

Terms of Use

Applits.com User Terms of Use

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Welcome to applits.com, a website that lets users submit mobile application ideas for feedback from the Applits community of Users (the "Community"). The web site is first and foremost designed to facilitate and provide general market research data and information to individuals or entities that submit a mobile application idea. However, selected smartphone application ideas may further be developed by the Community and may ultimately be developed and sold by Applits. The applits.com web site and its associated services (the "Services") may be found at the domain and its related subdomains found at www.applits.com (the "Site"). The Site is owned and operated exclusively by Applits LLC, a New York limited liability company, and its affiliates (collectively referred to herein as "Applits", "us", "we" or "the Company"). By creating a user account and/or accessing or using the Site or by posting any content on the Site, you represent and warrant that you have read, understand and agree to be bound by these User Terms of Use ("Terms of Use" or "Agreement"). We reserve the right, at our sole discretion, to change, modify, add, or delete portions of these Terms of Use at any time without further notice. If we do this, we will post the changes to these Terms of Use on this page and will indicate at the top of this page the date these terms were last revised. Your continued use of the Site after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to abide by these or any future Terms of Use, do not use or access (or continue to use or access) the Site or the Services. It is your responsibility to regularly check the Site to determine if there have been changes to these Terms of Use and to review such changes.

PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, AND A DISPUTE RESOLUTION CLAUSE THAT GOVERNS HOW DISPUTES WILL BE RESOLVED. PLEASE NOTE THAT BY AGREEING TO THE TERMS OF USE PROVIDED FOR HEREIN YOU MAY BE TRANSFERRING VALUABLE INTELLECTUAL PROPERTY RIGHTS TO APPLITS FOR ITS COMMERCIAL USE.

Commonly Used Terms and their Definitions

All initial capitalized terms used in this Agreement shall have the meaning ascribed to such terms. In addition to the terms defined elsewhere in this Agreement, the following Terms shall have the meaning listed below:

- **"Acquired MAI"** means any Mobile Application Idea that is selected by the Company for development and/or commercialization.
- **"Acquired User Content"** means any User Content submitted in connection with any Acquired MAI.
- **"Applits Mobile Application Revenue"** means the total gross revenue actually received by the Company from the license or sale of licenses of the first binary version of an Acquired MAI made publicly available by the Company, less all returns, warranty claims, fees, expenses, judgments, charge backs, and other direct offsets against gross revenue, less costs of development, marketing and distribution of such first binary version, as determined in the sole discretion of the Company.
- **"Intellectual Property Rights"** means writing, trade name, trademark, service mark, mask work or any other material registered or otherwise protected or protectable under state, federal, or foreign patent, trademark, copyright, trade secret or similar laws.
- **"Leaderboard"** is a location on the site where Points earned by a User are displayed. Prizes may be rewarded to a User based on their position on the Leaderboard. This position is determined by the amount of Points a user has earned in that month.
- **"Mobile Application Idea (MAI)"** means a smartphone, mobile device or other software application concept, design or idea that is submitted by a User to the. The "MAI" includes: a User's core idea description and features list, a purpose statement, a description of the User's expected marketplace (including pricing, targeted customers and differentiators), mock-ups, flow charts, logos, icons and more.
- **"Points"** are given to Users based on their participation on the Site, which will be publicly displayed on the Leaderboard. From time to time, the Company may announce and grant rewards based on Point totals.

- **“Proprietary Information”** includes any scientific, technical, trade or business secrets of any person or entity and any scientific, technical, trade or business materials that a person or entity treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, Inventions belonging to a person or entity and confidential information obtained by or given to a person or entity about or belonging to a third party, and including but not limited to materials that is or could be copyrighted, trademarked or patented.
- **“Person”** means any individual, trust or legal entity.
- **“Reward”** means any prize, monetary or otherwise, granted by the Company from time to time at the Company’s sole discretion.
- **“Royalty”** means any User’s share of Applits Mobile Application Revenue, as provided in this Terms of Use or from time to time by the Company.
- **“Site Content”** shall mean all information on the Site and available through the Services, including without limitation designs, text, graphics, pictures, video, animation, information, applications, software, programs, music, sound, audio, schematics, illustrations, diagrams, data, and other files and creative output, in whatever format, and their selection and arrangement. Site Content does not include User Content.
- **“User”** is any Person that creates a user account and/or accesses or uses the Site, and/or transmits any User Content on the Site
- **“User Content”** includes all information that a User transmits to the Site, as well as communications made by a User, and alterations made to the Site by a User.

Eligibility

Participation in the Site is void where prohibited. This Site is intended solely for users who are eighteen (18) years of age or older. Any registration by, use of or access to the Site by anyone under 18 is unauthorized, unlicensed and in violation of these Terms of Use. By using the Services or the Site, you represent and warrant that you are 18 or older and that you agree to and will abide by all of the terms and conditions of this Agreement.

