

## **Jolly App Business Subscriber Terms of Use Agreement**

This Subscriber Terms of Use Agreement (“Agreement”) is entered into between You (referred to herein as “You” or “Subscriber”) and Jolly App, LLC, an Oregon limited liability company (“Jolly App” or “We”) concerning use of the Jolly App SaaS platform (the “Software”).

By clicking I AGREE during the Jolly App’s Subscriber onboarding process, You agree to these terms and conditions. You will be asked to furnish certain contact and other information in order to become a registered Subscriber and receive access to the Software and user information. This Agreement will be effective as of the date that Jolly App receives and validates Your registration information, and Jolly App reserves the right to withhold or revoke consent to register You as a Subscriber for any reason at any time, without prior notice.

**By using any of the Software or other services offered through this Agreement, You agree to be bound by these terms.** If You are using the Services on behalf of an organization, these terms are binding for that organization and You warrant that You have the authority to bind that organization and its affiliated to these terms. You may use the Software and other services only in compliance with this Agreement. **IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MAY NOT USE THE SOFTWARE OR ANY JOLLY APP SERVICES.** Should You have any questions concerning this Agreement, please contact us at [www.thejollyapp.com](http://www.thejollyapp.com)

Jolly App reserves the right to modify or replace the terms of this Agreement at any time in our sole discretion. We will notify You by email, using the address You provide, in the event that any modifications are made. Any modifications to this Agreement will be effective upon the date We provide You with such notice.

### **1. GRANT OF LICENSE; LICENSE RESTRICTIONS**

- 1.1 Grant of License. Jolly App grants Subscriber a nonexclusive, nontransferable worldwide license to access and use the Software and any related documentation. All rights not expressly granted to Subscriber are reserved by Jolly App.
- 1.2 Restrictions on Use. The right of use is at all times conditioned on prompt and timely payment of Subscription Fees, where applicable, and on compliance with all other provisions of this Agreement. You may use the Software on an unlimited number of computers and user sites, provided such use is only for Your internal business purposes. The Software may not be used in any way that is illegal or promotes illegal activities or in a manner that might be libelous or defamatory or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age or is otherwise indecent. You agree not to (a) license, sublicense, sell, lease, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Software, including operation of a service bureau; (b) modify or make derivative works based upon the Software; (c) attempt, or assist a third party, to decompile, disassemble or reverse engineer the Software, or otherwise attempt to determine the logic structure, architecture or other internal system design for the Software, including for the purpose of building a competitive product or service; or (d) build a product using similar ideas, features, functions or graphics of the Software, or copy any ideas, features, functions or graphics of the Software.
- 1.3 Ongoing Membership Database Requirements. You agree to maintain accurate up-to-date information in Your records associated with the Jolly App database, including business amenities, proximities to other businesses and services, hours of operation, sensory attributes, service types and menu offerings.

## 2. TERM; TERMINATION

- 2.1 Term. The license granted under this Agreement shall commence on the Effective Date and will continue indefinitely until Your Subscription has expired or been terminated.
- 2.2 Termination. You may terminate this Agreement at any time for any reason. Jolly App may terminate this Agreement at any time if You commit a material breach of this Agreement and fail to cure such breach within thirty (30) days following Your receipt of notice of breach, provided that Jolly App may terminate the Agreement immediately in the event of a breach of Sections 1.2, 6.4 or 7.2. In addition, Jolly App may, at its discretion, temporarily suspend services if deemed to be necessary in connection with (a) the actual or suspected violation of this Agreement; (b) the use of the Software in a manner that may cause Jolly App to have legal liability or disrupt others' use of the Software; (c) the suspicion or detection of any malicious code, virus or other harmful code by You or in Your account; (d) scheduled downtime and recurring downtime; (e) use of excessive storage capacity or bandwidth; or (f) unplanned technical problems and outages.
- 2.3 Obligations and Rights Upon Termination. Upon termination, all of Your rights to access and use the Software, and any similar rights that You have granted to any employees, affiliates, customers, agents or representatives, will immediately cease. If You elect to cease accessing or using the Software, You may still, by paying the required fees and complying with Jolly App's data retention policies, retain a separate secure data file within Jolly App's data storage archive containing any documents or materials that You designate, which retention shall remain subject to all applicable terms of this Agreement.

