

## OPEN AIM PLATFORM DEVELOPER AGREEMENT AND TERMS OF SERVICE

Welcome to the new Open AIM Platform! We're making it easier than ever to participate as a developer in Open AIM in your own way. Using our free development tools and documentation, you will be able to develop and implement the following Open AIM Platform Applications:

**Presence** – use AIM Presence Indicators on your Site, displaying users' online, offline, away, idle or mobile status

**Plugins** – develop and distribute Plugins for the AIM Service Client and Customized AIM Clients, adding cool new functions that enhance users' experience

**Customized AIM Clients** – develop and distribute your own downloadable Customized AIM Clients that will interface with the AOL Messaging Network

**Web AIM Applications** – develop and distribute software code to enable Web AIM functions on your Site

**Mobile AIM Clients** – develop and distribute Mobile AIM clients

While we want to encourage you to develop new and innovative applications for AIM, we also must comply with applicable laws, protect our users, our site and our company from harm. For this reason, there are a few requirements that you must meet before we will grant you the right to use the Open AIM Platform and its Tools. These are as follows: (1) you must be an AOL registered user with an AOL-issued or AOL-authorized (e.g. – AIM, mac.com) screen name and comply with all terms of service and end user license agreements for the applicable AOL-provided instant messaging service you use; and (2) You must complete the registration process displayed to you and indicate your agreement to the following Open AIM Platform Developer Agreement and Terms of Service by clicking, "I Agree".

### OPEN AIM PLATFORM DEVELOPER AGREEMENT AND TERMS OF SERVICE

Last Updated August 12, 2009 – converted to html on August 12, 2009

READ THIS AGREEMENT CAREFULLY. WE WILL ALLOW YOU TO USE THE OPEN AIM PLATFORM ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THIS AGREEMENT. BY CLICKING "I AGREE," OR BY USING OR ACCESSING ANY OF THE TOOLS, YOU ARE AGREEING ELECTRONICALLY TO ALL OF THE TERMS AND CONDITIONS OF THIS OPEN AIM PLATFORM DEVELOPER AGREEMENT AND TERMS OF SERVICE (THE "AGREEMENT"). YOU AGREE THAT ANY DISPUTE THAT YOU MAY HAVE WITH US OVER THIS AGREEMENT OR THE OPEN AIM PLATFORM MUST BE RESOLVED IN VIRGINIA. IF YOU DO NOT AGREE TO THIS AGREEMENT CLICK THE "CANCEL" BUTTON AND DO NOT INSTALL OR USE ANY OF THE TOOLS.

#### I. DEFINITIONS. The following definitions apply in this Agreement:

- "AIM Expressions" means user-selected personalization features for the AIM Service Client, Custom Clients, Mobile AIM Clients and Web AIM Applications, including, but not limited to, Buddy Icons and "smiley" images.
- "AIM Service" means the AIM® branded instant messaging communications service operated by or for AOL, currently available through the Internet, which enables users of such service and other compatible services to exchange real-time, private, personalized messages with, and to monitor the online status of, other users.
- "AIM Service Client" means the proprietary, AOL-provided client software application resident on a user's personal computer ("PC") or other compliant device that allows a registered end user to utilize all of the features and functionalities of the AIM Service.
- "AIM Start Page" means an AIM-related web page hosted, owned and selected by AOL, subject to change in AOL's sole discretion.
- "AIM Toolbar" means the proprietary, user-customizable AOL toolbar that has features including, but not limited to: (1) an ability to log in to the AOL Network, (2) the ability to add favorite sites from the AOL Button Gallery located at <http://client.web.aol.com/toolbar/ie/aol/en-US/5.0/buttons/buttons.htm>, (3) email inbox preview and (4) web page sharing with AIM Buddies.

- "AOL" means AOL LLC, a Delaware limited liability company with offices located at 22000 AOL Way, Dulles, VA 20166, and any successor.
- "AOL Messaging Network" means the AIM Service and any and all applications, software, programs, plugins, systems, web sites, network, transmission facilities, servers or other functionality, and any part thereof, created or made available by AOL and used directly or indirectly to provide the AIM Service.
- "API" means Application Programming Interface.
- "Buddy Icon" means a type of AIM Expression that may be selected by an AIM Service user and used to personalize his or her identity on the AOL Messaging Network.
- "Custom Client" means a Developer Application consisting of a version of the AIM Service Client software application developed by you, using the Tools, and used to provide instant messaging functionality in your application.
- "Custom Client Tools" means the Tools provided to you by AOL to enable you to develop and deploy Custom Clients.
- "Developer Application" means an Open AIM Platform Application that is developed and deployed by you under the terms and conditions of this Agreement, using the relevant Tools.
- "Mandated Free Public Distribution Software" means any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software or similar licensing or distribution models, and that requires as a condition of its use, modification or distribution that such software or other software incorporated into, derived from or distributed with such software (1) be disclosed or distributed in source code form; (2) be licensed for the purpose of making derivative works; or (3) be redistributable at no charge.
- "Mobile AIM Client" means a Developer Application consisting of a version of the AIM Service Client software application developed by you, using the Tools, and used to provide instant messaging functionality in your application on a Mobile Device.
- "Mobile Device" means any portable wireless communications device, including without limitation, smart phones, cellular phones, Wi-Fi enabled phones or Wi-MAX enabled phones.
- "Open AIM Platform Applications" means the Presence, Plugins, Custom Clients, Mobile AIM Client or Web AIM applications each of which is intended to facilitate communications utilizing the AOL Messaging Network.
- "Plugin" means a software application or service that accesses or interacts with the AIM Service Client or a Custom Client. Although AOL has itself developed various plugins for the AIM Service Client, in the context of this Agreement, "Plugin" will refer to a Developer Application developed by you, using the Plugin Tools.
- "Plugin Tools" means the Tools provided to you by AOL to enable you to develop and deploy Plugins.
- "Presence" means the AOL-provided functionality that displays whether an end user is online and available to communicate, or offline, idle or mobile.
- "Presence Indicators" means the online presence or activity status indicators provided by AOL as part of the Presence Tools.
- "Presence Tools" means the Tools provided to you by AOL to allow you to enable Presence on your Site or in your Developer Application.
- "Sample Modifiable Code" means source code that AOL may provide to you in the SDK or Web AIM Code and that is explicitly labeled as "Sample Modifiable Code" in the applicable Documentation. The Sample Modifiable Code, if any, will be considered part of the SDK or Web AIM Code.

