

## Merchant Agreement

Welcome to Tangotab.

Tangotab is an online business promotion / advertising service located at <http://tangotab.com> and other online areas owned or operated by Tangotab (the "Site"). The Services (the "Services") include but are not limited to the opportunity for you to publish your Deals on the Site. The Site and Services are collectively referred to herein as "Tangotab."

"Merchant" or "you" is the person and/or entity that is registering for or using Tangotab's Site and/or Services. Tangotab, Inc. is sometimes referred to as "Tangotab" "we" "us" or "our." You and Tangotab are sometimes individually referred to as a "Party" and collectively as the "Parties."

The following terms and conditions (the "Terms and Conditions") create a legally binding agreement (the "Agreement") between you and Tangotab.

By registering for or using the Site or any of our Services, you agree to follow and to be bound by these Terms and Conditions, our Privacy Policy (published at <http://tangotab.com/privacy.jsp>) and our Terms of Use (published at <http://tangotab.com/terms.jsp>), both of which are incorporated herein by reference.

## Agreement

### 1. Definitions

"Account" means Merchant's Tangotab account and the password-protected pages containing account information and account control options, accessible via the Site.

"Merchant Offering" means the goods or services to be provided by Merchant as specified on the Deals.

"Special Instructions" means the special instructions, if any, as specified on the Deal.

"Deal Expiration Date" means the date on which the Deals are intended to expire.

### 2. Accounts

Merchant must register for an Account with Tangotab and provide certain information as prompted by the registration form. Merchant represents and warrants that: (a) all required registration information submitted is complete and accurate; and (b) Merchant will maintain the accuracy of such information. Merchant is responsible for maintaining the confidentiality of Merchant's Account login information and fully responsible for all activities that occur under the Account. Merchant agrees to immediately notify Tangotab of any unauthorized use, or suspected unauthorized use of the Account or any other breach of security. Tangotab cannot and will not be liable for any loss or damage arising from Merchant's failure to comply with the above requirements.

### 3. Deals

Merchant may, from time to time, propose a Deal using the Create A Deal section in their Merchant Account. Once Merchant has completed a prospective Deal, Tangotab will have the right to accept or reject the Deal. Merchant's receipt of an electronic or other form of Deal confirmation does not signify Tangotab's acceptance of Merchant's Deal. A Deal will be deemed to be accepted only after Tangotab has finalized the Deal Specification via a message in the Merchant's Account. Tangotab will not have any obligations with respect to any Deals that have not been accepted by Tangotab as described in this Section. Despite any acceptance or approval of any Deal, Tangotab will have the right to terminate any Deal at any time for any reason in Tangotab's discretion (including without limitation, if such Deal is related to any unlawful activity or is not consistent with Tangotab's brand identity).

### 4. Accepted Deals

#### **4.1. Deal Information**

Tangotab shall promote each Deal per Section 4.2. Merchant is the seller of the goods and services described in the Deal. A notification of the Deal will be sent to the guest electronically. The guest will then present the notification to the Merchant to verify their eligibility to receive the Deal from the Merchant.

a. Merchant is making the Merchant Offering available pursuant to the Deals.

b. Delivery of Deals: Tangotab may offer the Deal through its featured Deal of the Day, through its various side deals, through its marketplace, or through its affiliate network. All of these formats may be offered to part or all of Tangotab's subscriber base, or the communities associated with Tangotab's affiliates.

c. Each Deal will be subject to no restrictions other than as provided herein. Each Deal will expire on the Deal Expiration Date. However, after the Deal Expiration Date, Merchant shall and for the amount of time required by applicable law continue to honor the Deals for the product or service specified on the Deal. Merchant is aware and acknowledges that the law may require Merchant to honor Deals beyond their stated expiration dates, and Merchant agrees to do so (to the extent applicable law requires).

d. Merchant agrees that in providing the goods/services that are the subject of the Deal, it will not impose any extra or additional fees or charges that contradict the terms set forth on the face of the Deal.

e. Merchant will comply with the Special Instructions (if any).

#### **4.2 Deal Promotion**

Merchant authorizes Tangotab to promote, advertise and distribute Deals, in accordance with this Agreement and the restrictions set forth in this Agreement. Merchant acknowledges that Tangotab may terminate the publication or promotion of the Deals at any time.

