

M-Biz Terms & Conditions for Pocket Arena

For Content Provider

THIS AGREEMENT IS COMPRISED OF THESE TERMS AND CONDITIONS, THE SELECTIONS YOU MAKE IN THE INITIAL CLICK THROUGH (AND ONGOING 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 ("CONTENT PROVIDER" 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, OR BY USING OR DOWNLOADING THE M-BIZ SDK, 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 a developer of Mobile Games and you wish to customize your Mobile Games with the M-Biz add-on software development kit and have them distributed in accordance with the Agreement (in the context of M-Biz's social gaming platforms and competitions).
- 1.3 Subject to the terms of this Agreement, M-Biz add-on software development kit, does not restrict you from also using other advertisement software development kits in connection with the Mobile Games.

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 at least one transaction generating Net Revenue within a period of 6 months;
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 configuration as well as any applicable order form;
Customized Mobile Game	means the Mobile Game as customized with the Pocket Arena Solution;
Documentation	means any documentation including but not limited to manuals, guidelines, class libraries, language packs, technical specifications and any other information relating to the M-Biz SDK that is supplied by M-Biz to you;
End User	means a person using a Mobile Device to whom a Customised Mobile Game is made available through this 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 Distributors	means any WAP Portal, Android, App store, or website to which M-Biz distributes the Customized Mobile Games;
M-Biz SDK	means the software development kit, source code, class libraries, language packs, the Pocket Arena Solution

	and other Intellectual Property Rights created by or for M-Biz that enable a Mobile Game to be customized and distributed;
M-Biz's Sponsors	means the publishers of advertisements selected by M-Biz;
M-Biz's Sponsors Ads	means any advertisements, offers or promotions displayed by the Pocket Arena Solution from Sponsors selected by M-Biz;
Mobile Device	means any mobile device which is capable of running a Customized Mobile Game;
Mobile Game	means the software application(s) supplied and customized by the Content Provider under the Agreement;
Net Revenue	has the meaning given to in clause 7.3;
Net Revenue Statement	shall have the meaning given to it in clause 7.5(a);
Permitted Purpose	shall have the meaning given to it in clause 9.9;
Pocket Arena Solution	means a solution which links Mobile Games to advertisement engines, social gaming platforms and competitions powered by M-biz;
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 can be distributed to End Users) which you select during the initial click through or ongoing configuration (or in any applicable order form) as amended from time to time;
Your Ads	means any advertisements, offers or promotions from publishers selected by you;
Your Distributors	means any WAP Portal, Android, App store or website, to which you distribute the Customized Mobile games (e.g. Google Play Store or Apple Store) in accordance with the Agreement; and

Your Sponsors means the publishers of advertisements selected by you.

- 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 Creation and Updates of the Customized Mobile Game

- 3.1 M-Biz will make available for download the M-Biz SDK, and associated Documentation to you. You undertake to customize the Mobile Game with the M-Biz SDK and thereby create the Customized Mobile Game strictly in accordance with this Agreement.
- 3.2 M-Biz reserves the right to review or audit the content of any of your Mobile Games (or any other content associated to them) at any time and for any reason.
- 3.3 Notwithstanding clause 3.4 below, M-Biz reserves the right, at M-Biz sole discretion, and for any reason, to:

- (a) exclude one or more of your Mobile Games from this Agreement with or without prior warning; or
 - (b) to terminate this Agreement as it relates to a particular Mobile Game(s) at any time in accordance with clause 13.
- 3.4 In the event that M-Biz, in its sole discretion, considers that the content of any of your Mobile Games (or any other content associated to them):
- (a) is not in accordance the terms of the Agreement; or
 - (b) is not suitable for use with the Pocket Arena Solution,
- then M-Biz may issue a first warning in writing (and at M-Biz's discretion, a subsequent second and a third warning) requiring you to amend the content of the relevant Mobile Game(s) (or any other content associated to them) within a set period of time from the date of issue of the warning. Your failure to comply with any warning may lead to M-Biz excluding the relevant Mobile Games in accordance with clause 3.3(a) and shall entitle M-Biz to terminate the Agreement in accordance with clause 13.4.
- 3.5 You hereby agree that you will not exploit nor use the Customized Mobile Game except in accordance with the terms of this Agreement. For the avoidance of doubt, nothing herein shall be deemed to prohibit you from exploiting the Mobile Game in any manner whatsoever.
- 3.6 You agree to update the Customize Mobile Games promptly with the latest versions and features for the Mobile Games. The terms of this Agreement will govern any updates or upgrades that replace and/or supplement any Mobile Game or Customize Mobile Game.

