



**Don Johnston Incorporated**  
**Subscription Services License Agreement**  
**Effective Date: September 2, 2014**

**Subscription Services License Agreement**

This Don Johnston License Agreement (“License” or “Agreement”) governs access to and use of fee-based products and services offered by Don Johnston Incorporated (“DJI”). By accessing, installing, using, printing, displaying, registering or logging in for such services or products, you (“Customer”) agree to the terms of this Agreement. If you do not agree to the terms of this Agreement, do not open, install, register, print, display or log in.

DJI offers and provides this interactive web service on the world wide web portion of the Internet (“Website”), documentation, apps, extensions and desktop software, also known or collectively referred to herein as the Don Johnston Services (“DJ Services” or “DJ Service”) and any modifications, updates, revisions or enhancements are subject to the terms of this Agreement. DJI reserves the right to seek all remedies available by law and in equity for any violation of these terms and conditions. Any rights not expressly granted herein are reserved.

The DJ Service is licensed, not sold, to you by DJI for use only under the terms of this license, and DJI reserves any rights not expressly granted to you.

**1. License**

This License Agreement permits you to install and use, to provide copies or to issue access codes to others in your organization that are authorized to use the DJ Service to which you have subscribed. By using DJ Service you accept the DJ Service “as is” and agree it meets your expectations and requirements.

**2. License Administrator**

All Official correspondence will be between DJI and your designated License Administrator (“License Administrator”) via email. The License Administrator is responsible to communicate the terms of this agreement within the organization and monitor that the terms are upheld. The License Administrator is responsible to keep their contact information current.

If you change your License Administrator, it is required to be submitted in writing to:

Don Johnston Incorporated  
Attn: License Correspondent  
26799 W. Commerce  
Volo, IL 60073  
Email: [info@donjohnston.com](mailto:info@donjohnston.com)  
Subject Line: License

### 3. Authorized Users

The License Administrator can add additional staff and students (“User or Users”). All staff shall be fully subject to this agreement.

#### **Seat Licenses (“Seats”)**

Each seat is for a single student. Seats are not to be shared by multiple students.

#### **Building Licenses (“Building”)**

Building licenses cover students who are on the school roster. Building Licenses are sold to include only students with IEP Plans (“IEP”) or all students (“All”) in a single school building. If Customer purchases a Building License for IEP, you will take appropriate steps to identify and monitor use by IEP students only. If Building License is for All students, any student on the school roster for the designated building is eligible. If a student transitions to a different school building, that building must have a Building License or a Seat License to cover that student.

### 4. Subscription Term

You have procured this License on a Subscription basis. Payment Terms and Renewals are handled as stated below.

#### **If you have purchased a Subscription License:**

- (a) You agree to pay DJI a license fee for the Initial Term based upon the current fee schedule and as set forth in the Don Johnston Invoice between you and DJI.
- (b) Prior to the end of the Initial Term, DJI shall, based upon the current fee schedule or as otherwise agreed to by the parties, invoice you the amount payable for the annual fee for each subsequent Renewal Term and you agree to pay said invoice amount prior to the end of the term for each Renewal Term to ensure continuity of service from DJI.
- (c) Your expiration date is listed in the Educator Dashboard. When you renew your license, the expiration date will change to reflect your new expiration date.
- (d) Both Parties agree that this License Agreement does not include any right for Customer to assign or sublicense this License Agreement, in whole or in part.

### 5. Privacy

DJ Services are designed to comply with the Children’s Online Privacy Protection Act (COPPA). By using the DJ Services you also accept and agree to our Privacy Policy. For our current Privacy Policy, go to <http://donjohnston.com/privacy/>.

### 6. Terms of Service

By using the DJ Services you also accept and agree to our Legal Terms, Use, and Conditions. For our current Legal Terms, Use, and Conditions go to <http://donjohnston.com/terms-conditions/>.

## 7. Support

The License Administrator will answer all product usage and application questions from your individual users for the length of this agreement. DJI shall have no further obligation to provide any support for the Don Johnston Service. Only the License Administrator may inquire to DJI for assistance or general product support. You agree that direct support or contact with the individual users of the Don Johnston Service is beyond the scope of this agreement. The phone number for technical support is 800-889-5242 (USA and Canada) or 847-740-0749 ext. 772 (Global).

## 8. License to Duplicate Master CDs

The License Administrator is allowed to create a master CD of the software for archival/backup purposes and ease of installation. The master CD copy and all other authorized copies must be labeled on the face of the disc with the language set forth below:

School Name  
License Start and End Dates  
Name of Software  
Authorized Students  
Version Number of Software  
Copyright Notice as stated on the master CD

## 9. Limited License; Permitted Uses

DJI grants to each authorized User a non-exclusive, non-transferable, non-assignable limited license to access and use the DJ Service for their personal, non-commercial use relating to you only. All other license rights not specifically granted herein, whether by estoppel, implication, or otherwise, are expressly reserved by DJI and any other use of the DJ Services are strictly prohibited. DJI further reserves the right, at its sole discretion, to revoke this limited license at any time and without notice. This DJ Service is owned by DJI or its suppliers and is protected by United States copyright laws and international treaty provisions.

