

USER PARTICIPATION AGREEMENT

This User Participation Agreement (“Agreement”) is entered into by and between MINDBODY, Inc., located at 4051 Broad Street, San Luis Obispo, CA 93401, for itself and its subsidiaries and affiliates (“MINDBODY”), and the other party identified below (“You” or “Your”). If You agree to this Agreement on behalf of a business, you represent and warrant that you have authority to bind that business to this Agreement, and references to “You” and “Your” herein refer to that business. By signing below, You agree to the terms and conditions of this Agreement. This Agreement governs Your participation in MINDBODY user experience research activities, including but not limited to participating in surveys, use and evaluation of pre-release/beta products or services, and/or other activities in which You will provide information about Your experiences to MINDBODY (“Participation”).

A. In connection with Your Participation, You may receive certain Confidential Information (as defined below) of MINDBODY and/or MINDBODY’s partners. MINDBODY provides such Confidential Information to You only subject to the terms set forth in this Agreement.

B. “Confidential Information” means all non-public technical and non-technical information of MINDBODY and/or its licensors or partners (including but not limited to software, including Beta Software as defined below, hardware, product information, plans and pricing, financials, marketing plans, business strategies, customer information, data, research and development, APIs, specifications, designs, proprietary formulae and proprietary algorithms). You agree to (a) hold the Confidential Information in confidence; (b) use such Confidential Information only for the Survey; and (c) to the extent applicable, not create other works from or disassemble any such Confidential Information unless otherwise specified in writing by MINDBODY. Your obligations hereunder will continue until all Confidential Information falls within the public domain.

C. The restrictions in Section B above will not apply to Confidential Information to the extent that You can provide written documentation to show it (a) was in the public domain at the time of disclosure; (b) became publicly available after disclosure to You without breach of this Agreement; (c) was lawfully received by You from a third party without such restrictions; (d) was known to You prior to Your receipt from MINDBODY; (e) was independently developed by You without reference to such Confidential Information; or (f) is required to be disclosed by You pursuant to judicial order or other compulsion of law, provided that You will provide to MINDBODY prompt notice of such order and comply with any protective order imposed on such disclosure.

D. You acknowledge and agree that MINDBODY is not required to disclose any particular information to You and any disclosure pursuant to this Agreement is entirely voluntary and does not, in itself: (a) create warranties or representations of any kind; (b) create a commitment as to any product, service, or prospective business relationship; (c) constitute solicitation of any business or the incurring of any obligation not specified herein; or (d) constitute a license or transfer of ownership under any intellectual property rights of MINDBODY or its licensors. In addition, the terms of this Agreement are Confidential Information and as such, may not be disclosed by You without MINDBODY’s prior written consent.

E. In the course of Your Participation, You may be requested to provide comments, feedback, ideas, reports, suggestions, data or other information to MINDBODY (collectively “Feedback”). By submitting Feedback to MINDBODY, You acknowledge and agree that: (a) Your Feedback does not contain confidential or proprietary information; (b) MINDBODY is not under any obligation of confidentiality, express or implied, with respect to the Feedback; (c) MINDBODY shall be entitled to use or disclose (or choose not to use or disclose) such Feedback for any purpose, in any way, in any media worldwide; (d) MINDBODY may have

something similar to the Feedback already under consideration or in development; (e) Your Feedback automatically becomes the property of MINDBODY without any obligation of MINDBODY to You; and (f) You are not entitled to any compensation or reimbursement of any kind from MINDBODY under any circumstances. You further acknowledge and agree that all quotations, photos, and/or video that may contain Your likeness are the exclusive property of MINDBODY and may be used by MINDBODY in MINDBODY’s sole discretion for any reason without any compensation or reimbursement of any kind from MINDBODY to You under any circumstances.

F. Except as otherwise provided by this Agreement, any personally identifiable data collected by MINDBODY during the study shall be used by MINDBODY in accordance with MINDBODY’s general privacy policy (available at www.mindbodyonline.com/privacy-policy) incorporated into this Agreement by reference.

