

Media Partner Terms & Conditions

These [Terms and Conditions](#) (“**Agreement**” or “**Terms**“) are a legally binding and enforceable agreement between Brewstarz Ltd, Redhill, United Kingdom (“**Company**“) and you (“**Media Partner**“) and apply to a Media Partner’s participation in Company’s Media Partner program (“**Program**“).

1. Definitions

1. “**Account**” means the Media Partner’s account associated with the Program.
2. “**Action**” means installs, clicks, sales, impressions, downloads, registrations, subscriptions, etc. as defined in the applicable Insertion Order, provided that the Action was performed by an actual human End User (which is not computer generated) in the normal course of using any device.
3. “**Advertising Material**” graphic and textual links to specific websites or other creative or promotional materials, including without limitation, any website or information including additional advertisements, to which the creative material may link to, if applicable, as provided by Company’s upstream advertisers (“**Advertisers**“).
4. “**Advertising Network**” is a network of registered third party affiliates and publishers (“**Media Partners**“) run by the Company, utilizing related technology and software.
5. “**Claims**” means claims, suits, demands and actions brought or tendered for defense or indemnification.
6. “**Media Partner Assets**” means software application, service, web pages or digital placements owned by Media Partner or properly licensed to Media Partner and emails send by Media Partner which clearly identify Media Partner.
7. “**Confidential Information**” as defined in Company’s website, under [“Confidential Information](#)“.
8. “**End User**” means human end user who interacts with the Media Partner’s Assets.
9. “**Fraudulent Activity**” shall mean: (a) the display, promotion, distribution or interaction with the Advertising Material in a manner which engages with anything other than natural persons viewing actually displayed Advertising Material in the normal course of using any device, including without limitation, browsing through online, mobile or any other technology or platform, as determined by Company at its sole discretion which may lead to falsely generated or artificially inflated revenues; (b) the automatic redirection of visitors, blind text links, misleading links, forced clicks, etc. from the Advertising Material. Without limiting the foregoing, Fraudulent Activity shall include any of the following practices: (i) inclusion or counting of views or clicks: by a natural person who has been engaged for the purpose of viewing the Advertising Material, whether exclusively or in conjunction with any other activities of that person (including, without limitation, employing any means to induce, encourage, incentivize (unless such incentivized traffic or means were preapproved specifically by Company) or trick

the End User into viewing or clicking on the Advertising Material); and/or by non-human visitors (such as bots); and/or that are not actually visible to the human eye, discernible to human senses or perceived by a human being; (ii) masking or cloaking any URL, or employing any means to obscure the true source of traffic, or conceal conversions; (iii) generating automated, fraudulent or otherwise invalid impressions, inquiries, views, clicks or conversions, or artificially inflating impressions, inquiries, views, clicks, or conversions, or employing any misleading or practices (such as repeated manual clicks); (iv) Installing or transmitting malicious code; (c) displaying the Advertising Material in a misleading or non-viewable manner.

10. "**Insertion Order**" means a document (including an online registration page or order form) executed by both parties that specifies custom pricing and additional terms.
11. "**Losses**" means damages, losses, costs, and liabilities, including reasonable attorney and professional fees, arising from a Claim.
12. "**Objectionable Content**" as defined in Company's website, under ["Objectionable Content"](#).
13. "**Party**" means the Company or the Media Partner.
14. "**Qualified Action**" means an Action, excluding any Action by an End User which: (1) is using pre-populated fields; (2) does not complete all the information required for such Action within the timeframe allowed by Company; or (3) is determined, by Brewstarz Ltd's sole discretion, to be fraudulent, incomplete or duplicate.

2. **Enrollment to the Program**

1. In order to participate in the program you may be required to submit an online application and submit all required information as further detailed in this Agreement.
2. Company reserves the right to reject applications, at its sole discretion, without liability to any person.

3. **The Program and Limited License**

1. Media Partner will keep access data (login, passwords) to its Account and Program ("**Account Data**") strictly confidential. The Media Partner shall promptly inform Company in case it learns or suspects that an unauthorized third party is in possession of the Account Data. If Company suspects that an unauthorized third party is in possession of the Account Data, Company may, at its sole discretion, change the Access Data or block the applicable Account. In case an unauthorized third party uses, through Media Partner's fault, the Access Data, then Media Partner will be liable for all actions done through the access to the Account and Program.
2. Company will make available to Media Partner the Advertising Material for Media Partner to display on any of the Media Partner's Assets.
3. Display of Advertising Material by Media Partner will include identification of Media Partner as a member of Company's Program and will provide a link to the Program's site.