Basic Description of User Participation on the Site

The Site is developed and operates using a variety of terms and phrases. To summarize generally how the Site functions:

- Each User creates a User Profile, and may include biographical information, a photo / avatar. The creation of your new User Profile will be announced to other Users via the Live Stream feature of the Site.
- Mobile Application Ideas (“MAI” or “MAIs”) are submitted by Users.
- MAIs are displayed on the “Browse Ideas” page for up to thirty days. There, they are visible to the public, and Applits community members may vote for, and add comments to the MAIs.
- The most popular MAIs on the “Browse Ideas” page (based on votes, responses, and Company discretion) are then moved to Voting Week. MAIs that are not chosen for Voting Week are removed from public viewing. During Voting Week, Users post their suggestions or ideas to further contribute to perfecting the MAIs.
- During Voting Week, Users evaluate submitted MAIs. The Company may, at its sole discretion, taking into consideration a variety of factors, including User input, select an MAI for development and sale (“Acquired MAI”). If the Company has not identified a MAI as a winning idea within sixty days following submission of such MAI by a User, such User withdraws such MAI or can elect to re-submit such MAI to Applits and Applits’ trusted partners for further consideration for development.
- Once the above phases related to a MAI are completed, the Company may then develop the MAI and sell the commercialized version of the MAI.

- The MAI will be subject to one or more additional phases if selected as a winner of voting week, each of which is targeted to get Community ideas, suggestions and input related to a specific aspect of the development of the MAI (e.g. the selection of a name, or slogan for the app).
- The Company may offer rewards, to those Users who participated in the development of the MAI or who originally submitted the MAI at the Company's sole discretion.

THE SELECTION, DEVELOPMENT, AND SALE OF ANY MAI IS SUBJECT TO THE COMPANY'S SOLE AND ABSOLUTE DISCRETION AND THE COMPANY RESERVES THE RIGHT, FOR ANY OR NO REASON, TO (I) REJECT ANY SUBMITTED MAI, (II) REFUSE TO POST ANY SUBMITTED MAI TO THE SITE, (III) TERMINATE THE DEVELOPMENT OR ANY PHASE RELATED TO A MAI, (IV) TERMINATE THE SALE AND OR DEVELOPMENT OF ANY COMMERCIALIZED MOBILE APPLICATION RELATED TO ANY MAI, (V) REFUSE TO ACQUIRE ANY WINNING IDEA, OR (VI) SELL OR LICENSE AN MAI, AND/OR ANY INTELLECTUAL PROPERTY RELATED THERETO, TO ANY THIRD PARTY.

Conduct by Users; Prohibited Conduct

You agree that you shall not: (i) take any action or upload, post, e-mail or otherwise transmit to or via the Site any User Content that infringes or violates any third party rights, including without limitation all Intellectual Property Rights, or that constitutes any other Person's Proprietary Information; (ii) impersonate any Person without their consent, including, but not limited to, a Applits employee, or falsely state or otherwise misrepresent your affiliation with any Person; (iii) take any action or upload, post, e-mail or otherwise transmit to or via the Site any User Content that violates any law or regulation; (iv) take any action or upload, post, e-mail or otherwise transmit to or via the Site any User Content as determined by Applits at its sole discretion that is harmful, threatening, abusive, harassing, causes tort, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (v) take any actions or upload, post, e-mail or otherwise transmit to or via the Site any User Content that contains any viruses, Trojan horses, worms, spyware, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (vi) take any action or upload, post, email or otherwise transmit to or via the Site any User Content that would violate any right or duty under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements); (vii) upload, post, email or otherwise transmit to or via the Site any unsolicited or unauthorized advertising, or promotional materials, that are in the nature of "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation that the Company considers in its sole discretion to be of such nature; (viii) interfere with or disrupt the Services or servers or networks connected to the Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Services; (ix) attempt to gain access to any other User's account or password; or (x) "stalk", abuse or attempt to abuse, or otherwise harass another user; (xi) charge any third party for use of the Site or the Services. Any violation by you of the terms of the foregoing may result in immediate and permanent suspension or cancellation of your account and the forfeiture of any accrued payments otherwise due to you from the Company.

License of User Content

The Company and each User that is a party to this Agreement acknowledges and agrees that, subject to the terms and conditions of this Agreement, including the Company's right to acquire User Content and MAI's as described below, Users may retain any and all applicable copyright and other Intellectual Property Rights with respect to any User Content that a User creates or submits using the Services, to the extent such User has such rights under applicable law.

