

MOBKOI LTD  
TERMS AND CONDITIONS

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY BEFORE USING THE SERVICE OFFERED BY MOBKOI. USING, THE MOBKOI MOBILE ADVERTISING SERVICE INDICATES THAT YOU ACCEPT THESE TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE DO NOT USE, THE MOBKOI MOBILE ADVERTISING SERVICE.

1. Scope of the Agreement

1.1 These terms and conditions are incorporated into every Contract entered into between MOBKOI Ltd, 145 City Road, London, EC1V 1LP, and the Publisher and/or the Advertiser.

1.2 These terms and conditions apply to all the Services offered or provided by MOBKOI for publishers. MOBKOI will provide the Services only on the basis of these terms and conditions. These terms and conditions shall apply exclusively and shall also apply if MOBKOI Services despite of knowledge of different or contrary terms, custom, practice or course of dealing. MOBKOI objects to any counter confirmation, counter offer or any other reference of the contractual partner to its terms and conditions.

1.3 Differing or contrary terms and conditions shall not apply, except if expressly agreed upon in writing.

1.4 Any amendments or additions to this contract must be in writing. Notices delivered via facsimile or other means of electronic transmission shall satisfy the writing requirement. The same shall apply to any other declarations of the parties that are necessary for the substantiation, assertion, or exercise of their rights, in particular notice of defects, setting of deadlines, or unilateral notices of termination.

1.5 For the purposes of interpreting this agreement the following definitions shall be used:

- Advertiser- An Advertiser is a party, which wishes to advertise on the Publisher s mobile and digital media using MOBKOI services in accordance with these terms and conditions.
- Advertising Materials- Every form of mobile advertising content material (e.g. video, banner, text, flash animation and others) of the Publisher on which the Advertisers advert may appear.

- Clients- Advertisers and publishers will be called as clients in these terms and conditions.
- Contract or Insertion order (IO)- the contract between MOBKOI Limited and the Client (incorporating these terms and conditions) for the provision of the Services.Mobile Advertising Sites means the websites, mobile or digital media or other applications containing the Advertising Materials Platform - The online platform self service marketplace which enables an Advertiser to create and manage campaigns on the Advertising Materials of Mobile Advertising Sites supplied by the Publisher.
- Publisher - A Publisher is a party who is the, owner or operator of the Mobile Advertising Sites on which advertising space is made available to MOBKOI Mobile Advertising in accordance with these terms and conditions and then brokered to Advertisers by MOBKOI Mobile Advertising.
- Services- The use of the Publisher's sites to host Advertising Materials via MOBKOI Mobile Advertising services.

1.6. These terms and conditions apply solely to business persons.

## 2. Registration

2.1. To use the services of MOBKOI Mobile Advertising, the client must accept an insertion order, by doing so the client confirms these terms and conditions.

2.2. The clients provide true and complete information. To keep the information true and complete, the client must update the information promptly.

## 3. Formation of the contract

3.1. MOBKOI Mobile Advertising facilitates the sale and purchase of the Publisher's Mobile Advertising Site and or Mobile Application through Mobkoi's services.

3.2 The Contracts will be concluded separately between MOBKOI Mobile Advertising and the publisher and between MOBKOI and the advertiser. No contract will be entered into directly between the Publisher and an Advertiser.

3.3 Acceptance of any Insertion Order from the Client constitutes an offer by Mobkoi to provide the Services subject to these terms and conditions.

#### 4. Data protection

4.1. MOBKOI Mobile Advertising is entitled to collect, process and use personal data exclusively in compliance with the applicable statutory provisions governing the protection of data.

4.2. MOBKOI Mobile Advertising will use the contact data also to contact Publishers by e-mail in connection with their network-participation of MOBKOI Mobile Advertising. The use of this data by clients for other purposes, in particular commercial purposes, is prohibited. MOBKOI Mobile Advertising reserves the right to use and process data and information for another purpose only if the client has expressly agreed to this being done or it is within legal within the statutory provisions governing the protection of data.

#### 5. The Advertiser

5.1. The Advertiser shall produce content including (without limitation) text link banners, video and graphics for display on mobile display devices on which the Publishers sites are made available.

5.2 All Information provided by the Advertiser in connection with the Advertising Material created by the Advertiser should be complete, accurate and up to date. If any such information provided should be or become inaccurate the Advertiser shall register any required change on the online-system of MOBKOI Mobile Advertising as soon as reasonably possible and in any event no later than seven days after it becomes aware of such inaccuracy.

5.3. The Advertiser is responsible for ensuring that all Advertising Material supplied by it, shall comply with all relevant applicable legal obligations (including without limitation all statues, regulations and orders) and all applicable codes of practice, guidelines and principles.

