

TEMBO SOCIAL FOR JIVE
SUBSCRIPTION AGREEMENT

Last updated: June 13, 2017

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.

JIVE MAY AMEND OR MODIFY THIS AGREEMENT AT ANY TIME AND IN OUR SOLE DISCRETION. IF WE MAKE ANY CHANGES TO THIS AGREEMENT, JIVE WILL PROVIDE CUSTOMER 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"). CUSTOMER SHOULD PERIODICALLY REVIEW THE AVAILABLE AGREEMENT FOR ANY CHANGES. 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 THE SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES.

1.0 ACCESS RIGHTS AND RESTRICTIONS.

1.1 Provision of Service. Subject to the terms of this Agreement, Jive will make the applicable TemboSocial service for Jive available to Customer on a hosted, software-as-a-service (SaaS) basis (the "Hosted Service"). Each Pricing Schedule will specify whether the Hosted Service acquired thereunder is to be used as an Internal or External version. With a subscription to an "Internal" version, Customer is authorized to access the Service in connection with its Internal Jive Community (defined below) for use within Customer's organization solely by authorized individual, non-concurrent users ("Users") that are (1) employees or specific individual independent contractors of Customer ("Internal Users") and (2) other users who are (i) not Internal Users (e.g. third party consultants, advisors, etc.) and (ii) are invited by Internal Users to participate in certain aspects of the Internal Community ("External Contributors"). Customer has sole discretion as to whether to permit External Contributors to access the Community and to designate those Internal Users who may invite External Contributors. With a subscription to an "External" version, Customer is authorized to create and maintain a Community for use primarily by Users who are not employees or independent contractors of Customer (e.g. members of the general public) ("External Users"). Customer will use the Hosted Service for the intended version type set forth in the Pricing Schedule. A "Community" is an online virtual community of Users licensed under a separate written agreement that contains a collective, shared repository for user, group data, and search functionality and permits access to the underlying database by only one unique instance of the Hosted Service. Each license to either the External or Internal version of the Hosted Service permits Customer to access and use the Hosted Service in connection with a single Community. As used in this Agreement, the term "User" shall mean all Internal Users, External Users and External Contributors.

1.2 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 Hosted Service or any portion thereof; (b) distribute, transfer, grant sublicenses to, or otherwise make available the Hosted Service (or any portion thereof) to third parties, including, but not limited to, making such Hosted 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 Hosted Service; (d) attempt to modify, alter, or circumvent the license control and protection mechanisms within the Hosted Service; (e) use or transmit the Hosted 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 Hosted 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 Hosted 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 Hosted Service ("Jive Marks"). The Hosted Service is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), and more specifically is "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.

1.3 Implementation Types. The Hosted Service is made available under the following implementation types. The relevant Pricing Schedule will designate the form of the Hosted Service implementation Customer will receive.

(i) User Subscription. For Internal Communities, Customer may permit access to the Hosted Service by no more than the number of Users (regardless of whether such Users are Internal or External Users) specified in the relevant Pricing Schedule; provided that with respect to each group within a Community, the number of External Contributors may not exceed one hundred (100). Customer may order additional User subscriptions from Jive in accordance with the ordering process set forth above. To the extent that any User subscriptions have been purchased and are in effect ("Existing Subscriptions") at the time that Customer subsequently purchases additional User subscriptions (collectively, "Additional Subscriptions"), then the Subscription Term pertaining to the Additional Subscriptions shall equal the period of time remaining on the then-current Subscription Term pertaining to the Existing Subscriptions so that the Subscription Term for all subscriptions shall be coterminous, regardless of when purchased and subject to payment of additional Fees for such Additional Subscriptions, as set forth in the applicable Pricing Schedule.

(ii) User View Subscription. For External Communities, such usage shall be subject to the restrictions on the number of monthly User Views specified in the relevant Pricing Schedule. As used herein, a "User View" means each request from Customer or its Users for a visually displayed impression of content presented by the Hosted Service, including HTML content and asynchronous requests within the Hosted Service. Each applicable Pricing Schedule shall set forth a table of monthly User View ranges (i.e., 0-50,000 or 50,001 to 150,000 monthly User Views) (each, a "User View Range") and the initial estimated fee payable by Customer for use of the Hosted Service in connection with a single Community for the applicable Subscription Term (the "Initial User View Subscription Fee"). The Initial User View Subscription Fee will be based upon Customer's anticipated and designated User View Range as set forth on the Pricing Schedule ("Designated User View Range"). The Initial User View Subscription Fee shall be payable in advance of the applicable Subscription Term in accordance with this Agreement. On a monthly basis during the Subscription Term, Jive may track and deliver or make available to Customer a report summarizing the total number of actual User Views calculated by Jive during the preceding month ("Monthly User Views").