Notwithstanding the foregoing, you understand and agree that by submitting User Content to any area of the Site, you automatically grant (and you represent and warrant that you have the right to grant) to the Company: (a) a royalty-free, worldwide, fully paid-up, perpetual, irrevocable, non-exclusive right and license to use, reproduce and distribute your User Content within the Services, within the Site, and within any Acquired MAI, (b) the perpetual and irrevocable right to delete any or all of your User Content from Company owned, controlled or used servers and from the Site, for any reason or no reason, whether intentional or unintentional, and, without any liability of any kind to you or any other party; and (c) a royalty-free, fully paid-up, perpetual, irrevocable, non-exclusive right and license to copy, analyze and use any of your User Content as the Company may deem necessary or desirable for purposes of debugging, testing and/or providing support services in connection with the Services. Furthermore, you hereby grant to other Users a limited license to access and use your User Content for their own personal use, in connection with participating on the Site, during the duration of the evaluation and development of a submitted MAI for which such User Content was originally posted. Other than as expressly provided herein, no User shall acquire any license or ownership in other Users' User Content, provided however that in the event a User withdraws a MAI from the Site in accordance with these Terms, and desires to adopt User Content provided by another User for use away from

the Site, such Users may agree among themselves, separate and apart from these Terms, to terms governing use of such User Content. Further, you agree to grant to Company a royalty-free, worldwide, fully paid-up, perpetual, irrevocable, non-exclusive, sub-licensable right and license to exercise the copyright, publicity, and database rights you have in your account information, including any data or other information generated by your account activity, in any media now known or not currently known, in accordance with our privacy policy as set forth below.

You further understand and agree that: (i) you are solely responsible for understanding all copyright, patent, trademark, trade secret and other intellectual property or other laws that may apply to any User Content (including your User Content); (ii) you are solely responsible for, and the Company will have no liability in connection with, the legal consequences of any actions or failures to act on your part while using the Site, including without limitation any legal consequences relating to your or any other Person's Intellectual Property Rights or Proprietary Information; and (iii) Applits' acknowledgement hereunder of your Intellectual Property Rights in your User Content does not constitute a legal opinion or legal advice, but is intended solely as an expression of the Company's intention not to require Users of the Site to forego certain Intellectual Property Rights with respect to User Content they submit to the Site, subject to the terms of this Agreement, including without limitation each User's agreement to assign all right, title and interest in User Content as provided below.

Notwithstanding the foregoing, Applits retains ownership of the User account, regardless of any Intellectual Property Rights in User Content. You agree that even though you may retain certain copyright or other Intellectual Property Rights with respect to User Content that is submitted on the Site, you do not own the account you use to access the Site, nor do you own any data Applits stores on its servers (including without limitation any data representing or embodying any or all of your User Content). Your Intellectual Property Rights in any User Content, if any, do not confer any rights of access to the Site, the Services or any rights to data stored by or on behalf of the Company. You also agree that the Company has to right to purchase a User's MAI for the same prize money as the User picked winner whose prize money can be found on the badge displayed in the upper right hand corner of the website. This purchase will transfer the User's ownership of their MAI to the Company. The decision to exercise this right is at the sole discretion of the Company.

Assignment and Ownership of Acquired User Content and Acquired MAI

Except as otherwise provided in this Terms of Use, all works, data, images, ideas, code, schematics, drawings, designs, branding, programs, discoveries, inventions, patents, products or other information, whether copyrightable or not, developed in whole or in part by you and contained in any Acquired MAI or Acquired User Content shall be the sole and exclusive property of the Company (together the "Acquired Content"). Upon selection by the Company of any MAI for commercial development, you agree to irrevocably assign to the Company all of your right, title and interest to such Acquired MAI, and any Acquired User Content or other Intellectual Property Rights related thereto. You hereby grant the Power of Attorney to the Company for the purpose of registering any trademark, service mark, copyright, patent or any property rights to the Acquired Content. If you have any rights to the Acquired Content, including without limitation intellectual property rights, that cannot be assigned to the Company, you hereby irrevocably and unconditionally grant to the Company an exclusive, irrevocable, perpetual license to such rights in the Acquired Content. You also grant to the Company the right to sublicense to all levels of sub-licensees, reproduce, revise, distribute, publically perform or display in any manner or means, use or sell the Acquired Content. Further, if any of your rights in the Acquired Content rights cannot be licensed or assigned to the Company, you hereby waive the enforcement of such rights, and any claims or causes of action of any kind against the Company concerning such rights. Upon request, you agree to sign, without delay, all documents necessary to confirm or perfect the Company's exclusive ownership of, or rights, to the Acquired Content. You further acknowledge and agree that in connection with any such assignment you reserve no rights whatsoever and the Company shall have the right to enforce all Intellectual Property Rights in such User Content against you and any subsequent use by you of such User Content. You further acknowledge and agree that any compensation that you might receive as a result of submitting such User Content and its inclusion in a successfully commercialized MAI may be inadequate or below fair market value, and you expressly agree to bear such risk in connection with submitting User Content on the Site. The provisions of this Section may be specifically enforced by either the Company or any third party who is assigned or licensed rights in such User Content by the Company, and any such third party is intended to be a third party beneficiary of this provision. All provisions of this section shall remain in full force and effect during and after your use of the Site.

