

CONTENT DISTRIBUTION AGREEMENT

This Content Distribution Agreement (“**Agreement**”) is a legal contract between you, the content developer or provider (“**You**” or “**Content Provider**”), and Bemobi International AS (“**Apps Club**”). This Agreement sets forth the terms and conditions applicable to Content Provider’s distribution of computer programs, graphical images, ringtones, music, or other mobile services and digital goods (“**Content**”) through Apps Club’s mobile content distribution program (“**Program**”).

Terms & Conditions

1. SUBMISSION AND DISTRIBUTION.

1.1 **Registration for the Program.** To distribute Content through the Program, Content Provider must register by creating a profile on the Apps Club Developer Portal (“**Portal**”). Content Provider’s profile must include Content Provider’s contact details, tax ID, email address for receiving information regarding orders, support email addresses, and such other reasonable information as may be requested by Apps Club.

1.2 **Submission of Content.** Content Provider must provide its Content through the Portal in a form suitable for electronic reproduction and distribution. For each instance of Content submitted, Content Provider must:

- (a) ensure that the Content complies with the submission documentation and Program requirements in effect at the time of submission;
- (b) provide images, thumbnails, descriptions and categorization of the Content (which, if not supplied by Content Provider, may be generated by Apps Club in its sole discretion);
- (c) accurately classify the Content as freeware (free), shareware (try-and-buy), or commercial (for purchase) and, where applicable, provide the end-user price for the Content; and
- (d) provide the end user license agreement or terms of use (“**EULA**”) and privacy policy governing the use of the Content as further described below in Section 2 of this Agreement.

Content Provider may log into the Portal and update and/or change the foregoing information at any time. Via the Portal’s statistics platform, Content Provider may also view the details regarding the distribution of its Content via the Program.

1.3 **Distribution Parameters.** Within the Portal, Content Provider may define the parameters for distribution of its Content. In particular:

- (a) Content Provider may determine the regions or countries in which it wishes to distribute the Content (“**Territory**”); and
- (b) Content Provider may determine that distribution channels and storefronts through which it wishes to distribute its Content (“**Channels**”).

Notwithstanding the foregoing, by entering into this Agreement Content Provider agrees to distribute its Content via Apps Club’s mobile store platform (however named, branded or customized). All other Channels are optional and may be disabled by Content Provider via the Portal.

1.4 **Appointment.** Content Provider appoints Apps Club as Content Provider’s non-exclusive agent authorized and entitled to: (a) publicly display, publicly perform, and duplicate the Content for the purpose of marketing or demonstrating the Content; (b) market the Content at Apps Club’s sole discretion and expense; (c) distribute the Content in the Territory and via the Channels and authorize app signing of such Content where necessary; (d) accept payments for the Content on Content Provider’s behalf if Content Provider has specified that a fee should be charged for such Content; and (e) collected payments associated with in-application purchases on Content Provider’s behalf if Content Provider utilizes Apps Club’s in-application payment tools. Apps Club, in its sole discretion and at any time, may refuse to distribute or indefinitely suspend (in whole or in part) the distribution of any piece of Content for any reason. Apps Club will bear all expenses for its operations and staff.

- 1.5 **License Grant.** Content Provider grants Apps Club a nonexclusive, worldwide, royalty-free right and license to use, in connection with the Content, Content Provider's trademarks, trade names, service marks, logos or other identifying or distinctive marks (collectively, "**Marks**"), provided that Apps Club will comply with the Content Provider's trademark usage guidelines provided to Apps Club.
- 1.6 **Distribution Partners.** Apps Club enters into this Agreement on behalf of itself and its billing service providers, advertising service providers, and distribution partners, original equipment manufacturers, mobile network operators, and authorized sales agents ("**Partners**"). Apps Club may assign and/or sub-license any of the foregoing rights to its Partners subject to this Agreement and to the limited extent necessary to distribute Content via the Channels in cooperation with such Partners. Content Provider acknowledges and agrees that Apps Club's Partners are express intended third-party beneficiaries of this Agreement.