## 3. FEES

- 3.1 Subscription Fees. You agree to pay the Subscription Fees as set forth on the Jolly App Fee Schedule. Subscription Fees are based on the Subscriber's usage and storage requirements. There is no fee for locating and verifying ("claiming") Subscriber's business in the database. Once claimed, Subscriber is then directed to a page describing the Subscriber Plan, which requires agreement to the subscription fees, and includes additional capabilities, features and functionality not available on the free Subscriber plan. You are responsible for all taxes and other charges (for example, data charges and currency exchange settlements). Jolly App reserves the right to amend the Fee Schedule at any time, and such amendments will be effective thirty (30) days following notice to You. In addition to any Subscription Fees, You may still incur, and are solely responsible for, third party charges incidental to using the Software, for example, charges for Internet access, data roaming, and other data transmission charges. No refunds shall be made unless expressly authorized by Jolly App.
- 3.2 Payment Methods. Fees will be calculated and due on a monthly basis. You must be authorized to use the payment method and account information that You enter in the billing portion of the Subscriber dashboard. All invoiced fees are required to be paid in a timely manner. You may pay invoices manually each month or enroll in autopay. If you choose to pay monthly invoices manually, you may do so via account dashboard under billing. If you choose to enroll in autopay, we will automatically charge the credit card or bank account payment method approximately 5 days after the email delivery of each monthly invoice on the 1st of each month. You authorize Jolly App to make direct withdrawals from Your designated credit card or bank account to pay Subscription Fees or any other costs or charges assessed or incurred by Jolly App under this Agreement. You must keep all information in Your billing account current. You may change Your method of payment or account information by notifying Jolly App in accordance with the payment guidelines set forth in this Agreement or on the Fee Schedule. In the event of a suspension of services, Jolly App may impose a reconnection fee.

**4. JOLLY APP SUBSCRIBER SUPPORT.**

- 4.1 Jolly App may, at its discretion, issue unscheduled new releases or enhancements to the Software from time to time, which will be made available to all valid Subscribers. Additional online support may be made available for payment of additional support fees as set forth on the Jolly App Fee Schedule.

**5. SUBSCRIBER'S SYSTEM REQUIREMENTS.**

- 5.1 Subscriber is responsible, at its expense to provide suitable connections, computer equipment, storage space, heat, lighting, ventilation, and electrical supply required for Subscriber's use of the Software. Subscriber agrees to upload a current Adobe PDF menu file in order for Jolly App to provide valid menu item offerings to Jolly App End Users.

**6. OWNERSHIP OF SOFTWARE, EVALUATION INFORMATION AND SUBSCRIBER CONTENT.**

- 6.1 Software. Jolly App alone (and its licensors, where applicable) shall own all right, title and interest, including all related intellectual property rights, in and to the Software, all documentation, materials and information furnished by Jolly App, including all subsequent modifications, changes, corrections or enhancements to the Software, whether or not authorized by Jolly App. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Software. JOLLY APP®, and all other product names or logos associated with the Software are trademarks of Jolly App and no right or license is granted to use them.

- 6.2 Evaluation and Comments. All suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Software shall be the sole property of Jolly App, and all of such information shall be considered Jolly App's Confidential Information. Jolly App reserves the right to incorporate any of such information into the creation of new releases, upgrades or enhancements to the Software, and You hereby assign to Jolly App, without any additional compensation, all right, title and interest, including intellectual property rights, in and to such information as well as any new releases, upgrades or enhancements developed on the basis of such information.