#### **4.3 Deal Publication and Delivery**

Deals shall be published on the Site in accordance with Section 4.1. If there is a Maximum Number of Deals designated, Tangotab will use reasonable efforts to cease publishing the Deals once it has received requests to use that number of Deals equal to the Maximum Number of Deals. Tangotab will electronically deliver notice of the Deal to the guest. Once notification of a Deal has been delivered to the guest, Merchant shall be solely responsible for all customer service in connection with the Deal and for supplying all goods and services specified in the Deal. Tangotab further reserves the continuing right, but shall not be obligated, to reject, revise, or discontinue publishing any Deals and to require Merchant to edit or modify the same for any reason, including, without limitation, to conform the Deal to Tangotab specifications or applicable Laws.

#### **4.4 Payment**

Your account is a prepay account which means you must maintain sufficient funds in your Account to cover your usage fees. Each time a guest makes a reservation for a Deal, we will deduct the applicable fees from your Account. It is your responsibility to maintain a balance in your Account sufficient to cover your fees and other authorized transactions. You may maintain your Account by credit card or debit card. When your Account reaches \$25 or less, we will charge your minimum recharge amount to your credit card or debit card to automatically increase your Account balance. The credit card or debit card user is solely responsible for ensuring that the credit/debit card is valid and accepting charges and can be automatically/electronically re-charged in the amounts required herein. All monies received are non-refundable.

#### **4.5 License**

Merchant grants to Tangotab a non-exclusive worldwide license and right to use, reproduce, license, display, distribute and transmit the Merchant's name, logo and any trademarks ("Merchant Marks") and any photographs, graphics, artwork, text and other content provided or specified by Merchant ("Content") in connection with the

marketing, promotion or distribution of Deals, in any and all media or formats in which such Deals are marketed, promoted, transmitted, sold, or distributed, including but not limited to, on the Tangotab Site.

## **5. Term and Termination**

This Agreement shall continue in effect for the longer of one (1) year following the Effective Date or the last date when a guest of Tangotab downloads notification of a Deal offered by Merchant through Tangotab. Tangotab may terminate this Agreement at any time for any reason by giving the Merchant written notice of such termination. Tangotab will terminate Merchant for any copyright infringement activity. The expiration of the Term shall not in any way affect the Merchant's obligation to honor the Deals. Upon execution of the Agreement, Merchant agrees that Merchant will not promote an online offer with respect to the products or services described in this Agreement of similar or greater value for a period up to 90 days from the Effective Date, plus a minimum of 90 days following the Merchant's date of feature on the Tangotab Site. Sections 5-13 and any claims for payments due either party, shall survive any expiration or termination of this Agreement.

## **6. Merchant Representations and Warranties**

Merchant represents and warrants throughout the Term that: (a) Merchant has the right, power and authority to enter into this Agreement; (b) Merchant is registered for sales and use tax collection purposes in all states in which Merchant's goods and services will be provided pursuant to the terms and presentation of the Deals; (c) the Deal, upon being delivered to the guest by Tangotab shall be available immediately to the guest; (d) the terms and conditions of the Deal, including any discounts or goods and services offered there under, comply with all, and do not and will not violate any, local, state or federal law, statute, rule, regulation, or order ("Laws"), including but not limited to, any Laws governing vouchers, gift cards, coupons, and/or gift certificates; (e) Merchant owns all right, title and interest in the Marks and Content and has the right to grant the licenses in the Marks and Content stated in this Agreement; (f) the Deals and any advertising or promotion of Merchant's products and services relating thereto will not constitute false, deceptive or unfair advertising or disparagement under any applicable Laws; and (g) the Marks and the Content do not and will not violate any copyright, trademark, or other intellectual property right or right of privacy or publicity of any third party or any Laws.

## **7. Merchant Indemnity**

Merchant agrees to defend, indemnify and hold Tangotab, its affiliated and related entities, and any of their officers, directors, agents and employees, harmless from and against any claims, lawsuits, investigations, penalties, damages, losses or expenses (including but not limited to attorney's fees and costs) arising out of or relating to any of the following: (a) any breach or alleged breach by Merchant of this Agreement or the representations and warranties stated in Section 6; (b) any claim for state sales or use tax obligations ("Taxes") arising from the promotion, advertising and subsequent delivery of notification of a Deal; (c) any claim by any local, state or federal governmental entity for unredeemed Deals or unredeemed cash values of Deals or any other amounts under any applicable abandoned or unclaimed property or escheat law, including but not limited to any claims for penalties and interest ("Abandoned Property Claims"); or (d) any claim arising out of or relating to the products and services provided by Merchant, including but not limited to, any claims for false advertising, product defects, personal injury, death, or property damages. Without limiting the foregoing, Merchant shall pay any monies owed to any party, as well as all attorney's fees, related to any action against, or determinations against, Tangotab related to any action to pursue Tangotab for Taxes or Abandoned Property Claims.

