

M-Biz Terms & Conditions for Pocket Arena

Advertisers

THIS AGREEMENT IS COMPRISED OF THESE TERMS AND CONDITIONS, THE SELECTIONS YOU MAKE IN THE INITIAL CLICK THROUGH (AND ONGOING ONLINE CONFIGURATION) AND ANY APPLICABLE ORDER FORM.

THIS AGREEMENT FORMS A LEGALLY BINDING CONTRACT BETWEEN M-BIZ GLOBAL SOLUTIONS GMBH ("M-BIZ" OR "US" OR "WE" OR "OUR", AS THE CONTEXT MAY BE) AND YOU ("ADVERTISER" OR "YOU", OR "YOUR", WHICH INCLUDES ANYONE ACTING ON YOUR BEHALF OR WITH YOUR AUTHORIZATION).

YOU MUST READ CAREFULLY THE TERMS OF THIS AGREEMENT. BY CLICKING A BUTTON AND/OR BOX, BY SENDING US AN ORDER FORM OR OTHER RELEVANT FORM OR BY MAKING AVAILABLE YOUR ADVERTISEMENTS TO US, YOU INDICATE YOUR ACCEPTANCE OF ITS TERMS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THE COMPANY, ITS AFFILIATES AND ANY OTHER LEGAL ENTITY ON WHOSE BEHALF YOU ARE ENTERING INTO THIS AGREEMENT. IF YOU DO NOT HAVE THIS AUTHORITY OR IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT YOU MAY NOT USE OUR SERVICES.

YOU ACKNOWLEDGE AND AGREE THAT OTHER SERVICES AND ADDITIONAL FEATURES OR FUNCTIONALITIES MAY BE AVAILABLE TO YOU AND MAY BE SUBJECT TO ADDITIONAL TERMS AND/OR DIFFERENT TERMS AND TO THE EXTENT THAT YOU USE SUCH ADDITIONAL FEATURES OR FUNCTIONALITIES, YOU AGREE TO BE BOUND BY THESE TERMS.

1 Introduction

- 1.1 M-Biz is the owner of an add-on software development kit which enables End Users to download Customized Mobile Games, linked to advertisement engines, social gaming platforms and competitions powered by M-Biz.
- 1.2 You are an advertiser and you wish your Advertisements to be distributed and displayed with the Customised Mobile Games (in the context of M-Biz's social gaming platforms and competitions).

2 Definitions & Interpretation

- 2.1 The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

Activity means the submission of at least one Advertisement to

M-Biz, within a period of 12 months;

Advertisements

means the advertisements (e.g. text links, banners, videos, graphics, etc) that you submit to us or upload onto our system including all related materials and metadata;

Affiliates

means, in relation to either party, any company which is for the time being a holding company of that party or a subsidiary of that party or of any such holding company (where "Subsidiary" and "Holding Company" have the meanings given in section 1159 and Schedule 6 of the Companies Act 2006);

Agreement

means these Terms and Conditions and the selections you make in the initial click through and ongoing online configuration as well as any applicable order form;

Configuration

means the order form(s) and the selections you make during the initial or ongoing online configuration of the M-Biz Services;

Conversion

means:

- a) each time an Advertisement is viewed, displayed or clicked by End Users; or
- b) each time any other pre-determined End Users' actions (e.g. downloading another game or app) or events occur,

which are the main basis for determining the Fees payable under the Agreement;

Conversion Tracking

means a mechanism that enables the tracking of how many Conversions an Advertisement has;

Customized Mobile Game

means the Mobile Game as customized with the Pocket Arena Solution;

Deliver or Delivery

shall have the meaning specified in clause 3.1;

Distributors

means any WAP Portal, Android, App store, or website to which M-Biz or the publishers of the Mobile Games distribute the Customized Mobile Games connected to the Advertisements;

Documentation

means any documentation including but not limited to manuals, guidelines, class libraries, language packs, technical specifications and any other information that is supplied by M-Biz to you under the Agreement;