2. OBLIGATIONS OF CONTENT PROVIDER.

- 2.1 **Safety and Compliance.** Before submitting Content via the Portal, Content Provider shall test such Content to ensure it is, to a reasonable extent, free of defects. Content Provider shall be solely responsible for ensuring that its Content is safe, free of defects in design and operation, that it complies with applicable laws and regulations in the Territory, and that it does not infringe any third party's intellectual property rights. Content Provider shall provide such bug fixes and/or software patches as may be reasonably required to ensure proper operation of the Content.
- 2.2 **EULA.** When submitting Content via the Portal, Content Provider shall provide a link to, or the text of, the EULA under which Content Provider licenses its Content to end-users. Such EULA shall comply with applicable law and shall not conflict with this Agreement in any respect.
- 2.3 **Privacy Policy.** Content Provider shall be solely responsible for protecting the privacy and legal rights of end users of its Content. In particular, Content Provider shall, at a minimum, do as follows:
- (a) If end users provide Content Provider with, or the Content gathers or accesses, usernames, passwords or other log-in information, location data, or any personally identifiable information about end users ("**End User Information**"), Content Provider shall ensure it has a legally adequate privacy policy or statement governing the use of such information ("**Privacy Policy**").
 - (b) Content Provider shall provide a link to, or the text of, its Privacy Policy when submitting Content via the Portal.
 - (c) Content Provider's Privacy Policy must make end users aware of what End User Information will be available to Content Provider.
 - (d) Content Provider may only use End User Information for the limited purposes for which the end user has given permission, and in no case may the information be used in any manner that would violate Content Provider's Privacy Policy or applicable law.
 - (e) If Content Provider or the Content stores End User Information or other sensitive information provided by end users, it must do so securely and only for as long as it is needed.
- 2.4 **Support and Maintenance.** Content Provider shall be solely responsible for the quality and performance of the Content, for any warranty, support, maintenance, or other obligations related to the Content, for communicating with end users regarding the Content, and for addressing any end user complaints about the Content. Content Provider agrees to provide end users with support by email or phone, state Content Provider's support email address or phone number at an appropriate place within the Content, and respond promptly to end user related issues pertaining to the Content. The level of support must, at a minimum, be in accordance with Content Provider's support policies then in effect. Content Provider further agrees to provide a link to any support materials for the Content when submitting the Content to Apps Club.

3. FEES, PAYMENT AND REPORTING.

- 3.1 **Scope.** This Section 3 shall apply to Content for which Content Provider specifies, via the Portal, a license or service fee it wishes to charge end-users for use or access to such Content.

If no such fee is specified, the Content shall be distributed to end-users without charge. This Section 3 shall also apply to in-application sales of digital goods where Content Provider uses Apps Club's in-application payment tools to conclude transactions.

- 3.2 **Pricing.** If Content Provider wishes to charge end-users for Content distributed pursuant to this Agreement, Content Provider will provide a nominal global price point ("**Nominal Fee**") for such Content. Apps Club will collect on Content Provider's behalf subject to the following:
- (a) **Pricing Discretion.** Local pricing can vary from the Nominal Fee depending on mobile operator billing requirements, local market pricing practices, local legislation, local currency differences, and other factors. Apps Club may therefore vary the Nominal Fee to maximize gross receipts in its reasonable discretion. If Content Provider should become dissatisfied with Apps Club's pricing practices its sole remedy and recourse shall be to remove its Content from the Program.
 - (b) **Bundled Pricing / Subscription Service.** Access to multiple instances of mobile content from one or more participating content providers may be offered for a bundled Fee (on a one time or recurring subscription basis). The bundled Fee will be allocated pro rata amongst participating content providers based on program downloads. The bundled Fee will be set by Apps Club and its Partners in their reasonable discretion based on the properties of the package and local market conditions, and in order to maximize gross receipts. Apps Club and its Partners may offer users free trial access to a package for up to seven (7) calendar days on a promotional basis. Participation in this distribution model is optional. Content Provider may at any time disable such model as to one or more instances of its Content via the Portal.
- 3.3 **Reporting.** Within thirty (30) days after the end of each calendar month, Apps Club will issue to Content Provider a Summary Report of amounts payable pursuant to this Agreement.
- 3.4 **Payment.** Provided that Content Provider is not in material breach of any of its obligations under this Agreement, within 30 days after the end of each month Apps Club will pay Content Provider an amount equal to Net Receipts, less Apps Club's retained Service Fee. The following shall apply to the calculation of amounts payable pursuant to this Section:
- (a) "**Gross Receipts**" for each month shall be comprised of amounts actually collected with respect to the Content during such month. In the event that Content Provider utilizes Apps Club's in-application payment tools to conclude transactions for in-application sales of digital goods, "Gross Receipts" will include payments actually collected by Apps Club with respect to such goods. Gross Receipts shall be reduced by any amounts respecting the Content that are charged back or otherwise returned during such month due to customer refunds or contested payment transactions, and any fees or penalties associated therewith ("Chargebacks").
 - (b) "**Net Receipts**" for each month shall be comprised of Gross Receipts less Transaction Costs.
 - (c) "**Transaction Costs**" means all costs associated with Gross Receipts, including but not limited to: (i) credit card, mobile carrier billing and other transactional fees; (ii) fees payable to or retained by Apps Club's distribution and billing Partners; and (iii) applicable taxes.
 - (b) "**Service Fee**" means Apps Club's retained fee of 80% of Net Receipts from Content for Android, Blackberry, Symbian and Java platforms.
- 3.5 **Minimum Payment Amount.** Apps Club shall have no obligation to effect payment in any month in which the total amount Content Provider is owed is less than \$200 USD. Amounts under \$200 USD will be retained and accumulated with amounts accruing in subsequent months until 30 days after the end of the month in which the total amount payable comes to exceed \$200 USD. Accumulated amounts shall not accrue any interest.
- 3.6 **Chargebacks.** If Chargebacks result in a negative amount of Gross Receipts for a particular month, Apps Club shall at its discretion either: (i) offset such negative amount against future payments Content Provider is owed under this Agreement; or (ii) invoice this amount. Content