## **8. Confidentiality**

The terms of this Agreement are confidential, and Merchant agrees to not disclose the terms described herein to any party (other than its employees, parent companies, and shareholders on a need-to-know basis only after each has taken the necessary precautions of the kind generally taken with confidential information to preserve the confidentiality of the information made available to such individuals). Any breach of this confidentiality provision by Merchant shall be considered a material breach of this Agreement and will result in irreparable and continuing damage to Tangotab for which there will be no adequate remedy at law; and in the event of such breach, Tangotab will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary damages if appropriate).

## **9. Intellectual Property Rights**

Merchant agrees and acknowledges that Tangotab owns all right, title, and interest in the Tangotab Site, Tangotab trademarks, and any software, technology or tools used by Tangotab to promote, advertise, market or distribute the Deals (collectively the "Tangotab IP"). Merchant shall not rent, lease, sublicense, distribute, transfer, copy, reproduce, download, display, modify or timeshare the Tangotab IP or any portion thereof, or use such Tangotab IP as a component of or a base for products or services prepared for commercial sale, sublicense, lease, access or distribution. Merchant shall not prepare any derivative work based on the Tangotab IP. Merchant shall not translate, reverse engineer, decompile or disassemble the Tangotab IP.

#### **10. Limitation of Liability**

EXCEPT FOR INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL: (A) EITHER PARTY BE LIABLE OR OBLIGATED TO THE OTHER PARTY OR ANY THIRD PARTY IN ANY MANNER FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE; (B) TANGOTAB'S LIABILITY TO MERCHANT FOR ANY CLAIMS ARISING OUT OF OR RELATING TO ANY DEALS EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNTS RECEIVED FOR SUCH DEALS; OR (C) TANGOTAB'S AGGREGATE LIABILITY TO MERCHANT FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNTS RECEIVED HEREUNDER. THIS LIMITATION OF LIABILITY SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY.

Any claim arising out of or relating to any error or omission in a Deal must be made within one (1) month of first publication of the Deal. Otherwise, the claim shall be deemed waived by Merchant.

#### **11. Warranty Disclaimer**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. TANGOTAB DOES NOT WARRANT OR GUARANTEE THAT THE SERVICES OFFERED ON OR THROUGH THE SITE SHALL BE UNINTERRUPTED OR ERROR-FREE, THAT THE DEALS WILL BE ERROR-FREE OR THAT ANY ERRORS, OMISSIONS OR MISPLACEMENTS IN THE DEALS WILL BE CORRECTED, OR THAT DEALS WILL RESULT IN ANY REVENUE OR PROFIT FOR MERCHANT.

#### **12. Force Majeure**

Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, carriers, or other third parties to substantially meet its performance obligations, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

#### **13. Amendments**

Tangotab may modify this Agreement from time to time and such modification shall be effective upon the earlier of: (a) thirty (30) days after Tangotab has sent an e-mail containing a notification of such modifications and (b) the date after such notice that Merchant submits a new Deal proposal.

#### **14. Other**

The Parties are independent contractors. Nothing in this Agreement shall be construed to create a joint venture, partnership, franchise, or an agency relationship between the Parties. Neither Party has the authority, without the other Party's prior written approval, to bind or commit the other Party in any way.

Merchant may not assign or transfer its rights or obligations under this Agreement, whether by operation of law or otherwise, without Tangotab's prior written consent.

This Agreement shall be governed by the laws of the State of Delaware, without giving effect to any principles that may provide for the application of the laws of another jurisdiction. Any disputes, controversies, or claims in connection with or arising out of this Agreement, its negotiation, breach, existence, validity or termination, shall be referred to and finally determined by arbitration in Dallas, Texas before a single arbitrator who is a member of the American Arbitration Association, from which arbitration there shall be no appeal. Such arbitration shall be held in the city of the defendant, in accordance with the Commercial Rules of the American Arbitration Association, with the governing law to be that of the State of the defendant and the laws of the United States applicable therein. The award rendered by the arbitrator shall be final and binding on all parties, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

The communications between Merchant and Tangotab use electronic means. For contractual purposes, Merchant (a) consents to receive communications from Tangotab in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Tangotab provides to you electronically satisfy any legal requirement that such communications would satisfy if it were be in writing. The foregoing does not affect Merchant's statutory rights.

MERCHANT AND TANGOTAB AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

Last updated: June 01, 2011