End User	means a person using a Mobile Device to whom a Customised Mobile Game and the Advertisements are made available through this Agreement;
Fees	any fees you pay to M-Biz under the Agreement;
Intellectual Property Claim	shall have the meaning given to it in clause 10.1;
Intellectual Property Rights	means all intellectual property rights in any jurisdiction, whether existing under intellectual property, unfair competition or trade secret laws, or under statute or at common law or equity, or arising under license or other contract, including but not limited to: (i) copyrights, database rights, trade secrets, trademarks, trade names, patents, petty patents, utility models, inventions, designs, logos and trade dress, "moral rights," mask works, rights of personality, publicity or privacy, and any other intellectual property or proprietary rights; and (ii) any application or right to apply for any of the rights referred to in this clause; and (iii) for the full duration thereof and including any and all renewals, extensions and extensions thereof, now or hereafter in force and effect;
M-Biz Services	means the M-Biz advertising service(s) you select through the Configuration;
Mobile Device	means any mobile device which is capable of running a Customized Mobile Game and the Advertisements;
Mobile Game	means the software application(s) supplied and customized by the Content Provider under the Agreement;
Month	means a calendar month and "monthly" shall be interpreted accordingly;
Pocket Arena Solution	means a solution which links Mobile Games to advertisement engines, social gaming platforms and competitions powered by M-Biz;
Post-paid Campaign	means an advertising campaign where you pay our Fees Monthly in arrears;
Pre-paid Campaign	means an advertising campaign where you pre-pay the Fees (based on your budget) before the advertising campaign takes place;
Restricted Information	shall have the meaning given to it in clause 8.1;
Term	means the duration of this Agreement in accordance

with the provisions of clause 13 of this Agreement;

Termination Date the date of termination of this Agreement howsoever arising;

Territories means the countries specified by M-Biz from time to time on the Pocket Arena website (where the Customized Mobile Games with the Advertisements can be distributed to End Users) which you select during the Configuration, as amended from time to time; and

Working Days means any day other than a Saturday, Sunday or public holiday in England and Wales.

- 2.2 Clauses and Schedules headings shall not affect the interpretation of this Agreement.
- 2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 2.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.8 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 2.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.10 Any obligation on a party not to do something includes an obligation to not to allow that thing to be done.
- 2.11 References to clauses and Schedules are to the clauses and Schedules of this Agreement.
- 2.12 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3 Delivery of the Advertisements

- 3.1 You agree to make available, submit or upload onto our system the Advertisements (“Deliver or Delivery”), in accordance with the Documentation and the instructions provided by M-Biz, to enable the proper display of such Advertisements and tracking of the results through the M-Biz Services.
- 3.2 You will be solely responsible for any and all costs you incur for the production and Delivery of the Advertisements in accordance with such Documentation and instructions and for any programming related to the same which you elect to undertake. We will not modify or alter the content, text or appearance of any Advertisement without your prior written consent, unless such modifications and alterations are minor and are strictly necessary for the purposes of the Agreement.
- 3.3 M-Biz reserves the right, at M-Biz sole discretion, and for any reason, to:
 - (a) Exclude one or more of your Advertisements from this Agreement; or
 - (b) to terminate this Agreement as it relates to a particular Advertisement at any time in accordance with clause 13.
- 3.4 You agree to update the Advertisements promptly with the latest versions and features for the Advertisements. The terms of this Agreement will govern any updates or upgrades that replace and/or supplement any Advertisements.

4 Licence

- 4.1 You hereby grant to M-Biz the limited, royalty free, non-exclusive licence during the Term for the Territories to:
 - 4.1.1 sub-licence to the publishers of the Mobile Games (or where applicable to the Distributors) the right to use, copy, reproduce, distribute and display the Advertisements (in any medium known or hereafter developed);
 - 4.1.2 use, copy, reproduce, market, distribute and display, directly or indirectly the Advertisements to End Users (in any medium known or hereafter developed);
 - 4.1.3 use, copy, reproduce, market, distribute and display the Advertisements (in any medium known or hereafter developed), in connection with M-Biz social gaming platforms and competitions; and
 - 4.1.4 use, copy, reproduce, market, distribute and display the Advertisements in connection, or within the Customized Mobile Games.
- 4.2 M-Biz hereby grants to you a limited, non-exclusive, revocable licence during the Term for the Territories to display the Advertisements in connection with the Customised Mobile Games (in the context of M-Biz social gaming platforms and competitions).
- 4.3 You grant to M-Biz a royalty free, sub-licensable, transferrable, non-exclusive, license in the Territories to use your Trademarks solely in advertising, promoting, selling and distributing the Advertisements for the purposes of the Agreement.
- 4.4 All rights not expressly granted to M-Biz under this Agreement are reserved to you.