Provider agrees to pay within thirty (30) days of the date of invoicing any amounts invoiced by Apps Club as a result of such Chargebacks. Apps Club reserves the right to de-list the Content or to increase Apps Club's Service Fee for the Content if Apps Club determines, at its sole discretion, that the Content quality or related customer support is causing excessive Chargebacks. Apps Club will notify Content Provider in advance of taking such action to give Content Provider a chance to correct the problem.

- 3.7 **Tax.** Content Provider is solely responsible for any and all taxes related to its distribution of Content through the Apps Club Mobile Store including any value added tax, sales tax, or similar transactional taxes applicable in the Territory in which Content Provider chooses to offer its Content. The fee specified by Content Provider for its Content must be inclusive of all transactional taxes for each Territory in which Content Provider chooses to offer its Content.
- 3.8 **Verification.** Content Provider may, once every twelve (12) months and at its sole expense, hire an independent certified public accountant to audit Apps Club's financial records to the extent reasonably necessary to verify Apps Club's compliance with its payment obligations under this Agreement. The certified public accountant will execute a reasonable confidentiality agreement prior to commencing any such inspection. Notwithstanding the foregoing, any financial records not audited within a twelve (12) month period will be deemed accurate and not subject to review.

4. **LIMITATION OF LIABILITY.**

IN NO EVENT SHALL EITHER PARTY OR APPS CLUB'S PARTNERS BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS) IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE FURNISHING, FUNCTIONING, USE, DISTRIBUTION OR MARKETING OF THE CONTENT OR ANY RELATED ITEM OR SERVICE PROVIDED BY CONTENT PROVIDER OR APPS CLUB. IN NO EVENT SHALL APPS CLUB AND ITS PARTNER'S TOTAL CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF SERVICE FEES APPS CLUB RECEIVES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING SUCH CLAIM.

5. **TERM AND TERMINATION.**

- 5.1 **Term.** This Agreement commences on the date of the last signature or, if made electronically, the date of Content Provider's online or email acceptance, and shall remain in effect until terminated as provided in this Section.
- 5.2 **Termination.** For Cause: This Agreement may be terminated by either Party if the other Party is in material breach of any term or condition of this Agreement and such breach is not remedied for a period of thirty (30) calendar days after the Party in breach has been notified of the breach by the other Party. Without Cause: Either Party may terminate this Agreement for any reason and at any time by giving the other Party ninety (90) calendar days prior written notice.
- 5.3 **Rights and Duties Upon Termination.** In the event of expiration or termination of this Agreement: (i) within sixty (60) days of termination, Apps Club shall provide Content Provider with a statement of all sums due to Content Provider under this Agreement; (ii) Apps Club shall not distribute the Content to any third party after the effective date of such expiration or termination; and (iii) the Content Provider shall be responsible for continued support of its Content. Content Provider acknowledges and agrees that the termination or expiration of this Agreement does not terminate the rights or licenses of an end user to continue to use the Content, if the Content was subscribed to or downloaded by the end user prior to the effective date of expiration or termination.
- 5.4 **Return of Content.** Upon termination or expiration of this Agreement, Apps Club shall return to Content Provider or destroy all Content, including code and documentation, covered by this

Agreement. Notwithstanding the foregoing, Apps Club may retain one copy of the Content and documentation solely for archival purposes.

