

# The Mobile Gamer: Reseller Affiliate Agreement

This document sets out the terms on which you will resell Mobile Games for The Mobile Gamer. Your acceptance of these terms will create a legally binding agreement between you and us.

There is a list of words and phrases that carry specific meanings in Schedule 1.

## **Our agreement**

We appoint you as a non-exclusive agent of ours to market the Product in the Territory.

You are not permitted to assign or sub-contract any of your rights or obligations under this Agreement nor to appoint any sub-agent to perform your obligations. If you attempt to do so, we may terminate your appointment.

## **Duration**

Your appointment is open ended and shall continue until terminated by either party giving to the other not less than one months' written notice expiring at any time after that date, but shall be subject to earlier termination as provided in this Agreement.

## **Your obligations**

You shall:

use your best endeavours to promote and extend the sales of the Product throughout the Territory;

promptly inform us of any facts or opinions of which you become aware that are likely to be relevant in relation to the commercial exploitation of the Product and which are advantageous or disadvantageous to our interests;

at all times conduct your business in a manner that will reflect favourably on the Product and on our good name and reputation; not participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of the Product or The Mobile Gamer or other practices which may be detrimental to the Product, The Mobile Gamer or the public interest during the continuance of this Agreement (whether alone or jointly and whether directly or indirectly);

not make any promises or representations or give any warranties, guarantees or indemnities in respect of the Product in favour of Licensees;

use our trade marks and trade names only in the registered or agreed style and only in connection with the resale of the Product

## **Our obligations**

We shall:

provide you with such marketing and technical assistance as we may in our discretion consider necessary to assist you with the promotion of the Product;

give you reasonable advance written notice of any change in or modification of the Product or of our intention to discontinue licensing or sub-licensing the Product in the Territory;

provide you with all information and assistance necessary to enable you properly to perform your obligations under this Agreement in respect of any modified, enhanced or replacement version of or addition to the Product.

### **Warranties and liability**

The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

Notwithstanding anything else contained in this Agreement, we shall not be liable to you for loss (whether direct or indirect) of profits, business or anticipated savings nor for any indirect or consequential loss or damage whatsoever and whether arising from negligence, breach of contract or howsoever.

### **Royalties and payments**

For each unit of the Product ordered, we shall issue that Product on a suitable medium. The Product will have a unique licence associated with it. All payments are due on receipt by you of the invoice.

Where under this Agreement any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.

The provisions of this clause shall survive the termination of this Agreement.

### **Property rights**

The Product and all materials relating to the Product and the intellectual property rights in it or relating to it are and shall remain the property of us and all copies of it in your possession, custody or control shall (to the extent that they are not exhausted by proper use) be returned to us or otherwise disposed of by you as we may from time to time direct.

You shall notify us immediately if you become aware of any unauthorised use of any of the Product or any of the intellectual property rights in it or relating to it and will assist us (at our expense) in taking all steps to defend our rights in it.

You shall not use, reproduce or deal in the Product except as expressly permitted by this Agreement.

The provisions of this clause shall survive the termination of this Agreement.

### **Confidentiality**

You shall not without our prior written consent divulge any part of the Information to any person except:

your own employees who need to know it;

Licensees and prospective Licensees (in each case strictly in accordance with these terms);  
and

your auditors, professional advisers and any other person having a right, duty or obligation to know the your business and then only in pursuance of that right, duty or obligation.

You undertake to ensure that these persons are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to us. You shall indemnify us against any loss or damage that we may sustain or incur as a result of you failing to comply with such undertaking.

You shall promptly notify us if you become aware of any breach of confidence by any person to whom you divulge any part of the Information and shall give us all reasonable assistance in connection with any proceedings that we may institute against such person for breach of confidence.

The obligations as to confidentiality set out in these terms shall remain in full force and effect notwithstanding any termination of this agreement.

### **Reservation of rights**

We reserve the right:

to exploit the Product ourselves in the Territory by such means as we may think fit including, without limitation, by the appointment of other resellers;

to modify, enhance, replace or make additions to the Product in any way whatsoever as we may in our discretion determine;

to discontinue licensing or sub-licensing the Product in the Territory (whereupon this Agreement shall automatically terminate); and

to require you either not to use or to cease to use any advertising or promotional materials in respect of the Product that we consider not to be in our best interests.