5 Your Obligations

5.1 You acknowledge that, unless otherwise agreed through the Configuration or in writing, you will use without modification the standard M-Biz Services, and any special placement and promotion shall be previously approved by M-Biz in writing.

5.2 You agree to:

- (a) provide to M-Biz any information and support as may be reasonably requested by M-Biz;
- (b) where applicable, comply with the technical specifications provided by M-Biz;
- (c) Deliver the Advertisements in accordance with the Documentation provided by M-Biz and with M-Biz's instructions,

to enable the proper and efficient distribution and display of the Advertisements.

5.3 You acknowledge the value of obtaining access to the applications, webpages, mobile media and other advertising inventory of the Mobile Game's publishers that work with M-Biz, and you agree not to purchase or seek to purchase such inventory directly by circumventing or bypassing the M-Biz Service in any other way, during the term of this Agreement and for six Months thereafter. Unless M-Biz consents previously in writing, You may only use the M-Biz Services as provided by M-Biz, without modification.

5.4 You shall not, and shall not to seek to, set up a direct linking or any other arrangements to circumvent the M-Biz Service (including, but not limited, your payment obligations under the Agreement) so M-Biz is unable to fully track and monitor the Conversion Tracking results and other events that are the basis for determining the Fees. You may not otherwise interfere with or manipulate in any way M-Biz's Conversion Tracking and payment calculation processes (or any other parts of the M-Biz Service).

5.5 You acknowledge that M-Biz will have no control over, and will not be responsible for, the content of the Advertisements. M-Biz has no obligation to monitor the content of the Advertisements, or any other third-party content or web site. You are solely responsible (and assume all liability and risk) for determining whether or not such content of the Advertisements is appropriate or acceptable. Notwithstanding the above, M-Biz reserves the right at all times, at its discretion and without notice, to remove or refuse to distribute any content or Advertisement through the M-Biz Services. M-Biz also reserves the right to access, read, preserve and disclose any information as it reasonably believes is necessary to:

- (a) satisfy any applicable law, regulation, legal process or governmental request;
- (b) enforce this Agreement, including investigation of potential breaches hereof;
- (c) detect, prevent, or otherwise address fraud, security, or technical issues;
- (d) respond to End Users support requests; or
- (e) protect the rights, property or safety of M-Biz (or its licensors), its End Users and the public.

- 5.6 You undertake throughout the Term:
- 5.6.1 not to cause or permit anything which may damage or endanger M-Biz's (or its licensors) Intellectual Property Rights or M-Biz's (or its licensors) title to them or assist or allow others to do so;
 - 5.6.2 to notify M-Biz forthwith of any actual, threatened or suspected infringement of M-Biz's (or its licensors) Intellectual Property Rights;
 - 5.6.3 to notify M-Biz forthwith of any claim by any third party that the Customized Mobile Game infringes any Intellectual Property Rights of any third party;
 - 5.6.4 to take such reasonable action as M-Biz may direct at the expense of M-Biz in relation to such infringement;
 - 5.6.5 to compensate M-Biz on indemnity basis for any use by you of M-Biz's Intellectual Property Rights otherwise than in accordance with this Agreement;
 - 5.6.6 to obtain before entering into this Agreement and maintain all necessary licenses, authorisations, approvals, and consents to enter into and perform your obligations under the Agreement; and
 - 5.6.7 to indemnify M-Biz for any liability incurred to third parties for any use of M-Biz's (or its licensors) Intellectual Property Rights otherwise than in accordance with this Agreement, including (but not limited to) legal expenses and all costs and damages awarded or agreed to in settlement of a claim brought against M-Biz due to such use of the Intellectual Property Rights.
- 5.7 You agree that you will maintain true and accurate records to enable M-Biz to ensure your compliance with the terms of this Agreement. You will permit M-Biz to have reasonable access to all of your records and computer systems and to use software audit tools on your systems that may reasonably be required in relation thereto. M-Biz agrees that it will only use commercially available and commonly used software for such audits and that any cost relating to such audit shall be for the account of M-Biz.
- 5.8 You shall not during or after the expiry or termination of this Agreement, without the prior written consent of M-Biz, use or adopt any name, trade name, trading style or commercial designation used or resembling those used by M-Biz (or any of its licensors).
- 5.9 Advertisements:
- 5.9.1 You agree to display the Advertisements in accordance with this Agreement. You shall comply with any placement and Delivery requirements, any requirements to implement code and any technical specifications that are provided by M-Biz at any time to enable proper display of the Advertisements. You will be solely responsible for any and all costs you incur for the display of the Advertisements, in accordance with such specifications and for any programming related to the same which you elect to undertake.
 - 5.9.2 You will display the Advertisements, and provide any data to M-Biz as required under this Agreement, in compliance with all applicable local, state, national and

