

Terms of Service : Maka Social

Last Updated: September 3, 2021

Welcome, and thank you for your interest in Maka Social, LLC and our website at <https://www.maka.soial> along with our related mobile applications, and other services provided by us in the United States (collectively, the "Service"). These Terms of Service are a legally binding contract between you and Maka Social regarding your use of the Service.

PLEASE READ THE FOLLOWING TERMS CAREFULLY.

BY CLICKING "I ACCEPT," OR BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE SERVICE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF OR ACCESS TO THE SERVICE IN THE UNITED STATES, YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING MAKASOCIAL'S PRIVACY POLICY, WHICH IS INCORPORATED HEREIN BY THIS REFERENCE (TOGETHER, THESE "TERMS"). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICE AND YOU SHOULD STOP USING THE SERVICE IMMEDIATELY. YOUR USE OF THE SERVICE, AND MAKASOCIAL'S PROVISION OF THE SERVICE TO YOU, CONSTITUTES AN AGREEMENT BY MAKASOCIAL AND BY YOU TO BE BOUND BY THESE TERMS.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 17, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND MAKASOCIAL ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 17.)

#### 1. Maka Social Service Overview

The Service offers a social networking platform that allows users to post a profile that can be seen by other users of the service who are in the same physical location. Visibility of a user's profile requires a voluntary trigger ("check in") when they arrive at the location. The Service also allows users to become an "event host" by creating a participating location in 24 hour intervals or a "venue host" by creating a participating location that does not expire. The purchase of additional upgrades (defined below) is also permitted.

#### 2. Eligibility

You must be at least 13 years old to use the Service. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 13 years old; (b) you have not previously been suspended or removed from the Service; and (c) your registration and use of the Service is in compliance with any and all applicable laws and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms and you agree to be bound by these Terms. Certain age restrictions may apply to the use of some features of the Service (including, for example, the purchase of Virtual Items (defined below)), depending on applicable laws and the policies of Maka Social and its third-party vendors.

### 3. Accounts and Registration

To access most features of the Service, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself, such as your legal name, email address, phone number, birthdate, other contact information, and in some cases where legally permitted, you may be asked to provide a form of government identification. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. You are solely responsible for maintaining the confidentiality of your account and passwords, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you must immediately notify us at [DevelopmentTeam@maka.social](mailto:DevelopmentTeam@maka.social)

### 4. General Payment Terms

Certain features of the Service may require you to pay fees. Before you pay any fees, you will have an opportunity to review and accept the fees that you will be charged. All fees are in U.S. Dollars and are non-refundable.

#### 4.1 Price

Maka Social reserves the right to determine pricing for the Service. Maka Social will make reasonable efforts to keep pricing information published on the website up to date. We encourage you to check our website periodically for current pricing information. Maka Social may change the fees for any feature of the Service, including additional fees or charges, if Maka Social gives you advance notice of changes before they apply. Maka Social, at its sole discretion, may make promotional offers with different features and different pricing to any of Maka Social's customers. These promotional offers, unless made to you, will not apply to your offer or these Terms.

#### 4.2 Authorization.

You authorize Maka Social to charge all sums for the orders that you make and any level of Service you select as described in these Terms or published by Maka Social, including all applicable taxes, to the payment method specified in your account. If you pay any fees with a credit card, Maka Social may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase. In order to use a credit card for any payments in connection with the Service, you must be at least 18 years old.

### 5. Subscriptions

#### 5.1 Automatically Renewing Subscriptions

Maka Social may, from time to time, offer subscriptions that provide features or opportunities not available as part of the free-of-charge service. If you purchase a Subscription, you are subscribing to an automatically renewing subscription requiring recurring payments at the stated frequency (e.g., monthly or annual) until cancelled. When you purchase a Subscription, you must provide accurate and complete information for a valid payment method that you are authorized to use—this information may be collected and processed by a third party app store or platform. If you purchase a Subscription, you will be charged your first subscription fee and any applicable taxes on the date you

purchase your Subscription. Your Subscription will automatically continue at the selected interval, and you will continue to be charged at the then-current price (including any applicable taxes), unless at least 24 hours prior to the end of the current subscription period: (a) you terminate your account; (b) you cancel your subscription (as described below); (c) we decline to renew your subscription; or (d) these Terms are otherwise properly terminated as expressly permitted herein. The subscription fee is non-refundable except as expressly set forth in these Terms or in accordance with applicable law. If any subscription fee is not paid in a timely manner, or your transaction cannot be processed, we reserve the right to suspend, disable, cancel or terminate your access to the Service or cancel your Subscription. You will be responsible for paying all past due amounts.