Media Release and Waiver

You agree that the Company has the absolute right and permission to use your name, voice, image, likeness, User name, avatar, and your applicable User compensation information, including for example any Royalties or Rewards you receive, as well as representations made by you, in any media (including, without limitation, television, print, radio and the Internet) ("Released Materials"), world-wide, for the purposes of advertising, promoting, reporting and disseminating information about the Company, the Company's business or any Acquired Content. Therefore, you hereby grant to Applits the absolute and

irrevocable right and permission to use, reproduce, edit, exhibit, display, publish and/or sell the Released Materials, in whole or in part, in conjunction with any other media, in any medium and for any purpose whatsoever. You hereby release, discharge and agree to indemnify, defend and protect the Company from any and all liability by virtue of any blurring, distortion, alteration, optical illusion (whether intentional or otherwise) that may occur in the use thereof; violation of any personal or proprietary right that you may have in connection with such use; any claim for libel, slander, invasion of privacy, copyright or trademark violation, right of publicity, or false light arising out of or in connection with such use; any claim for compensation or royalty (monetary or otherwise), arising out of or in connection with such use; and any third party claims that such use constitutes infringement of any party's (including your) rights to the same.

Proprietary Rights in Site Content; Limited License

All Site Content is the proprietary property of the Company, with all rights reserved. No Site Content may be modified, copied, distributed, reproduced, republished, downloaded, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without the Company's prior written permission, except that the foregoing does not apply to User Content that is legally posted on the Site. Provided that you are eligible for use of the Site, you are granted a limited license to access and use the Site and the Site Content and to download or print a copy of any portion of the Site Content to which you have properly gained access solely for your own personal use, in connection with participating on the Site, during the duration of the development of an Acquired MAI for which such Site Content was originally posted. Except for your own User Content, you may not upload or republish Site Content on any Internet, Intranet or site or incorporate the information in any other database or compilation, and any use of the Site Content not explicitly permitted herein is strictly prohibited. The foregoing license is subject to these Terms of Use and does not include use of any data mining, robots or similar data gathering or extraction methods. Any use of the Site or the Site Content other than as specifically authorized herein, without the prior written permission of Company, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws including copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to Intellectual Property Rights, whether by estoppel, implication or otherwise. The foregoing license is revocable at any time by the Company without notice and with or without cause.

Other Parties Rights in Content

By using the Site, you acknowledge that you will have access to User Content provided by other Users. User Content and Site Content may be provided under license by independent content providers, including contributions from other Users. The Company may not pre-screen User Content submitted by Users to the Site. You acknowledge that the Company and other Users may have rights in their respective Site Content and User Content, including but not limited to rights under copyright and other applicable laws and treaty provisions. Except as described in this Agreement, such rights are not licensed or otherwise transferred by mere use of the Site. You accept full responsibility and liability for your use of any Site Content or User Content in violation of any such rights. You agree that your submission of any User Content is not in any way based upon any expectation of compensation from the Company, any User, or any third party. You also agree that the Company is under no obligation to protect User Content, including but not limited to your User Content, from the actions of others, including actions that might infringe upon any rights you may have in your User Content.

Monitoring User Content

You acknowledge that Users have the ability to interact with and alter the Site, contribute and modify User Content, and communicate with other Users through the Site. Applits does not police or regulate the User Content for any purpose, including but not limited to removing defamatory or infringing User Content, or the quality, safety, morality, legality, truthfulness or accuracy of User Content. Applits is not responsible or liable in any manner for any User Content posted on the Site or in connection with the Services. Although we provide rules for User conduct and postings, we do not control and are not responsible for what Users post, transmit or share on the Site and are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable Site Content you may encounter on the Site or in connection with any User Content. The Company is not responsible for the conduct, whether online or offline, of any User of the Site or Services. Notwithstanding the foregoing, Applits reserves the right to monitor, limit and/or remove any User Content posted by a User to the Site, including, without limitation, MAIs, at its sole discretion.

Trademarks

“APPLITS” and other Applits graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, trademarks or trade dress (collectively, the “Marks”) of Applits in the U.S. and/or other countries. The Marks may not be used, including as part of trademarks and/or as part of domain names, in connection with any mobile application or service in any manner that is likely to cause confusion or association or affiliation with Applits and may not be copied, imitated, or used, in whole or in part, without the prior written permission of the Company.