- 6.3 Subscriber and End User Content; Ownership. You shall remain the owner of all information, documents, data and materials that You either create, originate or legally furnish or use from a third party source in connection with Your use of the Software ("Subscriber Content"). Jolly App does not acquire ownership of such Subscriber Content or End User Content, provided, however, that You authorize Jolly App to host, copy, reproduce, transmit, display, modify and adapt Subscriber Content and End User Content as necessary for Jolly App to: (a) furnish the services set forth in this Agreement or as necessary in connection with Jolly App's monitoring of Your account for quality control, error correction and compliance with Jolly App's legal obligations; and (b) investigation of any existing or suspected breach of this Agreement, or if deemed necessary to protect Jolly App's obligations to other subscribers. Jolly App will have no liability of any kind as a result of the deletion of, correction of, destruction of, damage to, loss of or failure to store or encrypt any Subscriber Content. Jolly App is allowed to gather and store information on Subscriber's business as needed for quality control, market analysis, and matching End Users with the specific amenities offered by Subscriber.

- 6.4 Your Obligations Regarding Subscriber Content. You are solely responsible for the nature, quality and accuracy of Subscriber Content. Jolly App will provide functions that allow You to control who may access Your Subscriber Content. If You enable the features that allow You to share the Subscriber Content with others, anyone You've shared content with (including the general public, in certain circumstances) may have access to Your Subscriber Content and You acknowledge that Jolly App does not verify, or endorse the safety of any Subscriber Content made available to others. You represent and warrant that You have all the rights in the Subscriber Content necessary for You to use Subscriber Content and to grant rights to the storage, transmission or use of the Software as contemplated in this Agreement. You agree to promptly handle and resolve any notices and claims relating to the Subscriber Content, including any notices sent to You by any person claiming that any Subscriber Content violates any person's rights, such as take-down notices pursuant to the Digital Millennium Copyright Act and any other notices, and to maintain appropriate security, protection, which may include Your use of additional encryption technology to protect the Subscriber Content from unauthorized access. You must immediately notify Jolly App of any in writing of any unauthorized use of any existing or suspected unauthorized use of or access to Subscriber Content and will take all steps necessary to terminate such unauthorized use. You will provide Jolly App with such cooperation and assistance related to any such unauthorized use as Jolly App may reasonably request.
- 6.5 Disclosure of You as a Subscriber. You agree that Jolly App shall have the right to disclose the fact that You are a Subscriber, provided such disclosure does not furnish specific contact details or grant access to any of Your Subscriber Content.

## **7. CONFIDENTIALITY; PRIVACY POLICY**

- 7.1 Confidential Information Defined. As used herein, "Confidential Information" shall mean any technical or business information furnished, in whatever form or medium, disclosed or made accessible by one party to the other (including, but not limited to, product/service specifications, prototypes, computer programs, models, drawings, marketing plans, financial data, personnel statistics), which is marked as confidential or proprietary; or for information which is orally disclosed, the disclosing party clearly indicates to the receiving party at the time of disclosure the confidential or proprietary nature of the information and confirms the confidential or proprietary nature in writing within thirty days after the disclosure, or any other information which is received or obtained under conditions such that the receiving party reasonably should understand that such information is considered confidential by the disclosing party.
- 7.2 Restrictions on Use of Confidential Information. Each party agrees to hold Confidential Information of the other party in strictest confidence and shall use same solely for the purposes of this Agreement unless otherwise authorized in writing by the disclosing party. The receiving party shall not copy such Confidential Information without express written permission, or disclose such Confidential Information to anyone (including consultants and subcontractors) except employees of the receiving party to whom disclosure is necessary for the purposes set forth in this Agreement. The receiving party shall appropriately notify each such employee that the disclosure is made in confidence and must be kept in confidence in accordance with this Agreement. The obligations set forth herein shall be satisfied by each party through the exercise of at least the same degree of care used to restrict disclosure and use of its own information of like importance.
- 7.3 Return of Confidential Information. All copies of such Confidential Information fixed or stored in written, graphic, electronic, optical, magnetic or other tangible form shall be returned to the disclosing party upon expiration, termination or cancellation of this

Agreement or upon the disclosing party's request, unless otherwise agreed.

