

# FILTRBOX G2

## TERMS OF SERVICE

Last Updated: February 28, 2010

Welcome to a Jive Software website (the “Site”) provided by Jive Software, Inc., a Delaware corporation with offices at 915 SW Stark Street, Suite 400, Portland, OR 97205 (“Jive”). The Site provides access to and use of Jive’s proprietary Filtrbox G2™ social media monitoring service and related services (collectively, the “Services”). Any person who wishes to access the Site to use any of the Services must accept the terms and conditions of these Terms of Service (this “Agreement”) without change.

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU USE THE SERVICES. BY CLICKING ON THE “ACCEPT” BUTTON DURING REGISTRATION OR OTHERWISE INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT IN ANY MANNER, YOU ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT, INCLUDING ANY MATERIALS AVAILABLE ON THE SITE INCORPORATED BY REFERENCE HEREIN, INCLUDING, WITHOUT LIMITATION, THE PRIVACY POLICY DESCRIBED IN SECTION 7 BELOW AND THE ACCEPTABLE USE POLICY DESCRIBED IN SECTION 9 BELOW. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (AN “ENTITY”), YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE “CANCEL” BUTTON OR DO NOT OTHERWISE INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT AND YOU WILL NOT HAVE ANY RIGHT TO USE THE SERVICES. ANY CONTINUED USE OF THE SERVICES SHALL ALSO CONSTITUTE ASSENT TO THE TERMS OF THIS AGREEMENT.**

Jive reserves the right to change any of the terms and conditions contained in this Agreement, including the Services, or any policies or guidelines governing the Site or Services, at any time and in its sole discretion. While we will endeavor to provide direct notice to you of any changes, you are responsible for periodically checking the Site to determine if any changes have been made and we are not liable for your failure to do so or our failure to provide such direct notice to you. Your continued use of the Site and the Services following any revision to this Agreement will constitute your acceptance of the changes or modifications to the Agreement. If you do not agree to any changes to this Agreement, do not continue to use the Services or this Site.

### Section 1 - Definitions.

Capitalized terms shall have the meanings set forth below unless defined elsewhere in this Agreement:

- 1.1 **“Additional Functionality”** means the additional Services, if any, available on the Site upon your request, as more specifically described on the Site or within the applicable Order Form. Unless otherwise expressly provided herein, the Services shall include any Additional Functionality which is effectively requested by you pursuant to an Order Form.
- 1.2 **“Administrative Interface”** means the restricted-access administrative interface component of the Site that allows Users to access the configuration and settings components of the Service to manage, configure and monitor the Service.
- 1.3 **“Content”** means all materials displayed or performed on the Site, including, but not limited to text, graphics, news articles, photographs, images, illustrations, audio clips and video clips.
- 1.5 **“Fee”** means the periodic fees you agree to pay for access to and use of the Site and Services, including additional fees for any requested Additional Functionality, as such are set forth within the applicable Order Form.

- 1.6 **“Order Form”** means the electronic or written order form, pricing schedule or similar agreement between you and Jive that sets forth the applicable Additional Functionality, if any, Fees and Term.
- 1.7 **“Proprietary Rights”** means all patents, patent applications, mask works, copyrights, moral rights, trade secrets, know-how and other proprietary rights.
- 1.7 **“Submitted Content”** means any Content that you or a User submits to the Site in the course of using the Services.
- 1.8 **“Term”** means the initial and, if applicable, renewal term(s) of this Agreement as set forth in the applicable Order Form(s).
- 1.9 **“User”** means individual active users that are authorized to use the Administrative Interface, as may be further set forth on the applicable Order Form. For Entities, Users may include only employees or specific individual independent contractors of the Entity.

## **Section 2 - Services.**

- 2.1 *Description.* Subject to the terms and conditions of this Agreement, Jive will use commercially reasonable efforts to make the Services, as more specifically described on the Site, available to you during the Term. The Services are available for use within the Entity’s organization solely by authorized Users, and not for the use or benefit of any third party. You understand and agree that the Services and Additional Functionality are provided “AS IS” and “AS AVAILABLE” and that Jive assumes no responsibility for the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Services, Additional Functionality or any Content or personalization settings. You are responsible for obtaining and maintaining any equipment or ancillary services needed to access the Site or otherwise use the Services and Additional Functionality, including, without limitation, modems, hardware, software, and long distance or local telephone service and any fees associated therewith. You are also responsible for ensuring that such equipment or ancillary services are compatible with the Services and Additional Functionality.
- 2.2 *Bandwidth and Security.* You understand that Jive uses third-party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and other technology required to provide the Services via the Site. If your bandwidth usage on the Site significantly exceeds the average bandwidth usage of other users on the Site, as determined by Jive, Jive reserves the right to limit your bandwidth to the Site. You are prohibited from violating, or attempting to violate, the security and other technological protection measures of the Site. Any violations may result in criminal and civil liabilities to you. Jive will investigate any alleged violations and will cooperate with law enforcement agencies. Examples of violations of the security of the Site include, without limitation, intentionally accessing data not intended for you, logging into a server or account that you are not authorized to access, attempting to probe, scan, or test the vulnerability of a system or network, attempting to interfere with services provided by the Site to any user, or any attempt to obtain services or products through the Site to which you are not entitled.

