



METAVINE

# Terms of Use

Last updated: June 23, 2016

## Introduction

1. Directly and through its subsidiaries, Metavine, Inc. (together “Metavine”, “we” or “us”) provides a range of products and services (“Services”) to users (“Users” or “you”).
2. As we provide a broad range of Services, additional terms or requirements (including age requirements) may apply to a particular Service. These additional terms will be available with the relevant Service.
3. By using, including visiting, any of our Services, you agree that your use of the Services is governed by:
  - (a) the terms and conditions below; and
  - (b) any additional terms, including requirements, which apply to a particular Service; and
  - (c) our Privacy Policy,(together the “Terms of Use”) which are legally binding.
4. If you are entering into our Terms of Use on behalf of an organization, you represent that you have the authority to bind that organization to our Terms of Use and that the terms “you” and “your” will refer to that organization.
5. You should read our Terms of Use carefully. If you do not agree with our Terms of Use, or do not have the required authority to agree to them, you may not use and must leave the Service.

## Use of Services

6. You agree to use the Services only for the purposes permitted under our Terms of Use and any applicable laws and regulations.
7. In relation to your use of the Services, you agree to each of the following:
  - (a) that in accordance with the terms of our Privacy Policy, we may access, store and use any information that we collect;
  - (b) that all content, including information and Open AppShare items, submitted by you does not violate the law or anyone’s rights (including intellectual property and contractual);
  - (c) to pay all fees, charges and taxes in accordance with any relevant additional terms;
  - (d) that you are responsible for safeguarding your security credentials you use to access the Services;

- (e) that you are responsible for all activities conducted through your Metavine accounts whether you have given permission or not;
  - (f) to immediately notify us of any unauthorized use or other security breach relating to any of your Metavine accounts;
  - (g) that you are responsible for compliance with all legal and regulatory requirements that apply to you, including as an employee of or due to your role within an organization;
  - (h) that you are responsible for compliance with your employer's policies and requirements;
  - (i) that you are responsible for notifying us of changes to your information which you submitted to us.
8. In relation to your use of the Services, you agree that you must not do any of the following:
- (a) use our Services in a manner or for any purpose which is fraudulent, improper, impinges on a third party's rights or is contrary to or in breach any law, legal or regulatory requirement;
  - (b) submit to or transmit via our Services any material which interferes with any person or defames, harasses, threatens, menaces or offends any person or which affects the ability of any person to use or enjoy our Services;
  - (c) submit to or transmit via our Services any obscene, indecent, inflammatory, offensive, illegal or pornographic material or any other material that may give rise to civil or criminal proceedings;
  - (d) remove any copyright, trade mark or other proprietary right notices contained in or on our Services or their content;
  - (e) use another person's details without their permission or impersonate another person when using our Services;
  - (f) misrepresent your relationship with us;
  - (g) tamper with or hinder the operation of our Services;
  - (h) store, submit, link to or transmit any content that contains or installs any viruses, worms, defects, trojan horses, malware or similar disabling or malicious code, files or programs;
  - (i) engage in phishing or other fraudulent activity;
  - (j) reformat or frame any portion of our web pages or social media information;
  - (k) create or use accounts for our Services by an automated means or under false or fraudulent pretenses;
  - (l) use our Services to violate the security of any device or network;
  - (m) scrape, data extract or data mine, or any related activity, from the Services, or otherwise collect information about other users without their consent;
  - (n) take any action that imposes or that would, in our reasonable opinion, result in an unreasonably or disproportionately large load on our infrastructure or the infrastructure of our third party service providers;
  - (o) use our Services otherwise than in accordance with our Terms of Use;
  - (p) attempt any of the above acts or engage or permit another person to do any of the above acts.

## Fees and charges

9. We will not charge you a fee to use our Services unless we:
  - (a) state otherwise on one of our websites: <https://metavine.com> or <https://developer.metavine.com>; or
  - (b) offer you a particular Service to which fees apply and you accept our offer.
10. Where we are entitled to charge fees for one or more Services, you agree that those fees and any associated charges, applicable taxes, subscription periods and conditions are additional terms agreed between Metavine and you.

## Warranties

11. You warrant that:
  - (a) you have the right to submit all content which you submit to our Services; and
  - (b) you will comply with all relevant laws and our Terms of Use in relation to your use of our Services.
12. You agree to indemnify and hold us and our officers, agents and employees harmless from any claims by third parties, and any related damages, losses or costs (including reasonable attorney fees and costs), arising out of content you submit to any of our Services, your use of any of our Services, your violation of our Terms of Use or your violation of any rights of a third party.
13. We do not in any way warrant the accuracy, reliability, completeness, usefulness, non-infringement, or quality of our Services or any content on our Services, regardless of who originated that content, whether it was moderated, whether the content is designated as “certified” or whether its submitter is designated as “certified”. We disclaim all warranties, including but not limited to any implied warranties of merchantability or fitness for a particular purpose, in relation to such Services and content. We shall not be liable or responsible in any way for any loss or damage of any kind, including lost profits or other indirect or consequential damages, in relation to your use of or reliance upon any Services or their content.

