

**Terms and Conditions for the provision of advertising services within the “itsmy.biz Mobile Social Advertising Network” – itsmy® a brand of Gofresh (“Terms and Conditions”)**

**as of August 2008**

**These Terms and Conditions are agreed upon by and between Gofresh GmbH, Lilienstr. 7, 81669 Munich, Germany (“Gofresh”) and all advertisers, agencies and other companies who are buying advertising within the “itsmy.biz Mobile Social Advertising Network”, (“Advertiser”).**

**Gofresh and Advertiser hereby agree as follows:**

**1. Scope**

- 1.1 Gofresh provides Advertiser with access to advertising opportunities within the “itsmy.biz Mobile Social Advertising Network” (“Platform”) by means of banners, text links, TV spots, microsites, private messaging etc. (“Services”) subject to these Terms and Conditions. The details of the respective Services provided by Gofresh shall be agreed on in an Insertion Order (“Insertion Order”). Any Insertion Order shall be subject to these Terms and Conditions (Insertion Order and Terms and Conditions collectively referred to hereinafter as the “Agreement”). Terms or conditions of the Advertiser shall not apply and such terms and conditions are hereby rejected.
- 1.2 In cases where the Advertiser is an advertising agency acting not in its own name but on behalf of a third party, advertiser ensures that he has obtained all rights necessary for placing the insertion order from the third party and is able to prove this on request.

**2. Services provided by Gofresh**

- 2.1 Gofresh shall insert advertising material provided by the Advertiser (“Content”) in mobile internet pages on the itsmy.biz Platform. If not otherwise agreed in the Insertion Order, Gofresh may at its discretion adjust the Content in terms of format, size and shape to comply with the design or look-and-feel of the Platform.
- 2.2 Unless otherwise agreed in the Insertion Order, Advertiser may not demand specific placement of the Content on the Platform.

**3. Advertiser's obligations**

- 3.1 Advertiser shall in due time and by appropriate technical means provide Gofresh with all Content and respective technical information necessary to run Advertiser’s Content on the Platform. In cases where Content will not be stored on a Gofresh-Server, the Advertiser shall provide all technical information necessary to establish the integration of the Content on the Platform.

- 3.2 With respect to the entire Content provided by the Advertiser, the Advertiser hereby warrants that it is the owner of the corresponding intellectual property rights or is entitled to use and transfer rights of use (in particular for publication, reproduction and dissemination) to the extent necessary and required under these Terms and Conditions and any applicable Insertion Order without the infringement of third-party rights. The Advertiser is aware that in mobile internet content can be saved, passed on and duplicated. Content breaching third party rights – e.g. copyright, performance and commercial property rights such as brands, patents, registered designs, design rights and also other rights, for example name and personality rights - and Content that is illegal, false, deceptive, misleading or violates criminal or unfair competition law is prohibited.
- 3.3 Furthermore Advertiser warrants that the Content and the website including any WAP site and/or any other form of mobile accessible content to which the end-user will be directed if she/he clicks on the corresponding advertising (“Website”) does not relate to any contents of the list of restrictions of Gofresh which is part of every Insertion Order. Advertiser also warrants that the Content and the Website will be free of viruses, Trojan horses, trap doors, back doors, Easter eggs, worms, time bombs or other computer programming routines that may potentially damage, interfere with, intercept, or expropriate any system data or personal information.
- 3.4 The Advertiser agrees that Gofresh is not responsible for any aspect of Advertiser’s Content or Website nor for any content or websites of Third Parties.
- 3.5 In cases where the Advertiser is in breach of the above clauses, Gofresh reserves the right to refuse to provide the Services and/or to suspend the provision of the Services. Only if it is just and reasonable, Gofresh shall give advertiser a warning prior to such refusal or suspension of Services. The Advertiser may in any case change Content or Websites in order to comply with this Agreement. For the time of discontinuation of the Services due to such circumstances, Gofresh shall nevertheless be entitled to payments based on traffic that could have been reasonably expected for this period or any other indices agreed on in the Insertion Order. However, in order to avoid such payment for the time of discontinuation of the Services, the Advertiser may ask Gofresh to canvass third party advertisement as a replacement for this period of time. In such a case, Gofresh shall use reasonable efforts to achieve such replacement but does not guarantee in any way that such replacement will be found.
- 3.6 Upon the agreed date of going live of the Services, the Advertiser shall declare the Services to be as specified in the Insertion Order without delay (“Acceptance”). In the event that the Advertiser does not explicitly declare Acceptance, the Services shall be deemed to be accepted one day after the actual date of going live.

