

SUBSCRIPTION AGREEMENT
(Circle)

Last updated: July 26, 2016

BY SIGNING AN ORDERING FORM (EACH, A “PRICING SCHEDULE”) REFERENCING THESE TERMS AND CONDITIONS (THIS “AGREEMENT”), OR BY ACCESSING OR USING THE SERVICE (AS DEFINED BELOW), YOU HEREBY AGREE TO THE RIGHTS AND OBLIGATIONS OUTLINED IN THIS AGREEMENT. YOU FURTHER AGREE THAT YOU HAVE THE REQUISITE AUTHORITY, POWER AND RIGHT TO FULLY BIND YOURSELF AND/OR THE ENTITIE(S) (COLLECTIVELY, THE “CUSTOMER”) LISTED ON THE APPLICABLE PRICING SCHEDULE WHICH JIVE SOFTWARE, INC. (“JIVE”) OR ONE OF ITS AUTHORIZED RESELLERS (A “RESELLER”) PROVIDES OR MAKES AVAILABLE TO CUSTOMER. THE TERMS OF EACH PRICING SCHEDULE (TO THE EXTENT APPLICABLE) WILL SET FORTH THE SPECIFIC TERMS OF THE ORDER, AND EACH SUCH PRICING SCHEDULE IS HEREBY INCORPORATED HEREIN BY REFERENCE.

IF YOU DO NOT HAVE THE AUTHORITY TO BIND THE CUSTOMER, OR YOU OR THE CUSTOMER DO NOT AGREE TO ANY OF THE TERMS BELOW, JIVE IS UNWILLING TO PROVIDE THE SERVICE TO THE YOU AND/OR THE CUSTOMER, AND YOU SHOULD DISCONTINUE THE ACCESS AND USE OF THE SERVICE.

IN THE EVENT YOUR EMPLOYER ENTERS INTO AN AGREEMENT WITH JIVE THAT GOVERNS YOUR EMPLOYER’S AND ITS EMPLOYEES’ USE OF AND ACCESS TO THE SERVICE (“EMPLOYER AGREEMENT”), AS OF THE DATE OF THE EMPLOYER AGREEMENT, THE EMPLOYER AGREEMENT SHALL SUPERSEDE THIS AGREEMENT AND SHALL GOVERN YOUR USE OF AND ACCESS TO THE SERVICE. NOTE THAT THIS AGREEMENT OR THE EMPLOYER AGREEMENT, AS APPLICABLE, IS THE ONLY AGREEMENT THAT GOVERNS YOUR USE OF AND ACCESS TO THE SERVICE. ANY OTHER BINDING AGREEMENT, WRITTEN OR ELECTRONIC, BETWEEN YOU AND JIVE AND/OR BETWEEN YOUR EMPLOYER AND JIVE SHALL NOT APPLY TO CUSTOMER’S USE OF AND ACCESS TO THE SERVICE.

BY REGISTERING TO USE THE SERVICE, YOU REPRESENT AND WARRANT THAT (A) YOU ARE OVER 18 YEARS OLD; (B) YOU HAVE NOT PREVIOUSLY BEEN SUSPENDED OR REMOVED FROM THE SERVICE; (C) YOU DO NOT HAVE MORE THAN ONE ACCOUNT; (D) YOU HAVE FULL POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND IN DOING SO WILL NOT VIOLATE ANY OTHER AGREEMENT TO WHICH YOU ARE A PARTY; AND (E) YOU WILL NOT USE THE SERVICES IF THE LAWS OF YOUR COUNTRY PROHIBIT YOU FROM DOING SO IN ACCORDANCE WITH THESE TERMS.

WE MAY AMEND OR MODIFY THIS AGREEMENT AT ANY TIME AND IN OUR SOLE DISCRETION. IF WE MAKE ANY CHANGES TO THIS AGREEMENT, WE WILL PROVIDE YOU WITH NOTICE OF SUCH CHANGES, SUCH AS BY SENDING AN EMAIL, POSTING A NOTICE IN THE SERVICE, OR UPDATING THE DATE AT THE TOP OF THIS AGREEMENT (“NOTICE”). YOU SHOULD PERIODICALLY REVIEW THE AVAILABLE AGREEMENT FOR ANY CHANGES. YOUR CONTINUED USE OF THE SERVICE AFTER WE HAVE PROVIDED YOU WITH NOTICE OF THE CHANGES SIGNIFIES YOUR ACCEPTANCE OF THE REVISED AGREEMENT. IF YOU ARE DISSATISFIED WITH ANY MODIFICATIONS OR AMENDMENTS, YOU AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES.