5.4 Without prejudice to the obligations contained in clause 5.3 the Advertiser shall at all times comply with the MOBKOI Mobile Advertising content guidelines.

5.5 The Advertiser must not provide MOBKOI Mobile Advertising with any Advertising Material which:

5.5.1 may harm the goodwill or reputation of MOBKOI Mobile Advertising or the Publisher or bring MOBKOI Mobile Advertising or the Publisher into disrepute including any material which is indecent, obscene, illegal,

defamatory, discriminatory, misleading, harmful or offensive or is otherwise in violation of any laws or regulations to which MOBKOI Mobile Advertising, or the Publisher is subject or any right of any third party. If MOBKOI Mobile Advertising in its absolute discretion, considers any Advertising Material to be in breach of this clause it may in its absolute discretion remove any such Advertising Material from the platform forthwith

5.5.2 infringes the intellectual property rights or any other rights of any third party (in particular copyrights, trademark rights, personal rights or similar rights).

5.6. The Advertiser is fully responsible for the content of the Advertising Material provided to MOBKOI Mobile Advertising. The Advertiser guarantees that he is duly authorised to use all the company and product names, trademarks, brands, logos and pictures (hereinafter referred to as "Images") contained in the advertising material and grants MOBKOI Mobile Advertising the right to use these Images within the scope of delivering the service.

5.7. The Advertiser warrants and undertakes that none of the content or any other data which it shall communicate to MOBKOI Mobile Advertising shall include any computer virus, routine, worm, time bomb, trojan or any other such device or mechanism of misuse.

5.8. The Advertiser shall indemnify MOBKOI Mobile Advertising against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by MOBKOI Mobile Advertising arising out of or in connection with any breach by the Advertiser of clauses 5.3 -5.7 (inclusive).

5.9. MOBKOI Mobile Advertising can use the respective names and logos of the contractual party as a reference for the advertising purpose in all media.

5.10. The Advertiser shall communicate exclusively through MOBKOI Mobile Advertising and shall make no direct contact with any Publishers.

5.11. For the period of providing the Services the Advertiser grants MOBKOI Mobile Advertising all necessary rights of use pertaining to the Advertising Materials.

5.12. By supplying the content for the Advertising Material to MOBKOI Mobile Advertising the Advertiser grants the Publisher the right of use for the advertising content for the time of the agreed advertising period.

## 6. The Publisher

6.1 Publisher has to direct to Company and not to any advertiser or publisher, as the case may be, all communications regarding any matter arising out of Publishers use of the Services.

6.2 The Publisher shall not take any actions which might damage the good name and/or business of MOBKOI Mobile Advertising, or any Advertisers. The Publisher shall be responsible for ensuring the availability, functionality and content of the Publisher s Mobile Advertising Sites at all times.

6.3 Automatic generation of views, clicks, leads or sales by means of technical appliances and similar methods resembling fraud is forbidden. Accounts belonging to Publishers, who engage in prohibited or fraudulent activities will be permanently removed from the MOBKOI Mobile Advertising network.

6.4 No remuneration will be paid to Publishers in respect of fraudulent or invalid impressions or clicks. If after payment has been made to the Publisher it is subsequently discovered that any element of the payment related to prohibited or fraudulent activities, MOBKOI Mobile Advertising shall deduct the remuneration paid in respect of any such prohibited or fraudulent activities from future payments or to reclaim any sums unduly paid. Any such deduction or repayment shall be without prejudice to any claim which MOBKOI Mobile Advertising may have against the Publisher in respect of such prohibited or fraudulent activities.

6.5 Any misuse of the ad-code on mobile advertising space not meant for this purpose is forbidden.

6.6 The Publisher is not allowed to modify or change the ad-code provided by MOBKOI Mobile Advertising or to delete or in any way modify the tracking tags that are included in the code.

6.7 The Publisher undertakes to implement the ad-code only in those Mobile Advertising Sites and Advertising Materials, which have been specifically cleared by MOBKOI Mobile Advertising.

6.8 Any infringement of the obligations underlying these Terms and Conditions, breach of contract or misuse will lead to the blocking of the Publishers accounts immediately. In such a case the Publisher shall after receiving a notice remove any advertising from the relevant Mobile Advertising Sites within 24 hours if it is called upon to do so by MOBKOI

Mobile Advertising. The Publisher is enabled to provide a statement and evidence within one month that the chosen form of advertising has been in accordance with these Terms and Conditions.