#### 5.2 Cancellation.

When you cancel a Subscription, you cancel only future charges associated with your Subscription. You may initiate your cancellation at any time, but the cancellation will become effective at the end of your current subscription period. In order to avoid future charges, you must cancel your Subscription at least 24 hours prior to the end of your current subscription period. Subscriptions purchased through a third-party app store or platform must be cancelled through that third party.

#### 5.3 No Refunds

EXCEPT AS OTHERWISE STATED HEREIN OR REQUIRED BY APPLICABLE LAW, YOUR SUBSCRIPTION FEE IS NONREFUNDABLE and if you cancel your Subscription, you will not receive any refund and you will continue to have access to your Subscription benefits and services at least until the end of your current subscription period. We reserve the right to issue refunds, credits, or discounts at our sole discretion. If we issue a refund, credit, or discount, we are under no obligation to issue the same or similar refund in the future.

#### 5.4 Termination

We may terminate your Subscription at our sole discretion and without any notice. If we cancel your Subscription, we may give you a prorated refund based on the amount of time remaining that you cannot use; provided, however, that we will not be obligated to grant you a refund if we terminate your account or your Subscription because we determine, in our sole discretion, that your actions or your use of the Service violate these Terms, any applicable law, or has harmed another user.

#### 5.5 Changes.

5.6 We may change the subscription terms or fees at any time on a going forward basis in our discretion. If the pricing for your Subscription increases, we will notify you, and provide you an opportunity to change your Subscription before applying those changes to your account or charging you in connection with an automatic renewal. We may choose in our sole discretion to add, modify, or remove benefits and features from a Subscription. Your continued use of the Service after the changes become effective will constitute your acceptance of the changes. If you do not wish to continue subscribing with the new fees or features, you may cancel your Subscription. If you accept the new Subscription, its terms and conditions will apply for that renewal and all renewals going forward.

### 6. Licenses

#### 6.1 Limited License

Subject to your complete and ongoing compliance with these Terms, Maka Social grants you, solely for your personal use, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to: (a) install and use one object code copy of any mobile application associated with the Service obtained from a legitimate marketplace (whether installed by you or pre-installed on your mobile device by the device manufacturer) on a mobile device that you own or control; and (b) access and use the Service.

## 6.2 License Restrictions.

Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Service; (b) make modifications to or derivative works of the Service; or (c) interfere with or circumvent any feature of the Service, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, you may not use it.

## 6.3 Feedback

If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service (“Feedback”), then you hereby grant Maka Social an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services.

## 7. Ownership, Proprietary Rights

The Service is owned and operated by Maka Social. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service (“Materials”) provided by Maka Social are protected by intellectual property and other laws. All Materials included in the Service are the property of Maka Social or its third-party licensors. Except as expressly authorized by Maka Social, you may not make use of the Materials. Maka Social reserves all rights to the Materials not granted expressly in these Terms.

## 8. Third-Party Terms

### 8.1 Third-Party Services and Linked Websites.

The Service may contain links to third-party websites. Linked websites are not under Maka Social’s control, and Maka Social is not responsible for their content.

### 8.2 Third-Party Software

The Service may include or incorporate third-party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components (“Third-Party Components”). Although the Service is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third-Party Components under the applicable third-party licenses or to limit your use of Third-Party Components under those third-party licenses.

## 9. User Content

**Commented [MF1]:** What about third party components that are not free like the ID verification? Shouldn't that be mentioned in this section? How?

### 9.1 User Content Generally

“User Content” means any content that you submit to the Service, including, without limitation, audio content (including voice), comments, messages, photos, video, images, folders, data, text, and other types of works published on the Service. You retain any copyright and other proprietary rights that you may hold in the User Content that you Post to the Service.

