

## Non-Exclusive Software Reseller Agreement

This Non-Exclusive Software Reseller Agreement (this "Agreement") is entered into as of *the date of approval into the SocialEngine Reseller Program* (the "Effective Date"), by and between Webligo Developments, LLC, a Delaware corporation having a primary place of business at 2898 Rowena Ave., Suite 100 & 101, Los Angeles, California, 90039 USA ("Webligo") *and company name entered into the online application* ("Reseller") having a primary place of business at the *company address entered into the online application*.

### Background

1. Webligo has developed and desires to advertise, promote, market, and distribute Webligo's software products.
2. Reseller desires to obtain the right to act as an independent Reseller of the Products, with the non-exclusive right to incorporate the Products into their own services.

Webligo and Reseller agree as follows:

1. **APPOINTMENT AS A RESELLER.** On the terms and subject to the conditions set forth herein, Webligo appoints Reseller as an independent, non-exclusive authorized Reseller of the Products and Reseller hereby accepts such appointment. Reseller may advertise, promote, and offer services which incorporate the Products solely to third party End Users. For purposes of this Agreement, the term "End User" means a person or entity that desires to acquire services that incorporate the Products for its own use, rather than for resale or distribution. Reseller may not authorize or appoint any dealers, subresellers, agents, representatives, subcontractors, or other third parties to advertise, promote, resell, or distribute the Products. All rights not specifically granted by Webligo hereunder are reserved by Webligo. Without limiting the generality of the foregoing, Webligo reserves the right to advertise, promote, market and distribute the Products, and to appoint third parties to advertise, promote, market, and distribute the Products. Further, Webligo reserves the right, in its sole discretion, at any time and from time to time, to modify any or all of the Products, or to discontinue the publication, distribution, sale or licensing of any or all of the Products without liability of any kind.

2. **CONSIDERATION, ORDERS AND DELIVERY.** Reseller acknowledges that Webligo has the right, at any time and from time to time, to modify any or all of the products Prices. Reseller shall pay for the Products in U.S. dollars in immediately available funds using a Visa, MasterCard, or American Express Credit Card, or by wire transfer, or in such other manner as Webligo may approve. Except as otherwise mutually agreed in writing, Reseller shall be responsible for all costs associated with its performance of this Agreement. Reseller will indemnify and hold Webligo harmless from any obligation to pay any governmental entity any employer statutory taxes, withholding taxes, social security taxes or other taxes, levies or duties in connection with Reseller's performance under this Agreement, and from any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs of litigation) arising out of or resulting therefrom.

### **3. MARKETING AND PROMOTION OF PRODUCTS**

- a. Promotion. Reseller shall use its best efforts to market and promote its own offerings that incorporate the Products.
- b. Marketing Practices. Reseller will at all times perform hereunder in a professional manner and in accordance with this Agreement and any guidelines issued by Webligo. Reseller will: (a) conduct business in a manner that reflects favorably

at all times on the Products and the good name, goodwill and reputation of Webligo; (b) avoid deceptive, misleading or unethical practices that are or might be detrimental to Webligo, the Products or the public, including but not limited to disparagement of Webligo or the Products; (c) make no false or misleading representation with respect to Webligo or the Products; and (d) make no representation with respect to Webligo or the Products that are inconsistent with Webligo's end user license agreement for the Products, promotional materials and other literature distributed by Webligo, including all liability limitations and disclaimers contained in such materials; (e) avoid marketing efforts that are competitive with Webligo's marketing efforts; (f) agree to immediately alter or cease any relevant marketing efforts at the will of Webligo at any time.

c. Promotional Materials. Reseller consents to the listing of its business name, address, phone number and web site address in such Webligo advertising and promotional materials as Webligo may determine in its sole discretion, including product literature and Webligo's web sites. During the term of this Agreement, Webligo may provide to Reseller promotional materials with respect to the Products. Reseller may not use the promotional materials for any purpose other than advertising and promoting their own services that incorporate the Products to End Users.

d. Permits, Licenses, and Compliance with Laws. Reseller will, at its sole cost and expense, obtain all permits and licenses necessary in connection with its performance of this Agreement, and will comply with all applicable laws, rules and regulations in the performance of this Agreement.

e. Privacy/Data Collection. Reseller will at all times during the term of this Agreement maintain appropriate technical and organizational measures to protect any End User data that it collects, accesses or processes in connection with this Agreement against unauthorized or unlawful use, disclosure, processing or alteration. Reseller will act in accordance with all applicable laws, rules and regulations in relation to the collection, use, disclosure, and processing of any such End User data.