## **Section 3 - Eligibility & Registration.**

Use of the Site and the Services is limited to authorized Users that lawfully can enter into and form contracts under applicable law. Without limiting the generality of the foregoing, minors may not use the Services. Each person who enters this Agreement hereby represents to Jive that he or she is not a minor, is at least over the age of eighteen (18) and may otherwise enter into and form binding contracts under applicable law.

You also agree to: (a) provide true, accurate, current and complete information about yourself, the Entity, if applicable, and your Jive account as prompted by the Site’s registration form, including contact name, business and email address, telephone number, billing and credit card information and any Additional Functionality if desired (such information being the **“Registration Data”**) and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Jive has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Jive has the right to suspend or terminate your account and refuse you any and all current or future use of the Services (or any portion thereof).

## **Section 4 - Subscription Term.**

This Agreement commences on the date the applicable Order Form is accepted by Jive and, unless terminated earlier pursuant to Section 12 below, shall remain in effect during the Term. If a “month-to-month” or similar indefinite term is set forth on the applicable Order Form, this Agreement shall remain in effect until either you or Jive provides at least thirty (30) days’ prior notice of the intent to terminate the Agreement. During the Term, you may use the Site and Services for so long as you make timely payments to Jive of all Fees owed pursuant to Section 10 below.

## **Section 5 - License Grant and Restrictions.**

During the Term, Jive hereby grants you a limited, non-exclusive, non-transferable, worldwide right to (i) permit Users to access and use the Administrative Interface and other generally available portions of the Services for, if applicable, the Entity’s internal business purposes and (ii) use and make a reasonable number of copies of any descriptions, instructions, or other documentation made available by Jive in connection with the Services, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Jive. You may not access, or permit access to, the Services if you are a competitor of Jive or for purposes of monitoring the availability, performance or functionality of the Services, or for any other benchmarking or competitive purpose. You also agree not to: (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party (other than authorized Users) the Site or the Services in any way, including, without limitation, providing User IDs (as defined below) and passwords to any third party (other than authorized Users) to allow such party to access and use the Services; (b) modify or make derivative works based upon the Site or the Services; (c) create Internet “links” to the Site or “frame” or “mirror” any portion of the Site on any other server or wireless or Internet-based device; or (d) reverse engineer or access the Site or the Services in order to build a competitive product or service or build a product using similar ideas, features, functions or graphics of the Site or Services.

## **Section 6 - Account, User ID, Password and Security.**

You will establish a password and user name (a “**User ID**”) designation (i) for the Users upon completing the registration process and (ii) for all Users as they may be added from time to time. User IDs are for your use only and you may not allow any other party (other than authorized Users) to use any User ID. You are responsible for maintaining the confidentiality of User passwords, and are fully responsible for all activities that occur under User IDs. You agree to immediately notify Jive of any unauthorized use of a password or User ID or any other breach of security of which you are aware. Jive is not liable for any loss or damage arising from your failure to comply with this Section 6.

## **Section 7 - Jive Privacy Policy.**

Registration Data and certain other information about the Users are subject to our Privacy Policy. For more information, see our full Privacy Policy at [www.jivesoftware.com/legal](http://www.jivesoftware.com/legal). You understand that through your use of the Site and Services you consent to the collection and use (as set forth in our Privacy Policy) of this information, including the transfer of this information for storage, processing, and use by Jive and its affiliates.

## **Section 8 - Proprietary Rights; Content.**

Jive shall own all right, title and interest, including all related Proprietary Rights, in and to all of Jive’s proprietary technology (including software, hardware, products processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Jive in providing the Site and Services, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Site or Services. The trademarks and service marks and other Jive logos and product and service names are trademarks of Jive (the “**Jive Marks**”). Without Jive’s prior written permission, you agree not to display or use in any manner, the Jive Marks.

Jive does not claim ownership of any Submitted Content. You, and not Jive, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and Proprietary Rights or right to use all Submitted Content, and Jive shall not be responsible for the deletion, correction, destruction, damage, loss or failure to store any Submitted Content. However, with respect to any Submitted Content, all Users grant Jive a worldwide, royalty-free,

non-exclusive, perpetual, irrevocable and fully sublicensable license to use, distribute, reproduce, modify publicly perform and publicly display such Submitted Content (in whole or in part) solely for the purposes of providing the Services to you.