### 9.2 Limited License Grant to Maka Social.

By Posting User Content to or through the Service, you grant Maka Social a worldwide, non-exclusive, irrevocable (subject to all applicable laws and Section 2 of these Terms), royalty-free, fully paid right and license (with the right to sublicense, through multiple tiers) to host, store, transfer, display, perform and communicate to the public (in each instance on a through-to-the-audience basis), reproduce, modify for the purpose of formatting for display, distribute and otherwise use and exploit your User Content, in whole or in part, in any media formats and through any media channels now known or hereafter developed, including in Maka Social’s marketing and advertising of the Service.

**Commented [MF2]:** This needs to be a lot more limited.

### 9.3 Limited License Grant to Other Users.

By providing User Content to or via the Service to other users of the Service, you grant those users a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Service.

### 9.4 User Content Representations and Warranties.

Maka Social disclaims any and all liability in connection with User Content. You are solely responsible for your User Content and the consequences of providing User Content via the Service. By providing User Content via the Service, you affirm, represent, and warrant that:

You are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize Maka Social and users of the Service to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by Maka Social, the Service, and these Terms;

Your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (i) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iii) cause Maka Social to violate any law or regulation; and

Your User Content could not be deemed by a reasonable person to be embarrassing, harassing, hateful, indecent, objectionable, pornographic, profane, threatening, or otherwise inappropriate.

### 9.5 You Must Have Rights to the Content You Post.

You must not Post any User Content to the Service if you are not the copyright owner of or are not fully authorized to grant rights in all of the elements of the User Content you intend to Post to the Service in compliance with the grant of rights set forth in Section 9.2. You represent and warrant that: (a) you own the User Content Posted by you on the Service or otherwise have the right to grant

the license set forth in these Terms; (b) the Posting and use of your User Content on or through the Service does not violate the privacy rights, publicity rights, copyrights, trademark rights, patent rights, trade secret rights, contract rights, or any other rights of any party, including, but not limited to, the rights of any person visible in any of your User Content; (c) the Posting of your User Content on the Service will not require us to obtain any further licenses from or pay any royalties, fees, compensation or other amounts or provide any attribution to any third parties; and (d) the Posting of your User Content on the Service does not result in a breach of contract between you and a third party. You agree to pay all monies owing to any person resulting from Posting your User Content on the Service, including from Maka Social's exercise of the license set forth in Section 9.2.

#### 9.6 Through-To-The-Audience Rights.

All of the rights you grant in these Terms are provided on a through-to-the-audience basis, meaning the owners or operators of external services will not have any separate liability to you or any other third party for User Content Posted, viewed, performed, communicated or otherwise used on such external services via the Service.

#### 9.7 User Content Disclaimer.

We are under no obligation to edit or control User Content that you or other users post or publish, and will not be in any way responsible or liable for User Content. Maka Social may, however, at any time and without prior notice, screen, remove, preserve, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable or inappropriate as determined by Maka Social in its sole discretion. You understand that when using the Service you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent, or objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against Maka Social with respect to User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, Maka Social does not permit copyright-infringing activities on the Service.

#### 9.8 Monitoring Content.

Maka Social does not control and does not have any obligation to monitor: (a) User Content; (b) any content made available by third parties; or (c) the use of the Service by its users. You acknowledge and agree that Maka Social reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Service for operational and other purposes. If at any time Maka Social chooses to monitor the content, Maka Social still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our Privacy Policy.

### 10. Communications

#### 10.1 Text Messaging.

Maka Social and those acting on our behalf may send you text (SMS) messages at the phone number you provide us. These messages may include operational messages about your use of the Service, as

well as marketing messages. You may opt out of receiving marketing and/or operational text messages at any time by sending an email to [DevelopmentTeam@maka.social](mailto:DevelopmentTeam@maka.social) indicating that you no longer wish to receive such texts along with the phone number of the mobile device receiving the texts. You may continue to receive text messages for a short period while Maka Social processes your request, and you may also receive text messages confirming the receipt of your opt-out request. Opting out of receiving operational text messages may impact the functionality that the Service provides to you. Text messages may be sent using an automatic telephone dialing system. Your agreement to receive text messages is not a condition of any purchase or use of the Service. Standard data and message rates may apply whenever you send or receive such messages, as specified by your carrier.