1.0 ACCESS RIGHTS AND RESTRICTIONS.

1.1 Provision of Service; Restrictions; Usage.

(a) *Provision of Service.* Subject to the terms of this Agreement, Jive will make subscriptions to access and use of the Jive Circle application made available by Jive and/or its suppliers on a hosted, software-as-a-service (SaaS) basis (the “Service”) and the related user documentation (“Documentation”) available to Customer and its employees or authorized specific individual independent contractors (“Users”). Please note that Jive Circle is not intended for use by citizens of EU/EEA countries.

(b) *Restrictions.* Except as otherwise expressly permitted under this Agreement, Customer agrees not to: (a) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Service or any portion thereof; (b) distribute, transfer, grant sublicenses to, or otherwise make available the Service (or any portion thereof) to third parties, including, but not limited to, making such Service available (i) through resellers or other distributors, or (ii) as an application service provider, service bureau, or rental source; (c) create modifications to or derivative works of the Service; (d) attempt to modify, alter, or circumvent the license control and protection mechanisms within the Service; (e) use or transmit the Service in violation of any applicable law, rule or regulation, including, without limitation, any data privacy or protection laws; (f) intentionally access, use, or copy any portion of the Service or the Documentation (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Service; or (g) remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other designation included on any display screen within the Service (“Jive Marks”).

(c) *Usage.* Customer may permit access to the Service by no more than the number of Users specified in the relevant Pricing Schedule. At the end of each calendar quarter during the Subscription Term (defined below), Jive will review Customer’s current licensed User count, and to the extent that Customer has exceeded the usage agreed upon in the Pricing Schedule, Jive will invoice Customer for the number of Users exceeding the number of licensed Users on a pro rata basis for the balance of the Subscription Term. Such additional User licenses must be purchased in blocks of 25 and will be coterminous to the end of the then-current Subscription Term.

1.2 Bankruptcy. All rights granted pursuant to this Agreement are, for purposes of Section 365(n) of the U.S. Bankruptcy Code, deemed to be rights to “intellectual property” as defined under Section 101 of the U.S. Bankruptcy Code. In any bankruptcy or insolvency proceeding involving Jive, Customer, as recipient of such rights, will retain and fully exercise all of its rights and elections under the U.S. Bankruptcy Code, which will apply notwithstanding conflict of law principles.

2.0 SUPPORT AND MAINTENANCE. At no additional charge, Jive will provide support and maintenance services in accordance with the terms and conditions described at www.jivesoftware.com/legal, which such terms are incorporated herein by reference.

3.0 ACCEPTABLE USE. Customer will comply with and will be responsible for its Users’ compliance with all applicable laws and regulations as well as the terms and conditions of the Acceptable Use Policy (“Jive AUP”) with respect to use of the Service. The Jive AUP is found at www.jivesoftware.com/legal. The Jive AUP is incorporated herein by reference. Customer is responsible for establishing and enforcing terms of use and privacy policies applicable to use of the Service by Users as permitted under this Agreement. In relation to all personal data comprised within any content that is uploaded and displayed via the stored through the Service (“Customer Content”), Customer warrants that such personal data shall have been obtained and supplied to Jive in compliance with applicable data protection legislation, including Customer having obtained all necessary

consents and approvals from Users that are necessary to permit Jive to provide the Service. Customer will indemnify Jive for any damages, costs, expenses (including reasonable attorneys' fees) and any other liabilities arising from a third party claim, demand or proceeding pertaining to a breach of this Section 3.0.