international laws, rules and regulations, including any laws regarding the transmission of technical data exported from your country of residence.

5.9.3 You will not, will not agree to, and will not authorize or encourage any third party to use the M-Biz Service:

(a) to transmit or otherwise distribute any Advertisement or content that is unlawful, defamatory, libellous, harassing, abusive, fraudulent, pornographic or obscene, or that contains viruses, or is otherwise objectionable, as reasonably determined by M-Biz;

(b) to interfere or attempt to interfere with the proper working of the M-Biz Service or prevent others from using the M-Biz Service, or for any fraudulent or unlawful purpose,

5.9.4 Any breaches of clauses 5.9.3(a) and 5.9.3(b) above, will be deemed as a material breach of the Agreement and may result, at M-Biz's sole discretion, in immediate termination of this Agreement.

5.9.5 M-Biz reserves the right to, but will have no obligation, to review the Advertisements and your use of the M-Biz Services, in order to determine any breaches of this Agreement or to ensure your compliance with any applicable law, regulation, legal process, or governmental request.

6 Obligations of M-Biz

6.1 M-Biz agrees to maintain sufficient and competent resources to diligently and in a professional manner handle and execute M-Biz's obligations under this Agreement.

6.2 M-Biz may, at its sole discretion, distribute the Advertisements to End Users, the publishers of the Mobile Games and/or to Distributors in accordance with the Agreement.

7 Price and Payment

7.1 Any Fees you pay (or pre-pay) under this Agreement are not refundable and non-cancellable.

7.2 You acknowledge that the M-Biz Services may be based on an auction model and that volumes and Fees may vary based on price, Conversion rates and other factors that may not be within M-Biz's control.

7.3 M-Biz reserves the right to change the definition and/or calculation criteria of the Fees at any time, upon giving you 7 days prior notice in accordance with the Agreement (e.g. by posting the changes on our Pocket Arena website)..

7.4 M-Biz Fees will be based on:

7.4.1 the number of Conversions generated by each advertising campaign through the M-Biz Services;

7.4.2 the selections you made during Configuration; and

- 7.4.3 other dynamic factors as specified in clause 7.2:
- 7.5 Payment Terms:
- 7.5.1 For your Pre-paid Campaigns, we will offset M-Biz Fees from your pre-paid account balance as they are incurred, in accordance with the criteria specified in Clause 7.4. You will be able to check your daily account balance in the online statements posted on the Pocket Arena website (for the avoidance of doubt, no invoice will be issued).
- 7.5.2 For your Post-paid Campaigns you will be invoiced Monthly (in accordance with the criteria specified in Clause 7.4.) and the payments will be due within 10 Working Days of the date of our invoice.
- 7.6 You shall be solely responsible for the bank fees (or any other fees) incurred in the payment of our Fees.
- 7.7 Payment currency is US dollars (USD, \$) only, unless M-Biz confirms otherwise in writing to you. If you pay our Fees in any other currency other than USD, you shall be solely responsible for any currency conversion fee.
- 7.8 M-Biz's Fees under the Agreement, shall be based upon M-Biz's measurements (and records). Save for manifest error, in the event of a dispute between the parties about the payments due under the Agreement, M-Biz's own records available through the Pocket Arena website will prevail.
- 7.9 In the event that you dispute any payment under the Agreement:
- 7.9.1 for Post-Paid Campaigns: you must notify M-Biz in writing within five (5) Working Days from the date M-Biz sends an invoice to you; or
- 7.9.2 for Pre-Paid Campaigns: you must notify M-Biz in writing within ten (10) Working Days from the date M-Biz offsets the disputed Fees from your pre-paid account balance and displays your daily account balance in the online statement posted on the Pocket Arena website,

After the periods referred to in clauses 7.9.1 and 7.9.2, any invoice or online statement will be deemed correct and you waive your rights to dispute the relevant invoice or online statement.

