.
- 16.9. Any subsequent modifications to these terms and conditions will be made in writing and duly signed by authorized representatives of both Parties or they will be void and of no effect. Together with the terms of the Services Agreement, these terms are the complete and exclusive agreement between the Parties with respect to the subject matter hereof, and supersedes any previous or contemporaneous agreement, proposal, commitment, representation, or other communication whether oral or written between the parties regarding such subject matter.

The terms within this Terms Service Agreement and any Services Agreement(s) prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgement, confirmation, or other document issued by Customer, even if signed and returned. The Services Agreement and this Terms of Service Agreement shall govern, in that order of precedence, in the event of any conflict by or among such documents. This Terms Service Agreement and any Services Agreement(s) may be executed in multiple counterparts all of which taken together shall constitute one single agreement between the parties.

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