G. Beta Software, Applications and Services. If MINDBODY provides You with software, mobile applications, or services which are made available as pre-release, alpha, Beta, or otherwise not publicly available, and which may include associated media, printed materials, and online or electronic documentation (“Beta Software”), You agree that, in addition to the other terms in this Agreement, the following terms will govern Your use of such Beta Software:

1. License. During the term of this license and subject to Your compliance with the terms and conditions of this Agreement, MINDBODY grants You a non-exclusive, non-transferable, non-sublicensable, royalty-free license to install and use the Beta Software only: (a) in object code form; (b) for internal use; and (c) to evaluate the Beta Software and to provide Feedback to MINDBODY.
2. Restrictions. The license granted in Section G.1 above is granted solely to You and not to any parent, subsidiary or affiliate of Yours. You acknowledge that the Beta Software and its structure, sequence, organization and source code contain valuable trade secrets of MINDBODY and its suppliers. Accordingly, You agree that You will not, nor will You permit anyone else to: (a) modify, adapt, alter, translate or create derivative works from the Beta Software; (b) merge the Beta Software with other software; (c) sublicense, lease, rent, loan or act as a service provider using the Beta Software, or otherwise transfer the Beta Software to any third party; (d) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Beta Software; (e) remove, obscure or alter MINDBODY’s copyright notices, trademarks, or other proprietary rights notices affixed to or contained within the Beta Software; or (f) otherwise exercise rights to the Beta Software except as expressly allowed under Section G.1 above. You are responsible for any use of the Beta Software under the credentials supplied by MINDBODY and You agree to protect such credentials and to notify MINDBODY immediately of any

unauthorized use. You acknowledge and agree that the Beta Software is Confidential Information of MINDBODY as defined herein.

3. Ownership. The Beta Software, and all worldwide intellectual property rights and proprietary rights relating thereto or embodied therein, are the exclusive property of MINDBODY and its suppliers. MINDBODY reserves all rights in and to the Beta Software not expressly granted to You in Section G.1, and no licenses or rights are granted by implication, estoppel or otherwise.
4. Beta Software may contain links to or enable access to third party content, services and/or websites ("Third Party Materials"). You acknowledge and agree that MINDBODY bears no responsibility or liability to You for any Third Party Materials.
5. In addition to Feedback which You provide to MINDBODY as described in Section E above, MINDBODY may automatically collect certain data from You about Your use of the Beta Software. You acknowledge and agree that any such data collected constitutes "Feedback" as defined in Section E.
6. Updates. The terms of this Agreement will govern any upgrades or updates provided by MINDBODY to any Beta Software, provided such upgrades or updates are also Beta Software as defined herein.
7. MINDBODY has no obligation under this Agreement to provide any technical support for the Beta Software.
8. Termination. MINDBODY may terminate this license as to a particular piece of Beta Software at any time upon written notice to You. In addition, if this Agreement is terminated by either MINDBODY or You, this license will automatically terminate as to all Beta Software. Furthermore, the license granted to a particular piece of Beta Software will automatically terminate upon MINDBODY's commercial release of such product. In the event of any termination described in this Section G.8, You agree to stop using the terminated Beta Software immediately and, at MINDBODY's option, to return or destroy all copies of it in Your possession or control.
9. MINDBODY does not guarantee that it will make a commercial release of any Beta Software available and reserves the right to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability, documentation or any other characteristics of any commercial release of the products previously made available as Beta Software. You acknowledge that MINDBODY may not have publicly announced the availability of the Beta Software, that MINDBODY has not promised or guaranteed to You that such Beta Software will be announced or made available to anyone in the future, that MINDBODY has no express or implied obligation to You to announce or introduce the Beta Software and that MINDBODY may not introduce a product similar to or compatible with the Beta Software.
10. You acknowledge and agree that the Beta Software is a pre-release version, does not represent final product from MINDBODY, and may contain bugs, errors and other problems that could cause system failures and other damages. Consequently, the Beta Software is provided "AS IS" and with all faults. MINDBODY, ON BEHALF OF ITSELF AND ITS SUPPLIERS, HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES WITH REGARD TO THE BETA SOFTWARE, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. THE BETA SOFTWARE IS NOT INTENDED FOR ANY PRODUCTIVE USE INCLUDING, WITHOUT LIMITATION, ANY USE IN CONNECTION WITH ANY NUCLEAR, AVIATION, MASS TRANSIT OR MEDICAL APPLICATION OR ANY OTHER INHERENTLY DANGEROUS APPLICATION THAT COULD RESULT IN DEATH, PERSONAL INJURY, CATASTROPHIC DAMAGE OR MASS DESTRUCTION, AND LICENSEE AGREES THAT MINDBODY AND ITS SUPPLIERS SHALL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE BETA SOFTWARE.

