

meebo Platform Terms and Condition

These meebo Platform Terms and Conditions (the “**Terms and Conditions**”) govern the terms by which you (“**Developer**”) may make your application (the “**Application**,”) available to meebo users through www.meebo.com, including any widgets or other features of the website that are embeddable on third party websites (collectively, the “**meebo Site**”). These Terms and Conditions set forth the terms and conditions under which meebo will provide Developer the APIs, tools, data, images, text, content, code, tools or other information or materials (the “**meebo Materials**”) necessary for the Application to be made available to meebo users through the meebo Site (the “**meebo Platform**”). The version of the Application that is distributed through the meebo Platform is referred to as the “**Platform Application**.”

Section 1. Delivery of the Application.

(a) By submitting its Application to the meebo Platform, Developer agrees that these Terms and Conditions will govern the manner in which the Platform Application is made available to meebo users via the meebo Platform.

(b) meebo grants Developer a royalty-free, non-transferable license to use and copy the meebo Materials during the term solely for the purpose of allowing the display of the Platform Application to meebo users through the meebo Platform in accordance with the terms of these Terms and Conditions.

(c) Developer grants to meebo a royalty-free, non-transferable license to display, link to, and otherwise incorporate the Platform Application into the meebo Site, to display advertising in and around the Platform Application, and to carry out any copying, modification, distribution, internal testing, derivative works or other processes necessary in order to carry out these Terms and Conditions.

(d) The Platform Application will be made available to meebo users free of charge and will not require the meebo user to undertake any registration in order to use the Platform Application. Partner may ask for email or other registration information for additional services, however, such prompts must allow for the user to opt out and cancel, the prompts should be presented in a form so as to be clearly understood that it is the Partner who is asking for registration (not meebo), and such registration should not be used for spam, or otherwise violate the terms of these Terms and Conditions. The Partner’s privacy policy and terms of service should be plainly available to users registering with the Partner.

(e) The Platform Application integration will comply with the following requirements:

- (i) It will not obscure, interfere with or disable any portion of the meebo Site, including any legal notices contained on the site;
- (ii) It will be clearly identified as a separate program and will not be presented in such a way as to suggest that it is being provided by meebo.
- (iii) Developer may present to meebo users through the Platform Application communications that offer the user the opportunity to obtain additional or enhanced Platform Application features, provided that Developer may not present those communications in any manner that interrupts or alters the

- manner in which the user would use the meebo Site absent such communications (i.e., no pop-ups, no items that require user action to continue using the meebo Site.)
- (iv) Except as set forth in subsection (iii) above, Developer will not include in the Platform Application any advertisement, promotions or marketing materials.
 - (v) meebo will link to an approved Application from its directory at its discretion. A link to an application can be removed at any time.

Section 2. Technical Responsibilities.

- (a) Developer will be responsible for performing all programming and development work necessary to distribute the Platform Application through the meebo Platform and for hosting and maintaining the Platform Application, including ensuring the continued availability and proper functioning of the Platform Application on the meebo Platform.
- (b) Developer will ensure that the Platform Application meets the service level criteria and performance metrics set forth on Exhibit A attached hereto (the “**Service Levels**”) and that it does not interfere with or cause any latency in the operation of the meebo Site. If Developer fails to meet the Service Levels, meebo may terminate Developer’s right to post the Platform Application immediately.
- (c) Developer will be responsible for providing all first-level customer support to meebo users with respect to the Platform Application. Developer will provide such support in a professional manner consistent with the highest industry standards.
- (d) meebo may suspend or limit access by Developer or the Platform Application to the meebo Platform if meebo determines, in its good faith judgment, that suspending or limiting access is necessary to ensure the uninterrupted, error-free and efficient operation of the meebo Site.
- (e) meebo may modify, terminate or suspend Developer’s access to the meebo Materials or the meebo Platform in its sole discretion at any time.

Section 3. Privacy.

- (a) Developer agrees to implement and observe standards of privacy and confidentiality for the collection, use and sharing of any data related to any meebo user obtained through the Platform Application that are at least as protective of the user’s privacy as the standards set forth in the meebo Privacy Policy. The Platform Application will display a privacy policy that accurately and adequately discloses how the Platform Application collects, uses, stores, and discloses data collected from users of the Platform Application. Developer will comply with its privacy policy.
- (b) Developer will not:
 - (i) request, collect, solicit or otherwise obtain access to usernames, passwords or other authentication credentials from any meebo users, or to proxy authentication credentials for any meebo users for the purposes of automating logins to the meebo Site; or

- (ii) collect or store any personally identifiable information from any meebo user without their express consent.

- (b) Developer will not have access to any personally identifiable information of any meebo User, other than information that Developer collects itself through the Platform Application in compliance with these Terms and Conditions. In the event that meebo provides such access, Developer agrees to keep such information confidential and not to use such information for any purpose other than to provide the Platform Application to the meebo users or to disclose or provide such information to any other person.