4 Licence

- 4.1 M-Biz hereby grants to you:
- 4.1.1 the limited, non-exclusive, non-transferable licence during the Term to create the Customized Mobile Game utilising the M-Biz SDK.
- 4.2 M-Biz hereby grants to you the limited, non-exclusive, non-transferable licence during the Term for the Territories to:
- 4.2.1 sub-licence to Your Distributors the right to distribute the Customized Mobile Game;
 - 4.2.2 market, distribute, sub-license, directly or indirectly the Customized Mobile Game to End Users;
 - 4.2.3 distribute, market and use the Customized Mobile Games in connection with M-Biz social gaming platforms and competitions; and
 - 4.2.4 display the M-Biz's Sponsors Ads in connection, or within the Mobile Games.

- 4.3 You specifically agree that you cannot use the M-Biz SDK for any other purpose. All rights not expressly granted to you under this Agreement are reserved to M-Biz and its licensors (which includes M-Biz's Sponsors).
- 4.4 You hereby grant to M-Biz the limited, non-exclusive licence during the Term for the Territories to:
- 4.4.1 sub-licence to M-Biz Distributors the right to distribute the Customized Mobile Game;
 - 4.4.2 market, distribute, sub-license, directly or indirectly the Customized Mobile Game to End Users;
 - 4.4.3 distribute, market and use the Customized Mobile Games in connection with M-Biz social gaming platforms and competitions; and
 - 4.4.4 display the M-Biz's Sponsors Ads in connection, or within the Mobile Games.
- 4.5 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 Customized Mobile Games to End Users for the purposes of the Agreement.
- 4.6 All rights not expressly granted to M-Biz under this Agreement are reserved to you.

5 Your Obligations

- 5.1 You shall provide to M-Biz any information and support as may be reasonably requested by M-Biz for the purposes of the Agreement, including, but not limited, to enable the proper and efficient distribution of the Customized Mobile Game.
- 5.2 You undertake throughout the Term:
- 5.2.1 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;
 - 5.2.2 to notify M-Biz forthwith of any actual, threatened or suspected infringement of M-Biz's (or its licensors) Intellectual Property Rights;
 - 5.2.3 to notify M-Biz forthwith of any claim by any third party that the M-Biz SDK infringes any Intellectual Property Rights of any third party;
 - 5.2.4 to take such reasonable action as M-Biz may direct at the expense of M-Biz in relation to such infringement;
 - 5.2.5 to affix as soon as reasonably practicable such notices to the M-Biz SDK, its packaging and/or advertising as M-Biz may be legally or statutorily required to do;
 - 5.2.6 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;

- 5.2.7 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;
 - 5.2.8 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;
 - 5.2.9 not to tamper with any markings or name plates or other indication of the source of origin of the M-Biz SDK which may be placed by M-Biz on the M-Biz SDK; and
 - 5.2.10 monitor incidences of fraud or illegal, criminal or unlawful activities or any other breaches of security connected to this Agreement and notify them to M-Biz forthwith.
 - 5.2.11 not to distribute the Customized Mobile Games to Samsung or to any other M-Biz Distributors that M-Biz notifies you in writing at any time;
- 5.3 You agree that:
- 5.3.1 You will not sell, license, lease, rent, loan, lend, transmit, network, or otherwise distribute or transfer or deal with the M-Biz SDK, and/or the Documentation in any manner to third parties save as is expressly permitted otherwise in this Agreement; and
 - 5.3.2 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.
- 5.4 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).
- 5.5 You undertake to immediately upon request of M-Biz at any time:
- 5.5.1 forthwith cease customizing the Mobile Games (or any Mobile Game specified by M-Biz) with the M-Biz SDK;
 - 5.5.2 forthwith cease providing the Customized Mobile Games (or any Customized Mobile Game specified by M-Biz) to Your Distributors; or
 - 5.5.3 as soon as reasonably practical cease to allow Your Distributors, and request them to cease, to offer End Users the ability to download the Customized Mobile Games (or any Customized Mobile Game specified by M-Biz).