- "Screen Name" means an AOL-provided user credential for the AIM Service or mac.com, including without limitation email addresses that have been registered for use with the AIM Service.
- "Site" means any website located at a URL address (and not any Custom Client) on which you place any code that calls or accesses the API that renders the AIM Service Presence or online activity services.
- "Tools" means the AOL-provided software code (in object or source code form, and instructions), such as, APIs, SDKs ("Software Development Kits") and related documentation ("Documentation"), data, content and services to enable you to develop and deploy customized Developer Applications, including any Sample Modifiable Code that may be included.
- "Web AIM Application" means the Open AIM Platform Application that uses the Web AIM Tools to utilize functionality provided by the AIM Service.
- "Web AIM Code" means the code provided by AOL as part of the Web AIM Tools.
- "Web AIM Tools" means the Tools provided to you by AOL to enable you to develop and deploy Web AIM Applications.

## II. THE OPEN AIM KEYS

AOL will issue you one or more alphanumeric software keys that are uniquely associated with your Screen Name and your Application(s) (the "Open AIM Keys") to enable you to access the Tools you will use to build your Developer Application(s). During the registration process for access to and/or download of the Tools associated with a given Application or Applications (as set forth below), you will be prompted to identify to AOL certain information describing your development and intended use of the relevant Applications, including the URL of your Site. There are four distinct Open AIM Keys: (i) the Presence Key; (ii) the Plugins Key; (iii) the Custom Clients Key; and (iv) the Web AIM Key. For security purposes, each Application must at all times incorporate the applicable Open AIM Key in a secure, embedded manner. AOL may in its sole discretion limit the number of unique Open AIM Keys made available to you.

## III. THE TOOLS

**A. Presence Tools.** The Presence Tools offer access to the AOL Messaging Network for the purpose of allowing the display of online presence and activity indication for registered users of the AIM Service. You can use the APIs, Documentation and Presence Indicators to implement Presence on your Site and to display online status and activity indication for registered users of the AIM Service. Clicking on the Presence Indicator for a Screen Name will result in the launch of the AIM Service Client, if installed on the Site user's PC, initiating an AIM Service communication session, or the sending of an instant message using the Web AIM Developer Application.

**B. Plugin Tools.** The Plugin Tools offer access to the AOL Messaging Network for the purpose of creating Plugins to access, "plug into" or interact with the AIM Service Client or a Custom Client as further described in the relevant Documentation.

**C. Custom Client Tools.** The Custom Client Tools offer access to the AOL Messaging Network for the purpose of creating Custom Clients as further described in the Documentation.

**D. Web AIM Tools.** The Web AIM Tools allow the creation of a web-based Developer Application that provides access to the AOL Messaging Network for the purpose of facilitating IM functionality, obtaining or displaying a user's contact list, or obtaining or displaying other metadata provided by the Web AIM APIs in the Web AIM Open AIM Platform Application. The Web AIM Tools also offer access to the AOL Messaging Network for the purpose of allowing the display of online presence and activity indication for registered users of the AIM Service. This is accomplished on your Site by your implementation of code created with certain APIs, Documentation, and either AOL-provided Presence Indicators or other non-AOL-provided presence indicators of your choice. A Site user clicking on the Presence Indicator for a Screen Name will result in either the launch of the AIM Service Client, if installed on the Site user's PC, initiating an AIM Service communication session or the sending of an instant message using the Web AIM Developer Application.

#### IV. LICENSES AND RESTRICTIONS ON USE

**A. Presence Tools and Presence Indicators.** AOL grants you a free-of-charge, limited, non-exclusive, non-transferable, non-sublicensable license during the Term to use the Presence Tools solely in order to enable Presence Indicators on your Site or in your Developer Application in accordance with the terms and conditions of this Agreement and the applicable Documentation. You may use the Presence Indicators solely for the purpose of indicating the online presence or activity status of Screen Names, which Presence information will only be viewable by Site or Developer Application users, solely in accordance with this Agreement and any Presence Indicators usage or style guidelines that AOL may include with the Documentation. You may only use the Presence Indicators to display online presence or activity status for a Screen Name of a user of your Site or Developer Application to third parties when you have received consent from that user to display such information. Such consent will at a minimum include informing the user that by providing his or her Screen Name, online status will be publicly displayed. You will include within the Site or Developer Application a link to <http://dev.aol.com/aim/faqs#AIMPresence> to inform Site users about displays of online presence. You may use each Presence Key for a Site or Developer Application identified to AOL in the registration process only. No rights or licenses are granted in the Presence Tools or the Presence Indicators other than those specifically stated in this Agreement.