- (b) Developer will, upon notice from meebo, immediately remove from the Platform Application and any server, computer, database or other storage device under Developer's control ("**Data Repositories**") any personally identifiable information of any meebo user if meebo has received notice from such user of a request to have such data removed.

Section 4. Representations and Warranties

- (a) Developer represents and warrants that the Application and any content displayed, linked to or transmitted through or included in the application (the "**Application Content**"):
 - (i) do not infringe, violate or misappropriate any third party's intellectual property rights, including copyright, trademark or patent;
 - (ii) are not false, misleading, defamatory or libelous;
 - (iii) are not pornographic, sexually explicit or obscene;
 - (iv) do not exploit children or minors;
 - (v) do not violate the rights of privacy or publicity of any person;
 - (vi) do not contain any personally identifying information about any person without their consent or about any person who is a minor;
 - (vii) are not offensive and do not include blatant expressions of bigotry, prejudice, racism, hatred or profanity;
 - (viii) do not promote or provide instructional information about illegal or illicit activities;
 - (ix) do not contain any virus, worm, Trojan horse, adware, spyware or other malicious code;
 - (x) do not violate any applicable local, state, national, or international laws and regulations, and
 - (xi) do not include spam or other advertising or marketing activities that violate any applicable laws, regulations or generally-accepted advertising industry guidelines.

Developer further represents, warrants and covenants that it will not induce any user to take any action or post any content that would be in violation of the foregoing.

Section 5. Revenue Share.

meebo may display advertising in the Platform Application and in meebo Rooms in which the Platform Applications are running, including without limitation impression-based advertising, paid links, streaming video ads (the "**Advertising Inventory**"). meebo will pay 50% of any Net Revenues to Developer. meebo will make payment to Developer approximately 45 days after the end of any calendar month in which such Net

Revenue is collected. If the Net Revenue owed is less than \$100, meebo may defer payment until 45 days following the month, if any, in which the aggregate amount owed is \$100 or greater. Developer must provide meebo with its legal name, legal address and a completed W-9 with taxpayer identification number for US companies.

“**Net Revenue**” is defined as revenue received from the sale of Advertising Inventory to third parties less (A) any agency fees, commissions or third-party ad serving or reporting costs directly related to the sale or delivery of the advertising; (B) royalties or license payments payable to third parties with respect to any content included in the Platform Application or on the meebo page in which the Platform Application is displayed; and (D) any other out-of-pocket expenses directly attributable to the generation of the advertising or sponsorship revenue

Section 6. Confidential Information.

“**Confidential Information**” means any information of either party that is designated as confidential by the disclosing party or that is not generally known or readily ascertainable to the public, including, without limitation, nonpublic information regarding the disclosing party’s products, services, programs, features, data, techniques, technology, code, ideas, inventions, research, testing, methods, procedures, know-how, trade secrets, user, traffic, business and financial information and other activities. All Confidential Information remains the property of the disclosing party, and no license or other right in any Confidential Information is granted hereby. The receiving party will not disclose any Confidential Information of the disclosing party to any third party, and will take all reasonable precautions to prevent its unauthorized dissemination, both during and after the period that the Platform Application is available. Each party will limit the internal distribution of the disclosing party’s Confidential Information to its employees and agents who have a need to know, and will take steps to ensure that dissemination is so limited. Upon the disclosing party’s written request, the receiving party will destroy or return to the disclosing party all Confidential Information in the receiving party’s custody or control. This provision will survive any termination.

Usage data of the Platform Application that is generally and publically made available by meebo to users shall not be covered by the above confidentiality agreement. For example, meebo may list the number of users and or the total time spent by users for each Platform Application.

Section 7. Compliance with meebo Terms of Use; Copyright Policy

(a) Developer will remove from the Platform Application any content which Developer has reason to believe may violate the meebo Terms of Use or as to which meebo has provided a request for removal to Developer. meebo has the right to terminate access to the meebo Site by users who violate meebo’s Terms of Use or who are deemed to be repeat copyright infringer, and Developer agrees to, if requested by meebo, take reasonable steps to terminate access to the Platform Application for any user designated by meebo.

(b) Developer will maintain a mechanism that allows users of the Platform Application to report potential intellectual property infringements or abusive behavior within the Platform Application and will maintain a policy for removing potentially

infringing or offensive material that complies with the Digital Millennium Copyright Act and industry standards for such policies.

Section 8. Publicity; Trademark Usage.

(a) Both parties may publicize the availability of the Platform Application on the Meebo Site through press releases, media interviews and other public statements, provided that any press release will be provided to the other party for its approval, not to be unreasonably withheld. Meebo may include Developer's name and logo in marketing materials featuring the Platform Application.

(b) Each of Meebo and Developer may make available to the other certain graphic images, trademarks, trade names, service marks or logos ("Marks") that the other party may use in conjunction with the display of the Platform Application on the Meebo Platform. Developer may use the Meebo Marks solely in connection with the display of the Platform Application on the Meebo Site. Meebo may use Developer's Marks in connection with the display of the Platform Application on the Meebo Site and in connection with the promotion and marketing of the Meebo Site.