**You may not:**

- a) disassemble, de-compile or “unlock,” reverse translate, in any manner decode the DJ Service for any reason, or reduce the DJ Service to another computer language;
- b) assign, sublicense, sell, lease, or rent the DJ Service, or Service;
- c) distribute or create derivative works based upon the DJ Service in whole or in part, or
- d) tamper with any proprietary notices or marks in the DJ Service or labels affixed thereto.

## 10. Duty to Back Up Computer System, Data, and User Content

YOU AGREE THAT IT IS YOUR RESPONSIBILITY TO MAINTAIN BACKUP COPIES OF YOUR COMPUTER SYSTEM AND ANY AND ALL DATA. YOU FURTHER AGREE THAT DJI IS NOT RESPONSIBLE FOR ANY DATA UPON TERMINATION OF THIS AGREEMENT (AS DEFINED IN SECTIONS 18 AND 19).

## 11. Responsibility

YOU HAVE AND AGREE TO SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF DATA AND/OR EQUIPMENT USED IN CONNECTION WITH THE DJ SERVICE AND WILL NOT MAKE A CLAIM AGAINST DJI FOR ANY LOST DATA, INACCURATE OUTPUT AND LOST FUNDS FROM USE OR MODIFICATION OF THE LICENSED DJ SERVICE. YOU FURTHER AGREE TO HOLD DJI HARMLESS FROM ANY AND ALL CLAIMS BASED ON USE OR MODIFICATION OF THE DJ SERVICE.

## 12. Trademarks

This License Agreement does not grant the Customer any rights to use any trademarks, service marks, logos, trade names, or trade dress belonging to DJI in the United States and/or other countries (collectively "DJI Marks"). This License Agreement does not grant the Customer any rights to DJI's Marks and the Customer expressly agrees that you may not, or assist or induce others to, import, manufacture, promote, advertise, offer for sale, sell, or otherwise use any product or service that bears the DJI Marks or other designation or colorable imitation on goods or services which is confusingly similar to the DJI Marks.

## 13. Taxes

You shall, in addition to the other amounts payable under this License Agreement, pay all taxes including but not limited to sales, and other taxes, federal, state, local, use, excise, value-added, privilege or assessments or governmental charges, or otherwise, and any other types of taxes, however designated, which are levied or imposed by reason of the transactions contemplated or relating to this License Agreement.

## 14. Ownership

DJI retains all rights, title, and interest in and to the DJ Service.

## 15. Retention of Rights

DJI reserves all rights not expressly granted to you in this License Agreement. **You acknowledge and agree that:**

- (i) except as specifically set forth in this License Agreement, DJI retains all rights, title and interest in and to the DJ Service, and to any modifications, enhancements or derivative works thereof created by DJI, and you acknowledge and agree that they do not acquire any rights, express or implied, therein,
- (ii) any configuration or deployment of the DJ Service shall not affect or diminish DJI's rights, title, and interest in and to the DJ Service, and
- (iii) if you suggest any new features, functionality, or performance enhancements for the DJ Service that DJI subsequently incorporates into the DJ Service, such new software or features, functionality, or performance enhancements of shall be the sole and exclusive property of DJI.

## 16. Disclaimers

You expressly acknowledge and agree that use of the DJ Service is at your sole and entire risk. YOU ASSUME ALL RISK AS TO THE SELECTION, USE, PERFORMANCE AND QUALITY OF THE DJ SERVICE AND AGREE NOT TO USE THE DJ SERVICE IN ANY SITUATION WHERE SIGNIFICANT DAMAGE OR INJURY TO PERSONS, PROPERTY, OR BUSINESS COULD OCCUR FROM A DJ SERVICE ERROR. THE DJ SERVICE IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND AND DJI EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. DJI DOES NOT WARRANT INTERFERENCE WITH YOUR ENJOYMENT OF THE DJ SERVICE OR THAT THE FUNCTIONS CONTAINED IN THE DJ SERVICE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE DJ SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE DJ SERVICE MAY BE TEMPORARILY UNAVAILABLE FROM TIME TO TIME DUE TO MAINTENANCE OR OTHER REASONS, OR THAT DEFECTS IN THE DJ SERVICE WILL BE CORRECTED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE DJ SERVICE IS ASSUMED BY YOU. FURTHERMORE, DJI DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE DJ SERVICE IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DJI OR DJI'S AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SHOULD THE DJ SERVICE PROVE DEFECTIVE, YOU (AND NOT DJI OR DJI'S AUTHORIZED REPRESENTATIVE) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSION MAY NOT APPLY HERE.

## 17. Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL DJI, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING DAMAGES FOR LOSS OF FUNDS, INTERRUPTION, LOSS OF INFORMATION, AND THE LIKE ARISING OUT OF OR RELATING TO THIS LICENSE AGREEMENT OR THE USE, MODIFICATION, PRODUCTION, DELIVERY, MISUSE OR INABILITY TO USE THE DJ SERVICE OR ANY PORTION THEREOF, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY OR OTHERWISE, EVEN IF DJI OR DJI'S AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN NO EVENT SHALL DJI'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSE OF ACTION WHATSOEVER (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) EXCEED THE PRICE PAID BY YOU UNDER THIS LICENSE AGREEMENT. YOU AGREE TO BEAR ALL COSTS RESULTING FROM THE USE OF THE LICENSED DJ SERVICE.