**B. Plugin Tools and Developer Applications.** AOL grants you a free-of-charge, limited, non-exclusive, non-transferable, non-sublicensable license during the Term to (i) reproduce and use the Plugin Tools in connection with a Plugins Key solely in order to develop a Plugin Developer Application and (ii) reproduce, use, and distribute such Plugin Developer Application to end users and enable such end users to use the Plugin Developer Application. The Plugin Tools may be used, solely in accordance with the terms and conditions of this Agreement and the applicable Documentation. Your Plugin may not block, disable, or otherwise affect any advertising, advertisement banner window, tabs, links to other sites and services, or other features that constitute an integral part of the AIM Service Client. No rights or licenses are granted in the Plugin Tools other than those specifically stated in this Agreement.

**C. Custom Client Tools and Developer Applications.** AOL grants you a free-of-charge, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable license during the Term to (i) reproduce and use the Custom Client Tools in connection with a Custom Client Key solely in order to develop a Custom Client Developer Application and (ii) reproduce, use, and distribute such Custom Client Developer Application to end users and enable such end users to use the Custom Client Developer Application. You are required to create user interface screens and warnings for your Custom Client Developer Application that contain the following components: (i) a sign on screen allowing users to enter both a Screen Name and a password, (ii) the ability for users to report IM spam to AOL, and (iii) the ability for users to block an offending third party IM spammer. (For information regarding user interface development, click here: <http://dev.aol.com/aim/styleguide>.) You must notify end users in a clear and conspicuous manner that any use of your Custom Client Developer Application to access the AOL Messaging Network remains subject to the AOL Messaging Network terms of service located at [http://about.aol.com/aolnetwork/terms\\_use](http://about.aol.com/aolnetwork/terms_use). Your Custom Client Developer Application may choose to incorporate or omit any feature identified in the Documentation as available for Custom Client Developer Application use. You agree and acknowledge that AOL reserves the right at all times to reserve certain features or functionality within the AIM Service as available only for end users of client software created by or on behalf of AOL. The Custom Client Tools may be used solely in accordance with the terms and conditions of this Agreement and the applicable Documentation. No rights or licenses are granted in the Custom Client Tools other than those specifically stated in this Agreement.

**D. Web AIM Tools and Developer Applications.** AOL grants you a free-of-charge, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable license during the Term to use Web AIM Tools and to create Web AIM Developer Applications on your Site and enable end users of your Site to use the Web AIM Application. You may choose to incorporate in your Site or omit any feature identified in the Web AIM Documentation as available for Web AIM Application use. You agree and acknowledge that AOL reserves the right at all times to reserve certain features or functionality within the AIM Service as available only for end users of client software created by or on behalf of AOL. If your Web AIM Developer Application blocks, disables, or otherwise affects any advertising, advertisement banner window, tabs, links to other sites and services, or other features that constitute an integral part of your Site, such that a third party advertiser, content provider, or marketing partner with whom you do business files a complaint regarding the Web AIM Application, then you agree that you (and not AOL) are solely responsible for any liabilities or damages arising from or in connection with such third party complaint. You may not offer or promote your Web AIM Developer Application for any use other than that explicitly authorized in this Agreement. The Web AIM Tools must be used solely in accordance with the terms and conditions of this Agreement and the applicable Documentation. Use of the Clientlogin API with Web AIM Developer Applications is strictly prohibited. (See <http://dev.aol.com/aim/faqs#CommercialUse> for more information.) No rights or licenses are granted in the Web AIM Tools other than those specifically stated in this Agreement.

**E. Sample Modifiable Code License.** You agree that any Sample Modifiable Code made available to you when you obtain an Open AIM Key for a Plugin, a Custom Client or Web AIM Application will be subject to the terms and conditions of the Open Source Initiative BSD License available at <http://www.opensource.org/licenses/bsd-license.php> and binding on you.

## V. ADDITIONAL TERMS AND CONDITIONS

**A. Charges and Use Thresholds.** Use of the Open AIM Developer Platform to develop, distribute and implement Developer Applications on the AOL Messaging Network is currently free of charge to Developers. However, AOL does not guarantee that it will always provide any or all of these products or services without charge. For example, AOL may in its discretion charge fees for the use of the Open AIM Developer Platform Tools or for access to the AOL Messaging Network. In addition, in the event your Developer Application exceeds use thresholds that AOL may in its discretion establish from time to time, AOL may require you to enter into a new commercial arrangement for continued access to the AOL Messaging Network.

**B. Third Party Software Notices.** The Plugin Tools, the Custom Client Tools and the Web AIM Tools each contain the following third party software:

1. Expat software that is Copyright © 1998, 1999, 2000 Thai Open Source Software Center Ltd. Permission is hereby granted, free of charge, to any person obtaining a copy of this expat software and associated documentation files (the "Software"), to deal in the Software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the Software, and to permit persons to whom the Software is furnished to do so, subject to the following conditions: The copyright notice and this permission notice shall be included in all copies or substantial portions of the Software.