6. INTELLECTUAL PROPERTY RIGHTS.

- 6.1 **Program Materials.** Through participation in the Program, Content Provider may be given access to certain tools and materials including, by way of example and not limitation, developer SDKs, code samples, documentation, training materials, and/or client software for enabling in-application purchases (collectively, "**Program Materials**"). Content Provider agrees to use Program Materials solely for purposes of its participation in the Program and in accordance with any license terms included with such Program Materials. If no license terms are included with the Program Materials, Content Provider is granted a limited, non-sublicensable, nonexclusive, worldwide, royalty-free right and license to use the Program Materials solely for purposes of distributing its Content via the Program.
- 6.2 **Apps Club Logo.** Within the Portal, Content Provider may be offered the opportunity to place certain Apps Club logos on its websites and promotional materials. Content Provider is hereby granted a revocable, non-sublicensable, non-exclusive license to use the Apps Club logo ("**Apps Club Mark**") solely in connection with promoting the availability of Content Provider's Content via Apps Club. Content Provider's use of the Apps Club Mark shall be subject to Apps Club's prior review and approval. Content Provider acknowledges that it shall acquire no proprietary rights whatsoever in and to the Apps Club Mark, which shall remain Apps Club's sole and exclusive property for its unlimited exploitation and all use and acquired goodwill shall inure to Apps Club's sole benefit.
- 6.3 **Ownership of Content.** The parties agree that Content Provider owns all intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in and to the Content and that this Agreement does not transfer ownership of any of these rights.
- 6.4 **Ownership by Apps Club.** The parties agree that Apps Club and its affiliates own all intellectual property rights, including copyrights or trademarks, including copyrights, patents, trademarks, and trade secrets, in and to the Apps Club mobile store technology, Program, Apps Club Mark and Program Materials, and that this Agreement does not transfer ownership of any of these rights.
- 6.5 **Feedback.** Content Provider may, in its sole discretion, provide Apps Club with comments, information or other feedback regarding Apps Club's products and services or this Program, which Apps Club may freely use to improve or enhance its products, services or this Program without obligation of confidentiality or compensation to Content Provider.

7. WARRANTIES AND INDEMNIFICATION.

- 7.1 **General Warranties.** Each party warrants that it has the full power, legal right and authority to enter into this Agreement and perform its obligations hereunder.
- 7.2 **Warranties by Content Provider.** Content Provider represents and warrants that the Content, as submitted and as subsequently updated or upgraded: (a) will be free from code that might disrupt, disable, harm, or otherwise impede the operation of any software, firmware, mobile device, computer system, or network; (b) complies with all applicable laws in the Territory and Content Provider's Privacy Policy; (c) does not infringe or otherwise violate the copyright, trademark or other intellectual property rights of any third-party; and (d) does not contain any material (or advertising promoting material) that is unlawful in the Territory, defamatory, pornographic, discriminatory or which promotes or facilitates, illegal activity, violence, discrimination, or infringement of any copyright, trademark, or other intellectual property right.
- 7.3 **Disclaimer of Warranties.** Except for the express representation and warranties set forth in this Agreement, neither Content Provider nor Apps Club make any other representations or warranties. Each party expressly disclaims all other representations or warranties.

7.4 **Duty to Indemnify.** Content Provider hereby agrees to indemnify and defend Apps Club, its affiliates, Partners, successors and assigns from and against all claims, demands, actions, proceedings, liabilities, costs, and expenses based on any claim that: (i) arises from an alleged breach of Content Provider's obligations, representations or warranties under this Agreement; (ii) arises from Content Provider's actions or Content allegedly infringing the intellectual property rights of any third party; (iii) arises as a result of Content Provider's alleged breach of any warranty, representation, or support, maintenance, privacy or other obligation to end users.

8. CONFIDENTIALITY

8.1 You agree that all Program Materials and all information disclosed by Apps Club to You that relates to the Program or Apps Club's products, designs, business plans, business opportunities, finances, research, development, know-how, personnel, or third-party confidential information, will be considered and referred to collectively as "**Confidential Information.**" Confidential Information, however, does not include: (i) information that Apps Club makes generally available to the public; (ii) information that You can demonstrate to have had rightfully in Your possession prior to disclosure to You by Apps Club; (iii) information that is independently developed by You without the use of any Confidential Information; or (iv) information that You rightfully obtain from a third party who has been given the right to transfer or disclose it by Apps Club. You agree not to disclose, publish, or disseminate Confidential Information to anyone other than those individuals who have an existing Program membership. You further agree to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. You agree not to use Confidential Information otherwise for Your own or any third party's benefit without the prior written approval of an authorized representative of Apps Club in each instance.