- 7.10 M-Biz shall have the right to set-off any due amounts or liability owed to you against any sums you owe to M-Biz or against any liability you have to M-Biz, irrespective of the currency of its denomination, with the liability being set off against the oldest balance. Any exercise by M-Biz of its rights under this clause shall be without prejudice to any other rights or remedies available to M-Biz under this Agreement or otherwise.
- 7.11 Subject to clause 7.12, all amounts which are due and payable under this Agreement are exclusive of VAT or similar taxes. You shall be solely responsible for the payment of, and shall pay when due, all applicable taxes, including VAT, withholding tax, any sales, use, excise or transfer taxes and other taxes associated with payments under this Clause 7. M-Biz cannot accept any responsibility for any tax implications of you paying any amounts (except for taxes assessed on M-Biz's net income).

- 7.12 Where applicable, M-Biz shall deduct applicable withholding tax required under applicable law.
- 7.13 We reserve the right to perform credit checks on you with no prior given notice.

8 Confidential Information

- 8.1 Both parties to this Agreement undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential, including, without limitation, information contained or embodied in the Customized Mobile Game, Documentation and other information supplied by M-Biz or you (in this Agreement collectively referred to as the "Restricted Information") with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this clause shall not extend to any information which: (i) was rightfully in the possession of either party prior to the commencement of the negotiations leading to this Agreement; (ii) which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause); (iii) such Restricted Information is rightfully received by a party from a third party without restriction and without breach of this Agreement; or (iv) such Confidential Information is required to be disclosed by a court of competent jurisdiction, provided that the receiving party must provide written notice and assistance in obtaining a protective order to the disclosing party, and shall only disclose such information to the extent required by such court.
- 8.2 Neither party shall without the prior written consent of the other party divulge any part of the other party's Restricted Information to any person except:
- 8.2.1 to their own employees and then only to those employees who need to know the same; or
- 8.2.2 to either party's auditors, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right duty or obligation to know the business of the other party and then only in pursuance of such right duty or obligation.
- 8.3 Both parties undertake to ensure that persons and bodies referred to in clause 8.2 are made aware before the disclosure of any part of the Restricted Information that the same is confidential and that they owe a duty of confidence to the other party.
- 8.4 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Restricted Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.
- 8.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

9 Intellectual Property

- 9.1 M-Biz acknowledges and accepts that the title and all property rights in the Advertisements, which shall include all Intellectual Property Rights, are the sole ownership of you.
- 9.2 You acknowledge that M-Biz may provide the Advertisements for display within the Customised Mobile Games pursuant to this Agreement.
- 9.3 You agree that, where applicable, you will use any data (including any usage data and compilations thereof), information or software provided by M-Biz, only for the purpose of the display of the Advertisements on the Customized Mobile Games in accordance with this Agreement.
- 9.4 You acknowledge and accept that the M-Biz Service belong to M-Biz (or its licensors) and that nothing in this Agreement shall act so as to transfer any interest in the M-Biz Service to you. You agree to complete any documents or undertake any action, at M-Biz's cost, reasonably required by M-Biz to confirm the vesting in M-Biz of all the rights in the M-Biz Service.
- 9.5 You acknowledge that any and all of the copyrights, trademarks and other Intellectual Property Rights used or embodied in or in connection with the M-Biz Services, including all documentation and manuals relating thereto, are and shall remain the property of M-Biz and you shall not during or at any time after the expiry of or termination of this Agreement, in any way question or dispute the ownership or any such rights by M-Biz.
- 9.6 You also acknowledge that such trademarks, copyrights and other rights belonging to M-Biz are only used by you with the consent of M-Biz and during continuation of this Agreement. Upon expiry or termination of this Agreement you shall forthwith discontinue such use, without receipt of compensation for such discontinuation.
- 9.7 M-Biz shall not assign, modify, merge, transfer, decompile or reverse-engineer the Advertisements, except to the extent expressly permitted under this Agreement, or for the purposes of the fulfilment of this Agreement, or to the extent that this restriction is not permitted under any applicable law.