4. Company grants Media Partner a non-exclusive, non-transferable, revocable right to use the Advertising Material and access the Company's website solely in accordance with the terms of the Agreement, and for the sole purpose of identifying the Media Partner's Assets as a participant in the Program.
5. Company may revoke Media Partner's license at any time, at its sole discretion, if Company determines that Media Partner has breached any of the terms of the Agreement.
6. Company may determine, at any time and at its sole discretion, that certain Advertising Materials will not be available for a Media Partner.
7. Company may change, suspend or discontinue any aspect of the Advertising Material or remove, alter or modify any tags, texts, graphics or banner ad in connection with Advertising Material. Media Partner agrees to promptly implement any request from Company to remove, alter or modify any link, graphic or banner ad that is being used by Media Partner as part of the Program.
8. Media Partner network – If Media Partner operates a network (" **Network** ") of its own media partners (" **Third Party Media Partner** "):
 1. Media Partner will not broker Advertising Material within its Network without prior written approval from Company. Media Partner will maintain the Network in accordance with the highest industry standards.
 2. If a Third Party Media Partner operates its own network:
 1. Media Partner must receive Company's prior written approval for each applicable Third Party Media Partner network;
 2. Media Partner will forbid Third Party Media Partner to modify the Advertising Material in any way;
 3. Media Partner will ensure that Third Party Media Partners will not display or be associated with objectionable content;
 4. Media Partner will ensure that Third Party Media Partners will affirmatively accept terms which are at least equivalent to those in the Agreement prior to obtaining access to the Advertising Material;
 5. If a Third Party Media Partner breaches any of the terms above: (i) Media Partner will immediately remove the Third Party Media Partner from the Network; (ii) Media Partner will notify Company and provide Company with the identity and contact information of the Third Party Media Partner. For the avoidance of doubt, a breach by a Third Party Media Partner shall be considered a breach of this Agreement and will entitle the Company to act, *inter alia*, in accordance with the provisions of Article 10.3 and 10.4 of the Agreement.

4. **Intellectual Property**

1. Except as otherwise agreed in the Agreement, Media Partner shall have all right, title and interest in its intellectual property. Company retains all right, title and interest in the intellectual property rights in the Program and Advertising Network, as well as any derivative thereof.

2. Nothing herein shall be interpreted to provide Media Partner any rights to the Program or Advertising Network except the limited license granted under Article 2 of the Agreement.
3. Media Partner shall only use Company's trade names, trademarks, service marks, logos or other distinctive brand features as set out in this Agreement.

5. Restrictions on Use

Media Partner shall not, or not allow any third party, to: (i) infiltrate, hack, copy, create derivative works of, reverse engineer, decompile, or disassemble or otherwise attempt to interfere with the proper operation of the Advertising Material or Advertising Network, or any part thereof for any purpose and shall not simulate or derive any source code or algorithms from the Advertising Network; (ii) represent that it possess any proprietary interest in the Advertising Material or Advertising Network, or remove any notices or copyright information from the Advertising Network; (iii) attempt to sell, resell, sublicense, modify, transfer, lease, assign, pledge, or share its rights under this Agreement; (iv) use any robot, spider, or other device to retrieve, index, scrape, data mine, or in any way gather information, Advertising Material, or other materials from the Advertising Network; (v) take any action, directly or indirectly, to contest the Company's intellectual property rights or infringe them in any way, including without limitation, using the Confidential Information to develop, enhance or operate a service that competes with the program, or assist any other party to do so; (vi) except as specifically permitted in writing by the Company, use the name, trademarks, trade-names, and logos or other proprietary rights of the Company; (vii) use the Program for any Fraudulent Activity or other unlawful, harassing, intrusive or abusive activities, or for any unauthorized purposes; (viii) place any links to the Advertising Material in chat rooms or bulletin boards, unless preapproved by Company in writing.

6. Term and Termination

1. This Agreement shall become effective as of the date that Company approves Media Partner's application to the Program, as specified in the Agreement, and shall remain effective until terminated pursuant to this section and as further provided in the accompanying Insertion Order.
2. Either Party may terminate this Agreement without any liability to the other party by providing written notice to the other Party.
Following the termination of the Agreement, any provisions of the Agreement that in order to fulfill their purpose need to survive the termination of the Agreement, shall survive.
3. If the Agreement has been terminated by Company due to: (i) Fraudulent Activity of Media Partner; or (ii) a breach of Media Partner's obligations and representations under this agreement which have not been remedied within seven (7) days following a written notice by Company (including without limitation, breaches regarding maintain the quality of traffic provided via the Media Partner's Assets); then Company shall be entitled to withhold all considerations still due and owing to Media Partner at the date of termination.
4. In the event of any termination:

1. Each Party will have no obligation to maintain any information stored in its data centers related to the other Party.
2. Media Partner will cease representing itself a part of the Program or Advertising Network.
3. All rights, licenses and obligations of the Parties shall cease, except that all obligations that accrued prior to the termination and remedies for breach of this Agreement shall survive.
4. Confidential Information of either party which is in the possession of the other party shall be immediately returned. If the Confidential Information is not returned, it should be maintained confidential in accordance with article 14.