4.0 PROPRIETARY RIGHTS. As between the parties, Jive and its suppliers will retain all ownership rights in and to the Jive Marks, the Service, the Documentation, and other derivative works of the Service and/or Documentation that are provided by Jive, and all intellectual property rights incorporated into or related to the foregoing. Customer acknowledges that the goodwill associated with the Jive Marks belongs exclusively to Jive. All rights not expressly licensed by Jive under this Agreement are reserved. As between the parties hereto, Customer will retain all ownership rights in and to all Customer Confidential Information, all pre-existing Customer intellectual property and all Customer Content. Jive may use without limitation any suggestions, recommendations or other feedback provided by Customer regarding the Service.

5.0 DISCLAIMERS. THE SERVICE IS PROVIDED "AS-IS" AND JIVE EXPRESSLY DISCLAIMS ALL CONDITIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY CONDITIONS OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, QUIET ENJOYMENT, TITLE, MERCHANTABILITY AND THOSE THAT ARISE FROM ANY COURSE OF DEALING OR COURSE OF PERFORMANCE ARE HEREBY DISCLAIMED. JIVE DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED.

6.0 INDEMNITY. Jive will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Service infringes any copyright, trademark, or misappropriates any trade secret rights recognized (in either case) in the United States. Jive will pay those costs and damages agreed to in a monetary settlement of such action. If the Service (or any component thereof) becomes, or in Jive's opinion is likely to become, the subject of an infringement claim, Jive may, at its option and expense, either (x) procure for Customer the right to continue exercising the rights licensed to Customer in this agreement, or (y) replace or modify the Service so that it becomes non-infringing and remains functionally equivalent. If neither of the foregoing options are, in Jive's reasonable opinion, commercially reasonable, Jive may terminate this Agreement and will refund to Customer a pro-rata portion of any applicable prepaid Fees. Notwithstanding the foregoing, Jive will have no obligation under this Section 6.0 or otherwise with respect to any infringement claim based upon any Exclusions. Customer will have the right, at its own expense, to participate in the defense of any claim of infringement. This Section states Jive's entire liability and Customer's sole and exclusive remedy for infringement or misappropriation claims and actions. The foregoing obligations are conditioned on (i) the Customer notifying Jive in writing of an action, proceeding, or other claim by a third party no later than 30 days after first receiving notice of such action and must provide copies of all communications, notices and/or other actions relating to the action; (ii) giving Jive sole control of the defense thereof and any related settlement negotiations, provided that such defense shall be conducted in a manner that is not adverse to Customer's interests (Customer may employ its own counsel at its own expense to assist it with respect to any such claim); (iii) Customer's compliance with this Agreement; and (iv) Customer acting in accordance with the reasonable instructions of the other party, cooperating and, upon reasonable request and at the expense of Jive, assisting in such defense.

7.0 LIMITATIONS ON LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S AGGREGATE CUMULATIVE LIABILITY TO THE OTHER, IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE AND REGARDLESS OF WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, THE GREATER OF THE FEES PAYABLE TO JIVE BY CUSTOMER UNDER THIS AGREEMENT DURING THE ONE YEAR PERIOD PRIOR TO THE DATE THAT SUCH LIABILITY FIRST ARISES, OR ONE HUNDRED US DOLLARS (\$100). HOWEVER, THERE IS NO LIMITATION ON DIRECT LOSS, CLAIM OR DAMAGES ARISING AS A RESULT OF AN INFRINGEMENT OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS.

8.0 CONFIDENTIALITY. "Confidential Information" means, with respect to a party (the "Disclosing Party"), all non-public confidential information pertaining to such party's business. Customer Content shall constitute Customer's Confidential Information. Jive and Customer will comply with this Section 8.0 when exchanging Confidential Information under this Agreement. Confidential Information will be designated and/or marked as confidential when disclosed, provided that any information that the party receiving such information (the "Receiving Party") knew or reasonable should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party, will be considered Confidential Information of the Disclosing Party even if not designated or marked as such. The Receiving Party shall preserve the confidentiality of the Disclosing Party's Confidential Information and treat such Confidential Information with at least the same degree of care that Receiving Party uses to protect its own Confidential Information, but not less than a reasonable standard of care. The Receiving Party will use the Confidential Information of the Disclosing Party only to exercise rights and perform obligations under this Agreement. Confidential Information of the Disclosing Party will be disclosed only to those employees and contractors of the Receiving Party with a need to know such information. The Receiving Party shall not be liable to the Disclosing Party for the release of Confidential Information if such information: (a) was known to the Receiving Party on or before Effective Date without restriction as to use or disclosure; (b) is released into the public domain through no fault of the Receiving Party; (c) was independently developed solely by the employees of the Receiving Party who have not had access to Confidential Information; or (d) is divulged pursuant to any legal proceeding or otherwise required by law, provided that, to the extent legally permissible, the Receiving Party will notify the Disclosing Party promptly of such required disclosure and reasonably assists the Disclosing Party in efforts to limit such required disclosure.