THE EXPAT SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE EXPAT SOFTWARE OR THE USE OR OTHER DEALINGS IN THE EXPAT SOFTWARE.

2. zlib software that is Copyright © 1995-2002 Jean-loup Gailly and Mark Adler.

**C. Limitation on Distribution Right.** You acknowledge and agree that you may only distribute those portions of the SDK or Web AIM Code identified as redistributable in the applicable Documentation, and that such portions of the SDK or Web AIM Code, except with respect to Sample Modifiable Code, may be redistributed solely in an unmodified, object code form embedded in your Plugin, Custom Client, Mobile AIM Client, or Web AIM Developer Application. You may not in any way redistribute the AOL components that are not expressly identified in the relevant Documentation as distributable, but may enable your Developer Application to make calls to the AOL components as directed in the Documentation for purposes of interaction with the AOL Messaging Network.

### D. Additional Restrictions

1. **In General.** In addition to any other restrictions contained in this Agreement, you may not: (i) share with, sell, loan, provide, or distribute to anyone any Open AIM Key issued to you by AOL in connection with the Open AIM Platform or the Tools; (ii) register for more than one Open AIM Key for each Application or use any automated process to obtain any Open AIM Key; (iii) modify or create any derivative works of the Tools (except as explicitly stated in Section IV.E); (iv) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Tools provided in object code format only; (v) redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer rights to the Tools; (vi) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Tools; (vii) use the Tools or a Developer Application as a means to engage in conduct that disparages or devalues AOL's reputation or goodwill, as determined in AOL's sole discretion; or (viii) use any Open AIM Key to access any service or software not covered by this Agreement. Further, in addition to any other restrictions contained in this Agreement, you will not use any Tool to, and your Developer Application will not, enable direct communication (e.g., presence data, text, video, VoIP, file transfers, or data exchanges) between the AIM Service and any other instant messaging community or third party instant messaging service. You will ensure that any end user's log on to the AOL Messaging Network will be accomplished solely through the use of unique end user identifiers and passwords authorized by AOL.

**2. Restrictions on Functionality of Developer Applications.** You may not develop or distribute any website or Developer Application that (i) blocks or disables any host-based setting residing on the AOL Messaging Network or the AIM Service, or affects or otherwise modifies any user preference setting in a manner not explicitly authorized by an end user; (ii) is designed to generate or facilitate the generation of instant messenger-delivered SPAM ("SPIM"), SPAM, or other bulk unsolicited communications; (iii) may cause damage to or interfere with the proper functioning of any AOL-provided software or the AOL Messaging Network (or any features thereof) or a user's computer or computer files or that disables or circumvents copyright protection measures; (iv) contains, is bundled with, or otherwise enables any viruses, Trojan horses, trap doors, back doors, worms, time bombs, cancelbots, adware, spyware or other computer programming routines designed or intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (v) otherwise violates or induces a third party to violate the most current version of the policies located at [http://about.aol.com/aolnetwork/terms\\_use](http://about.aol.com/aolnetwork/terms_use); (vi) disparages, or devalues AOL's reputation or goodwill, as determined in AOL's discretion; (vii) violates or encourages conduct that would violate any criminal laws, any other laws, or any third party rights; or (viii) creates, or purports to create, any obligation on behalf of AOL, or grants, or purports to grant, any rights or immunities to any third party under AOL's intellectual property rights or its other proprietary rights, whether by use of Mandated Free Public Distribution Software or otherwise.

**3. Contact Importer Function.** You may not use the software, tools or documentation licensed under this Agreement for the purpose of identifying an AIM User's contacts contained on his or her Buddy List® and inviting such contacts to join any service that is not owned or controlled by AOL (the "Contact Importer Function").

**4. Use of Third Party Libraries for Access.** AIM Service Clients use the OSCAR protocol to communicate with the AOL Messaging Network, and AOL makes the OSCAR protocol available for use by Open AIM Platform developers in their Developer Applications, and recommends its use. (See <http://dev.aol.com/aim/oscar> for more details.) While AOL does not prohibit the use of other third party libraries with the Open AIM Platform in lieu of the OSCAR protocol, and does not restrict developers from writing their own libraries for use with Developer Applications, developers that do not intend to use the OSCAR protocol must notify AOL prior to implementing their Developer Applications, and cooperate with AOL to ensure that usage of the Developer Application may be tracked appropriately. Use of a third party library for AOL Messaging Network access by a Developer Application that cannot be tracked by AOL is prohibited.

**E. Blocking and Open AIM Key Cancellation; No Support.** AOL reserves the right, in its discretion and without limiting its other legal remedies, to cancel any Open AIM Key it has issued to you and/or to prevent your Developer Application from accessing or working with the AOL Messaging Network at any time for any reason. You understand that AOL provides no assistance with the Tools or AOL Messaging Network, nor will AOL be responsible for any assistance to you with respect to your or any of your end users' use of the Open AIM Platform Applications or Developer Applications. AOL is under no obligation to provide you with any error corrections, updates, upgrades, bug fixes and/or enhancements of the Tools.