#### 10.2 Push Notifications.

When you install our app on your mobile device, you agree to receive push notifications, which are messages an app sends you on your mobile device when the app is not on. You can turn off notifications by visiting your mobile device's "settings" page.

#### 10.3 Email.

We may send you emails concerning our products and services, as well as those of third parties. You may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself.

#### 10.4 Electronic Notifications.

You consent to receive notifications from Maka Social electronically and agree that all notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing or be delivered in a particular manner. You agree that you have the ability to store such electronic communications such that they remain accessible to it in an unchanged form. You agree to keep your contact information current.

### 11. Prohibited Conduct

BY ACCESSING OR USING THE SERVICE YOU AGREE NOT TO:

- 11.1 use the Service for any illegal purpose or in violation of any local, state, national, or international law;
- 11.2 harass, threaten, demean, embarrass, or otherwise harm, or encourage the harm or self-harm of, any other user of the Service;
- 11.3 post or display hate speech, including content promoting racism, terrorism, age discrimination, gender discrimination, or content intended to insult religious beliefs;
- 11.4 engage in, promote, or incite violence against any individual or group, including posting or displaying images of firearms or other weapons;
- 11.5 violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third-party intellectual property right;
- 11.6 interfere with security-related features of the Service, including by: (a) disabling or circumventing features that prevent or limit use or copying of any content; or (b) reverse

engineering or otherwise attempting to discover the source code of any portion of the Service except to the extent that the activity is expressly permitted by applicable law;

- 11.7 interfere with the operation of the Service or any user's enjoyment of the Service, including by: (a) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (b) making any unsolicited offer or advertisement to another user of the Service; (c) collecting personal information about another user or third party without consent; or (d) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service;
  - 11.8 perform any fraudulent activity, including impersonating any other user of the Service, person, or entity (including impersonating Maka Social employees), claiming a false affiliation, accessing any other Service account without permission, or using the Service to perform money laundering activities;
  - 11.9 sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 7) or any right or ability to view, access, or use any Materials;
  - 11.10 provide false identification or personal information to Maka Social when making a user inquiry, or requesting a refund;
  - 11.11 collect, store, distribute, or post any personal information or that of third parties;
  - 11.12 post or display overtly sexual content or pornography or link to pornographic sites;
  - 11.13 attempt to do any of the acts described in Section 10 or assist or permit any person in engaging in any of the acts described in Section 11.
  - 11.14 If you find any suspected violation of the above provisions, please immediately notify Maka Social at [DevelopmentTeam@maka.social](mailto:DevelopmentTeam@maka.social) or use the "report" function in the Maka Social mobile application.
12. Modification of these Terms

We reserve the right to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we may require that you accept the modified Terms in order to continue to use the Service. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in Section 13, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

13. Term, Termination and Modification of the Service
- 13.1 Term.

These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Service, and ending when terminated as described in Section 13.2

- 13.2 Termination.

If you violate any provision of these Terms, your authorization to access the Service automatically terminates. In addition, Maka Social may, at its sole discretion, terminate these Terms or your account on the Service, or suspend or terminate your access to the Service, at any time for any reason or no reason, with or without notice. You may terminate your account and these Terms at any time by contacting customer service at [DevelopmentTeam@maka.social](mailto:DevelopmentTeam@maka.social).

### 13.3 Effect of Termination.

Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Service; (b) you will no longer be authorized to access your account or the Service, (c) you must pay Maka Social any unpaid amount that was due prior to termination; and (d) all payment obligations accrued prior to termination and Sections 6.3, 7, 9.2, 13.3, 14, 15, 16, 17, and 18 will survive.

### 13.4 Modification of the Service.

Maka Social reserves the right to modify or discontinue the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. Maka Social will have no liability for any change to the Service or any suspension or termination of your access to or use of the Service.

### 14. Indemnity

To the fullest extent permitted by law, you are responsible for your use of the Service, and you will defend and indemnify Maka Social and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the "Maka Social Entities") from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or connected with: (1) your unauthorized use of, or misuse of, the Service; (2) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (3) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (4) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

### 15. Disclaimers; No Warranties

15.1 THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. MAKA SOCIAL DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (a) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (b) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. MAKA SOCIAL DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND MAKA SOCIAL DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

15.2 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR MAKA SOCIAL ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE MAKA SOCIAL ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SERVICE AND YOUR DEALING WITH ANY OTHER SERVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SERVICE AT

YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE) OR ANY LOSS OF DATA, INCLUDING USER CONTENT.