6.9 The Publisher warrants and undertakes that every element of the Publishers Mobile Advertising Sites together with the method of publication of the Advertiser s adverts on the Mobile Advertising Sites of the Publisher will in each case:a) comply with and shall not infringe all relevant statutes, regulations and other legal requirements and all relevant codes of practice, guidelines, principles etc applicable to the website;b) not display any defamatory, libellous immoral, illegal, defamatory, misleading, harmful or offensive content or any content which is otherwise in violation of any laws or regulations;c) not promote, portray or endorse violence, racism, or discrimination against any sector of society;c) not display any pornographic, indecent or obscene content;d) not infringe the intellectual property rights (including ,without limitation copyright, trade marks, design right, database rights or patents) of any third parties;e) not infringe any protected rights of third parties, including (without limitation) business secrets or confidentiality agreements;f) not include anything which may damage the good name or the esteem of the MOBKOI Mobile Advertising brand or its business operations and may in the event of any breach of this clause in its absolute discretion terminate the Contract with any Publisher forthwith.

6.10 The Publisher warrants and undertakes that it has the proper authorisation for access to the Mobile Advertising Sites and Advertising Materials which it registers with MOBKOI Mobile Advertising, and that it is duly authorised to implement the ad-code.

6.11 Each of the Publisher s media upon which adverts are to appear must be enabled by MOBKOI Mobile Advertising. MOBKOI Mobile Advertising reserves the right to reject any proposed media of the Advertiser.

6.12 Advertising must not be placed on empty sites without site content, pure link lists or media that have not obtained prior acceptance.

6.13 The Publisher shall at all times comply with the MOBKOI Mobile Advertising Publishing guidelines.

6.14 For the purpose of control and optimisation of quality standards (in particular, without limitation, copyrights, trademark rights, personal rights or similar rights) MOBKOI Mobile Advertising may employ the necessary, appropriate number of ad-impressions on the registered media freely and exclusively.

6.15 The Publisher shall indemnify MOBKOI Mobile Advertising against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by MOBKOI Mobile Advertising arising out of or in connection with any claim brought or threatened against MOBKOI Mobile Advertising by any third party (including any claim brought by an Advertiser) arising out of any breach by the Publisher of the provisions contained in this clause 3.

## 7. Liability

7.1. Payment liability: Publisher agrees to hold Mobkoi Mobile Advertising solely liable for payments for Ads place in accordance with an IO. Publisher shall not hold liable any Advertiser or its Media Agency acting as an agent. Publisher understands that Advertiser is Agency's disclosed principal and Agency, as agent, has no obligations relating to such payments, either joint or several.

7.2. MOBKOI Mobile Advertising shall be held without liability for any damages, losses or other failures caused a) by the content of third party websites; orb) by a malfunction of software or hardware of participants, orc) by their incompatibility with the services of MOBKOI Mobile Advertising, ord) by lack of availability or technical problems with the internet, ore) by false client data.

7.3. The liability of MOBKOI Mobile Advertising shall be limited to grossly negligent and intentional behaviour. In any intentional or negligent breach of essential contractual obligations shall be liability. The liability for damages regarding the breach of essential contractual obligations is limited to the amount of the typically foreseeable damage or loss. There is no liability for the slightly negligent breach of accessory contractual obligations.

7.4. The above exclusions and limitations of liability do not apply to claims for damages based on the intentional or negligent injury of life, body and health. Additionally, the liability limitations do not apply to claims arising from mandatory statutory liability, especially under product liability law.

7.5 Should the Publisher suffer loss or damage because of misconduct on the part of the Advertiser, MOBKOI Mobile Advertising shall subject to being fully indemnified by the Publisher in respect of all costs (including its own internal costs and legal fees) and liabilities incurred by MOBKOI Mobile Advertising in respect of the same take any reasonable action requested by the Publisher on behalf of the Publisher in respect of that misconduct by the Advertiser. The obligation on the Publisher to indemnify MOBKOI Mobile

Advertising in respect of all cost and liabilities shall be without prejudice to the success or otherwise of any action taken by MOBKOI Mobile Advertising on behalf of the Publisher. If any sum is recovered from the Advertiser in respect of the relevant misconduct then any surplus after deducting all such costs and liabilities of MOBKOI Mobile Advertising in connection with such recovery from the Advertiser shall be paid to the Publisher.

7.6. MOBKOI Mobile Advertising cannot guarantee a minimal number of impressions and/or clicks to the Publisher.

7.7. MOBKOI Mobile Advertising shall provide the Publisher with access to reporting information. The Publisher shall use such information reporting system only for the purposes for which it is made available to him and shall only communicate its password to such of its employee as require access to the reporting system in connection with this Contract.

