

Terms of Use

(last updated 2020 February 28)

SUMMARY

Jostle Services were created to provide organizational clarity, and to improve employee engagement and communication. Your Organization has subscribed to Jostle Services and designated You as an “Authorized User” of these services.

These Terms of Use (TOU) were created to help You get the most benefit out of Jostle Services while using them appropriately.

Your data is always private and confidential, as determined by You and Your organization.

PLEASE READ THESE TOU CAREFULLY. THEY ARE THE RIGHTS AND OBLIGATIONS THAT WILL APPLY TO YOU AFTER YOU ACCEPT THEM AS A LEGALLY BINDING AGREEMENT WITH JOSTLE CORPORATION (“WE” or “US”) BY CLICKING THE “ACCEPT BOX” OR BY STARTING TO USE JOSTLE SERVICES.

YOU MAY NOT ACCEPT THESE TOU IF YOU ARE NOT OF LEGAL AGE TO FORM A BINDING CONTRACT WITH US.

YOU MAY NOT USE THE JOSTLE SERVICES IF YOU DO NOT ACCEPT, OR ARE NOT CAPABLE OF ACCEPTING, THE TOU.

WE MAY MAKE CHANGES TO THE TOU FROM TIME TO TIME. WHEN WE UPDATE THESE TOU, WE WILL REVISE THE “LAST UPDATED” DATE AT THE TOP OF THIS AGREEMENT AND WILL POST THE UPDATED TOU ON OUR WEB SITE AND/OR EMAIL YOUR SYSTEM ADMINISTRATOR PRIOR TO THE CHANGES BECOMING EFFECTIVE. IF YOU USE JOSTLE SERVICES AFTER THE DATE ON WHICH THE TOU HAVE CHANGED, YOU ARE DEEMED TO HAVE ACCEPTED THEM.

1. REGISTRATION AND ACCESS

1.1 Registration. In order to use the “Jostle Services” described in Section 2.1, You must be registered as an “Authorized User” through “Your Organization”, and Your Organization must have a current “Subscriber Agreement” with Jostle. To register, You must have a “Qualifying Relationship” with Your Organization, consisting of a business (as opposed to personal) relationship, arising from being an (1) employee, (2) director, (3) shareholder, (4) customer, client, consultant, advisor, contractor, agent, representative, supplier or service provider interacting with the organization, or (5) a contributor participating on Your Organization’s teams, project groups, committees, working groups, clubs or similar collaborative associations. A Subscriber Agreement is an agreement for Jostle Services between Us and

Your Organization, which allows Your Organization to register You to be an Authorized User of Jostle Services and to populate the Jostle Services with data relating to You, such as Your contact information, skills, education, personal interests and other attributes (“User Profile”). You may have Qualifying Relationships with more than one organization, and be separately registered through each of them as its Authorized User.

1.2 Porting. If You were already an Authorized User before Your Organization acquired a Subscriber Agreement or before You were hired or engaged by Your Organization which had a Subscriber Agreement, Your existing Authorized User registration will be ported to continue under Your Organization’s Subscriber Agreement.

1.3 Expiry. If You are registered as an Authorized User under Your Organization’s Subscriber Agreement, when You cease to have any Qualifying Relationship with Your Organization, or Your Organization’s Subscriber Agreement is terminated, then Your Authorized User registration will automatically expire. Your future use of Jostle Services will require obtaining a new Authorized User registration from Us as described in Section 1.1.

1.4 IDs and Passwords. You are responsible for maintaining the security and confidentiality of Your Authorized User identification and password that are provided for accessing Jostle Services, and their use. Your Authorized User identification and password can only be used by You, and You shall not share, loan or otherwise provide them to any other person. If You become aware of any unauthorized use of Your identification or password, You must notify the individual at Your Organization who is responsible for managing the Subscriber Agreement (“Administrator”) or notify Us.

1.5 Approved Access. You shall not access the Jostle Services by any means other than through the interface that is provided by Us.

1.6 Suspension or Termination. We have the right to immediately terminate these TOU and Your registration as an Authorized User, or to suspend Your access to the Jostle Services in whole or in part, if We determine in Our reasonably held belief that Your use of the Jostle Services does not meet the requirements of, or does not otherwise comply with, these TOU. Termination or suspension of Your registration as an Authorized User of any organization will allow Us to also terminate or suspend any other registrations that you may have as an Authorized User with other organizations.