You acknowledge and agree that the Services may generate for Users certain links to or excerpts of social media content residing on the Internet and reports, graphs and information generated by the Services based on the foregoing social media content which are made available to Users in the course of Users' use of the Services. Jive has no responsibility for any such Content that is derived from third party resources as generally available on the Internet and you agree not to, and to ensure that none of the Users, knowingly rent, lease, loan, sell, distribute or create derivative works based on such Content, unless such party has obtained rights to do so from the owner of such Content in writing. Additionally, some Content may be indecent, offensive or otherwise objectionable, and Jive shall have the right, but not the obligation, to preview, flag, modify, filter, or remove any or all such Content from the Site and/or Services, in its sole discretion, and in any event, your use of such Content is at your sole risk.

## **Section 9 - User Conduct; Acceptable Use Policy.**

You and Users shall at all times comply with the Acceptable Use Policy located at [www.jivesoftware.com/legal](http://www.jivesoftware.com/legal). You are liable for any breach of this Agreement by a User. You understand that all Content, whether publicly posted or privately transmitted, is the sole responsibility of the person from whom such Content originated. This means that you, and not Jive, are entirely responsible for all Content that you upload, post, transmit, or otherwise make available via the Site or Services. Jive does not control the Content posted via the Services and, as such, does not guarantee the accuracy, integrity, or quality of such Content. You understand that by using the Services, you and Users may be exposed to Content that is offensive, indecent, or objectionable. Under no circumstances will Jive be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, transmitted or otherwise made available via the Site or the Services.

You acknowledge and agree that Jive and its designees shall have the right (but not the obligation) in their sole discretion to refuse or remove any Content that is available via the Service. You acknowledge, consent and agree that Jive may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the terms of this Agreement; (c) respond to claims that any Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of Jive, its users and the public.

## **Section 10 - Fees and Billings.**

During the Term, you agree to pay all Fees associated with the Services on a period basis in advance as set forth in the applicable Pricing Schedule. You must provide Jive with valid credit card and/or other applicable billing information required during the registration process and Jive will charge your credit card or invoice you for all Fees accordingly. You are responsible for all Fees during the Term and Jive will continue to charge your credit card or invoice you in advance on a periodic basis for such Fees. All Fees are nonrefundable.

Unless otherwise set forth in the applicable Pricing Schedule, Jive reserves the right at any time to change the amount of, or basis for determining, any Fees for the Services, and to institute new Fees effective upon at least thirty (30) days prior notice to you. Jive reserves the right to offer special offers of the Services and to provide the Services at no charge for promotional reasons or otherwise (such as a free trial).

## **Section 11 - Non-Payment and Suspension.**

Your right to use the Site and Services is subject to any limits established by Jive or by your credit card issuer. If payment cannot be charged to your credit card or your charge is returned to Jive for any reason, including chargeback, Jive reserves the right to either suspend or terminate your access and account, thereby terminating this Agreement and all obligations of Jive hereunder. If you have a balance due on your Jive account, you agree that Jive can charge these unpaid Fees to your credit card. In cases where you fail payment under this Agreement, you shall bear default interest after the due date at the rate of 18% per year or the highest amount permitted by applicable law (whichever is less), which shall be calculated on a per diem basis of a year of 365 days.

## **Section 12 - Termination; Transition; Survival.**

Jive shall be entitled to terminate this Agreement, and also terminate or suspend any and all Services and your access to the Site immediately in Jive's reasonable discretion, without prior notice or liability, if you fall under any of the following items:

1. You breach any of the provisions in this Agreement;
2. You become insolvent, or an application for a proceeding for the bankruptcy or other similar proceeding has been instituted by you or against you;
3. The Entity dissolves, liquidates, is wound-down, ceases to do business, sells or disposes of all or substantially all of its assets or is acquired (by sale of stock or otherwise); or
4. Jive determines that continuation of the Services for you is not permitted by applicable law or is otherwise inappropriate.

Upon termination of your account, your right to access the Site and use the Services will immediately cease. Sections 7, 8, 10, 11, 16 through 18 and 20 shall survive termination of this Agreement for any reason; provided, however, that Section 10 and 11 shall survive if and to the extent that any Fee or default interest remains unpaid.

## **Section 13 - Technical Support Services.**

Technical support services will be available during the Term, in Jive's sole discretion, according to the terms and conditions, if any, posted on the Site.

