



Don Johnston Incorporated

Terms of Service

Effective Date: September 1, 2014

Brief Summary

Passwords: Do not share passwords. You are responsible for any activity that occurs with your login. Don't share it. This is the only way for you to guarantee your account security. Do not log in using fictitious names unless given permission for specific purposes such as professional development. Do not upload any materials that contain illegal content, viruses, malware or promotional materials.

Don Johnston Property: DJ services contains intellectual property protected by copyright and trademark laws. Our terms do not grant you the right to use our trademarks, web domains or other product features.

Authorized Students: Your organization subscribes to this service for certain students such as students with IEPs or students in particular buildings. If you are not familiar with this license, please contact your License Administrator.

Fine Print: The complete terms and conditions of this Legal Terms, Use, & Conditions is set forth below. Use of DJ Services constitutes your agreement to adhere to our terms and conditions set forth below. Please read these terms and conditions before using this Service.

Don Johnston Incorporated offers and provides this website, software and services, also known or collectively referred to herein as ("DJ Service" or "DJ Services"). DJ Services are subject to the following terms and conditions. By accessing, installing, using, printing, displaying, registering or logging in for such services, you 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. Don Johnston Incorporated reserves the right to change these terms and conditions, and the information, products, and services at any time, at its sole discretion, without notice. Any rights not expressly granted herein are reserved.

Legal Terms, Use, and Conditions

1. Copyright Notice

All of the information and material contained in DJ Services is protected under the copyright laws of the United States and other countries. Any unauthorized reproduction, derivative work, distribution, in whole or in part and by any means, electronic or otherwise, of Don Johnston Incorporated material or licensed material is strictly prohibited and may subject the offender to civil liability and severe criminal penalties (Title 17, United States Code, Sections 501 and 506).

2. Trademark Notice

The names Start-to-Finish, Co:Writer, Flexspell, Protocol for Accommodations in Reading, Snap&Read and the Don Johnston logo are registered, pending or common law trademarks of Don Johnston Incorporated. All reference to other brands and products appearing on this site are trademarks of their respective owner.

3. Privacy

You agree to comply with the Children's Online Privacy Protection Act (COPPA) and the Family Educational Right to Privacy Act (FERPA) (Buckley Amendment), 20 U.S.C. § 1232g, where applicable. Don Johnston Incorporated's web-based products are designed to comply with the Children's Online Privacy Protection Act (COPPA). You agree to comply with our Privacy Policy located at <http://donjohnston.com/products-services-privacy/> and in the About Screen.

4. 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. Your organization has paid for a subscription to use DJ Services for certain students such as IEP students or students in certain buildings. If you are not familiar with your district's subscription, check with your district license administrator. 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.

5. Retention of Rights

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

- (i) except as specifically set forth in this 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.

6. Disclaimers

You expressly acknowledge and agree that use of DJ Service is at your sole and entire risk. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN AN AGREEMENT BETWEEN YOU AND DON JOHNSTON INCORPORATED, ALL INFORMATION ON THIS WEB SITE (“WEBSITE CONTENT”) AND “DJ SERVICES” ARE PROVIDED “AS IS” AND THAT USE OF ANY WEBSITE CONTENT AND 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 SOFTWARE ERROR. The DJ Services are provided “AS IS” and without warranty of any kind and DON JOHNSTON INCORPORATED 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. DON JOHNSTON INCORPORATED DOES NOT WARRANT INTERFERENCE WITH YOUR ENJOYMENT OF THE DJ SERVICES OR THAT THE FUNCTIONS CONTAINED IN THE DJ SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE DJ SERVICES, WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE DJ SERVICES WILL BE AVAILABLE AT ALL TIMES, OR THAT DEFECTS IN THE DJ SERVICES WILL BE CORRECTED. The entire risk as to the results and performance of the DJ Services, is assumed by You. FURTHERMORE, DON JOHNSTON INCORPORATED DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE DJ SERVICES IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DON JOHNSTON INCORPORATED OR DON JOHNSTON INCORPORATED’S AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SHOULD THE DJ SERVICES PROVE DEFECTIVE, YOU (AND NOT DON JOHNSTON INCORPORATED OR DON JOHNSTON INCORPORATED’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.

Don Johnston Incorporated does not control and is not responsible for what You or other Users create or upload through the DJ Services and is therefore not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content that You may encounter. You also agree that Don Johnston Incorporated shall not be responsible in any manner whatsoever for Your conduct with respect to the DJ Services.

DJ Services may be distributed internationally and may contain references to products and services that have not been released in your country. These references do not guarantee that Don Johnston Incorporated intends to release those products and services in your country.

7. Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL DON JOHNSTON INCORPORATED, OR ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, BE LIABLE TO YOU FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF OR RELATING TO THE DJ SERVICES OR YOUR USE, YOUR RELIANCE ON THE DJ SERVICES, MODIFICATION, PRODUCTION, DELIVERY, MISUSE OR INABILITY TO USE THE DJ SERVICES OR ANY PORTION THEREOF, WHETHER UNDER A THEORY OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY OR OTHERWISE, EVEN IF DON JOHNSTON INCORPORATED OR DON JOHNSTON INCORPORATED'S AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. In no event shall DON JOHNSTON INCORPORATED'S total liability to You for all damages, losses, and any cause of action whatsoever (whether in contract, tort (including negligence) or otherwise exceed the price paid by You for the use of the DJ SERVICES. YOU AGREE TO BEAR ALL COSTS RESULTING FROM THE USE OF THE DJ SERVICES. DON JOHNSTON INCORPORATED ASSUMES NO RESPONSIBILITY FOR ERRORS OR OMISSIONS IN CONTENT OR OTHER DOCUMENTS WHICH ARE REFERENCED BY OR LINKED TO THIS SERVICE.

DJ Services may contain links to third party sites on the Internet that are not under the control of Don Johnston Incorporated. Don Johnston Incorporated is not responsible for the content or availability of any linked third party sites.

8. 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 OR ELECTRONIC FILES OF INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DOCUMENTS, INFORMATION, PROGRAMS, USER CONTENT, OR OTHERWISE THAT ARE USED, POSTED, STORED, OR HOSTED BY DON JOHNSTON INCORPORATED, OR OTHERWISE USED IN CONJUNCTION WITH THE WEBSITE, DJ SERVICES, AND SOFTWARE ("DATA"). YOU FURTHER AGREE THAT DON JOHNSTON INCORPORATED IS NOT RESPONSIBLE FOR ANY DATA (AS DEFINED HEREIN).

9. Updates or Changes

Don Johnston Incorporated reserves the right to change these terms and conditions at any time, at its sole discretion, without notice. If we do, we will update the "effective date" at the top of the Policy. We encourage you to review this Policy and our Privacy Policy periodically. Your continued use of DJ Services or any other content, products or other services covered by this Policy constitutes your agreement to this Policy and any updates.

10. 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
Subject Line: License

11. Subscription Term

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

- (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.

12. Taxes

You shall, in addition to the other amounts payable under this 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 Agreement.

13. 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 Software that are in your possession or control, if any. Don Johnston reserves the right to delete any or all data at termination. Provisions which, by their nature, should remain in effect beyond the termination of this Agreement shall survive, including but not limited to Sections, 1, 2 and 5-7. 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 15, if you terminate for any reason prior to the end of the Initial or Renewal Term, your organization shall be liable to DJI for payment of all Fees through the entire Initial or Renewal Term.

14. Miscellaneous

14.1 Relationship of Parties

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

14.2 Waiver; Construction

Failure by DJI to enforce any provision of this 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 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 Agreement.

14.3 Assignability

Neither this Agreement nor any interest, licenses, or rights may be assigned, transferred, or conveyed, in whole or in part. Any assignment in violation of this Agreement 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 Agreement.

14.4 Severability

If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the 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 Agreement will continue in full force and effect.

14.5 Dispute Resolution

All claims, disputes, controversies, differences or misunderstandings between the parties hereto arising under, out of, or in connection with this 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.

14.6 Governing Law

This 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.

14.7 Don Johnston Incorporated makes no representation that information on this Website is appropriate or available for use in all countries, and prohibits accessing materials from territories where contents are illegal. Those who access DJ Services may do so on their own initiative and shall be responsible for compliance with all applicable laws.

14.8 Export Control Laws

All products, software, documentation and information available in DJ Services are subject to export controls administered by the United States, and other countries. Diversion contrary to U.S. law, where applicable, is strictly prohibited. Export, re-export or import of certain products, software, documentation and information may require action on your behalf prior to purchase and it is your responsibility to comply with all applicable international, national, provincial, state, regional and local laws, and regulations, including any applicable import and use restrictions. By downloading or using product from DJ Services, you are agreeing to the foregoing and all applicable export control laws.

14.9 When you use DJ Services, you agree to have your data transferred and processed and stored in the United States of America. Given this information, if this use of the DJ Services would violate any law that is applicable to you, your right to use these services is revoked.

14.10 Force Majeure

Neither DJI nor your organization shall be liable for any breach of its obligations under this 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, requirements or regulations of any civil or military authority.

14.11 Integration

DJI and you agree that this Amendment sets forth the entire 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 Agreement.

14.12 Entire Agreement

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

15. Contact Information

Don Johnston Incorporated welcomes your comments regarding the legal terms. If you have any questions or comments regarding the legal terms, please contact us electronically or via postal mail at the address provided below and Don Johnston Incorporated will use commercially reasonable efforts to promptly determine and remedy the problem.

Don Johnston Incorporated
Attn: Legal Department
26799 W. Commerce Drive
Volo, Illinois 60073
Email: info@donjohnston.com
Subject Line: Legal