11. Beta Software is not available in all languages or in all countries. MINDBODY makes no representation that Beta Software is appropriate or available for use in any particular location.
12. To the extent Beta Software contains or provides any location data, such data is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Neither MINDBODY nor its suppliers guarantees the availability, accuracy, completeness, reliability or timelessness of location or any other data accessed or provided through or displayed via Beta Software.
13. You shall comply with all laws, regulations, rules, ordinances and orders applicable to use of the Beta Software. Without limiting the foregoing, You shall comply with the relevant export administration and control laws and regulations, as may be amended from time to time, including, without limitation, the United States Export Administration Act, to ensure that the Beta Software is not shipped, transferred or exported (directly or indirectly) in violation of U.S. law.
14. The Beta Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Beta Software with only those rights set forth therein.
15. If any Beta Software is accompanied by a separate license agreement, the terms of this Agreement shall supersede such accompanying terms to the extent of any inconsistency.

H. IN NO EVENT WILL MINDBODY OR ITS SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THE BETA SOFTWARE OR THIS AGREEMENT, EVEN IF MINDBODY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MINDBODY'S AND ITS SUPPLIERS' TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE BETA SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED ONE HUNDRED DOLLARS (\$100). YOU ACKNOWLEDGE THAT THE LICENSE FEES (OR LACK THEREOF) FOR BETA SOFTWARE, IF ANY, REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT MINDBODY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

I. This Agreement is the parties' entire agreement on this topic, superseding any prior or contemporaneous agreements. Any amendments must be in writing. You may not assign or delegate, directly or indirectly, by operation of law, change of control or otherwise, this Agreement or any of its rights or obligations under this Agreement to any third party, and any attempt to do so will be void and of no effect.

J. You agree that MINDBODY has no obligation about any forward-looking statement made during the term of this Agreement. Forward-looking statements are statements regarding future MINDBODY events, product offerings, product performance, customer uses, or the expected financial performance of MINDBODY. Any such statements reflect current expectations and estimates based on factors currently known and actual events or results could differ materially. MINDBODY does not assume any obligation to update any forward-looking statements made during the term of this Agreement. In addition, any information about MINDBODY's roadmap outlines MINDBODY's general product direction and is subject to change at any time without notice. It is for informational purposes only and shall not be incorporated into this Agreement or any contract or other commitment.

K. As already noted, You are not entitled to any compensation for your Participation; notwithstanding the foregoing, MINDBODY reserves the right from time to time in its sole and absolute discretion to provide a participant with a gratuity for Participation. Where MINDBODY elects to do so, any taxes due thereon or for any Beta Software provided to it shall be Your responsibility, including but not limited to sales, use, value added, excise or similar tax attributable to this Agreement, exclusive of taxes based on MINDBODY's net income.

L. This Agreement cannot be cancelled, assigned or modified except by the written agreement of both parties. This Agreement will be governed and construed using California law, without giving effect to California conflict of law provisions or to constructive presumptions favoring either party. Failure to enforce any of provisions of this Agreement will not constitute a waiver. This Agreement will be governed and construed using California law, without giving effect to California conflict of law provisions or to constructive presumptions favoring either party. All actions arising out of or relating to this Agreement will be heard and determined exclusively by the Superior Court of the State of California for the County of San Luis Obispo or the western division of the United States District Court for the Central District of California.

M. You acknowledge that unauthorized disclosure of Confidential Information will diminish the value of the proprietary interests that are the subject of this Agreement. Accordingly, in addition to any other remedies and damages available at law or equity, You acknowledge and agree that MINDBODY may immediately seek enforcement of this Agreement by means of specific performance or injunction, without any requirement to post a bond or other security.

N. This Agreement is effective as of the date accepted by MINDBODY. This Agreement may be terminated immediately by either party upon written notice to the other party, provided however that the provisions of Sections B, C, D, E, G2 - G15, H, I, J, K, L M, and N will continue to apply regardless of such termination.

Party/Name (full company or individual name):

Signature: _____

Date: _____