**F. End User License.** You must ensure that distribution or use of a Plugin, Custom Client, Mobile AIM Client, or Web AIM Developer Application requires end users to agree to an enforceable end user license containing at least the following specific minimum terms: (i) a provision stating that you, and not AOL, are responsible for your Developer Application and referring end users via a hyperlink to the "AIM® Enabled" webpage at <http://dev.aol.com/aim/aimenabled>; (ii) a provision indicating that the AOL components and services are provided as-is, without any warranties, and that AOL expressly disclaims all implied or express warranties, including the implied warranties of merchantability, accuracy, fitness for a particular purpose and non-infringement, regarding the AOL components' use or operation alone or in combination with your Developer Application; (iii) a prohibition against modifying or creating derivative works of any AOL components of your Developer Application; (iv) a prohibition against decompiling, reverse engineering, disassembling, and otherwise reducing the AOL components of your Application to a human-perceivable form, to the full extent allowed by law; (v) a provision indicating that ownership of the AOL components and services resides with AOL; (vi) a disclaimer of any liability for any service interruptions or the discontinuation of the AIM Service and the inability to access the AOL Messaging Network to the maximum extent permitted by law, even if you or your licensors have been informed of such damages; (vii) a disclaimer of indirect, special, incidental, punitive, and consequential damages; (viii) a prohibition against end users taking any actions that (a) create, or purport to create, any obligation on behalf of AOL, or (b) grant, or purport to grant, any rights or immunities to any third party under AOL's intellectual property rights or its other proprietary rights; and (ix) a complete and accurate disclosure to end users of the privacy practices and policies applicable to your Developer Application, including without limitation notice to the end user (A) that AOL's collection of data via the AOL Messaging Network is subject to AOL Messaging Network privacy policies available at [http://about.aol.com/aolnetwork/mem\\_policy](http://about.aol.com/aolnetwork/mem_policy) and [http://about.aol.com/aolnetwork/aol\\_pp](http://about.aol.com/aolnetwork/aol_pp), (B) that your collection of data is subject to your privacy policy, which may differ from the AOL Messaging Network privacy policies, but which must comply with applicable law and regulation,

and (C) whether your Developer Application contains any adware, including full disclosure of the impact of such adware on the end user. In addition, you must reproduce in their entirety any proprietary notices provided by AOL or required by any third party in any code, including without limitation Sample Modifiable Code. End user agreement to these terms and conditions may be obtained by any suitable and legally enforceable means, including but not limited to, a click through agreement, or other means by which such end users manifest assent to the End User Agreement after having an opportunity to review the terms.

#### **G. Use of Trademarks and Logos**

**1. Use of Marks; No Endorsement.** Except as set forth in Section G.2 ("Open AIM Marks"), below, you may not use the AOL name or any AOL trademarks or logos, including but not limited to, the AIM® and AOL® Instant Messenger™ marks or the AIM "Bubble" logos (collectively, the "AOL Marks") with your Developer Applications. You may not in any way indicate that AOL certifies, endorses, approves, or supports your Developer Application.

**2. Open AIM Marks.** You are hereby granted a non-exclusive, non-transferable revocable, royalty-free license to use the AOL-provided Open AIM marks and logos (the "Open AIM Marks") subject to the requirements of the Open AIM Platform Style Guide, available at <http://dev.aol.com/aim/styleguide>, said requirements being subject to change from time to time, and solely pursuant to the terms and conditions of this Agreement. You acknowledge that you have no right to sublicense the Open AIM Marks. If you use Open AIM Marks, your Developer Application must comply with all applicable laws, regulations and customs and you must obtain any required government approvals. All use of the Open AIM Marks by you shall inure to the benefit, and be on behalf, of AOL. You acknowledge that your utilization of the Open AIM Marks will not create in you nor will you represent you have, any right, goodwill, title, or interest in or to the Open AIM Marks other than the license expressly granted herein. You agree not to do anything contesting or impairing the trademark rights of AOL, including without limitation applying to register as a trademark or domain name, any of the Open AIM Marks, any trademark confusingly similar to any of the Open AIM Marks, or any trademark incorporating any of the Open AIM Marks. You hereby assign to AOL any and all proprietary interests you may obtain under applicable law in any territory in the name and/or trademarks or words associated with AOL due to your use or registration of such names, trademarks or words in such territory. You agree to immediately correct or change your usage of any of the Open AIM Marks should AOL notify you of its objection to your improper or incorrect use, such determination to be made in AOL's sole discretion. You agree to immediately cease all use of the Open AIM Marks if you are so instructed by AOL. You may not (i) create a unitary composite mark involving any of the Open AIM Marks, (ii) alter any of the Open AIM Marks in any way, or (iii) use the AOL Marks in any manner or for any purpose other than as explicitly permitted in this Agreement.

**H. Changes to Agreement.** AOL may modify this Agreement at any time with or without notice. You agree to assume the responsibility for reviewing this Agreement at <http://dev.aol.com/aim/license> frequently for updates or changes. If a modification is not acceptable to you, you may no longer use the Tools and must cease using Tool-enabled functionality in your Developer Application and may not enable access to the AOL Messaging Network through your Developer Application. If you continue to use the Developer Application after the Agreement has been modified, you will be deemed to have accepted the modifications. If you do not agree to the modifications of this Agreement, do not continue to use the Tools or the Developer Application. AOL encourages you to review the online version of the Agreement and the Additional Features Page frequently to ensure that you are aware of any modifications to your rights or obligations.