10 Intellectual Property Claims

- 10.1 The parties agree to defend and give all necessary assistance to the other party to enable it to enforce its Intellectual Property Rights against third parties, to defend claims for infringement of third party Intellectual Property Rights and to apply for registration of Intellectual Property Rights, where appropriate throughout the world, and for the full term of those rights.
- 10.2 Either party (the "Allegedly Infringer Party") shall defend at its own expense any claim brought against the other party (the "Charged Party") alleging that the Allegedly Infringer Party infringes the Intellectual Property Rights of a third party ("Intellectual Property Claim") and the Allegedly Infringer Party shall pay all costs and damages awarded or agreed to in settlement of a Intellectual Property Claim provided that the Charged Party:
 - 10.2.1 furnishes the Allegedly Infringer Party with prompt written notice of the Intellectual Property Claim;

- 10.2.2 provides the Allegedly Infringer Party with reasonable assistance in respect of the Intellectual Property Claim; and
- 10.2.3 gives to the Allegedly Infringer Party the sole authority to defend or settle the Intellectual Property Claim.

11 Warranties

- 11.1 You or the employee or person acting on your behalf represents, undertakes and warrants to M-Biz that:
 - 11.1.1 it has the full legal authority to bind you and that you have the right to enter into and to perform this Agreement and to grant the licenses and rights hereby granted to M-Biz and that in particular, but without limiting the generality of the foregoing, you are the owner or are otherwise entitled to licence to M-Biz the use of the Intellectual Property Rights in the Advertisements as envisaged by this Agreement;
 - 11.1.2 you are the owner of each Advertisement you Deliver to us in connection with the use of the M-Biz Services or that you are legally authorized to act on behalf of the owner of such Advertisement for the purposes of this Agreement;
 - 11.1.3 that the marketing distribution and display of the Advertisements by M-Biz shall not infringe upon any Intellectual Property Rights right of privacy or publicity or any other proprietary rights of third parties in each of the applicable Territories (including but not limited to copyright, trademarks, patent, consumer protection laws, trade secret, moral rights, privacy rights, rights of publicity, or any other intellectual property or proprietary right);
 - 11.1.4 that none of the Advertisements provided by you hereunder contain any viruses, Trojan horses, trap doors, back doors, Easter eggs, worms, time bombs, cancelbots, or other computer programming routines that may potentially damage or interfere with the M-Biz Services, the Customized Mobile Games or intercept or expropriate any system data or personal information from the M-Biz Service;
 - 11.1.5 you will comply with all legal and regulatory requirements from time to time affecting the marketing and distribution and display of the Advertisements in each of the applicable Territories including any age restrictions or ratings (any Advertisements directed to children will fully comply with applicable laws, regulations and codes of practice).
 - 11.1.6 there are no claims, demands or pending lawsuits involving Intellectual Property Rights in the Advertisements;
 - 11.1.7 you will give full particulars to M-Biz as soon as you become aware of any actual or threatened claim by any third party in connection with the M-Biz Services, the Customized Mobile Games and/or the Advertisements;
 - 11.1.8 nothing contained in the Advertisements breaches any laws, regulations or codes of practice or is, without limitation, unlawful, obscene or defamatory,

pornographic, abusive, offensive, hate-related or otherwise violates any applicable law or right of any third party.

11.2 M-Biz represents, undertakes and warrants to you that:

11.2.1 it has the right to enter into and to perform this Agreement and to grant the licenses and rights hereby granted to you and that in particular, but without limiting the generality of the foregoing, it is the owner or is otherwise entitled to licence to you the use of Intellectual Property Rights as envisaged by this Agreement;

11.2.2 the use of the M-Biz Service, as it relates to the Advertisements, does not and will in no way violate or infringe any third party Intellectual Property Rights of any person within the Territories.

11.3 M-Biz does not warrant that the functions of the M-Biz Services will meet any particular requirements or that all mobile devices are compatible with the M-Biz Services or the Advertisements or that its operation will be entirely error-free or that all program defects are capable of correction or improvement. In the case where you discover errors or defects in the M-Biz Services then you shall notify M-Biz and M-Biz shall take reasonable steps to remedy those defects or errors.