15.3 THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. Maka Social does not disclaim any warranty or other right that Maka Social is prohibited from disclaiming under applicable law.

#### 16. Limitation of Liability

16.1 TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE MAKASOCIAL ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY MAKASOCIAL ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

16.2 EXCEPT AS PROVIDED IN SECTION 17.5 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE MAKASOCIAL ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF: (a) THE AMOUNT YOU HAVE PAID TO MAKASOCIAL FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO CLAIM; OR (b) \$100.

16.3 EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN SECTION 16 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

#### 17. Dispute Resolution and Arbitration

17.1 Generally.

In the interest of resolving disputes between you and Maka Social in the most expedient and cost effective manner, and except as described in Section 17.2 and 17.3, you and Maka Social agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award, except as set forth in Section 17.7. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND MAKASOCIAL ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement

#### 17.2 Exceptions.

Despite the provisions of Section 17.1 nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.

#### 17.3 Opt-Out.

If you do not wish to resolve disputes by binding arbitration and have not previously agreed to arbitration with Maka Social, you may opt out of the provisions of Section 17 within 30 days after the date that you agree to these Terms by sending a letter to Maka Social, LLC., Attention: Legal Department to 6925 Dimarco Road, Tampa, FL 33634 that specifies: your full legal name, the phone number associated with your account on the Service, and a statement that you wish to opt out of arbitration (“Opt-Out Notice”). Once Maka Social receives your Opt-Out Notice, this Section 17 will be void and any action arising out of these Terms will be resolved as set forth in Section 18.2. The remaining provisions of these Terms will not be affected by your Opt-Out Notice.

#### 17.4 Arbitrator.

Any arbitration between you and Maka Social will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules (collectively, “AAA Rules”) as modified by these Terms. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Maka Social.

#### 17.5 Notice of Arbitration; Process.

A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“Notice of Arbitration”). Maka Social’s address for Notice is: Maka Social, LLC., 6925 Dimarco Road, Tampa, FL 33634. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“Demand”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Maka Social may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or Maka Social must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by Maka Social in settlement of the dispute prior to the award, Maka Social will pay to you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.

#### 17.6 Fees.

If you commence arbitration in accordance with these Terms, Maka Social will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. If the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Maka Social for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, all hearings will be in the English language and the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

17.7 No Class Actions or Consolidated Proceedings.

YOU AND MAKA SOCIAL 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. Further, unless both you and Maka Social agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitrator may award injunctive relief only in favor of you and only to the extent necessary to provide the relief warranted by your individual claim. Any claims for injunctive relief in favor of more than one person, the public at large, or otherwise seeking a public injunction must be brought in the state or federal courts located within Hillsborough County, Florida.

17.8 Modifications to this Arbitration Provision.

If Maka Social makes any future material change to this arbitration provision after the date you last accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us an Opt-Out Notice within 30 days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Maka Social's notice to you of such change. By rejecting any material change, you are agreeing that you will arbitrate any dispute between you and Company in accordance with the dispute resolution provision that was in effect as of the date you last accepted these Terms, as determined by the Company's business records.

17.9 Enforceability.

If Section 17.7 or the entirety of this Section 17 is found to be unenforceable, or if Maka Social receives a valid Opt-Out Notice from you, then the entirety of Section 17 will be null and void and, in that case, exclusive jurisdiction and venue described in Section 18.2 will govern any action arising out of or related to these Terms.

18. Miscellaneous

#### 18.1 General Terms.

These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and Maka Social regarding your use of the Service. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word “including” means “including but not limited to”. If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.

#### 18.2 Governing Law.

These Terms are governed by the laws of the State of Florida without regard to conflict of law principles. For claims and remedies that are not subject to arbitration under Section 17 above, you and Maka Social submit and irrevocably consent to the personal and exclusive jurisdiction of the state courts and federal courts located within Hillsborough County, Florida for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Service from our offices in Florida, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.