## 18. Termination.

This License and the rights granted hereunder will terminate:

- (a) automatically upon written notice or email from DJI if you fail to comply with any term(s) of this License Agreement and fail to cure such breach within 15 days of becoming aware of such breach;
- (b) automatically upon written notice or email from DJI if you fail to pay license subscription fees;
- (c) automatically upon written notice from DJI if you fail or refuse to cooperate with any DJI reasonable investigation of any suspected violation of this License Agreement; or
- (d) immediately in the event of a breach, violation of, or the circumstances described in Sections 4, 20.4(b), or DJI is required to terminate the License Agreement to comply with any law, regulatory, government, or any other legal body.

## 19. Effect of Termination

Upon termination, you agree to immediately stop any further use of the DJ Service, remove all permissions to teachers and students, uninstall all installations and destroy all copies of Licensed Software that are in your possession or control, if any. Provisions which, by their nature, should remain in effect beyond the termination of this License Agreement shall survive, including but not limited to Sections, 12 and 14-19 The termination of this License Agreement shall be without prejudice to any and all other right or remedy available to DJI as a result of your breach. Notwithstanding the provisions of this Section 19, if you terminate for any reason prior to the end of the Initial or Renewal Term, YOU shall be liable to DJI for payment of all License Fees through the entire Initial or Renewal Term.

## 20. Miscellaneous

### 20.1 Relationship of Parties

This License Agreement shall not be construed as creating a legal agency, partnership, joint venture or any other form of legal association between or among DJI and you, and you shall not represent to the contrary, whether expressly, by implication, appearance or otherwise.

### 20.2 Waiver; Construction

Failure by DJI to enforce any provision of this License Agreement will not be deemed a waiver of future enforcement of that or any other provision. Each party acknowledges and confirms that it has reviewed this License Agreement and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation and/or construction of this License Agreement.

### 20.3 Assignability

You agree that neither this License Agreement nor any interest, licenses, or rights may be assigned, transferred, or conveyed, in whole or in part. Any assignment in violation of this License Agreement by you is deemed null and void. DJI shall have the right to assign, transfer, or convey any interest, licenses, or rights, in whole or in part of this License Agreement.

## **20.4 Severability**

- (a) If for any reason a court of competent jurisdiction finds any provision of this License Agreement, or portion thereof, to be unenforceable, that provision of the License Agreement will be enforced to the maximum extent permissible so as to effect the economic benefits and intent of the parties, and the remainder of this License Agreement will continue in full force and effect,
- (b) Notwithstanding the foregoing, if applicable law prohibits or restricts you from fully and/or specifically complying with Section 7 or prevents the enforceability of this Section, this License Agreement will immediately terminate and you must immediately discontinue any use of the DJ Service.

## **20.5 Dispute Resolution**

All claims, disputes, controversies, differences or misunderstandings between the parties hereto arising under, out of, or in connection with this License Agreement which cannot be amicably settled and resolved by the parties hereto, shall be finally settled or determined by arbitration before a panel of arbitrators in Chicago, Illinois, in accordance with the rules of the American Arbitration Association and any final award rendered in such arbitration shall be binding upon the parties and shall be enforceable in any court of competent jurisdiction.

## **20.6 Governing Law**

This License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois without regard to its conflicts of law provisions. You further consent to jurisdiction of the courts of the State of Illinois with respect to any claim or dispute arising out of or relating to this License Agreement between the parties.

## **20.7 Attorneys' Fees**

If it shall be necessary for either party to this License Agreement to bring suit to construe, interpret or enforce any provisions hereof or for damages on account of any breach of this License Agreement, the prevailing party on any issue in any such litigation and any appeals there from shall be entitled to recover from the other party, in addition to any damages or other relief granted as a result of such litigation, all costs and expenses of such litigation and a reasonable attorney's fee as fixed by the arbitrator or court. The provisions of this subparagraph shall survive the termination of this License Agreement coextensively with other surviving provisions of this License Agreement.

## **20.8 Force Majeure**

Neither DJI nor you shall be liable for any breach of its obligations under this License Agreement resulting from causes beyond its reasonable control including but not limited to fires, strikes (of its own or other employees), insurrection or riots, embargoes or container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority.

## **21.9 Integration**

DJI and you agree that this License Amendment sets forth the entire License Agreement and understanding between them as to the subject matter hereof and merge any and all prior discussions between them. Neither DJI nor you shall be bound by any warranties, understandings, or representations other than as expressly provided herein and in this License Agreement.

### **21.10 Entire Agreement**

This document constitutes the entire License Agreement between the Parties and supersedes any and all prior or contemporaneous understandings or License Agreements, whether written or oral. Except as expressly set forth herein, the Parties make no warranties, representations, covenants, or License Agreements, express or implied. This License Agreement shall not be modified except by a written agreement executed by an authorized representative of DJI and you.