**I. Privacy Policy; Review; Monitoring.** The AOL member Privacy Policy (available at AOL Keyword: Privacy and on the web at [http://about.aol.com/aolnetwork/mem\\_policy](http://about.aol.com/aolnetwork/mem_policy)) describes AOL's information collection and usage practices for AOL members. For registered users of the AOL Messaging Network, the AOL Network Privacy Policy applies (available at [http://about.aol.com/aolnetwork/aol\\_pp](http://about.aol.com/aolnetwork/aol_pp)). AOL will have the right but not the obligation to review and monitor usage of your Developer Application developed using the Tools in any manner. At AOL's option, you will provide AOL four (4) free accounts and access to your Developer Application in order to enable AOL to conduct such review of your Developer Application.

**J. Proprietary Rights.** Title, ownership rights, and intellectual property rights in the AOL network of services and facilities ("AOL Network"), the AOL Messaging Network, the AOL Marks, any Open AIM Marks provided through the Tools, Documentation, the Tools, and the AOL components and algorithms and access to the AOL Messaging Network server complex (collectively, the "AOL Property"), will remain in AOL and/or its licensors and other suppliers. You acknowledge such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with AOL's or its licensors' or other suppliers' ownership of or rights with respect to the AOL Property. The AOL Property is protected by copyright, patent, trade secret and other intellectual property laws and by international treaties. AOL owns all customer data collected by AOL through the AOL Messaging Network registration

process. All trademarks used in connection with the AOL Property are owned by AOL, its affiliates or its licensors or other suppliers, and no license to use any such trademarks is provided hereunder, except to the extent any license is set forth in this Agreement. You acknowledge and agree that you obtain no intellectual property rights or licenses by this Agreement except for those licenses expressly granted herein. You agree that all comments, suggestions, complaints and other feedback relating to the AOL Property that you may disclose or otherwise provide to AOL may be used by AOL and its licensors, suppliers and licensees in any manner whatsoever and without limitation of any kind. Notwithstanding the foregoing, AOL will not be obligated to take action based upon any comments, suggestions, complaints or other feedback relating to the Tools. Feedback may be sent to [ReportDevAbuse@aol.com](mailto:ReportDevAbuse@aol.com).

**K. Non-Assert.** In consideration of the licenses granted herein, and other consideration provided by AOL to you under this Agreement, you covenant not to sue or otherwise assert any patent rights against AOL or any AOL affiliates or licensees for any alleged patent infringement during the term of this Agreement by any product or service that uses any Tools, Open AIM Platform Application or the AOL Messaging Network.

**L. Your Representations and Warranties**

1. You warrant to AOL that: (a) you have the legal capacity to enter into this Agreement; (b) all information provided by you to AOL in connection with your registration for and use of the Tools is true and accurate; and (c) that your use of the Tools, and your Developer Application, the operation thereof, any other products, services or information provided by you, and any updates, upgrades and modifications thereto, (i) will not be used in any commercially unreasonable manner; (ii) will not infringe any intellectual property rights of any third party, including without limitation, any right of privacy, publicity, copyright, trademark, or patent; and (iii) will comply with all applicable laws, rules and regulations, including without limitation, consumer protection, data security, and privacy laws. Further, you will ensure that you possess all authorizations, approvals, consents, licenses, permits, certificates and other rights and permissions necessary to provide your Developer Application and/or perform your obligations hereunder.

2. You warrant to AOL that: (a) you will not incorporate any Mandated Free Public Distribution Software, in whole or in part, into any part of the Presence Tools, any AOL-provided SDK or the Web AIM Code; (b) you will not use Mandated Free Public Distribution Software, in whole or in part, in the development of any part of any Developer Application in a manner that may subject the Tools or the AIM Service, in whole or in part, to all or part of the license obligations of any Mandated Free Public Distribution Software; (c) any Mandated Free Public Distribution Software is contained solely within specific package and/or components of your Developer Application; (d) you will comply with the instructions of the Open Source Federation ([www.opensource.org](http://www.opensource.org)) with respect to modification of Mandated Free Public Distribution Software, and will promptly report to AOL, in writing, any deviation therefrom; and (e) you have processes and precautions necessary to prevent any risk that the Tools, or any other AOL-provided software, will be provided to the open source community or otherwise into the public domain, as a result of your activities under this Agreement.