#### **4. Payment**

- 4.1 The Services shall be payable in accordance with the criteria (e.g. cost per insertion, cost per impressions, cost per action, cost per click etc.) set forth in the applicable Insertion Order (“Payment”). For first orders advance payment is necessary.
- 4.2 If withholding taxes or any other taxes are imposed by any jurisdiction on the Services, the Advertiser shall pay such taxes to ensure that Gofresh receives the full amount without any offset or deduction from Payments.
- 4.3 Except as expressly set forth in an Insertion Order, all Insertion Orders are non cancelable. In the event that the Advertiser is in default with any of its Payments, Gofresh shall be entitled to suspend the provision of any Services provided by Gofresh pursuant to these Terms and Conditions.

#### **5. Warranty**

- 5.1 Gofresh shall have the right to rectify any defects of the Services. Only if the second attempt to rectify a defect has not been successful, the Advertiser shall have the right to claim any other remedies, however, subject to the limitations of Gofresh’s liability set forth in Section 6 below.
- 5.2 As a general rule, warranty claims shall be time-barred one year after Acceptance. However, in the event of damage claims based on intent or gross negligence, breach of material contractual obligations that jeopardize the purpose of the Insertion Order (“Cardinal Duties”) and damage to fatalities, personal injury or impairment of health the statutory warranty period shall apply.

#### **6. Liability and limitation of liability / Indemnification**

- 6.1 Gofresh shall be liable to the Advertiser in the case of willful misconduct and gross negligence and also in the event of breach of Cardinal Duties. Otherwise, liability for compensation is hereby excluded – regardless of the legal grounds.
- 6.2 In so far as Gofresh is liable for breach of Cardinal Duties without there being any willful misconduct or gross negligence, Gofresh's liability shall be limited to the scale expected given the known circumstances pertaining upon such occurrence at the time the relevant Insertion Order was concluded and to an amount not exceeding the total amount actually received by Gofresh as remuneration from the Advertiser under the relevant Insertion Order.
- 6.3 Gofresh shall not be liable for consequential or indirect losses, in so far as they are not due to gross negligence or willful misconduct.

- 6.4 In so far as Gofresh's liability is excluded by the above clauses, this shall also apply to Gofresh's employees and executives.
- 6.5 The limitations of liability shall not apply in the event of fatalities, personal injury or impairment of health or for liability under the German Product Liability Act.
- 6.6 In so far as third parties raise claims against Gofresh in conjunction with the insertion of Content on the Platform or the Website linked to it (including but not limited to any Content infringing third parties intellectual property rights or unfair competition law), the Advertiser shall hold Gofresh, its officers and employees free and harmless of such claims upon first request. In so far as such infringement of rights result in court proceedings, the Advertiser shall also bear the resulting costs incurred by Gofresh, in particular court and attorney fees.

## **7. Term / Termination**

- 7.1 These Terms and Conditions shall be in effect until replaced by an updated version on [www.itsmy.biz](http://www.itsmy.biz)
- 7.2 These Terms and Conditions shall continue to apply to the Services specified in any Insertion Order if such Services have not been fully performed upon the termination of these Terms and Conditions.
- 7.3 Unless agreed otherwise in the applicable Insertion Order, the Insertion Order shall apply until the respective Services are fully performed.
- 7.4 Either party's right to terminate for failure to perform or to terminate for cause shall remain unaffected.
- 7.5 Upon termination all outstanding payment obligations will become immediately due and payable.

## **8. General provisions**

- 8.1 Both Parties agree to keep the conditions of the respective advertising services confidential.
- 8.2 Use of Data: Advertiser will treat all user data of the itsmy.biz Mobile Social Advertising Network and other statistical data about which Advertiser may obtain knowledge during the Insertion Period as confidential. Both Parties shall comply with the applicable German data protection law.
- 8.3 Munich shall be the exclusive legal forum and only the laws of the Federal Republic of Germany shall apply, to the exclusion of UN Law on Sales (Convention on the International Sale of Goods – CISG).

8.4 The invalidity of individual provisions of this Agreement shall not void any of the other provisions in this Agreement. The void provision shall be amicably replaced by the contractual parties with new, valid provisions or, if no agreement on a new provision can be reached by a corresponding statutory provision. The same shall apply correspondingly if a provision in this Agreement becomes void at a later date.