9.1 TERM, TERMINATION AND EFFECT.

9.2 Subscription Duration; Renewal. The term of each subscription to the Service purchased by Customer will commence on the date that both parties have executed the applicable Pricing Schedule and will continue for the period set forth on such Pricing Schedule, including any renewal (collectively, the "Subscription Term"). Each subscription will automatically renew for a period of one year (unless a different renewal period is set forth in the applicable Pricing Schedule) unless either party notifies the other at least 30 days prior to the commencement of the renewal term that it does not intend to renew the Subscription Term.

9.3 Term and Termination. This Agreement shall commence as of the date the Customer first accesses the Service and shall continue in effect until terminated as set forth herein. This Agreement may be terminated (a) by either party if the other party materially breaches this Agreement and does not cure the breach within 30 days after receiving written notice thereof from the non-breaching party, or (b) by Jive at any time for any reason or no reason, as determined by Jive in its sole discretion. In addition to the foregoing, Jive may suspend any and all access to the Service for your failure to pay the applicable Fees (defined below) when due.

9.4 Effect. Upon any termination of this Agreement, without prejudice to any other rights or remedies which the parties may have under this Agreement, (a) all subscriptions, rights and obligations hereunder shall immediately cease; provided that Sections 4.0-8.0, 9.3, 10.0 and 11.0 and any other provisions with express survival language shall survive termination, and (b) Customer shall pay to Jive any outstanding Fees that have accrued prior to the date of termination. Customer will have access to Customer Content stored in the Service during the term, and for a period of thirty (30) days following termination or expiration solely for the purpose of extracting Customer Content.

10.1 FEES AND PAYMENT.

10.2 Fees. Subject to the terms and conditions below, applicable fees for subscriptions to the Service (collectively, the “Fees”) will be set forth on an invoice.

10.3 Payment Terms. Unless otherwise agreed to in writing by the parties, Customer will pay to Jive or the Reseller, as applicable, any applicable Fees owed within 30 days of the date of the invoice pertaining thereto. Payments will be sent to the address included on the invoice. Any amounts payable shall be in the currency of the United States and specifically exclude (and Customer is responsible for) any and all applicable sales, use and other taxes, (other than taxes based on Jive’s income). Each party is responsible for its own expenses under this Agreement unless set forth in an Order Document.

11.0 MISCELLANEOUS. The parties are independent contractors with respect to each other, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, agency relationship or a joint venture between the parties. Each party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to acts of God, earthquake, labor disputes and strikes, riots, war and governmental requirements (each a “Force Majeure Event”). The obligations and rights of the party so excused will be extended on a day to day basis for the duration of the Force Majeure Event. This Agreement applies to each party’s Users, representatives, officers, agents, employees and associated individuals. The terms of this Agreement shall be binding on the parties, and all successors to the foregoing. Neither party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other party’s prior written consent except pursuant to a transfer of all or substantially all of such party’s business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void. All modifications to or waivers of any terms of this Agreement must be in a writing that is signed by the parties hereto and expressly references this Agreement. This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws rules. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to this Agreement shall be the state or federal courts located in Santa Clara County, California. Each party waives any objection (on the grounds of lack of jurisdiction, forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or enforcement of this Agreement. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. This Agreement includes any Order Documents agreed to by the parties in writing and all expressly referenced documents. Collectively the foregoing constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications, including, without limitation, any quotations or proposals submitted by Jive. The terms on any purchase order or similar document submitted by Customer to Jive will have no effect and are hereby rejected. Unless otherwise expressly stated, all legal notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at its official headquarters to the attention of the chief legal officer and are deemed delivered when received.