User Presentation of Applits or Applits Mobile Applications

Users may choose to produce a web application (including, without limitation, a website, blog, Facebook page, Twitter page, or similar) promoting or otherwise presenting Applits or Applits mobile applications. Any such application must comply with the following guidelines:

1. Post the following notice clearly and conspicuously on each and every page within an application: "This mobile application is not affiliated with, endorsed by, or in any manner provided or controlled by Applits LLC. Applits LLC assumes no liability for the content of this application."
2. If using any Applits branding (including, without limitation, Applits or Applits mobile application brand names or logos), do not distort or alter the brand appearance. For example, don't change any spelling, don't add or merge words, and don't alter color, font or dimensions.
3. If using any Applits created imagery (still photos or videos), include the following attribution: "© Applits LLC. All rights reserved" adjacent to each instance of imagery.
4. Don't claim any untrue association with Applits. Applits Users are not employees, consultants, contractors or agents of Applits.
5. Don't include the Applits name or other Applits brand name in a domain name (including, without limitation, Facebook page URL or Twitter page URL).

Copyright Infringement Complaints

We respect the intellectual property rights of others and we prohibit Users from uploading, posting or otherwise transmitting on the Site or via the Services any materials that violate another party's Intellectual Property Rights or that constitute another Person's Proprietary Information. Any infringing materials posted by any User can be identified and removed pursuant to Applits' Digital Millennium Copyright Act (the “DMCA”) compliance process, provided herein, and you agree to comply with such process in the event you are involved in any claim of copyright infringement to which the DMCA may be applicable. If you believe that any Site Content infringes a copyright, please send a notice of copyright infringement containing the following information to support@applits.com:

1. Identification of copyrighted material allegedly being infringed, including an attached file containing the copyrighted material;
2. Identification of the Site Content claimed to be infringing including the specific location within the Site of the allegedly infringing Site Content;
3. Your contact information, including address, telephone number and e-mail address, and if you are not the owner of the copyright that has been allegedly infringed, an explanation of your relationship to the copyright owner;
4. A statement that you have a good faith belief that the allegedly infringing Site Content is not authorized by the copyright owner, its agent, or the law, and that under penalty of perjury, the information provided is accurate, and you are authorized to make the complaint on behalf of the copyright owner; and
5. Your signature.

Applits will, upon receiving your notice of copyright infringement, if that notice complies with the foregoing five requirements, take one or more of the following actions: (a) reasonably determine that the allegedly infringing Site Content is not infringing, and allow the Site Content to remain, (b) contact the Person who posted the allegedly infringing Site Content concerning your notice of infringement, and (c) remove the allegedly infringing Site Content. By your use of this Site, you expressly agree to and

accept the foregoing DMCA compliance process, acknowledge its compliance with US Copyright law, and waive any and all claims against Applits directly relating to, or arising from, the foregoing DMCA compliance process.

Repeat Infringer Policy

In accordance with the DMCA and other applicable law, Applits has adopted a policy of terminating, in appropriate circumstances and at Applits' sole discretion, Users who are deemed to be repeat infringers. Applits may also at its sole discretion limit access to the Site and/or terminate the accounts of any Users who infringe any Intellectual Property Rights or who disclose Proprietary Information of others, whether or not there is any repeat infringement or disclosure. Any amounts that may otherwise be or may become due from the Company to any User, who has submitted User Content that infringes any Intellectual Property Rights or discloses Proprietary Information of any other Person is subject to forfeiture, at the sole discretion of the Company.

Payments by the Company to Users - General

Users shall not be entitled to any payment, prize, consideration, Reward or Royalty by reason of using the Site, submitting User Content, or submitting MAIs. While the Company may, at its sole discretion, issue Rewards to Users from time to time, Users should not participate on the Site or in the Services primarily for financial gain, as any actual monetary compensation actually received by a User in connection with the Site, may or may not bear any relation to the actual time invested on the Site, or the quality or quantity of User Content submitted. The Company may also award prizes to Users based on their submission of User Content, as well as their position on the Leaderboard based on Points given to a particular User. Points are awarded both automatically, and manually based on discretion of the Company. Points may be removed for, but not limited to, exploitation of the Site, registering fake accounts, or any other actions that are deemed malicious by the Company.

Royalties - Eligibility

If your MAI becomes an Acquired MAI, or if your User Content becomes Acquired User Content, you may be entitled to receive Royalties in connection with such Acquired Content, as provided in the "Royalties" sections in this Terms of Use. The Company may elect in its sole discretion to develop or not develop Acquired Content, or to commercialize or not commercialize Acquired Content even if already developed. The Company makes no representation, warranty or guarantee that a User will ever receive any Royalties or other payments or compensation in connection with User's participation on the Site or submission of an MAI or User Content, even if the Company acquires such MAI or User Content. The determination of whether any particular MAI or User Content has become Acquired Content, or has been incorporated into a developed and commercialized App, shall be made by the Company in its sole discretion. In all cases, Applits' obligation to pay any Royalties to any party is conditioned upon Company receiving any Applits Mobile Application Revenue in connection with Acquired Content. Finally, no User will be entitled to any Royalties unless the Company first publishes such Royalty on the Site and specified the applicable royalty rate or amount.