## 8. Remuneration

8.1. The publisher is entitled to payment under following accumulative requirements:

- a) a successful business transaction between a customer and an Advertiser is caused by the Advertising space provided by the Publisher;
- b) the business transaction has been recorded by MOBKOI Advertising Mobile;
- c) there exists no fraud or other malpractice.

8.2 The amount of remuneration earned through advertising by a Publisher shall be calculated by MOBKOI Mobile Advertising at the end of each calendar month will be paid out after 30 days from the end of the calendar month in each case based on the amounts which have been received by MOBKOI Mobile Advertising from the Advertiser. Payment will be made only to such bank account as has been nominated by the Publisher for such purposes. The Publisher will cover all the charges connected with such payment (e.g. charged by the bank or online settlement systems).

8.3. If the remuneration due to the Publisher in any calendar month does not exceed 50 Euro, MOBKOI Mobile Advertising has the right not to pay this amount immediately but to carry it over to the next payment date on which the amount to be paid (including amounts held over in accordance with this clause) does exceed 50 Euro.

8.4. In the case of termination of the contract by MOBKOI Mobile Advertising or by the Publisher, MOBKOI Mobile Advertising will pay the outstanding amounts to the Publisher within 90 days of termination. If on termination of this Agreement for any reason the amount to be paid out to

the Publisher is lower than 50 Euro MOBKOI Mobile Advertising has the right to charge a handling fee of 5 Euro. The fee will be deducted from the amount to be paid.

8.5 The Publisher shall be and will remain liable in respect of all and any claims arising from any act or omission of the Publisher at any time during the term of this Agreement.

8.6 The Publisher undertakes to cover all the will cover all the applicable taxes and state charges connected to his participation in this platform.

8.7 All payments shall be made according to MOBKOI Mobile Advertising data. No other measurements or statistics will be accepted.

8.8 The amounts due to the Publisher will be paid out in different currencies. The currencies in which payment will be made will reflect the currencies of the Advertiser's settlements. The Publisher will be responsible for any resulting currency conversion charges.

8.9 Payment to the Publisher will only be made when MOBKOI Mobile Advertising has received payment from the respective Advertiser. No payment shall be due from MOBKOI Mobile Advertising to the Publisher until such payment has been received from the Advertiser. In the cases when the Advertiser fails to make payment for any reason MOBKOI Mobile Advertising has the right to refuse settlement with the Publisher.

8.10 No interest shall be paid on the amount on the account of the Publisher.

## 9. Termination

9.1 The Publisher or MOBKOI Mobile Advertising can terminate the contractual relationship at any time without providing reasons, by sending an appropriate written information to [contact@mobkoi.com](mailto:contact@mobkoi.com). In such a case the agreement is considered to be terminated after ten days from receipt of such notice by the other party.

9.2 The parties have the right to terminate the contract for cause in an exceptional case. Such a case is given if:

9.2.1 a party commits a material breach of the Contract; or

9.2.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or

9.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge; or

9.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

9.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

9.2.6 the other party ceases, or threatens to cease, to trade; or

9.2.7 there is a change of control of the other party; or

9.2.8 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or

9.2.9 an Event of Force Majeure continues for more than 30 days.

9.3 Any business transactions up until the termination will be processed and compensation will be paid out. In a case of termination because of exceptional circumstances, fraud or malpractice, the liquidated damages will be deducted from the Publisher Account.

## 10. Changes

10.1 MOBKOI Mobile Advertising is entitled to modify terms with minor effect on the implementation of the contract at any time without giving any reason by complying with a notice period of four weeks after the client have received a written notice whether by post, fax or email. The notice points out expressly the possibility of an objection and the following consequences. If the client does not object the modification, the terms and conditions are considered to be accepted. In such a case the contract continues with the modified terms and conditions. Does the client object within four weeks, the request of MOBKOI has been rejected. In such a case the contract continues with the unmodified terms and conditions.

10.2 If the Publisher wishes to make any change to any element of any Mobile Advertising Site after that Mobile Advertising Site has been approved

by MOBKOI Mobile Advertising, MOBKOI Mobile Advertising has the right to suspend the changed site and/or to withdraw the previously issued acceptance.

## 11. Severability Clause

11.1 If any provision of the Contract and of these terms and conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

11.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties. The same applies in the event that the Agreement contains any omissions.

## 12. Other provisions

12.1 The Contract 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 laws of England and Wales.

12.2 The parties agree that the place of performance and exclusive place of jurisdiction for all disputes or claims arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims and for check and exchange disputes) shall be the jurisdiction of The Court of England.