8.2 You further agree that despite any other confidentiality agreements You may have between You and Apps Club, Apps Club will not be responsible for keeping confidential any materials You submit to Apps Club for consideration through the use of the Program. You acknowledge that Apps Club works with many developers and publishers who develop their own Content. Some of Apps Club's or its publisher partners' Content may be similar to or compete with Your Content, either now or sometime in the future. Apps Club cannot agree, and expressly disclaims, any confidentiality obligations or use restrictions, express or implied, with respect to any information that You may provide in connection with this Agreement or the Program, including information included in or with Your Content.

9. GENERAL PROVISIONS.

9.1 **General.** Apps Club will not be liable for any delay or failure to fulfill its obligations hereunder that results from acts of God, war, civil disturbance, court order, legislative or regulatory action, catastrophic weather condition, failure or fluctuation in electrical power or other utility services or other cause beyond its control. This Agreement will not be construed to create a joint venture or partnership between the parties and neither will have the right, power, or authority at any time to act on behalf of, or impose any obligation on or to represent the other, except as expressly set forth herein. Content Provider understands that Apps Club may subcontract certain of its obligations under this Agreement. This Agreement and its exhibit(s), attachments, and/or addenda, if any, set forth the entire understanding of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements, understandings and negotiations with respect to the subject matter hereof.

9.2 **Notices.** All notices under or relating to this Agreement may be sent by e-mail or by registered mail to the address below or to any other address the party may designate in writing.

9.3 **Communication.** Apps Club may send communications to You from time to time. Such communications may be in the form of phone calls, emails, text messages or other forms of commercially available communication tools. The subject matter of these communications may include, but not be limited to, marketing materials, technical information, device support, and updates and/or changes regarding Your participation in the Program. By entering into to this Agreement, You acknowledge and agree that Apps Club may provide You with such communications.

- 9.4 **Amendment.** Apps Club may, from time to time, modify the terms of this Agreement by: (i) posting the revised agreement on Apps Club's website and notifying Content Provider of the change by e-mail; (ii) forwarding a copy of the revised Agreement to Content Provider, whether electronically or through a postal service; or (iii) any other means reasonably calculated to inform Content Provider of the terms of the revised agreement. Unless Content Provider objects to the revised agreement in writing to Apps Club within thirty (30) days of receiving notice of the change, in which case no revision will take effect, Content Provider will be deemed to have accepted the terms of the revised Agreement and the as-revised Agreement will take effect and be binding on both parties at the end of Content Provider's thirty (30) day objection period. No modification, amendment, supplement to or waiver of any provision of this Agreement shall be binding upon the Parties unless in writing and accepted by Content Provider in the manner described above or signed by both Parties.
- 9.5 **Governing law. Arbitration of disputes.** This Agreement shall be governed by and construed in accordance with the laws of England and Wales, except that body of laws controlling conflict of laws. Any claim, dispute or controversy between the Parties arising out of or in relation to this Agreement, which cannot be satisfactorily settled by the Parties shall be finally settled by arbitration upon the written request of either Party, in accordance with the rules of the London Court of International Arbitration (the 'LCIA'), which rules are deemed to be incorporated by reference into this clause. The place of arbitration shall be London, England. The arbitration proceedings shall be conducted in English by a single arbitrator. The award shall be final and binding upon both Parties. Notwithstanding the foregoing, either Party may bring proceedings in any court of any state for the purpose of seeking: (a) an injunction, order or other non-monetary relief which could not be obtained by using the LCIA; or (b) any relief or remedy which, if it (or its equivalent) were granted by the LCIA, would not be enforceable in such other state.
- 9.6 **Legal Effect.** A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

BY REGISTERING AS A DEVELOPER VIA APPS CLUB'S DEVELOPER PORTAL, OR REPLYING "I AGREE" OR THE LIKE TO AN EMAIL WITH THIS AGREEMENT, YOU REPRESENT AND WARRANT THAT: (1) THE INFORMATION PROVIDED IS TRUE AND ACCURATE; (2) YOU ARE AT LEAST 18 YEARS OLD; (3) YOU ARE EITHER THE CONTENT PROVIDER OR AN AUTHORIZED REPRESENTATIVE OF CONTENT PROVIDER WITH THE POWER AND AUTHORITY TO ENTER INTO AND BIND THE CONTENT PROVIDER TO THIS AGREEMENT; AND (4) YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.