

## Metl Support Subscription Agreement

This Support Subscription Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between JumpMind, Inc., (hereinafter “JumpMind”) whose principal place of business is 4100 Regent Street, Suite E, Columbus Ohio 43219, USA and \_\_\_\_\_, (hereinafter “Customer”) whose principal place of business is \_\_\_\_\_.

This Support Subscription Agreement (including Appendix A, below) and the associated Customer Order Form collectively make up the entire Agreement (the “Agreement”) and understanding of the parties. This Agreement is effective as of the above date.

### 1. DEFINITIONS.

“**Product**” means Metl software, add-on components, enhancements, and upgrades, collectively.

“**JumpMind**” means JumpMind, Inc., an Ohio corporation with its principal place of business at 4100 Regent Stree, Suite E, Columbus Ohio 43219, USA. JumpMind is the developer and provider of the Product.

“**Customer**” means the entity purchasing Services from JumpMind.

“**Customer Order Form**” means Customer’s Support Subscription order information signed by Customer and JumpMind.

“**Effective Date**” means the date on which the Agreement was entered into by JumpMind and Customer.

“**Initial Term**” means the period set forth on the applicable Customer Order Form, beginning upon the Effective Date.

“**Renewal Term(s)**” means the successive time periods set forth on the applicable Customer Order Form, beginning after the Initial Term.

“**Subscription Fee**” means the fees set forth in the applicable Customer Order Form for Support Services.

“**GPL**” means GNU General Public License.

“**Service Level**” defines the level of Support Services JumpMind provides to Customer under this Agreement. The two service levels are identified as “Standard Support” and “Enterprise Support.”

“**Services**” means the assistance JumpMind provides to Customer for effective use of the Product as described in this agreement.

“**JumpStart Services**” means mutually agreed upon time and materials-based consulting services JumpMind provides to Customer for effective use of the Product including but not limited to design, development, and/or testing of Customer usage scenario and/or Product enhancements.

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**“Support Services”** means Services provided to assist Customer with ongoing support of Product as detailed in Appendix A.

**“Coverage”** means the hours that Support Services will be available.

### 2. SCOPE

**2.1** Customer and JumpMind are independent contractors. Nothing in this Agreement shall constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Neither party shall be considered an agent or legal representative of the other for any purpose, nor shall either party nor any of their respective directors, officers, agents or employees be considered an agent or employee of the other. Neither Customer nor JumpMind has authority to assume or create any obligation or responsibility on behalf of the other or in the other's name, and neither party shall attempt to do so.

### 3. LICENSE

**3.1** Metl is released as open source under GPL. A copy of the GPL can be obtained either by web (<http://www.fsf.org/licenses/gpl.html>) or by writing to Free Software Foundation, Inc., 59 Temple Place, Suite 330, Boston, MA 02111-1307 USA. This license permits anyone to study, change, and improve the Product, and to distribute the unmodified or modified Product.

**3.2** Metl is also licensed by JumpMind as commercial editions of the software. As long as Customer maintains an active Support Subscription Agreement with JumpMind, Customer is granted a license to the commercial software according to the Metl License Agreement.

### 4. CUSTOMER ORDER FORM

**4.1** The Customer Order Form will provide details about Customer’s Services including the following information:

- Customer Name – Name of Customer
- Customer Contact Information – Address and phone number for Customer
- Edition – The level of the Product software that permits access to a collection of components, in increasing order of “Starter”, “Professional”, “Business”, or “Enterprise”
- Support Level – The level of Support Services for which Customer is contracting, either “Standard” or “Enterprise”
- Max Users – The maximum number of users permitted to be logged into the user interface at the same time
- Max Parallel Flows – The maximum number of flows that are permitted to run at the same time.
- Max Messages per Month – The maximum number of messages permitted to be passed between components during the 30-day period
- Max Agents – The maximum number of agents permitted to be deployed to hosts for execution