Royalties – Applicability and Limitations

The Company may determine the structure, amount, or any limitations governing any Royalty offering, in its sole discretion. The Company may offer any Royalty as a percentage of the Applits Mobile Application Revenue, a fixed amount of money, non-cash consideration, or any combination thereof. By submitting an MAI or User Content, User(s) shall be deemed to have accepted the prevailing and applicable Royalty offer made by the Company, if any.

If a Royalty offering does include a continuing obligation by the Company to pay a portion of the Applits Mobile Application Revenue, the following limitations apply. Any revenue, income or other consideration received by the Company in connection with an Acquired MAI shall only constitute "Applits Mobile Application Revenue" if such consideration directly arises from the license or sale of licenses to the **first binary version** of the Acquired MAI that the Company makes publicly available. Without expanding the foregoing, "Applits Mobile Application Revenue" shall **not** include any revenue or consideration received by the Company in connection with: (a) subsequent binary versions of the Acquired MAI, (b) any sale or transfer of the Company's rights in the Acquired MAI, except for licenses to end-users in the normal course of business, (c) the development and sale of derivative works of the Acquired MAI, or (d) the development and sale of any other products, services or merchandise based on or in connection with the Acquired MAI.

Royalties – Amount and Payment

As defined above, Applits Mobile Application Revenue means the total gross revenue actually received by the Company from the license or sale of licenses of the first binary version of an Acquired MAI made publicly available by the Company, less all returns, warranty claims, fees, expenses, judgments, charge backs, and other direct offsets against gross revenue, less costs of development, marketing and distribution of such first binary version, as determined in the sole discretion of the Company. Subject to this Terms of Use, as well as the eligibility and applicability requirements above, the User(s) who submitted Acquired Content shall be entitled to Royalties from the Applits Mobile Application Revenue, on the terms and rate(s) or amounts announced by the Company in advance.

The Company will determine the existence and amount of the Applits Mobile Application Revenue earned by any Acquired MAI on a monthly basis, and shall pay out Royalties (if any) within thirty (30) days of the end of the month to which such Royalties relate. The Company will make payments to Users by PayPal, check, ACH, wire transfer (fee assessed to User) or through any other commercially reasonable manner adopted by the Company from time to time. Notwithstanding the foregoing, Applits shall be under no obligation to distribute any Royalties until such time as the aggregate amount payable exceeds \$100. Furthermore, on an annual basis, Applits reserves the right to reset all User accounts below \$100 to \$0 in Applits' sole discretion, and to write-off all such unpaid amounts and Applits shall have no liability for any such write-offs.

Upon the death of a User, Applits will direct Royalty payments, to a replacement payee if: (a) the Person requesting a replacement payee presents verifiable documentation supporting the replacement payee's legal entitlement to the deceased User's payments, and (b) the request for a replacement payee is received by Applits within one year from the date of the deceased User's death. If Applits does not receive a request for replacement payee that complies with the foregoing conditions, Applits may cancel the deceased User's account and write-off any unpaid amounts, with no liability for any such write-offs.

Royalties – Forfeiture and Termination

In all cases, a User's right to receive any Royalties in connection with any Acquired MAI shall **terminate** when Applits no longer owns the Acquired MAI, or when Applits no longer distributes or otherwise offers the Acquired MAI for sale or license.

In the event that a User breaches this Terms of Use, or any other policies or agreements related to the Site, the Company may withhold any Royalty amounts otherwise payable to the User, until the breach has been cured. In the event that the User fails to cure such breach within thirty (30) days of notification by the Company, the Company may terminate such User's right to receive any further Royalties from the Company.

Tax Withholding and Applits Payee Information Form

You acknowledge and agree that you be responsible for all taxes due on any payments made to you in connection with your participation on the Site. The Company will be under no obligation to make any payments to you unless you have supplied your PayPal email address; all payments will be made via this method. Backup withholding taxes are a type of withholding for federal income taxes on certain types of income. Applits may be required by law to withhold these taxes from amounts payable to you unless you are otherwise exempt from backup withholding. US citizens and resident aliens will typically be exempt from backup withholding if they properly report their name and Social Security number to Applits on the Applits Personal Identification Form and that information matches the IRS records.