**M. AOL's Disclaimer of Warranty; As Is.** THE SDK, TOOLS, AOL MESSAGING NETWORK, THE WEB AIM CODE, THE SAMPLE MODIFIABLE CODE AND OPEN AIM PLATFORM APPLICATIONS ARE PROVIDED WITH ALL FAULTS, ERRORS, DEFECTS AND REDUCED OR INACCURATE FUNCTIONALITY ON AN "AS IS" BASIS. AOL, ITS LICENSORS AND OTHER SUPPLIERS DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES THAT THE SDK, TOOLS, AOL MESSAGING NETWORK, WEB AIM CODE AND OPEN AIM PLATFORM APPLICATIONS ARE FREE OF DEFECTS, VIRUS FREE, AND ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, THAT THE FUNCTIONALITY OF THE SDK, TOOLS, AOL MESSAGING NETWORK, WEB AIM CODE AND OPEN AIM PLATFORM APPLICATIONS WILL MEET YOUR REQUIREMENTS, OR THAT ERRORS IN THE SDK, TOOLS, AOL MESSAGING NETWORK, WEB AIM CODE AND OPEN AIM PLATFORM APPLICATIONS WILL BE CORRECTED, AND THE IMPLIED WARRANTIES THAT THE SDK, TOOLS, AOL MESSAGING NETWORK, WEB AIM CODE AND OPEN AIM PLATFORM APPLICATIONS ARE MERCHANTABLE, OF SATISFACTORY QUALITY, ACCURATE, FIT FOR A PARTICULAR PURPOSE OR NEED, OR NON-INFRINGEMENT, UNLESS SUCH IMPLIED WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. FURTHER, AOL, ITS LICENSORS AND OTHER SUPPLIERS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SDK, TOOLS, AOL MESSAGING NETWORK, WEB AIM CODE AND OPEN AIM PLATFORM APPLICATIONS IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AOL OR AN AOL AUTHORIZED REPRESENTATIVE WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY THAT CANNOT BE DISCLAIMED UNDER APPLICABLE LAW. AOL AND ITS LICENSORS AND OTHER SUPPLIERS HAVE NO LIABILITY WITH RESPECT TO YOUR USE OF THE SDK, TOOLS, AOL MESSAGING NETWORK, WEB AIM CODE AND OPEN AIM PLATFORM APPLICATIONS. YOU BEAR THE ENTIRE RISK AS TO THEIR QUALITY AND PERFORMANCE AND YOU ASSUME THE ENTIRE COST OF ANY SERVICE AND REPAIR. THIS DISCLAIMER OF WARRANTY

CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. NO USE OF THE TOOLS, AOL MESSAGING NETWORK, WEB AIM CODE AND/OR OPEN AIM PLATFORM APPLICATIONS IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER.

**N. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL AOL OR ITS PARENT, AFFILIATES, SUBSIDIARIES, OR ANY OF THEIR DIRECTORS, EMPLOYEES, DISTRIBUTORS, LICENSORS, SUPPLIERS, AGENTS OR RESELLERS (COLLECTIVELY, THE "AOL GROUP") BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SDK, TOOLS OR THE WEB AIM CODE, THE AOL MESSAGING NETWORK OR OPEN AIM PLATFORM APPLICATIONS, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION. IN ADDITION, THE MAXIMUM AGGREGATE LIABILITY OF THE AOL GROUP FOR ANY CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED ONE HUNDRED DOLLARS (USD \$100). THE TOOLS ARE PROVIDED WITHOUT CHARGE AND THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT BE APPLICABLE IN THOSE JURISDICTIONS.

**O. Acknowledgement.** The disclaimer of warranty and limitation of damages set forth above are essential elements of the bargain between AOL and you. You agree that AOL would not be able to provide the Tools on an economic basis without such limitations.

**P. Indemnification.** You will indemnify, hold harmless and, at AOL's request, defend AOL and/or its licensors and other suppliers and/or distributors from and against any and all claims, liabilities, losses, damages, expenses and costs (including attorneys' fees and costs) relating to your breach of any warranty contained in Section V.L and any provision under this Agreement or otherwise arising out of your Developer Application, including, but not limited to, any claim related to: (i) infringement or misappropriation of intellectual property rights, including but not limited to, infringement by your Developer Application and/or any content contained therein (except to the extent such a claim is based solely on the Tools or the AOL Messaging Network); and (ii) your use of the Tools. AOL will give you prompt notice of any such claim made against it, and you and AOL will cooperate in the defense of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise thereof, provided that AOL must approve the terms of any settlement or compromise, and such approval will not be unreasonably withheld.

**Q. Term; Termination.** This Agreement commences upon the date you click "I Agree" or otherwise commence using any Tool and will continue in force thereafter, unless terminated as provided herein (the "Term"). AOL may change, suspend, or discontinue all or any aspect of the Tools, including their availability, at any time, and may terminate your use of the Tools at any time prior to or after your development and/or deployment of your Developer Application, without notice, for no reason or for any reason, including but not limited to your breach of any condition hereunder. You may terminate this Agreement by removing any Open AIM Marks authorized hereunder from your Developer Application and ceasing use of the Tools, including without limitation by removing any and all code from your Developer Application enabling your use of the Tools or the AOL Messaging Network. You agree that once the Agreement is terminated, you will not use the Tools or enable access or use of the AOL Messaging Network or any Open AIM Platform Application.

**R. Survival.** The respective rights and obligations of AOL and you under the provisions of Sections V.D.2 and V.D.3 ("Restrictions"), V.J ("Proprietary Rights"), V.M ("Disclaimer"), V.N ("Limitation of Liability"), V.P ("Indemnification"), V.Q ("Termination"), V.R ("Survival"), and V.Y ("Miscellaneous") will survive expiration or termination of this Agreement. AOL will not be liable to you for damages of any sort resulting from terminating this Agreement.