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of flows

- Max Resources – The maximum number of resources permitted to be created as a source or target of data
- Schedule Type – The maximum frequency for running flows, either “Daily” for once per day, or “Hourly” for once per hour, or “On-Demand” for any time.
- Support Tickets per Term – The number of Support Tickets permitted to be created by Customer during the Term
- Effective Date – The Effective Date for Support Services desired for this Customer
- Initial Term - The Initial Term for Support Services desired for this Customer
- Renewal Term – The Renewal Term for Support Services desired for this Customer
- Price – The Subscription Fee for Support Services for this Customer for each Term
- Marketing Agreement Discount (optional) – Value of any possible discount provided in return for Customer agreeing to Section 13.8.
- JumpStart Services requested by Customer

### 5. SERVICE DEFINITION

The scope of Support Services provided to Customer under this Agreement are detailed in Appendix A (Metl Support Subscription Services).

The scope of JumpStart Services provided to Customer under this Agreement will be detailed in the Customer Order Form.

### 6. TERMS AND TERMINATION

**6.1** Support Services for Customer shall commence on the Effective Date of the Customer Order Form and continue for the Initial Term unless terminated earlier as set forth below. Thereafter, Support Services for Customer shall renew for successive Renewal Terms (unless an alternative period is agreed in writing by the parties), unless JumpMind or Customer gives at least sixty (60) days notice of non-renewal prior to the expiration of the applicable Initial Term or Renewal Term. JumpStart Services will commence and terminate per the details in the Customer Order Form.

**6.2** JumpMind may terminate Services for a Customer upon thirty (30) days written notice to Customer in the event of Customer's (a) unauthorized use of Product, or (b) failure to make timely payment to JumpMind, which has not been remedied within said 30 days period. In addition, JumpMind or Customer may terminate Services for Customer immediately in the event the other party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receipt of notice of material breach.

**6.3** Upon termination of Services for Customer, Customer shall have no further rights to receive or use Services under this Agreement including rights to Metl.

### 7. PRICE AND PAYMENT; TAXES

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**7.1** Subscription Fees for Support Services are based on the Support Subscription Parameters as defined in the Customer Order Form. JumpMind has the right to verify, and Customer must be able to provide, proof of the Support Subscription Parameters which Support Services are being provided under this Agreement. If at any time during a Term, Customer determines their utilization of Services is not in compliance with the Support Subscription Parameters specified in the Customer Order Form, Customer will contact JumpMind within thirty (30) days and pay JumpMind the Subscription Fees applicable for the new Support Subscription Parameters beginning from the first date of utilization of those Support Subscription Parameters. Subscription Fees for new Support Subscription Parameters during a Term shall be calculated at the then-current annual price prorated over the number of days remaining in such Term (based on 365 days per year).

**7.2** Pricing for the Support Subscription is as detailed on the Customer Order Form. Support Subscription Fees are due upon the commencement of each Term as set forth in the Customer Order Form. JumpMind will typically invoice Customer for Support Subscription renewals approximately sixty (60) days prior to the commencement of each Renewal Term. Fees for any JumpStart Services will be invoiced periodically for hours worked during the invoice period.

**7.3** All fees under this Agreement are due upon the date(s) set forth in this Agreement and are payable within thirty (30) days from receipt of JumpMind's invoice. Payment shall be made without any right of set-off or deduction. All payments made pursuant to this Agreement shall be made in the quoted currency and are nonrefundable.

**7.4** Subscription Fees for Renewal Terms may increase by a maximum of either 5% or the US CPI, whichever is greater, per year, and only once per year upon renewal.

**7.5** Any amount not paid when required to be paid under this Agreement shall accrue interest at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) on the remaining amount required to be paid, or at the highest amount permitted by applicable law (if lower), such interest to accrue on a daily basis from the payable date until the remaining amount is paid.

**7.6** All fees are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind. Customer shall be responsible for payment of such taxes and duties of any kind payable with respect to the Product and Services furnished pursuant to this Agreement, provided however that JumpMind shall be responsible for payment of taxes levied or imposed based upon JumpMind's net income. Without limitation, Customer will be responsible for all applicable sales taxes unless it first claims a sales tax exemption by providing JumpMind with an exemption certificate acceptable to the applicable authorities..