### **Termination**

Notwithstanding anything else contained in this Agreement, it may be terminated:

by us forthwith on giving notice in writing to you if:

the control of you shall be transferred to any person or persons other than the person or persons in control of you at the date of this Agreement;

you do not achieve the minimum level of commission as defined by "Active Affiliate" in Schedule 1 below;

you shall fail to remit to us in any month equal to or in excess of the invoices sent or such other targets as may be agreed between us and you from time to time; or

any audit carried out pursuant to this agreement shall reveal a deficiency of fifteen per cent or more in the relevant period;

by either your or us forthwith on giving notice in writing to the other if:

the other commits any material or persistent breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within thirty days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate);

the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order.

### **Effect of termination**

On the termination of this Agreement all rights and obligations of the parties under this Agreement shall automatically terminate except

for such rights of action as shall have accrued prior to such termination and any obligations which expressly or by implication are intended to come into or continue in force on or after such termination;

that the terms of this Agreement shall remain in full force and effect to the extent and for the period necessary to permit you properly to perform its continuing obligations under each Standard Licence subsisting at the date of termination (and your obligations under the remainder of this clause shall be deferred during such period as those continuing obligations subsist).

You shall at your own expense forthwith return to us or otherwise dispose of as we may instruct all promotional materials and other documents and papers whatsoever sent to you and relating to our business (other than correspondence between the parties), all property of ours and all copies of the Product and materials relating to the Product, being in each case in your possession or under its control.

You shall cause the Product to be erased from all computers of your or under your control and shall certify to us that you have done so.

### **Releases and waivers**

The rights, powers and remedies conferred on either you or us by these terms and remedies available to either of us are cumulative and are additional to any right, power or remedy which we may have under general law or otherwise.

Either of us may, in whole or in part, release, compound, compromise, waive or postpone, in our absolute discretion, any liability owed to us or right granted to us in these terms without in any way affecting our rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

No single or partial exercise, or failure or delay in exercising any right, power or remedy by either of us shall constitute a waiver by us of, or impair or preclude any further exercise of, that or any right, power or remedy arising under these terms or otherwise.

### **Entire agreement and variation**

This Agreement sets out the entire agreement and understanding between you and us in respect of the subject matter of this Agreement. The terms of our quotation are valid except to the extent that they conflict with these terms, in which case these terms shall take precedence.

No purported variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of you and us.

### **Force majeure**

Neither party shall be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled (subject to giving the other party full particulars of the circumstances in question and to using its best endeavours to resume full performance without avoidable delay) to a reasonable extension of time for the performance of such obligations.

### **Notices**

Any notice to a party under this Agreement shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery or facsimile to the address of the party as set out on page 1 of this Agreement or as otherwise notified in writing from time to time.

A notice shall be deemed to have been served:

at the time of delivery if delivered personally;

two business days after posting in the case of an address in the United Kingdom and four business days after posting for any other address; or

two hours after transmission if served by facsimile on a business day prior to 3pm or in any other case at 10 am on the business day after the date of despatch.

Neither party shall attempt to prevent or delay the service on it of a notice connected with this Agreement.

**Entire agreement and conflicts**

This Agreement sets out the entire agreement and understanding between the parties in respect of the subject matter of this Agreement.

This Agreement supersedes any heads of terms or letter of intent between us and you or any member of any corporate group to which you belong.

**Exclusion of third party rights**

Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

**Governing law and jurisdiction**

This Agreement shall be governed by and construed in accordance with English law. Both you and we irrevocably submit for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England.

## Schedule 1

### Definitions and interpretation

In this Agreement, unless the context otherwise requires, the following words have the following meanings:

**"this Agreement"**

the agreement formed by the acceptance by you and us of these terms (including any schedule or annexure to it and any document in agreed form);

**"business day"**

a day (other than a Saturday or a Sunday) on which clearing banks are open for business in the City of London;

**"Software Licence Agreement"**

a software licence in the form set out in schedule 2 or in such other form as The Mobile Gamer may from time to time direct or approve in writing and as it may be amended from time to time;

**"intellectual property rights"**

patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright, design rights, know-how, confidential information, trade and business names and any other similar protected rights in any country;

**"Licensee"**

a person situated in the Territory who is a party to an Standard Licence with us in respect of the Product;

**"Licensee fee"**

10% of revenue generated by the sales.

**"Product"**

Mobile Games and the internet site and delivery technology and additions to it provided by us and made available to the Reseller from time to time pursuant to this Agreement;

**"Territory"**

Worldwide as supported by the Payment platform, PayPal.com;

**"Active Affiliate"**

An affiliate with active links around the internet to The Mobile Gamer and generating more than £40 per calendar month in payable commission;

In this Agreement, unless the context otherwise requires:

words in the singular include the plural and vice versa and words in one gender include any other gender;

a reference to any party includes its successors in title and permitted assigns; and

the headings are for convenience only and shall not affect the interpretation of this Agreement;