**4. RESALE OF PRODUCTS.** Webligo shall provide copies of its end user license agreements to Reseller. Reseller may charge End Users for services that incorporate the Products at a price determined by Reseller. Reseller may distribute the Products or related derivatives solely by means of providing services that incorporate the Products to End Users. Reseller may not sell licenses for the Products or distribute the Products in a "pay to download" manner, or in any other manner that is competitive with Webligo's offerings. Reseller may not provide free services that incorporate the Products or components of the Products, and Reseller may not redistribute the Products or components of the Products in any manner other than by means of its commercial services. Reseller agrees to purchase one license of the Product from Webligo for each instance it deploys per End User. Reseller agrees to purchase all the necessary plugins and secondary components from Webligo needed for each instance deployed per End User. Webligo agrees to provide Reseller with a flat 20% discount per transaction unless another rate has been negotiated and expressly agreed-upon in writing between both parties. The relationship between the End User and Webligo shall be specified in the applicable Webligo end user license agreement. Notwithstanding the foregoing, as between Webligo and Reseller, Reseller shall be solely responsible for providing customer support to End Users.

**5. OWNERSHIP.** As between Webligo and Reseller, all right, title and interest in and to the Products and associated Webligo promotional materials and documentation, including without limitation all copyrights, patent rights, trademark and service mark rights, trade

secret rights and other intellectual property rights are and will remain the property of Webligo, and such items may only be used by Reseller as expressly permitted hereunder. Reseller shall not remove, alter or otherwise modify any copyright, trademark or other notices of proprietary interest contained within the source code of Products, Webligo promotional materials and/or documentation.

## 6. CONFIDENTIAL INFORMATION

a. "Confidential Information" Defined. "Confidential Information" includes: (a) the Products; (b) any personally identifiable data or information regarding any End User; (c) any and all information disclosed by Webligo to Reseller, in whatever format, that is either identified as or would reasonably be understood to be confidential and/or proprietary; (d) any notes, extracts, analyses or materials prepared by Reseller which are copies of or derivative works of Confidential Information or from which Confidential Information can be inferred or otherwise understood; and (e) the terms and conditions of this Agreement. "Confidential Information" does not include information received from Webligo that Reseller can clearly establish by written evidence: (x) is or becomes known to Reseller from a third party without an obligation to maintain its confidentiality; (y) is or becomes generally known to the public through no act or omission of Reseller; or (z) is independently developed by Reseller without the use of Confidential Information.

b. Reseller's Obligations. Reseller will make no use of Confidential Information for any purpose except as expressly authorized by this Agreement. Except as expressly provided in this Agreement, Reseller will not disclose Confidential Information to any third party and will protect and treat all Confidential Information with the same degree of care as it uses to protect its own confidential information of like importance, but in no event with less than reasonable care. Except as expressly provided in this Agreement, Reseller will not use, make or have made any copies of Confidential Information, in whole or in part, without the prior written authorization of Webligo. In the event that Reseller is required to disclose Confidential Information pursuant to law, Reseller will notify Webligo of the required disclosure with sufficient time for Webligo to seek relief, will cooperate with Webligo in taking appropriate protective measures, and will make such disclosure in a fashion that maximizes protection of the Confidential Information from further disclosure.