2. JOSTLE SERVICES

2.1 Description. Jostle Services are the services provided online by Us using web-based applications and platform, and have the functionality and features described at Our web site at www.jostle.me or in the “Jostle Support Center” at forum.jostle.us/hc. We are committed to continually improving and enhancing the Jostle Services, and as a result certain functionalities and/or features of Jostle Services may change or be removed from time to time, without prior notice.

2.2 Use. While Your registration as an Authorized User is valid and in effect, You may access and use the Jostle Services solely in association with or as part of Your normal business relationship with Your Organization, but only in accordance with these TOU and always in conformance with all applicable laws and government regulations. We make online user guidance for Jostle Services available to You, accessible at forum.jostle.us/hc.

2.3 Availability. We shall use commercially reasonable efforts to make the Jostle Services available 24 hours a day, 7 days a week, except for planned downtime and unavailability caused by circumstances beyond Our reasonable control. Certain Jostle Services features or functionality that are dependent on inter-operation with services provided by third parties may become temporarily or permanently unavailable if such third parties cease to make their API or programs reasonably available.

2.4 Support. Some of your questions about Jostle Services can be answered or addressed through the information and tools made available at the Jostle Support Center. Any other questions about Jostle Services or requests for support are to be directed to Your Administrator, who may be accessed through the “Contact Your Administrator” link from within Jostle Services.

3. ACCEPTABLE USE

3.1 Right to Use. Your right to access and use Jostle Services is personal to You, and can not be assigned or transferred to any other person while You remain an Authorized User. You shall not provide access to the Jostle Services to anyone, or loan, sell, rent, lease or charge any fee for the Jostle Services, or use the Jostle Services to provide time sharing services or a service bureau, or copy, frame or mirror any part or content of the Jostle Services other than copying or framing on Your Organization’s own intranets. Your Organization and We have the right to monitor use of the Jostle Services by You, to ensure that their usage is in accordance with this TOU.

3.2 Prohibited Activities. The following activities are strictly prohibited when accessing or using Jostle Services:

- Spamming
- Phishing or impersonating
- Posting materials containing viruses or other malicious or destructive code
- Posting offensive content including profanity, obscenity, racist or pornographic material
- Abusing, harassing, threatening or intimidating others
- Posting infringing, libelous, unlawful or tortious material
- Attempt to gain unauthorized access to the systems or networks that provide Jostle Services
- Using automated scripts to collect information from, or otherwise interact with, Jostle Services or the Our web site
- Attempting to interfere with or disrupting the proper functioning of the Jostle Services
- Attempt to access or modify the information or data about a Jostle Services user that You are not authorized to access or modify

- Interfering with any Jostle Services user's attempt to use the Jostle Services for their intended purposes
- Using Jostle Services for any fraudulent, illegal or unauthorized purpose

4. PRIVACY AND CONTENT

4.1. Privacy Policy. We care about protecting Your privacy and personal information. Please read the Jostle Privacy Policy, which explains how We treat Your personal information and protects Your privacy when You use the Jostle Services.

4.2 Enterprise Data Responsibility. Information, data or content relating to Your Organization, including User Profiles, which can be accessed through Jostle Services (collectively "Enterprise Data") is not controlled by Us, nor are We liable for it in any way. Enterprise Data is the responsibility of the person from which it originated. You are responsible for the accuracy, integrity and legality of any Enterprise Data that You create.

4.3 Correcting Enterprise Data. We have no obligation to monitor, examine or evaluate the content, accuracy, completeness, timeliness, validity, copyright compliance, legality or any other aspect of any Enterprise Data, or to screen any Enterprise Data. If You feel that Your User Profile, or any other Enterprise Data, is incorrect, misleading, offensive or objectionable, then Your sole recourse is to address Your concerns with the Administrator or the originator of such Enterprise Data.

4.4. Use of Enterprise Data. If any Enterprise Data that You create includes personal information about other identifiable individuals or their confidential information, then it is Your responsibility to acquire the appropriate authorizations or consents from such individuals prior to your inputting or using such Enterprise Data with Jostle Services. You shall not use any Enterprise Data outside the Jostle Services in any way, unless You acquire the appropriate authorizations or consents to do so from the originators of such Enterprise Data and Your Organization.