11.4 M-Biz does not warrant any results of the use of the M-Biz Services (including the results of any advertising campaign carried out through the M-Biz Services) and you assume all risk and responsibility of such advertisement campaigns.

11.5 M-Biz disclaims all guarantees regarding positioning, ranking, ratings or the levels of Advertisements' display or clicks, Conversion rates, or any other End User actions connected to the Advertisements.

11.6 To the maximum extent permitted by applicable law, all other warranties including, but not limited to, any implied warranties of merchantability, satisfactory quality or fitness for a particular purpose or ability to achieve a particular result are hereby excluded by M-Biz. In the absence of fraud, no oral or written information or advice given by M-BIZ or its agents or licensees shall create a warranty or give rise to any other liability other than is given in this Agreement.

12 Indemnities and Liability

12.1 Nothing in this Agreement shall exclude or restrict either party's liability for fraud, death or personal injury resulting from its negligence or the negligence of their employees or contractors while acting in the course of their employment.

12.2 Nothing in this Agreement shall limit each party's liability for any indemnity given under this Agreement or for breach of the other party Intellectual Property Rights.

12.3 Subject to clauses 12.1 and 12.2, M-Biz shall not be liable under, or in connection with, this Agreement for:

(a) loss of income;

(b) loss of business profits or contracts;

- (c) business interruption;
- (d) loss of the use of money or anticipated savings;
- (e) loss of information;
- (f) loss of opportunity, goodwill or reputation;
- (g) loss of, damage to or corruption of data;
- (h) cost of procurement of substitute goods or services; or
- (i) any loss or damage that it not foreseeable by us;
- (j) any indirect, special or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.

Each of the sub-paragraphs 12.3(a) to 12.3(j) shall be deemed to be independent of the others.

- 12.4 M-Biz's aggregated liability in contract, tort, or otherwise, including any liability for negligence, non-fraudulent misrepresentation, howsoever arising out of or in connection with the performance of its obligations under this Agreement shall be limited to the lesser of:
- 12.4.1 100% of the Fees you paid during the previous twelve (12) Months (or if the Agreement was in force for less than 12 Months when the liability arose, the Fees you paid to M-Biz from the date of commencement of the Agreement to such date); or
 - 12.4.2 the sum of 16,000 USD for any one event or series of related events.
- 12.5 All liability that is not expressly assumed in this Agreement is hereby excluded to the maximum extent permitted by applicable law. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause 12, M-Biz includes its directors, employees, sub-contractors and suppliers. The parties acknowledge that the M-Biz's directors, employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.
- 12.6 Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of this Agreement to each party and the commercial standing of each party.
- 12.7 You will fully indemnify us against all losses, damages, amounts paid by way of settlement, costs and expenses (including legal fees) of whatsoever nature suffered or incurred by us arising out of or in connection with any breach of the provisions of clause 5 of the Agreement.

12.8 You shall be liable to make payment under any indemnity given by you on demand from the time when the liability being indemnified is incurred by M-Biz, whether or not M-Biz has satisfied or discharged the liability.

13 Term and Termination

13.1 The Term of this Agreement shall be indefinite, until terminated by either party in accordance with this clause 13.

13.2 Either party shall be entitled to terminate this Agreement at any time, upon giving 60 days written notice to the other party.

13.3 Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if:

13.3.1 that other party commits any material breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within fourteen (14) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

13.3.2 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;

13.3.3 that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

13.3.4 that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);

13.3.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or

13.3.6 that other party ceases, or threatens to cease, to carry on business.

13.4 M-Biz shall be entitled forthwith to terminate this Agreement by written notice to you if:

(a) there is no Activity;

(b) we have good reason for believing that any information you have given us is false or misleading;

(c) we stop providing the M-Biz Services, or we change our business model as it relates to this Agreement.

13.5 M-Biz shall be entitled on the provision of written notice, to immediately terminate the Agreement as it relates to a particular Advertisement provided that:

13.5.1 the provisions of clause 14 below shall apply with respect to that Advertisement; and

13.5.2 there will be no effect on any other Advertisements.