- 5.6 Promptly send to M-Biz or otherwise dispose of in accordance with the directions of M-Biz all copies of the Customized Mobile Game(s).
- 5.7 You may, where applicable, supply the Customized Mobile Games to M-Biz, or directly distribute the Customized Mobile Games to Your Distributors, as directed by M-Biz and in accordance with the Agreement.
- 5.8 You undertake to comply with the terms and conditions of Your Distributors and with their instructions (provided that such terms and conditions and instructions do not conflict with the contents of this Agreement).
- 5.9 You shall ensure that the Customized Mobile Games that you submit to M-Biz for distribution fully comply with the terms and conditions of M-Biz Distributors and with the Agreement.
- 5.10 You undertake to comply, without limitation, with any applicable legislation, regulations and codes of practice for the purposes of the Agreement.
- 5.11 M-Biz's Sponsors Ads:
- 5.11.1 You agree to display all M-Biz's Sponsors Ads 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 M-Biz's Sponsors Ads. You will be solely responsible for any and all costs you incur for the display of the M-Biz's Sponsors Ads, in accordance with such specifications and for any programming related to the same which you elect to undertake.
- 5.11.2 You shall not modify or alter the content, text or appearance of any M-Biz's Sponsors Ads.
- 5.11.3 You will display the M-Biz's Sponsors Ads 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.
- 5.11.4 Where applicable, M-Biz reserves the right to, but will have no obligation, to review your display of M-Biz's Sponsors Ads and your use of Customized Mobile Games under the Agreement in order to determine any breaches of this Agreement or to ensure your compliance with any applicable law, regulation, legal process, or governmental request.
- 5.12 Your Ads:
- 5.12.1 You shall not use the M-Biz SDK to place Your Ads in the Customised Mobile Game.
- 5.12.2 Notwithstanding clause 5.12.1, you shall be entitled to use other suitable software development kits to place Your Ads in the Mobile Game (e.g. banner ads in the Mobile Games), provided that:

- (a) the software development kit you use is suitable and compatible with the M-Biz SDK and it does not interfere with, or affects in any way the performance of the M-Biz SDK; and
- (b) Your Ads:
 - (i) do not modify or alter the content, text or appearance of M-Biz's Sponsors Ads;
 - (ii) do not interfere with or affect the look and feel of M-Biz's Sponsors Ads; and
 - (iii) are not placed in the same location or space where the M-Biz's Sponsors Ads will be displayed for the purposes of this Agreement.

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 Customized Mobile Games to End Users and/or M-Biz Distributors in accordance with the Agreement.

7 Price and Payment

- 7.1 Unless otherwise agreed by M-Biz in writing, any downloads of Customised Mobile Games by End Users under this Agreement will be free of charge. Your Net Revenue shall be as stated in this clause below.
- 7.2 You shall notify to M-Biz your PayPal account and/or your Bank account information, when you register with us. The name and details that you use for registration, the bank account name (and details) and/or the PayPal account name (and details) must be the same (to prevent fraudulent activity such as money laundering).
- 7.3 "Net Revenue" shall mean the revenue actually received by M-Biz from M-Biz's Sponsors from the sale, use or other disposition of M-Biz's Sponsors Ads displayed on the Customized Mobile Game in accordance with this Agreement less:
 - (a) M-Biz's commission;
 - (b) any agency commissions and/or partner fees;
 - (c) any allowances actually made or taken for returns;
 - (d) promotional allowances;
 - (e) any sales taxes or VAT (or similar taxes), and
 - (f) other costs, if applicable, for consulting, marketing, localizing, technical modifications or technical innovations which may be applied by M-Biz (or by M-Biz's Sponsors) to you from time to time.

7.4 M-Biz shall provide you with access to M-Biz extranet which allows you to access estimated daily sales Advertising report.

7.5 Payment terms:

- (a) Within sixty (60) calendar days after the end of each month during the Term, M-Biz shall make available to you a final statement with electronic format providing information on the Net Revenue generated in the transaction month ("Net Revenue Statement").
- (b) M-Biz will transfer the Net Revenue to your PayPal or Bank account, as applicable, within thirty (30) days from the date that the Net Revenue Statement is available to you, provided that:
 - (i) M-Biz has previously received the relevant revenue from M-Biz's Sponsors; and
 - (ii) the Net Revenue payable for the transaction month is more than \$150. If not, such amount will be held and roll over to the next payment period, until the amount of Net Revenue exceeds \$150.
- (c) In the event that the Net Revenue stays between \$20 and \$150 with no Activity, M-Biz reserves the right to terminate the Agreement immediately in accordance with Clause 13. In the event that M-Biz decides to terminate the Agreement under this Clause (c), M-Biz will pay you the Net Revenue within 30 days.
- (d) In the event that the Net Revenue is less than \$20 with no Activity, M-Biz reserves the right to terminate the Agreement immediately in accordance with Clause 13. The remaining balance of the Net Revenue will be claimed by M-Biz as administration fee.
- (e) We will pay the Net Revenue in accordance with the Agreement by:
 - (i) bank transfer (to the bank account provided by you), if the Net Revenue per month is 5000 USD or above; or
 - (ii) by PayPal only (to the PayPal account provided by you), if the Net Revenue per month is less than 5000 USD.
- (f) You shall be solely responsible for the bank fees or PayPal fees incurred in the transfer of the Net Revenue to you (i.e. any bank or PayPal fees that M-Biz incurs while making the payments to your bank or PayPal account, will be deducted from such payments).
- (g) Payment currency is US dollars (USD, \$) only, unless M-Biz confirms otherwise in writing to you. If your bank account or PayPal account is set as any other currency other than USD, you shall be solely responsible for any currency conversion fee.
- (h) The Net Revenue payments 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.