(iii) Excess Usage. At the end of each calendar quarter during the Subscription Term, Jive will review Customer's current licensed User count and/or Monthly User Views, as applicable, and to the extent that Customer has exceeded the usage agreed upon in the Pricing Schedule ("Excess

Usage”), Jive will invoice Customer for: (a) the number of Users exceeding the number of licensed Users on a pro rata basis for the balance of the Subscription Term Length; such additional User licenses must be purchased in blocks of 25 and will be coterminous to the end of the then current Subscription Term; and (b) Excess Fees based upon the difference between the applicable Monthly Charge for the Designated User View Range and the actual User View Range. Customer shall pay to Jive all Excess Usage Fees plus an overage charge equal to 20% of the Excess Usage Fee.

2.0 SUPPORT AND MAINTENANCE. Jive offers the following levels of support and maintenance services (“Support Services”): JCS Silver, JCS Gold or JCS Platinum. JCS Silver Support Services are included without any additional charge to Customer. Customer may elect to upgrade to JCS Gold or JCS Platinum for additional Fees as set forth in a Pricing Schedule. Jive will provide Support Services at the applicable level during the Subscription Term in accordance with the terms found at: www.jivesoftware.com/legal (the “Support Terms”), which such terms are incorporated herein by reference. Jive will implement all Updates and Upgrades (as defined in the Support Terms) to the Hosted Services.

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 Hosted 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 Hosted 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 Hosted 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. Jive may collect and use data pertaining to Customer’s use of the Hosted Service, including (a) observing and reporting to Customer on Customer’s use of the Hosted Service and make recommendations for improvements, (b) for its internal research and development purposes, and (c) identifying trends and publishing reports or results on its findings provided that the reports or results include aggregated data that does not identify Customer.

4.0 PROPRIETARY RIGHTS. As between the parties, Jive and its suppliers will retain all ownership rights in and to the Jive Marks, the Hosted Service, Jive’s Confidential Information, all Updates and Upgrades (as defined in the Support Terms), and other derivative works of the Hosted Service that may be 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 to Customer under this Agreement are reserved. As between the parties hereto, Customer will retain all ownership rights in and to all Customer’s 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 Hosted Service.

5.0 WARRANTY; DISCLAIMERS.

5.1 Jive warrants that (i) the Hosted Service, as delivered and when used in accordance with the Documentation (defined below) will perform in all material respects as specified in such Documentation for the duration of the Subscription Term, and (ii) will not contain any back door, time bomb, Trojan horse, worm, drop dead device, virus, preventative routines or other computer software routines intentionally designed to permit unauthorized access to or use of either the Hosted Service’s or Customer’s computer systems (“Viruses”). In the event of any breach of the warranties in subsection above, Jive shall, as its sole liability and Customer’s sole remedy, diligently remedy any deficiencies promptly after its receipt of written notice from Customer. Jive will not be liable to the extent that any breach of the foregoing warranties are caused by (1) any other third-party components or services (including in combination with the Hosted Service) not provided by Jive; (2) unauthorized use or use of the Hosted Service other than in accordance with the Documentation, or (3) Viruses introduced by Customer or its agents or Users (collectively, “Exclusions”). “Documentation” means user documentation relating to the Hosted Service published by TemboSocial, Inc. and made generally available to its customers.

5.2 EXCEPT AS SET FORTH IN SECTION 5 ABOVE, THE HOSTED 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. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL SURVIVE ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE.

5.0 SECURITY. Jive or its subcontractors shall (i) establish and maintain technical and organizational measures intended to protect against accidental damage to, or destruction, loss, or alteration of Customer Content and (ii) establish and maintain technical and organizational measures intended to protect against unauthorized access to the hosting infrastructure and Customer Content. Jive is not responsible for the security of Customer while in transit over the Internet or other third party network. The Hosted Service, and Customer Content uploaded to the Hosted Service, is current hosted in Canada. Jive shall develop and implement a reasonable incident response plan for addressing security incidents in which unencrypted Customer Content processed or stored in the Hosted Service is accessed by an unauthorized person or entity. Jive shall notify Customer via Jive’s support services contacts within forty eight (48) hours, subject to applicable law or the needs of law enforcement, in the event that Jive confirms any instance of unauthorized access to unencrypted Customer Content. Jive does not provide, nor currently has, SOC2 or ISO 27001 or equivalent audit reports for the Hosted Service.

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. JIVE’S AGGREGATE CUMULATIVE LIABILITY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT

OR THE HOSTED SERVICE 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.

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. TERM, TERMINATION AND EFFECT.

9.1 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”).

9.2 Term and Termination. This Agreement shall commence as of the date the Customer first accesses the Hosted Service and shall continue in effect until terminated as set forth herein. This Agreement may be terminated 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. In addition to the foregoing, Jive may suspend any and all access to the Hosted Service for your failure to pay the applicable Fees (defined below) when due.

9.3 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 1.2, 3.0, 4.0, 5.2, 6.0-8.0, 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. FEES AND PAYMENT. Subject to the terms and conditions below, applicable fees for subscriptions to the Service (collectively, the “Fees”) will be set forth in the applicable Pricing Schedule. 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. 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 or its suppliers, 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. 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. Jive may subcontract to a third party any of its performance obligations under the Agreement, including obligations related to the hosting, storage, or processing of Customer Content. 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 Pricing Schedule agreed to by the parties in writing. 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.