## **8. PROPRIETARY RIGHTS.**

The intellectual property and proprietary rights of whatever nature in Product and related documentation, including derivative works, are and shall remain the exclusive property of JumpMind and/or its suppliers, and nothing in this Agreement should be construed as transferring any aspects of such rights to Customer or any other third party. JumpMind and its suppliers reserve any and all rights not expressly granted in this Agreement and the GPL License. Metl is a trademark of JumpMind, Inc.,

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and shall not be used by Customer without JumpMind's express authorization.

### **9. WARRANTY AND DISCLAIMER.**

JumpMind warrants that during each Term it will use its commercially reasonable efforts to ensure that Services are conducted in a workmanlike manner by qualified personnel. Except for the foregoing, Product and Services are provided to Customer "as is," without any warranties of any kind, including, but not limited to, warranties concerning the installation, use or performance of the Product and Services. JumpMind and its suppliers disclaim any and all warranties, either express or implied, including but not limited to any warranty of merchantability fitness for a particular purpose and/or non-infringement. JumpMind and its suppliers do not warrant that Product and Services will meet customer's requirements or that the operation thereof will be uninterrupted or error-free, or that errors will be corrected. Without limiting the generality of the foregoing disclaimer, Product is not specifically designed, manufactured or intended for use in the planning, construction, maintenance, control, or direct operation of nuclear facilities; aircraft navigation, control or communication systems; weapons systems; or direct life support systems.

### **10. CONFIDENTIALITY.**

**10.1** JumpMind and Customer will retain in confidence all information and know-how transmitted by the other party during each Term, and for a period of two (2) years beyond the Term, that is clearly designated as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought reasonably to be treated as proprietary and/or confidential, and will make no use of such information and know-how except to further the purposes set forth in this Agreement.

**10.2** Notwithstanding Section 10.1, JumpMind and Customer shall not have an obligation to maintain the confidentiality of information that (a) is now or subsequently becomes generally known or available by publication, commercial use or otherwise through no fault of the recipient; (b) is known by the recipient at the time of disclosure and is not subject to restriction; (c) is independently developed by the recipient without use of the discloser's confidential information; (d) is not designated as proprietary and/or confidential or would not reasonably be considered as such; or (e) is lawfully obtained from a third-party who has the right to make such disclosure.

Further, the recipient may disclose confidential information as required by government or judicial order, provided the recipient gives the disclosing party written notice prior to such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's confidential information.

### **11. LIMITATION OF LIABILITY.**

**11.1** In no event shall either party have any liability for consequential, exemplary, special, indirect, incidental or punitive damages; including (without limitation) any lost profit, lost data, or business interruption, even if it has been advised of the possibility of such damages.

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**11.2** In any event, and notwithstanding any other provision in this Agreement, the aggregate liability of either party for any reason and upon any cause of action under this agreement shall be limited to the amount paid to JumpMind by Customer during the twelve months prior to when the cause of action arose.

### **12. AUDIT RIGHTS.**

During the term of this Agreement and for a two (2) year period following termination or expiration, JumpMind shall have the right (at JumpMind's own expense) to conduct periodic reviews of Customer's records relating to its use of the Services for the purpose of verifying Customer's compliance with the terms of this Agreement. JumpMind shall exercise this right upon no fewer than thirty (30) days' prior notice. Customer will provide JumpMind with reasonable accommodation for the review, including reasonable use of available office equipment and access to all relevant records during normal business hours. JumpMind shall deliver to Customer a copy of the results of any such review.

### **13. MISCELLANEOUS.**

**13.1 Severability.** If any part of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

**13.2 Assignment.** Neither party may assign this Agreement or its rights or obligations under this Agreement to any person or party, whether by operation of law or otherwise, without the nonassigning party's prior consent attempt by either party to assign this Agreement without the other party's prior consent, where such consent is required, shall be null and void. Subject to the foregoing conditions, this Agreement shall be binding upon and inure to the benefit of each party and its respective successors and assigns. There are no intended third party beneficiaries of this Agreement.