**S. Import/Export Control.** You agree to fully comply with all export and import laws, regulations, rules and orders of the United States, or any foreign government agency or authority, and not to directly or indirectly export, re-export, transfer, or release the Tools, any other commodities, or technology received from AOL, or any direct product thereof, for any proscribed end-use, or to any proscribed country, entity or person (wherever located), without proper authorization from the U.S. and/or foreign government. You further agree to assume responsibility for and bear all expenses relating to your compliance with the described laws, regulations, rules and orders, and obtaining all necessary authorizations and clearances.

**T. High-Risk Activities.** The Tools are not fault-tolerant and are not designed, manufactured or intended for use in environments in which their failure could lead directly to death, personal injury, or severe physical or

environmental damage, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems ("High Risk Activities"). ACCORDINGLY, AOL AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. YOU AGREE THAT THE AOL GROUP WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM THE USE OF THE TOOLS IN SUCH APPLICATIONS.

**U. U.S. Government End Users.** The Tools are a "commercial item," as that term is defined in 48 C.F.R. § 2.101, consisting of "commercial software" and "commercial computer documentation," as such terms are used in 48 C.F.R. § 12.212 (Sept. 1995) and 48 C.F.R. § 227.7202 (June 1995). Consistent with 48 C.F.R. § 12.212, 48 C.F.R. § 27.405(b)(2) (June 1998) and 48 C.F.R. § 227.7202, all U.S. Government End Users acquire the Tools with only those rights as set forth herein.

**V. Electronic Notices.** You agree to transact with us electronically, and that this Agreement, combined with your act of using the Open AIM Platform Applications and service or clicking on "I Agree" have the same legal force and effect as a written contract with your written signature and satisfy any laws that require a writing or signature. YOU CONSENT TO AOL PROVIDING YOU ANY INFORMATION AND NOTICES REGARDING THE TOOLS, OPEN AIM PLATFORM APPLICATIONS OR AOL MESSAGING NETWORK ("NOTICES") IN ELECTRONIC FORM. AOL MAY PROVIDE NOTICES TO YOU (1) VIA E-MAIL IF YOU HAVE PROVIDED AOL WITH A VALID EMAIL ADDRESS OR (2) BY POSTING THE NOTICE ON A WEBSITE DESIGNATED BY AOL FOR THIS PURPOSE. The delivery of any notice is effective when sent or posted by AOL, regardless of whether you read the notice or actually receive delivery. You can withdraw your consent to receive notices electronically by discontinuing your use of the Tools.

**W. Injunctive Relief.** You acknowledge and agree that, notwithstanding any other provisions of this Agreement, your breach or threatened breach of this Agreement will cause AOL irreparable damage for which recovery of money damages would be inadequate and that AOL, therefore, may obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.

**X. Jurisdiction; Venue.** You agree that the laws of the Commonwealth of Virginia govern this Agreement and any claim or dispute that you may have against us, without regard to Virginia's conflict of laws rules, and that the United Nations Convention on Contracts for the International Sale of Goods will have no applicability. You further agree that any disputes or claims that you may have against us will be resolved by a court located in the Commonwealth of Virginia and you agree and submit to the exercise of personal jurisdiction of such courts for the purpose of litigating any such claim or action.

PLEASE NOTE THAT BY AGREEING TO THESE TERMS OF USE, YOU ARE: (1) WAIVING CLAIMS THAT YOU MIGHT OTHERWISE HAVE AGAINST US BASED ON THE LAWS OF OTHER JURISDICTIONS, INCLUDING YOUR OWN; (2) IRREVOCABLY CONSENTING TO THE EXCLUSIVE JURISDICTION OF, AND VENUE IN, STATE OR FEDERAL COURTS IN THE COMMONWEALTH OF VIRGINIA OVER ANY DISPUTES OR CLAIMS YOU HAVE WITH US; AND (3) SUBMITTING YOURSELF TO THE PERSONAL JURISDICTION OF COURTS LOCATED IN THE COMMONWEALTH OF VIRGINIA FOR THE PURPOSE OF RESOLVING ANY SUCH DISPUTES OR CLAIMS

**Y. Miscellaneous.** (a) This Agreement constitutes the entire agreement between you and AOL concerning the subject matter of this Agreement, which may only be modified by AOL. (b) If any part of this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties' original intent as nearly as practicable, and the remaining portions remain in full force and effect, or AOL may at its option instead terminate this Agreement. (c) The controlling language of this Agreement is English. If you have received a translation into another language, it has been provided for your convenience only. (d) Your use of the Tools or participation in the Open AIM Platform does not create any partnership, joint venture or agency relationship between you and AOL. Neither you nor AOL has the power to direct or control the day to day activities of the other or to create or assume any obligation on behalf of the other. (e) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof. (f) You may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. AOL may assign this Agreement to any entity at its sole discretion. (g) This Agreement will be binding upon and will inure to the benefit of the parties, their successors and permitted assigns. (h) Neither party will be in default or be liable for any delay, failure in performance or interruption of service resulting directly or indirectly from any cause beyond its reasonable control. (i) You understand and agree that we reserve the right to use whatever technical and legal remedies available to us to prevent abuses to the AOL Developer Network. We reserve the right to investigate or monitor in our own discretion and by any means we deem appropriate (x) your compliance with this Agreement and (y) any activity

or conduct that we believe violates the terms of this Agreement. In addition to any other rights that we may have in this section and in the Agreement, we reserve the right to request an audit to investigate compliance with this Agreement.