Disputes Between Users

As a condition of access to the Site and the Services, you release Applits (and Applits' shareholders, affiliates, directors, officers, subsidiaries, employees, and agents) from all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with any dispute you have or claim to have with one or more Users of the Site; including, without limitation, any claim that another User has infringed upon your Intellectual Property Rights, or that another User may be liable to you in tort, contract, or under any other theory of law or equity. You further understand and agree that: (a) Applits will have the right but not the obligation to resolve disputes between Users relating to the Services, and Applits' resolution of any particular dispute does not create an obligation to resolve any other dispute; (b) to the extent Applits elects to resolve such disputes, it will do so in good faith based solely on the general rules and standards of the Services and will not make judgments regarding legal issues or claims; and (c) Applits' resolution of such disputes will be final with respect to the Site, and any allocation of Rewards, Royalties or Points due to Users related to the foregoing, but will have no bearing on any real-world legal disputes in which Users of the Services may become involved.

Data – Risk of Loss

When using the Site or the Services, you may accumulate User Content, Points, objects, items, scripts, or other value or status indicators that reside as data on the Company's servers. THIS DATA, AND ANY OTHER DATA, ACCOUNT HISTORY AND ACCOUNT NAMES RESIDING ON APPLITS'S SERVERS, MAY BE DELETED, ALTERED, MOVED OR TRANSFERRED AT ANY TIME FOR ANY REASON IN APPLITS'S SOLE DISCRETION. Notwithstanding the foregoing, the Company will maintain back-up records related to any actual accumulated unpaid cash amounts earned by Users, and to the extent such information is deleted or otherwise altered, the Company will use its best efforts to accurately recreate such information to satisfy its payment obligations.

YOU ACKNOWLEDGE THAT, NOTWITHSTANDING ANY COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS YOU MAY HAVE WITH RESPECT TO USER CONTENT YOU POST ON THE SITE, AND NOTWITHSTANDING ANY VALUE ATTRIBUTED TO SUCH USER CONTENT OR OTHER DATA BY YOU OR ANY THIRD PARTY, APPLITS DOES NOT PROVIDE OR GUARANTEE, AND EXPRESSLY DISCLAIMS (SUBJECT TO ANY UNDERLYING INTELLECTUAL PROPERTY RIGHTS IN THE USER CONTENT OR SITE CONTENT), ANY VALUE, CASH OR OTHERWISE, ATTRIBUTED TO ANY DATA RESIDING ON THE COMPANY'S SERVERS.

YOU UNDERSTAND AND AGREE THAT APPLITS HAS THE RIGHT, BUT NOT THE OBLIGATION, TO REMOVE ANY SITE CONTENT, USER CONTENT OR DATA IN WHOLE OR IN PART AT ANY TIME FOR ANY REASON OR NO REASON, WITH OR WITHOUT NOTICE AND WITHOUT ANY LIABILITY OF ANY KIND.

Disclaimer of Warranties

APPLITS PROVIDES THE SITE, THE SERVICES, YOUR ACCOUNT AND ALL RELATED GOODS AND SERVICES STRICTLY ON AN "AS IS / WHERE IS" BASIS, PROVIDED AND ACCEPTED AT YOUR OWN RISK, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS OF ANY KIND, WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Without limiting the foregoing, the Company does not ensure continuous, error-free, secure or virus-free operation of the Services, the Site or your account, and you understand that you shall not be entitled to make any claim based on Applits' failure to provide any of the foregoing other than as explicitly provided in this Agreement. Some jurisdictions do not allow the disclaimer of implied warranties, and to that extent, the foregoing disclaimer may not apply to you.

Limitation of Liability

IN NO EVENT SHALL APPLITS OR ANY OF ITS SHAREHOLDERS, AFFILIATES, DIRECTORS, OFFICERS, SUBSIDIARIES, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOST PROFITS, ARISING (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) OUT OF OR IN CONNECTION WITH THE SERVICES OR THE SITE (INCLUDING WITHOUT LIMITATION ITS MODIFICATION OR TERMINATION), YOUR ACCOUNT (INCLUDING WITHOUT LIMITATION ITS TERMINATION OR SUSPENSION) OR THIS AGREEMENT, WHETHER OR NOT THE COMPANY MAY HAVE BEEN ADVISED THAT ANY SUCH DAMAGES MIGHT OR COULD OCCUR AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. IN ADDITION, IN NO EVENT WILL APPLITS'S CUMULATIVE LIABILITY TO YOU FOR DIRECT DAMAGES OF ANY KIND OR NATURE EXCEED ONE HUNDRED DOLLARS (U.S. \$100.00).

Some jurisdictions do not allow the foregoing limitations of liability, so to the extent that any such limitation is impermissible, such limitation may not apply to you. You agree that Applits shall not be held responsible or liable for anything that occurs or results from accessing the Site or participating in the Services.