**13.3 No Waiver; Limitations.** Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy. To the extent permitted by applicable law, no action, regardless of form, arising out of this Agreement may be brought by Customer more than one (1) year after the cause of action has accrued.

**13.4 Governing Law.** This Agreement shall be governed by the laws of the State of Ohio, USA, without regard to the conflict of laws provisions thereof. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act apply to, or govern, this Agreement. In the event either party initiates an action in connection with this Agreement or any other dispute between the parties, the exclusive venue and jurisdiction of such action shall be in the state and federal courts in the State of Ohio, USA.

**13.5 Notwithstanding Section 13.4,** either party may enforce any judgment rendered by such court in any court of competent jurisdiction, and JumpMind may seek injunctive or other equitable relief in any

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jurisdiction in order to protect its intellectual property rights.

**13.6** Any action brought under this Agreement shall be conducted in the English language.

**13.7** Notices. Unless otherwise agreed to by the parties, any notice, authorization, or consent ("Notice") required or permitted to be given or delivered under this Agreement shall be in writing and addressed and delivered to the other party's address set forth on the Order Form, to the attention of "Legal". All notices sent pursuant to this Agreement shall be written in the English language. Notices to JumpMind must also be copied to JumpMind, Inc. at JumpMind Inc., PO Box 2012, Westerville, OH 43086-2012 USA, Attn: Legal Group. Notice shall be deemed to have been received by a party, and shall be effective: (a) on the fifth business day after which such Notice is deposited prepaid in the local postal system; or (b) on the day received, if sent with a reputable, expedited overnight or international courier or hand delivered. Either party may change its address for receipt of Notice purposes upon issuance of Notice thereof in accordance with this Section.

**13.8** Marketing. Customer agrees to allow Customer name and logo to be shown on the JumpMind website as a customer of JumpMind.

**13.9** Export Law Assurances. Customer acknowledges that Product may be subject to export and import control laws, and agrees to comply fully with those laws in connection with Product. Customer agrees that Product is not being and will not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals.

**13.10** Force Majeure. Except for performance of a payment obligation, neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any causes beyond the reasonable control of that party.

**13.11** Entire Agreement. This Agreement comprises the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. This Agreement may be amended or modified only in a writing executed by both parties. JumpMind's acceptance of any document submitted by Customer to JumpMind shall not be construed as an acceptance of provisions which are in any way in conflict or inconsistent with, or in addition to, this Agreement, unless such terms are separately and specifically accepted in writing by an authorized representative of JumpMind. This Agreement may be incorporated in other documents or executed via facsimile or via emailed PDF-format document (or other mutually agreeable document format), and a facsimile or emailed copy of either party's signature shall be deemed and be enforceable as an original thereof. This Agreement may be executed in counterparts, both of which taken together shall constitute one single Agreement between the parties.

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### 14. SIGNATURES

**Customer:**

On behalf of Customer, the undersigned agrees to the above terms and conditions.

Name:	
Title:	
E-Mail:	
Phone Number:	
Company Name:	
Address:	
City, State, ZIP	
Signature:	
Date:	

**JumpMind:**

On behalf of JumpMind, the undersigned agrees to the above terms and conditions.

Printed Name:	
Title:	
Signature:	
Date:	



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## Appendix A Support Subscription Levels

JumpMind Support Subscriptions provide two levels of support from which to choose:

**Standard Support** - Standard Support Subscriptions equip you with the services needed to resolve technical issues. It includes web-based and email support, issue tracking, self-help forums, product releases, and updates. For Priority 1 issues, Standard Support Subscriptions include a six business-hour maximum initial response time. Standard Support Subscriptions also include bug fix requests, unlimited issue reporting, and version support.

**Enterprise Support** - Enterprise Support Subscriptions give you the level of coverage needed for business-critical applications with the addition of 24x7 phone-based coverage for Priority 1 incidents and 8am–5pm business-hours coverage for Priorities 2 – 4. Enterprise Support Subscriptions include everything from Standard Support along with shorter maximum initial response times.