## Licensing

14. In return for any fees we are entitled to charge you, we grant you a non-exclusive, worldwide license to use our Services including to create applications, build and upload content into our Open AppShare, download, use and modify content from our Open AppShare and use our Services to run an application or applications.
15. In relation to all content you submit to our Services you grant us a non-exclusive, irrevocable, transferable, perpetual and sub-licensable worldwide license to use, copy, reproduce, modify, distribute, publish and process that content (in whole or in part) to others and incorporate it into other works in any format now known or later developed, and permit others to do so, without any further consent or notice to you or others. You also agree that, unless there is a legally binding royalty agreement in place between Metavine and you, no compensation is payable to you or others for the license.

## Limits

16. We are not obligated to publish any content, regardless of who submitted it, on our Service and can remove it in our sole discretion, with or without notice.
17. Our Services are not storage services. You agree that we have no obligation to store, maintain or provide you a copy of any content that you or others submit, except to the extent required by applicable law and as noted in our Privacy Policy.
18. We may change, suspend or end any Service.
19. We reserve the right to refuse, suspend, archive, limit or terminate your use of any Service at any time for any reason with or without notice. This may occur but is not limited to in the event of an emergency, if we cease to provide a Service or if we believe that you may be in breach of our Terms of Use.
20. If we refuse, suspend, archive, limit or terminate your use of a Service, any attempt by you or your agent to evade or circumvent this is an unlawful trespass to our infrastructure.
21. You may stop using our Services at any time and for any reason. Where this occurs, any entitlement by us to fees continues after your termination of our Services.
22. Our total liability for any claims under our Terms of Use, including for any implied warranties, is limited to the amount you paid to us for the Services.

## Third Party Content

23. Users other than Metavine (i.e. third parties) submit content on our Services. Content on our Services that is submitted by a third party is the sole responsibility of that third party. You agree that our Terms of Use do not apply to that third party content and that we are not responsible and provide no warranty for third parties' content, regardless of whether or not we reviewed or moderated it, or for any damages as a result of your use (including download) or reliance on it.
24. You are responsible for deciding if you want to access or use third party content or sites that link from our Services. If you allow a third party item or site to authenticate you or connect with your Metavine account, that item or site may be able to access information on our Services related to you. Third party items and sites have their own legal terms and policies (including privacy), and you may be giving others permission to use your information in ways we would not. We are not responsible for these third party items or sites.

## Changes to Terms of Use

25. We may change our Terms of Use from time to time. You should regularly check for changes to our Terms of Use.
26. If you do not agree to the changed Terms of Use, you must discontinue your use of the Service.

## General

27. Our Terms of Use comprise the entire agreement between you and us. All prior agreements, discussions, communications, proposals, representations or warranties, whether written or oral, in relation to the subject matter are superseded by our Terms of Use. Nothing on any purchase order or preprinted form shall add to or vary our Terms of Use.
28. If there is a conflict between these terms and conditions and relevant additional terms, the additional terms will control for that conflict. If there is a conflict between these terms and conditions and our Privacy Policy, these terms and conditions will control that conflict.
29. The rights and remedies provided in our Terms of Use are in addition to other rights and remedies given by law independently of our Terms of Use.
30. Our Terms of Use control the relationship between you and us, which is one of independent contractors. Our Terms of Use do not create any third party beneficiary rights, nor any relationship of legal representative, joint venture, employment, partnership, franchise, joint venture, agency or fiduciary.
31. Our failure to exercise or delay in exercising any right, power or remedy will not constitute a waiver of that right, power or remedy unless agreed to by us in writing. Any single or partial exercise of a right, power or remedy by us does not prevent another or further exercise of that right, power or remedy.
32. You may not assign all or any part of your rights or obligations under our Terms of Use, whether by power of law or otherwise, without our prior written consent.
33. We may assign all or any part of our rights or obligations under our Terms of Use where there is a change in control or sale of assets of any part of Metavine.
34. If any provision of our Terms of Use is held by a court to be invalid, unenforceable or partly unenforceable in a jurisdiction, then it is severed for that jurisdiction. The remainder of our Terms of Use continue in full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected.

## Governing Law

35. Metavine, Inc is the legal provider of all Services to you. In the event that a Metavine, Inc subsidiary provides a Service to you, it is acting on the behalf of Metavine, Inc.
36. You and Metavine agree that the laws of California USA, excluding California's choice or conflict of law rules, will apply to any disputes arising out of or relating to our Terms of Use or the Services. You and Metavine agree that all claims arising out of our Terms of Use or the Services will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA. You and Metavine consent to personal jurisdiction in those courts.

## Notices

37. You agree that we may provide notices to you by any of the following means:
- (a) a banner notice on a Service; or
  - (b) an email sent to an address you have provided to us; or
  - (c) through other means including mobile number, telephone or mail.
38. You agree that the only way to send us notices or service of process is to do so by mailing Metavine Legal, 2001 Gateway Place, Suite 330E, San Jose, CA 95110, USA.