4.5 License of Enterprise Data. By inputting or using any Enterprise Data that You create with Jostle Services, You grant to Us a perpetual, irrevocable, worldwide, royalty-free and non-exclusive license to reproduce, adapt, modify, translate, publish, perform, display and distribute such Enterprise Data, solely as part of the Jostle Services provided to Your Organization and its Authorized Users. You confirm that You have all the rights necessary to grant such license.

4.6 Backups. We backup our entire database on a daily basis as protection against any disaster impacting Us. We do not provide any other backup, data recovery or reconstruction services unless explicitly agreed to with your Organization.

4.7. Assumed Risk. We have implemented commercially reasonable technical and organizational measures designed to secure Your User Profile and other Enterprise Data that You create from accidental loss and from unauthorized access, use, alteration or disclosure. However, We cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Your User

Profile and other Enterprise Data that You create for improper purposes. Jostle cannot control the actions of other users with whom You may choose to share Your User Profile or other Enterprise Data that You create, and therefore does not guarantee that such User Profile or other Enterprise Data that You make available will not be viewed or used by unauthorized persons.

4.8 Data Subject Access Requests. If Your User Profile or other Enterprise Data is considered Personal Data under the General Data Protection Regulation (“GDPR”) of the European Union (“EU”), then you may make a data subject access request of your personal data that is stored within the Jostle Services by contacting the Data Protection Officer for Your organization.

5. THIRD-PARTY APPLICATIONS

5.1 Not Required. No online web-based applications and offline software products provided by third parties (“Third-Party Applications”) are required on your computing device in order to access or use the Jostle Services, except for the recommended browsers, operating systems and Internet utilities described in the Jostle Support Center. We will not be responsible for, and do not warrant, support or assume any liability for, any Third-Party Applications.

5.2 Effect of Use. If You install or enable Third-Party Applications to inter-operate with or be used in conjunction with Jostle Services, We may allow providers of such Third-Party Applications to access Your User Profile or other Enterprise Data that You create, as required for the inter-operation or use of such Third-Party Applications with the Jostle Services. We shall not be responsible for any disclosure, modification or deletion of Your User Profile or any other Enterprise Data that You create, resulting from such Third-Party Applications.

6. PROPRIETARY RIGHTS

6.1 Ownership of Jostle Services. We own all rights, title and interest in and to the software and other technologies that are used to create the Jostle Services, including all related intellectual property rights. No rights or interests are granted to You other than the limited rights expressly granted to You to access and use the Jostle Services in accordance with these TOU.

6.2 Improvements. All rights, title and interest in and to each improvement made by Us to the Jostle Services and the software and technologies that are used to create the Jostle Services, shall be owned exclusively by Us even if such improvement was based on comments, recommendations, suggestions, enhancements or other feedback provided by You (“Feedback”). You hereby grant Us a perpetual, royalty-free, worldwide, transferable, sub-licenseable, irrevocable right and license to use for any purpose, incorporate into Jostle Services and/or make available to any person, all Feedback provided by You.

6.3 Proprietary Notices. You shall not remove, obscure, or alter Our copyright notice, trademarks, or other proprietary rights notices displayed by or accessed in conjunction with or through the Jostle Services. THE SOFTWARE AND TECHNOLOGIES USED IN ASSOCIATION WITH JOSTLE SERVICES ARE COVERED BY US PATENTS #8,631,021, #8,706,723 AND #10,523,613, AND ONE OR MORE PENDING PATENT APPLICATIONS OWNED BY JOSTLE CORPORATION.

6.4 Derivative Works. You shall not create any derivative works based on the Jostle Services, or use the Jostle Services or Our trade secrets or software in any way as part of, or to build, a competitive product or service.

6.5 Ownership of Your User Profile. As between Us and You, You exclusively own all rights, title and interest in and to all of Your User Profile and any other Enterprise Data that You create.

7. CONFIDENTIALITY

7.1 Definition. As used in these TOU, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally, in writing, by visual representation, delivery of items, or granting access to the information, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your User Profile and any other Enterprise Data that You create, and Our Confidential Information includes Jostle Services. Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) is independently developed by the Receiving Party.