Support Levels:	Standard	Enterprise
<b>Software</b>		
Certified Version	Yes	Yes
Product Updates	Yes	Yes
Fixes Requests	Yes	Yes
Version Support	12 months	24 months
Indemnification Options	No	No
<b>Service Level Agreements</b>		
Support Access*	8am x 5pm	24 x 7 for Priority 1 (8 x 5 for Priority 2-4)
Priority 1 Response*	6 hours	2 hours
Priority 2 Response*	1 day	6 hours
Priority 3 Response*	2 days	1 day
Priority 4 Response*	2 days	1 day
<b>Support Services</b>		
Initial Contact via Phone	No	Yes
Named Contacts	2	4
Web / Email Support	Yes	Yes
Issue Tracking	Yes	Yes

\* Times are in business days / hours, US Eastern time zone, except in the case of 24x7 Priority 1 issues for Enterprise Support

### Support Services

- **Certified Version and Maintenance Updates** – Customers have access to the latest version of the software that is certified for production use. Maintenance updates are provided that include enhancements, bug fixes, and performance tuning.
- **Requested Enhancements / Bug Fixes** – Customers can request to expedite reported enhancements or fixes.
- **Version Support Period** – A minor release (X.Y) of the software is supported and updated with maintenance releases for the specified time period. An extended support period is available on request.
- **Incident Tracking** – Full incident tracking capabilities are provided to monitor your requests. During the resolution process, the customer and support engineers can add comments, upload attachments, and update status.
- **Web / Email / Phone Support** – Depending on the level of support, customers have access to support engineers through the web, email, or phone.

### Issue Priorities

- **Priority 1 (Urgent)** – An Issue that results in a critical business impact for a Production System; may be assigned to an Issue where customer experiences (i) a complete or substantial loss of service when using a Production System, or (ii) real or perceived data loss or data corruption making an essential part of the Production System unusable, or (iii) the inability to use a mission critical application within a Production System.
- **Priority 2 (High)** – An Issue that results in a high business impact for a Production System or Development System; may be assigned to an Issue where customer experiences (i) the functionality of the software is adversely affected, but can be circumvented, or (ii) certain functions within the software are disabled, but the Software remains operable, or (iii) a complete or substantial loss of service when using a Development System.

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- **Priority 3 (Medium)** – An Issue that results in a medium business impact for a Production System or Development System; may be assigned to an Issue where customer experiences (i) partial non-critical functionality loss and the Issue has no significant effect on the usability of the software, or (ii) time-sensitive Issue important to long-term productivity that is not causing an immediate work stoppage.
- **Priority 4 (Low)** – An Issue that results in a minimal business impact for a Production System or Development System; may be assigned to an Issue with no impact to quality, performance, or functionality of the software, or cases of general information requests, such as usage and configuration.

### Support Resources

- **Knowledge Base** - A collection of articles that identify common issues and how to resolve or workaround them.
- **Support Forum** - A web-based forum for users to discuss issues and other topics during the course of their project, with the benefit of involvement from JumpMind experts.
- **Issue Tracking** - Customers enter their issue into the tracking service where they can monitor its progress. During the resolution process, the customer and support engineers can add comments, upload attachments, and update the status.
- **Web / Email / Phone Support** - Depending on the level of support, customers have access to support engineers through the web, email, or phone.
- **Issue** - An issue is a single support incident with a JumpMind product and the reasonable effort needed to resolve it. A single support issue is a problem that cannot be broken down into subordinate parts.
- **Named Contacts** - Support is provided to the Named Contact(s) provided by the Customer. End users requesting assistance will be redirected to their respective Named Contact.

### Service Level Agreement

- **Support Access** - Customers gain access to support engineers during business hours (9 am to 5 pm Eastern Time, except holidays).
- **Response Time** - Customers benefit from a guaranteed maximum time when a support engineer responds to an issue. A response means that JumpMind will contact the Customer to (i) acknowledge the issue report, and (ii) gather more information in order to assist with problem resolution.