- 7.4 Exceptions. The obligations imposed in Section 7.2 shall not apply to any information that: (a) is already in the possession of or is independently developed by the receiving party without violation of any obligation of nondisclosure; (b) is or becomes publicly available without violation of any obligation of nondisclosure; (c) is obtained by the receiving party from a third person without violation of any obligation of nondisclosure; or (d) is disclosed without restriction by the disclosing party.
- 7.5 Your Privacy. In order to operate and provide the Software to You, We collect certain information about you. We may also automatically upload information about your computer or device, your use of the Software, and Software performance. We use and protect that information as described in the privacy policy located on our website [www.thejollyaoo.com](http://www.thejollyaoo.com). You further acknowledge and agree that We may access or disclose information about you, including the content of your communications, in order to: (a) comply with the law or respond to lawful requests or legal process; (b) protect the rights or property of Jolly App or our customers, including the enforcement of our agreements or policies governing your use of the Service; or (c) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of Jolly App employees, customers, or the public.

## **8. WARRANTY, INDEMNIFICATION AND LIABILITY**

- 8.1 Jolly App Warranty; Disclaimers. Jolly App warrants and represents that it owns or has acquired the necessary rights to grant the license to Subscriber set forth herein. Jolly App will at all times reasonably attempt to achieve the highest possible availability of the Software, but no warranty is made with regard to specific availability or time of access. Jolly App makes no warranty with respect to recovering or restoring any lost Subscriber Content, and Subscriber acknowledges having been advised to secure separate backup services for all Subscriber content. Subscriber's use of the Software is at Subscriber's sole risk and Subscriber acknowledges that the software and associated documentation may contain defects, fail to comply with applicable specifications, any may produce unintended or erroneous results either alone or when operated in combination with other products or programs. Subscriber accepts the software "as is" without any other warranty whatsoever. Jolly App may at various times provide Subscribers with links to websites operated by third parties, and Subscriber acknowledges that Jolly App makes no warranty or representation as to the content, goods or services provided on such third party websites. Subscriber acknowledges that the Software is not intended or configured to serve as a source of reviews or ratings of Subscriber's business and services; and that Jolly App does not control or assume responsibility for any content that may be posted by an End User.
- 8.2 Jolly App Indemnification of Subscriber. Jolly App shall indemnify, hold harmless and defend Subscriber, its officers, directors, affiliates, agents and employees from any and all claims, demands, litigation, expenses and liabilities (including costs and reasonable attorneys' fees) arising from or incident to any claims that the Software infringes any trade secrets, trademark, copyright or patent rights of any third party. This shall not apply to the extent that any such claim is the result of Subscriber's misuse of the Software, combination of the Software with components or software not furnished by Jolly App, use of a superceded version of the Software, or unauthorized modification of the Software. Subscriber agrees to cooperate with the defense of any such claims, at Jolly App's expense. Jolly App may, at its sole option, and in addition to any other rights, respond to such claims by modifying the Software so as to remove the infringing component, procuring from the claimant the right to continue to use the Software under this

Agreement, or terminating this Agreement.

- 8.3 Subscriber's Indemnification of Jolly App. Except as provided in Section 8.2, You shall indemnify, hold harmless and defend Jolly App and its officers, directors, affiliates, agents and employees from any and all claims, demands, litigation, expenses and liabilities (including costs and reasonable attorney's fees) arising from any claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) asserted by a third party regarding Your use of the Software, Your use or disclosure of Your password, Your use, transmission, storage, access to or modification of Subscriber Content or End User Content, Your publication of false, libelous or defamatory content of any type, or any other act or omission in violation of the law or of the terms of this Agreement..
- 8.4 Disclaimer and Limitation on Damages. OTHER THAN AS SET FORTH ABOVE IN THIS ARTICLE 8, NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, COMMERCIAL LOSS, LOST PROFITS, LOSS OF VALUE, DAMAGES OR OTHER DAMAGES HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, WHICH DIRECTLY OR INDIRECTLY ARISES UNDER THIS AGREEMENT OR A BREACH OF THIS AGREEMENT. SUBSCRIBER SHALL BE RESPONSIBLE FOR ANY USE OF THE SOFTWARE IN SUBSCRIBER'S OPERATIONS AND FOR VERIFYING ANY OUTPUT RESULTING FROM USE OF THE SOFTWARE. SUBSCRIBER ACCEPTS ALL RISK OF LOSS OCCASIONED BY SOFTWARE DEFECTS, LOSS OF DATA OR FAILURE OF THE SOFTWARE TO OPERATE PROPERLY OR IN ACCORDANCE WITH SPECIFICATIONS.