## **Section 14 - Links.**

The Site or Services may provide, or third parties may provide, links to or portions of other World Wide Web sites or resources. Because Jive has no control over such sites and resources, you acknowledge and agree that Jive is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that Jive shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

## **Section 15 - Indemnity.**

You agree to indemnify and hold Jive, and its subsidiaries, affiliates, shareholders, officers, agents, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Submitted Content you submit, post, transmit or make available through the Services, your use of the Services, your access to the Site, your violation of this Agreement, including, without limitation, the restrictions in Section 9 above, or your violation of any applicable law or infringement of any intellectual property or other right of any other person or entity.

## **Section 16 - Disclaimer of Warranties.**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- (a) YOUR USE OF THE SITE AND THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. JIVE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- (b) JIVE MAKES NO WARRANTY THAT (I) THE SERVICES WILL MEET YOUR REQUIREMENTS, (II) THE SERVICES WILL BE UNINTERRUPTED, AVAILABLE, TIMELY, SECURE, OR ERROR-FREE, OR (III)

THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS.

- (c) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH YOUR USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- (d) JIVE MAKES NO WARRANTY THAT ANY OF YOUR SUBMITTED CONTENT WILL NOT BE LOST OR BECOME UNRETRIEVABLE. FOR THIS AND OTHER REASONS, YOU ACKNOWLEDGE AND UNDERSTAND THE IMPORTANCE OF BACKING UP ALL SUBMITTED CONTENT AND FILES TO ANOTHER STORAGE MECHANISM PRIOR TO USE OF THE SERVICES. YOU UNDERSTAND AND ACCEPT THE RISKS IF YOU DECIDE NOT TO BACK UP SUBMITTED CONTENT AND FILES. NEITHER JIVE NOR ITS AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS OR CONTRACTORS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SUBMITTED CONTENT, FILES OR DATA.

Electronic Communications Privacy Act Notice (18USC 2701-2711): JIVE MAKES NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SITE OR ANY WEB SITE LINKED TO THE SITE. Jive will not be liable for the privacy of email addresses, registration and identification information, disk space, communications, confidential or trade-secret information, or any other Content stored on Jive's equipment, transmitted over networks accessed by the Site, or otherwise connected with your use of the Services.

## **Section 17 - Internet Delays.**

The Services may be subject to limitations, delays and other problems inherent in the use of the Internet and electronic communications. Jive is not responsible for any delays, delivery failures, or other damages resulting from such problems, including, without limitation, problems in the transmission of data between the Site and your web browser.

## **Section 18 - Limitation of Liability.**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT JIVE SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF JIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICES; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE; OR (v) ANY OTHER MATTER RELATING TO THE SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

## **Section 19 - No Third Party Beneficiaries.**

You agree that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this Agreement.

## **Section 20 - General Information.**

20.1 *Entire Agreement.* This Agreement, inclusive of the Privacy Policy and Acceptable Use Policy, constitutes the entire agreement between you and Jive and governs your use of the Services, superseding any prior agreements between you and Jive with respect to the Site and the Services.

- 20.2 *Choice of Law and Forum.* This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Oregon, without giving effect to any conflicts of laws principles that require the application of the law of a different state. Venue in any suit or action between the parties arising out of or relating to the Agreement shall be in either the Circuit or District Court for Multnomah County, Oregon or the United States District Court for the District of Oregon in Portland, Oregon.
- 20.3 *Waiver and Severability of Terms.* The failure of Jive to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
- 20.4 *Assignment.* This Agreement is not assignable, transferable or sublicensable by you except with Jive's prior written consent. Any attempt to assign or transfer in violation of the foregoing shall be null and void. Jive shall be entitled to transfer this Agreement and/or any rights and obligations under this Agreement for any reason including, without limitation, in connection with the acquisition of all or substantially of its capital stock or assets, whether by merger, operation of law or otherwise.
- 20.5 *Force Majeure.* Jive shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond Jive's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including "line-noise" interference), fire, power cut, hacking, attack of computer virus, earthquake, flood, war, embargo, strike, riot, inability to secure materials and transportation facilities, or the intervention of any governmental authority.
- 20.6 *Confidentiality.* "Confidential Information" referred to in this Section includes any and all information relating to technologies, business, operation, finance, organization or others provided or disclosed by Jive to you in writing, orally, through recording media or in any manner in the transactions under this Agreement. Confidential Information shall not include information which (i) is already publicly known or known to you prior to the provision or disclosure; (ii) is or becomes publicly known through no wrongful act of you; (iii) is rightfully received by you from an authorized third party without any obligation of confidentiality; or (iv) is approved by written authorization of Jive. You shall not use Confidential Information beyond the purposes of this Agreement, and shall not, without prior written consent of Jive, disclose or divulge Confidential Information to any third party. You shall promptly return to the Jive, destroy or otherwise dispose of Confidential Information, documents and recording media containing Confidential Information, and copies thereof in accordance with Jive's instruction, upon the termination of this Agreement or Jive's request at any time.