- (i) In the event that you dispute any payment under the Agreement, you must notify M-Biz in writing fourteen (14) days of the date M-Biz makes the payment to you. After such period, any undisputed payment will be deemed correct and you waive your rights to dispute the payment.
 - (j) In the event that M-Biz makes a payment to you in error for an amount higher than the amount due to you under the Agreement, you shall notify M-Biz of this discrepancy immediately. M-Biz shall be entitled to request from you a full refund of the difference between the amounts due to you and the higher amount sent to you in error and you shall transfer back to M-Biz such amount without delay or M-Biz will be entitled to deduct such amounts in accordance with clause 7.6.
- 7.6 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.
- 7.7 M-Biz reserves the right to change the definition and/or calculation criteria of the Net Revenue 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).
- 7.8 M-Biz will not be liable to, and shall not, make any payments to you under this Clause 7, for any Net Revenue generated from fraudulent actions, criminal or illegal activities carried out by any person, automated program or similar device. M-Biz reserves the right to withhold the payment of your Net Revenue if M-Biz is aware or reasonably suspects of any kind of fraudulent, criminal or illegal activity.
- 7.9 Subject to clause 7.10, 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 to you under this Clause 7. M-Biz cannot accept any responsibility for any tax implications of you receiving any amounts (except for taxes assessed on M-Biz's net income).
- 7.10 Where applicable, M-Biz shall deduct applicable withholding tax required under applicable law.

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, the M-Biz SDK, 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 Mobile Game, which shall include all Intellectual Property Rights, are the sole ownership of you.

9.2 You acknowledge that M-Biz may provide M-Biz's Sponsors Ads for display within the Customised Mobile Games pursuant to this Agreement. You agree that you will use any data (including any usage data and compilations thereof), information or software provided by M-Biz only for the purpose of displaying the M-Biz's Sponsors Ads on the Customized Mobile Game in accordance with this Agreement.

9.3 You acknowledge and accept that the M-Biz SDK and the M-Biz's Sponsors Ads belong to M-Biz (or M-Biz's Sponsors) and that nothing in this Agreement shall act so as to transfer any interest in the M-Biz SDK or in the M-Biz's Sponsors Ads to you. You agree to complete any documents or undertake any action, at M-Biz's cost, reasonably required by M-Biz (or its Sponsors) to confirm the vesting in M-Biz (or where applicable in M-Biz's Sponsors) all rights in the M-Biz SDK or in the M-Biz's Sponsors Ads as mentioned above.

9.4 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 SDK or the M-Biz's

Sponsors Ads including all documentation and manuals relating thereto is and shall remain the property of M-Biz (or M-Biz's Sponsors) 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 (or by M-Biz's Sponsors).

- 9.5 You also acknowledge that such trademarks, copyrights and other rights belonging to M-Biz or to M-Biz's Sponsors 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.
- 9.6 Both parties acknowledge and agree that, to the extent there are Intellectual Property Rights subsisting in the Customized Mobile Game that are separate from the Mobile Game and M-Biz SDK, then these rights shall be owned jointly by the parties and shall only be used or exploited in accordance with the terms of this Agreement.
- 9.7 M-Biz shall not assign, modify, merge, transfer, decompile or reverse-engineer the Mobile Game, 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.
- 9.8 Subject to clause 9.9 and except to the extent that M-Biz cannot prohibit such acts by law, you agree not to translate, adapt, vary, modify, disassemble, decompile or reverse engineer the M-Biz SDK or any other M-Biz software or create derivative works of the same for any purpose (including error correction or any other type of maintenance) without M-Biz's prior written consent.
- 9.9 Notwithstanding clause 9.8, in the case of reverse analysis where permitted by applicable law, you may incidentally decompile the M-Biz SDK only if it is essential to do so in order to achieve interoperability of the M-Biz SDK with another software program or hardware ('Permitted Purpose') and provided the information obtained by you during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party without M-Biz's prior written consent and is not used to create any software which is substantially similar to the expression of the M-Biz SDK nor used in any manner which would be restricted by copyright.
- 9.10 Notwithstanding clause 9.9, you undertake to first consult M-Biz regarding any data you require in order to achieve interoperability or to deduce underlying ideas and principles so that M-Biz may consider making the same available to you (without you having to rely on clause 9.9) subject to the restrictions on disclosure set out in this Agreement.