14 Effects of Termination

14.1 On the termination of this Agreement for any reason:

14.1.1 subject to clause 14.2 the licences granted pursuant to this Agreement shall immediately terminate;

14.1.2 clauses that are necessary for the enforcement or interpretation of this Agreement shall survive, which shall include clauses relating to confidentiality and protection of Intellectual Property Rights; and

14.1.3 subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

14.1.4 you shall promptly return or destroy all copies of the Documentation and any other information supplied by M-Biz to you.

14.2 Upon termination of this Agreement however caused M-Biz shall:

14.2.1 cease providing the Advertisements to Distributors or to the publishers of the Mobile Games;

14.2.2 as soon as reasonably practical:

(a) cease to allow Distributors or request Distributors to cease; or

(b) where applicable request the publishers of the Mobile Games to cease to allow Distributors (and request Distributors to cease):

to offer End Users the ability to access the Advertisements.

14.2.3 upon your request, promptly return or destroy all copies of the Advertisements under M-Biz's control.

14.3 Your obligation to pay the Fees shall continue until the Advertisements are no longer accessed by End Users.

15 Force Majeure

15.1 The obligations of each party under this Agreement shall be suspended during the period and to the extent that that party is prevented or hindered from complying with them by any cause beyond its reasonable control including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or unreasonably increased expense in obtaining

workmen, materials, goods or raw materials in connection with the performance of this Agreement.

- 15.2 In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible (but in no event later than ten (10) business days) to the other party stating the date and extent of the suspension and its cause and the omission to give such notice shall forfeit the rights of that party to claim suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than thirty (30) days, either party may terminate this Agreement immediately upon written notice.

16 Assignment

- 16.1 M-Biz shall be entitled to assign, transfer, charge or deal in any manner with this Agreement or its rights under it or part of it, or purport to do any of the same, or sub-contract any or all of its obligations under this Agreement.
- 16.2 You shall not, without the prior written consent of M-Biz, assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or part of it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

17 Remedies

- 17.1 Unless expressly set forth to the contrary, a party's election of any remedy provided for in this Agreement will not be exclusive of any other remedy available hereunder or otherwise at law or in equity, and all such remedies will be deemed to be cumulative.

18 Freedom to Contract

- 18.1 The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver, and to exercise their rights and perform their obligations under this Agreement.

19 No Partnership

- 19.1 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20 Waiver

- 20.1 If we fail, at any time during the Term, to insist upon strict performance of any of your obligations under this Agreement, or if we fail to exercise any of the rights or remedies to which we are entitled under this Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.
- 20.2 A waiver by us of any default shall not constitute a waiver of any subsequent default.

20.3 No waiver by us of any of the terms and conditions of this Agreement shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

21 Severability

21.1 If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

22 Notices

22.1 Any notice under this Agreement, whether required to be written or otherwise, may be given by us to you by post, personal service, or e-mail to any address you have given us to correspond with you, or by posting it on the Pocket Arena website.

22.2 You must give notices to us by post or personal service or email sent to:

M-BIZ SUPPORT, PO BOX 1381, Kingston, KT1 9HY

Email: legal@mbizglobal.net

22.3 Notice will be deemed received and properly served, twenty-four (24) hours after an e-mail or publication on our website, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

23 Entire Agreement and Previous Contracts

23.1 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

24 Changes to this Agreement

24.1 We may vary this Agreement at any time by posting the changes on the Pocket Arena website, or by sending you a notice by post or by email. Your continuous use of the M-Biz Service or any other M-Biz services connected to this Agreement, after any amendments to this Agreement, will constitute your acceptance of the Agreement as modified.

25 Third Party Rights

- 25.1 You acknowledge and agree that M-Biz Affiliates shall be the third party beneficiaries to this Agreement and that such other companies shall be entitled to directly enforce, and rely upon, any provision of this Agreement that confers a benefit on it (or rights in favour of them)..
- 25.2 Other than as set out in clause 25.1 and in clause 12.5, the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the parties to this Agreement shall have any rights under it. The terms of this Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this Agreement may be rescinded (in each case), without the consent of any third party.

26 Governing Law and Jurisdiction

- 26.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 26.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims). Notwithstanding this, you agree that M-Biz shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.