7.2 Protection. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) to not disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of these TOU.

7.3 Enterprise Data that You create. We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Enterprise Data that You create. We shall not modify or access Enterprise Data that You create except (i) to provide the Jostle Services, (ii) to prevent or address service or technical problems, (iii) as required for customer support matters, or (iv) with your prior approval.

7.4 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

7.5 Anonymized Data. We shall have the right to use anonymized data and statistics extracted from access and use by You of the Jostle Services, in any way necessary to enhance Jostle Services for the benefit of all users.

8. WARRANTIES AND DISCLAIMER

8.1 Our Warranty. We warrant that the Jostle Services shall during normal use conform substantially to the material specifications described on the Jostle Support Center, subject to the provisions of these TOU. We do not warrant that the Jostle Services will meet all of Your requirements, that they will be uninterrupted or error-free, that any specific functionality or feature of the Jostle Services will always continue to be made available, that all defects in the Jostle Services will be corrected, or that the Jostle Services will be compatible or work with any third party software, applications or services.

8.2 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THESE TOU, JOSTLE SERVICES ARE PROVIDED “AS IS” AND WE MAKE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE JOSTLE SERVICES, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

9. LIMITATION OF LIABILITY

9.1 LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TOU, IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TOU, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOUR ORGANIZATION UNDER ITS SUBSCRIBER AGREEMENT IN THE 12 MONTHS PRECEDING THE INCIDENT.

9.2 EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFIT, REVENUE OR ANY OTHER LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE JOSTLE SERVICES OR ANY DEFECTS IN THE JOSTLE SERVICES, OR THE COST OF RECREATING OR REPLACING LOST OR CORRUPTED DATA, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. GENERAL

10.1 Governing Law. These TOU shall be governed by the laws of the Province of British Columbia, Canada, excluding its conflict of laws provisions.

10.2 Notice. All notices, consents, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon the day of personal delivery, the third business day after mailing, the second business day after sending by confirmed facsimile, or the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to Your Administrator.

10.3 Venue. Any claim or dispute between You and Us that arises in whole or in part from these TOU or the Jostle Services shall be decided by a court of competent jurisdiction located in the Province of British Columbia, Canada which shall have exclusive jurisdiction for such claim or dispute.

10.4 LIMITATION PERIOD. ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THESE TOU OR THE JOSTLE SERVICES MUST COMMENCE WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

10.5 Waiver of Jury Trial. Each party waives any right to jury trial in connection with any legal action or litigation in any way arising out of or related to these TOU or the Jostle Services.

10.6 Export Compliance. YOU shall comply with the export laws and regulations of Your applicable jurisdictions in providing, accessing and using the Jostle Services.

10.7 Relationship of the Parties. The parties are independent contractors. These TOU do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

10.8 No Third-Party Beneficiaries. There are no third-party beneficiaries to these TOU.

10.9 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right, power or remedy under these TOU shall constitute a waiver of that right, power or remedy. Other than as expressly stated in these TOU, the remedies provided are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

10.10 Severability. If any provision of these TOU is held by a court of competent jurisdiction in any country to be invalid or unenforceable, such provision shall be changed and interpreted in such country so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of these TOU shall remain in full force and effect.

10.11 Assignment. You may not assign or transfer any of Your rights or obligations under these TOU, whether by operation of law or otherwise, without Our prior written consent, and any such attempted assignment or transfer shall be null and void.

10.12 Amendment. Except as may be otherwise provided in these TOU, no modification, amendment, or waiver of any provision of these TOU shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted.

10.13 Survival. Sections 1.6 (Suspension or Termination), 4.1 (Privacy Policy), 4.5 (License of Enterprise Data), 6 (Proprietary Rights), 7 (Confidentiality), 8 (Warranties and Disclaimer), 9 (Limitation of Liability), and 10 (General) shall survive any termination or expiration of these TOU.

10.14 English Language. These TOU are in the English language only, which language shall be controlling in all respects, and any versions in any other language shall not be binding on the parties. All communications and notices to be made or given pursuant to these TOU shall be in the English language.

10.15 Entire Agreement. These TOU, including all exhibits and addenda, constitutes the entire agreement between the parties and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.