Section 9. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, EACH PARTY PROVIDES ITS SERVICES UNDER THESE TERMS AND CONDITIONS ON AN "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS, DEFECTS AND ERRORS" BASIS, AND EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, EACH PARTY DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY.

EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10 AND DAMAGES RESULTING FROM WILLFUL MISCONDUCT, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST DATA, BUSINESS OR ANTICIPATED PROFITS, WHETHER OR NOT A PARTY WAS AWARE OF OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 10. Indemnification

Developer will indemnify and hold harmless meebo, its users, all third-party advertisers, technology providers and service providers, and each of their respective employees, directors and representatives, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including reasonable fees of attorneys and other professionals) ("Losses"), arising out of or in connection with any third party claim, action or proceeding (any and all of which are "Claims") which in any way arise out of or are related to: (i) the usage by any meebo user of the Platform Application; or (ii) Developer's violation of any term, condition, representation, warranty of covenant of this Agreement. Developer may assume the defense and settlement of any Claim subject to indemnification by Developer, provided that no settlement is entered into that would require any payment, action or admission by meebo without meebo's consent.

Section 11. Termination.

(a) Termination. Developer may remove its Application from distribution through the meebo Platform at any time upon seven (7) business day's written notice to meebo. meebo may cease linking to the Platform application or otherwise making it available to meebo users through the meebo Sites at any time, in its discretion. meebo's right to terminate access to the Platform Application shall be in addition to all other rights and remedies it may have against Developer resulting from a breach by Developer of these Terms and Conditions.

(b) Effect of Termination. Upon termination of the availability of the Platform Application through the meebo Site by either party for any reason, Developer shall cease to use the meebo Materials and the meebo Platform and shall delete the meebo Materials from all of Developer's Data Repositories and meebo shall cease to access and shall delete the Platform Application from the meebo Data Repositories. The following provisions shall survive: 6, 9 10 and 12.

Section 12. General.

(a) Notices. All notices under these Terms and Conditions shall be given in writing via overnight courier or first class mail, postage prepaid, return receipt requested, to the addresses set forth above or such other address as either party may substitute by notice hereunder and all such notices given in accordance hereunder shall be deemed given as of the date of mailing.

(b) Choice of Law. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of laws rules. The parties irrevocably consent to the exclusive jurisdiction of the Federal and state courts located in San Francisco, CA for any claim or dispute arising in connection with these Terms and Conditions.

(d) Modification; Waiver. No modification, amendment, supplement to or waiver of any provision of these Terms and Conditions shall be binding upon the parties hereto unless made in writing and duly signed by both parties. A failure of either party to exercise any right provided for herein shall not be deemed to be a waiver of any right hereunder. Any waiver must be in writing and signed by the party against whom it is to be enforced.

(e) Assignment. Developer may not assign or sublicense the rights or obligations set forth in these Terms and Conditions.

(f) Severability. In the event that any provision of these Terms and Conditions shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect and the affected provision shall be modified in a manner which comes closest to the intention of the parties at the time the original provision was agreed upon.

(g) Force Majeure. Neither party will be liable for delay or default in the performance of its obligations under these Terms and Conditions if such delay or default is caused by conditions beyond such party's reasonable control, including, but not limited to, fire, flood, accident, earthquakes, telecommunications or network failures, acts of war, riot, government interference, strikes and/or walk-outs.

Exhibit A

Service Levels

1. Definitions.

1.1 “Complete Outage” means any aspect of the Platform Application is inoperable and not available for access by meebo users for two or more consecutive hours during Operating Hours.

1.2 “Maintenance Outage Time” means any time that any aspect of the Platform Application is inoperable or unavailable due to planned or emergency maintenance of which meebo is notified by Developer in advance or due to a request made by meebo. Planned maintenance shall take place no more than once per day.

1.3 “Operating Hours” means 24 hours per day, 365 days per year, excluding all Maintenance Outage Time.

1.4 “Service Outage” means any time during the Operating Hours when any aspect of the Platform Application is inoperable or unavailable due to reasons within Developer’s control, excluding, without limitation, any force majeure event or other reason not under the control of Developer and caused without the fault or negligence of any Developer personnel, representatives or agents (including a natural disaster or deterioration of service of the hosting center from which any aspect of the Platform Application is hosted or any systemic Internet failure).

2. Availability. The Platform Application and each component thereof shall be fully available to and accessible through the meebo Site by meebo users at least an average of 99.5% of the time, measured monthly, using the following formula:

Operating Hours *minus* Service Outages, *divided by* Operating Hours.

3. Maintenance Outages. Developer shall provide meebo with advance notice of any planned maintenance downtime for maintenance that shall occur other than between the hours of 1:00 a.m. and 4:00 a.m. Pacific Time.