Indemnification

You hereby agree to defend, indemnify and hold harmless Applits, its shareholders, affiliates, directors, officers, subsidiaries, employees, agents, suppliers, licensees, distributors, successors and assigns and other Users of the Services, from all damages, liabilities, claims and expenses, including without limitation attorneys' fees and costs, arising from any breach of this Agreement by you, or from your use of the Services. You agree to defend, indemnify and hold harmless the Company, its shareholders, affiliates, directors, officers, subsidiaries, employees, agents, suppliers, licensees, and distributors, successors and assigns from all damages, liabilities, claims and expenses, including without limitation attorneys' fees and costs, arising from any claims by third parties that your activity on the Site or your User Content (including your User Content as incorporated in a commercialized MAI) infringes upon, violates or misappropriates any of their Intellectual Property Rights or discloses their Proprietary Information.

Service Interruptions and Site Changes

Applits reserves the right to interrupt the Site with or without prior notice for any reason or no reason. You agree that Applits will not be liable for any interruption of the Site, delay or failure to perform. Applits has the right at any time for any reason or no reason to change and/or eliminate any aspect(s) of the Site and/or the Services (including the entire Site and all of the Services) as it sees fit in its sole discretion.

Registration Data; Account Security

In consideration of your use of the Site, you agree to (a) provide accurate, current and complete information about you as may be prompted by any registration forms on the Site ("Registration Data"); (b) maintain the security of your password and identification; (c) maintain and promptly update the Registration Data and any other information you provide to Company, and keep it accurate, current and complete; and (d) be fully responsible for all use of your account and for any actions that take place using your account.

Privacy Policy

The Company's collection, use, storage, maintenance and removal of User Content are governed by the Privacy Policy, available [here](#).

Dispute Resolution; Governing Law; Venue and Jurisdiction

By visiting or using the Site and/or the Services, you agree that the laws of the State of New York, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and the Company or any of our affiliates. With respect to any disputes or claims not subject to arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of the State of New York located in Onondaga County, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of the State of New York located in Onondaga County.

YOU AND THE COMPANY AGREE THAT, EXCEPT AS MAY OTHERWISE BE PROVIDED IN REGARD TO SPECIFIC SERVICES ON THE SITE IN ANY SPECIFIC TERMS APPLICABLE TO THOSE SERVICES, THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THIS AGREEMENT, THE SITE AND/OR THE SERVICES (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICES) SHALL BE FINAL AND BINDING ARBITRATION, except that: (a) either of us may seek injunctive relief in state or federal court located in New York County, New York concerning infringement, misappropriation or other violation by either of us of the other party's Intellectual Property Rights, and (b) Applits may seek injunctive relief in state or federal court located in New York County, New York concerning violation by a User of any of the User conduct rules set forth above, and in both such cases (a) and (b), the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought. Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes (the "AAA Consumer Rules") (collectively the "AAA Rules"). The location of the arbitration shall be in Onondaga County, New York. The allocation of costs and fees for such arbitration shall be determined in accordance with such AAA Rules and shall be subject to the limitations provided for in the AAA Consumer Rules (for consumer disputes). The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

To the fullest extent permitted by applicable law, YOU AND APPLITS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, AND THAT NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICES. In no event shall any claim, action or proceeding by you related in any way to the Site and/or the Services (including your visit to or use of the Site and/or the Services) be instituted more than three (3) years after the cause of action arose.

General Provisions

The Site and the Services is controlled and operated by Applits from its offices within the United States of America. The Company makes no representation that any aspect of the Services is appropriate or available for use in jurisdictions outside of

the United States. Those who choose to access the Services from other locations are responsible for compliance with applicable local laws. You must comply with all export and import laws and restrictions and regulations of any United States or foreign agency or authority relating to the Services and its use. The Company's failure to act with respect to a breach by you or others does not waive Applits' right to act with respect to that breach or subsequent or similar breaches. No consent or waiver by Applits under this Agreement shall be deemed effective unless delivered in a writing signed by a duly appointed officer of the Company. All or any of Applits' rights and obligations under this Agreement may be assigned to a subsequent owner or operator of the Site and/or the Services in a merger, acquisition or sale of all or substantially all of the Company's assets. You may not assign or transfer this Agreement or any or all of your rights or obligations hereunder without the prior written consent of the Company, and any attempt to do so is void. Notwithstanding anything else in this Agreement, no default, delay or failure to perform on the part of Applits shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of Applits. This Agreement sets forth the entire understanding and agreement between you and Applits with respect to the subject matter hereof. The section headings used herein, including descriptive headings, are for convenience only and shall not affect the interpretation of this Agreement. If any provision of this Agreement shall be held by a court of competent jurisdiction to be unlawful, void, or for any reason unenforceable, then in such jurisdiction that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of the remaining provisions. Applits may give notice to you by means of a general notice on our website, by electronic mail to your e-mail address in our records for your Account, or by written communication sent by first class mail, postage prepaid, or overnight courier to your address on record for your Account. All notices given by you or required under this Agreement shall be mailed to us at support@applits.com unless otherwise provided in this Agreement.