**7. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES, IF ANY, MADE TO THE END USER IN THE APPLICABLE WEBLIGO END USER LICENSE AGREEMENT, WEBLIGO MAKES NO OTHER WARRANTIES RELATING TO THE PRODUCTS, EXPRESS OR IMPLIED. WEBLIGO DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE AND NON-INFRINGEMENT. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PRODUCTS OR THE MEDIA ON WHICH PRODUCTS ARE SUPPLIED. RESELLER WILL MAKE NO WARRANTY, EXPRESS OR IMPLIED, ON BEHALF OF WEBLIGO.

**8. LIMITATION OF LIABILITY.** WEBLIGO'S AGGREGATE LIABILITY TO RESELLER UNDER THIS AGREEMENT, WHETHER FOR BREACH OR IN TORT, IS LIMITED TO THE PRICE PAID BY RESELLER FOR THE SINGLE COPY OF THE PRODUCT WHICH GIVES RISE TO THE CLAIM. IN NO EVENT WILL WEBLIGO BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA OR OTHER

ECONOMIC ADVANTAGE), HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF WEBLIGO HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

**9. INDEMNIFICATION BY RESELLER.** Reseller will indemnify, defend and hold harmless Webligo from and against any and all claims, damages and expenses (including reasonable attorneys' fees and costs of litigation) by any third party resulting from any acts or omissions of Reseller relating to its activities in connection with this Agreement, Reseller's breach of this Agreement, or Reseller's misrepresentations relating to Webligo, the Products or this Agreement, regardless of the form of action. Reseller will be solely responsible for any claims, warranties or representations made by Reseller or Reseller's representatives or agents which differ from the warranties provided by Webligo in the applicable end user license agreement.

**10. WEBLIGO SUPPORT.** Webligo shall offer Reseller technical support or training for the Products from time to time upon reasonable request from Reseller at Webligo's then current charges for such support.

**11. WEBLIGO TRADEMARKS.** "Trademarks" means all names, marks, logos, designs, trade dress and other brand designations used by Webligo in connection with its products and services. In performing its obligations hereunder, Reseller may refer to the Products by the associated Trademarks, provided that such reference is not misleading and complies with any guidelines issued by Webligo. Reseller is granted no right, title or license to, or interest in, any Webligo Trademarks. Reseller acknowledges and agrees that any use of the Webligo Trademarks by Reseller will inure to the sole benefit of Webligo. If Reseller acquires any rights in any Webligo Trademarks by operation of law or otherwise, it will immediately, at no cost or expense to Webligo, assign such rights to Webligo along with all associated goodwill.

**12. RELATIONSHIP OF PARTIES.** This Agreement does not constitute either party the agent of the other, or create a partnership, joint venture or similar relationship between the parties, and neither party will have the power to obligate the other in any manner whatsoever. Webligo and Reseller acknowledge and agree that: (a) Reseller is permitted to promote and sell products and services of companies other than Webligo's; (b) Reseller is not required to promote Webligo's products or services exclusively; and (c) Reseller's decision to devote all or some of its business efforts to the products or services of any particular company is solely in the discretion of Reseller.

### **13. TERM AND TERMINATION**

a. Term. This Agreement shall be effective for a term of one year from the Effective Date. It shall be automatically extended for further one-year terms unless either party gives written notice to the other at least 60 days before the expiration of the initial or any renewal term of the party's intent not to renew.

b. Termination. Notwithstanding anything in this Agreement that may be interpreted to the contrary, Webligo may terminate this Agreement without cause and without liability upon 15 days' prior written notice to Reseller. Either party may terminate this Agreement for any material breach of the Agreement that is not cured to the non-breaching party's satisfaction within 10 days of written notice that specifies the breach.

c. Effect of Termination. Upon termination of this Agreement, Reseller will cease all advertising, marketing and resale of the Products and any services that incorporate the Products or derivatives of the Products in any way. Termination

of this Agreement will not effect either party's rights or obligations with respect to Products distributed by Reseller prior to the effective date of termination.

d. No Liability for Termination. Neither party will be liable for any damages arising out of the termination of this Agreement in accordance with this Section 13. Reseller acknowledges and agrees that Webligo is not responsible for Reseller's dependence on revenues hereunder, and Reseller agrees to release, hold harmless and indemnify Webligo from any and all claims and liabilities relating to Reseller's revenues, financial forecasts or economic value that may result from termination by Webligo of this Agreement as permitted hereunder.

e. Survival. Expiration or termination of this Agreement will not relieve either party from its obligations arising hereunder prior to such expiration or termination. Rights and obligations which by their nature should survive will remain in effect after termination or expiration of this Agreement.