## 9. GENERAL PROVISIONS

- 9.1 Independent Contractor. Each party hereunder is acting as an independent contractor and not as an agent, employee, representative or affiliate of the other. Neither party shall have authority to act for the other's behalf, to bind or incur any debts or liabilities in the name of or on behalf of other, or to control or answer for the acts of the employees of the other. Each party shall be responsible for, and shall indemnify, defend and hold the other harmless from, claims arising from the acts of its own employees. Each party is responsible for all matters relating to payment of its employees and agents, including compliance with worker's compensation, unemployment, disability insurance, social security withholding, and all other federal, state and local laws, rules and regulations.
- 9.2 Entire Agreement; Survival. This agreement contains the entire agreement between the parties hereto with respect to the matters covered herein and supercedes all prior or contemporaneous agreements, understandings and representations, both oral and written. All provisions of this Agreement which confer benefits or impose obligations that, by their nature, extend beyond the termination date of this Agreement shall survive such termination as necessary to render them fully enforceable.
- 9.3 Severability. If any provision of this Agreement is held invalid or unenforceable, such determination will not affect the remaining portions of this Agreement, and the parties agree that the affected provisions shall be amended to the extent necessary to render it enforceable so as to carry out the intent of this Agreement.
- 9.4 Force Majeur. Neither party shall be liable for failure to perform solely caused by unforeseeable circumstances beyond their control.

- 9.5 Assignment and Delegation. No rights or interests in this Agreement shall be assigned by Subscriber without written permission of Jolly App, and any attempted assignment in violation of this Section shall be void.
- 9.6 Notices. All notices permitted or required under this Agreement shall be in writing and shall be directed electronically to the recipient's email address, and shall be deemed received upon confirmation of electronic transmission. A facsimile or photocopy of such notice, or of this Agreement shall be treated as an "original" document admissible into evidence unless a document's authenticity is genuinely placed in question.
- 9.7 Waivers. The failure of either party to exercise any right shall not be construed to be a waiver unless agreed upon in writing. A waiver in any one instance shall not constitute an amendment to this Agreement or indicate any continued waiver of such right(s) on any other occasion.
- 9.8 Modifications or Amendments. No modifications or amendments shall be made to this Agreement unless in writing and signed by the parties.
- 9.9 Governing Law; Venue; Attorney's Fees. This Agreement shall be governed and interpreted under the laws of the State of Oregon. Venue for any legal action commenced to enforce or interpret this Agreement shall be exclusively vested in the state and federal courts having jurisdiction over Bend, Oregon, and the parties submit to the exercise of *in personam* jurisdiction over them for such actions. If any legal action is required to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover, in addition to any other remedies, all attorney's fees and costs incurred in connection with such action.
- 9.10 Authority. Each party signing this Agreement warrants that such party has the full and necessary authority and capacity to bind the party represented by such party's signature to each and every obligation set forth in this Agreement.
- 9.11 Injunctive Relief. You agree that any breach of this Agreement by You would cause Jolly App to suffer severe, irreparable and incalculable injury, not compensable through monetary damages, and that in the event of any such existing or threatened breach, Jolly App shall be entitled, in addition to any other remedies, to injunctive or other equitable relief without the necessity of posting an undertaking, which requirement is hereby expressly waived.
- 9.12 Consent to Electronic Communications. By registering as a Jolly App Subscriber, You understand and acknowledge that We may electronically send You communications or data regarding the Software or this Agreement, Services, including but not limited to (a) notices about Your use of the Software, including any notices concerning violations of use, (b) updates, and (c) promotional information and materials regarding Jolly App products and services, via electronic mail using the website address information that You provide. You acknowledge that failure to maintain current contact information with Jolly App means that You may not receive proper, current or accurate notices and that You are solely responsible for such occurrences.