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 Mobile Game as envisaged by this Agreement;
- 11.1.2 that the marketing distribution and sale of the Customized Mobile Game by M-Biz or by you as permitted by this Agreement and the proper use of the Customized Mobile Game by End Users 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;
- 11.1.3 you will comply with all legal and regulatory requirements from time to time affecting the marketing and distribution of the Customized Mobile Game and the M-Biz’s Sponsors Ads in each of the applicable Territories including any age restrictions or ratings;
- 11.1.4 there are no claims, demands or pending lawsuits involving Intellectual Property Rights in the Mobile Game;
- 11.1.5 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 SDK and/or the Customized Mobile Game;
- 11.1.6 nothing contained in the Mobile Game breaches any laws, regulations or codes of practice or is, without limitation, unlawful, obscene or defamatory.

11.2 If the Mobile Game infringes any of the above-mentioned rights of a third party, then you may immediately at your own expense:

- 11.2.1 obtain the right of continued use of the Mobile Game according to this Agreement in the Territories; or
- 11.2.2 replace the Mobile Game; or

- 11.2.3 modify the Mobile Game in order to eliminate the infringement.
- 11.3 You shall, however, not be liable if the claim results from your compliance with M-Biz's instructions.
- 11.4 M-Biz represents, undertakes and warrants to you that:
 - 11.4.1 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;
 - 11.4.2 it will reasonably comply with legal and regulatory requirements from time to time affecting the marketing distribution and/or sale of the Customized Mobile Game in each of the applicable Territories including any age restrictions or ratings;
 - 11.4.3 the use of the M-Biz SDK in the Customized Mobile Game does not and will in no way violate or infringe any third party Intellectual Property Rights of any person within the Territories.
- 11.5 M-Biz warrants to you that it shall give full particulars to you as soon as M-Biz becomes aware of any actual or threatened claim by any third party in connection with the Mobile Game and/or the Customized Mobile Game;
- 11.6 M-Biz does not warrant that the functions of the M-Biz SDK or that the M-Biz's Sponsors Ads will meet any particular requirements or that all computers or mobile phones are compatible with the M-Biz SDK or the M-Biz's Sponsors Ads 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 SDK or in the M-Biz's Sponsors Ads then you shall notify M-Biz and M-Biz shall take all reasonable steps to remedy those defects or errors.
- 11.7 To the 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 Net Revenue paid to you during the previous twelve (12) months (or if the Agreement was in force for less than 12 months when the liability arose, the Net Revenue paid by M-Biz to you 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. 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 in writing 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 SDK, or we change our business model as it relates to this Agreement; or

(d) If you fail to comply with a warning as specified in clause 3.4.

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

- 13.5.1 the provisions of clause 14 below shall apply with respect to that Mobile Game; and
- 13.5.2 there will be no effect on any other Mobile Games.

14 Effects of Termination

14.1 On the termination of this Agreement for any reason:

- 14.1.1 subject to clause 14.3 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.

14.2 Upon termination of this Agreement however caused you shall:

- 14.2.1 upon request of M-Biz, promptly send to M-Biz or otherwise dispose of in accordance with the directions of M-Biz all copies of the Customized Mobile Game, the M-Biz SDK, the Documentation and Restricted Information of M-Biz or its licensors (or M-Biz's Sponsors) together with any physical or electronic documents or files incorporating any of the above.
- 14.2.2 forthwith cease providing the Customized Mobile Game to Your Distributors or directly to End users;
- 14.2.3 as soon as reasonably practical cease to allow Your Distributors, and immediately request them to cease forthwith, to offer End Users the ability to download the Customized Mobile Game.
- 14.2.4 upon M-Biz request, promptly return or destroy all copies of M-Biz SDK, Documentation and other information supplied by M-Biz to you.

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

- 14.3.1 forthwith cease providing the Customized Mobile Game to M-Biz Distributors;
- 14.3.2 as soon as reasonably practical cease to allow M-Biz Distributors, and request them to cease, to offer End Users the ability to download the Customized Mobile Game.
- 14.3.3 upon your request, promptly return or destroy all copies of the Mobile Game.

14.4 M-Biz's obligation to pay the Net Revenue shall continue until M-Biz no longer receives the Net Revenue in respect of the Customized Mobile Game(s).

14.5 The parties agree that the Customized Mobile Game cannot be used for any purpose after termination of this Agreement without the prior written approval of the other party.

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 SDK 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.