14. **ASSIGNMENT.** Neither this Agreement nor any rights or obligations of Reseller hereunder shall be assignable or transferable by Reseller, in whole or in part, by operation of law or otherwise, without the prior written consent of Webligo. Any attempted assignment, subcontract or other transfer of this Agreement or any of Reseller's rights or obligations hereunder will be void ab initio and will be considered a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Webligo reserves the right to assign this Agreement to any party at its sole discretion, at any time.

15. **NOTICES.** Any notices or other communications required or permitted hereunder shall be in writing and personally delivered at the principal business addresses designated at the beginning of this Agreement, or mailed by registered or certified mail, return receipt requested, postage prepaid, at the address set forth above, or to such other address or addresses as may be hereafter furnished by one party to the other party in compliance with the terms hereof. Notwithstanding the foregoing, Webligo may give notice of changes in Prices, Product descriptions, order procedures, delivery procedures and other routine events and procedures by way of printed materials, newsletter, or electronic mail.

16. **FORCE MAJEURE.** Webligo shall not be liable for failure or delay in performance of any of its obligations hereunder if such delay or failure to perform is caused by circumstances beyond its control.

17. **GOVERNING LAWS; ATTORNEYS' FEES.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, U.S.A. The parties agree that any legal action or proceeding with respect to this Agreement may be initiated only in the federal or state courts located in the State of California. By execution and delivery of this Agreement, the parties submit to and accept with regard to any such action or proceeding the exclusive jurisdiction of such courts. If any legal action or proceeding is initiated, the prevailing party shall be entitled to all attorney fees, court costs, and expenses in addition to any other relief to which such prevailing party may be entitled. THIS AGREEMENT WILL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS OR BY THE PROVISIONS OF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE, THE APPLICATION OF WHICH IS EXPRESSLY EXCLUDED.

18. **EQUITABLE RELIEF.** Reseller acknowledges that any breach or threatened breach of this Agreement involving an unauthorized use of Confidential Information or Webligo intellectual property will result in irreparable harm to Webligo for which damages

would not be an adequate remedy, and therefore, in addition to its rights and remedies otherwise available at law, Webligo will be entitled to seek injunctive or other equitable relief, as appropriate, and Reseller hereby waives the right to require Webligo to post a bond. If Webligo seeks injunctive or other equitable relief in the event of a breach or threatened breach of this Agreement by Reseller involving an unauthorized use of Confidential Information or Webligo intellectual property, Reseller agrees that it will not allege in any such proceeding that Webligo's remedy at law is adequate. If Webligo seeks any equitable remedies, it will not be precluded or prevented from seeking remedies at law, nor will Webligo be deemed to have made an election of remedies.

**19. ENTIRE AGREEMENT; WAIVER.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes and terminates all other prior commitments, arrangements or understandings, both oral and written, between the parties with respect thereto. Webligo reserves the sole right to modify or amend this agreement. In the case that the agreement is amended, Webligo agrees to provide notice to Reseller via electronic mail. If Reseller does not agree to the amendments, they agree to notify Webligo via electronic mail within 7 days of receiving the notification of the amendments. If no notice is provided to Webligo within 7 days, Reseller thereby acknowledges their agreement to be bound by the amended Agreement. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of either party, their agents or employees, but may be waived only by an instrument in writing signed by an officer of the waiving party. No waiver of any provision of this Agreement on one occasion shall constitute a waiver of any other provision or of the same provision on another occasion.

**IN WITNESS WHEREOF**, the undersigned party (Reseller) acknowledges that it will be bound by this agreement in its entirety as of the Effective Date of being approved by Webligo.

**Name:**

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**Title:**

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**Company:**

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**Signature:**

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**Date:**

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