7. Mutual Representations and Warranties

Each Party represents and warrants to the other Party that: (i) it has the full corporate right, power and authority to enter into the Agreement, to grant the licenses granted hereunder and to perform the acts required of it hereunder; (ii) the execution of the Agreement by it and the performance of its obligations and duties hereunder, do not and will not violate any agreement to which it is a party or by which it is otherwise bound; (iii) when executed and delivered, the Agreement will constitute the legal, valid and binding obligation of each party, enforceable against each party in accordance with its terms; (iv) it is the owner or has all legal rights and interest in its software, components, material or Content; and (v) to the best of its knowledge its software, components, material or services does not infringe or misappropriate the intellectual property or other proprietary rights of any third party when used by the other Party in accordance with the terms of this Agreement.

8. Company Representations and Warranties

1. Company hereby represents and warrants that it has the skills and will use reasonable efforts to perform its obligations hereunder as best as commercially possible. Company does not have any obligation to provide a certain amount of Advertising Material or monitor any Advertising Material made available through or in connection with the Advertising Network, for any purpose and, as a result, is not responsible for the accuracy, completeness, appropriateness, legality or applicability of any such Content.
2. Company reserves the right, at its sole discretion and without liability, to reject or remove any Advertising Material from the Advertising Network. Media Partner acknowledges that any campaign may be terminated or suspended, whether by Company or its upstream Advertisers, at any time and without notice to Media Partner.
3. Media Partner hereby acknowledges that Company is acting as an intermediary between Advertisers and Media Partners and as such Company shall not be held responsible or liable for any actions or omissions performed or omitted by third parties (including with respect to the content of the Advertising Material).
4. Company takes reasonable measures to protect its systems, including the Advertising Network, against viruses, spyware and other forms of malicious code (" **Malicious Code** "). However, Media Partner acknowledges that Malicious Code

can never be completely prevented, so Media Partner is responsible to protect its data and its systems against unauthorized access and Malicious Code and will make its End Users waive, as far as legally permissible, on all potential claims against Company based on Malicious Code

9. Media Partner Representations and Warranties

1. Media Partner hereby represents and warrants that: (i) any and all activities or obligations it undertakes in connection with the Agreement shall be performed in compliance with all applicable laws, rules and regulations, including, without limitation, privacy laws and will not engage in Fraudulent Activity; (ii) Media Partner is in compliance with all applicable laws, rules and regulations as well as industry best practices, including, without limitation, the Children's Online Privacy Protection Act of 1998 (" **COPPA** ") and CAN-SPAM Act of 2003 (" **CAN-SPAM** ") or any other applicable legislations or regulations relating to marketing; (iii) Media Partner's Assets do not infringe the intellectual property rights of third parties or contain any Objectionable Content; (iv) Media Partner's Assets do not collect, use or transfer the data of End Users in any manner not clearly and accurately disclosed pursuant to a privacy policy that complies with applicable laws and regulations; (v) Media Partner's privacy policy will inform End Users (and receive their consent, if required) that Company or Advertisers may store user data and usage data which they collect automatically or through forms, may use such data to optimize offers and service, perform statistical or market research and may use email addresses or other contact information for marketing and promotions (vi) Media Partner's Assets do not contain Malicious Code.
2. Media Partner acknowledges that in case of a material breach of this Agreement, Company reserves the right to disclose Media Partner's identity and contact information to applicable law enforcement agencies, regulatory authorities or any relevant third party which has been directly damaged by Media Partner's actions or lack thereof.
3. The Company has executed a Data Protection Addendum ("Addendum") in accordance with Article 24 of the EU General Data Protection Regulation 2016/679 ("GDPR"). A copy of the Addendum can be found [here](#). The Media partner hereby warrants and represents that any personal data (as defined in the GDPR) which is shared with the Company by the Media partner shall be governed under the provisions of the Addendum. The Addendum is an integral part of this Agreement and does not derogate from any of the Media Partner's representations and warranties.

10. Considerations

1. Company will pay Media Partner for each Qualified Action, as defined in the applicable Insertion Order. The Considerations due to Media Partner will be calculated and based only on Company's tracking systems or reports, which shall be considered final and binding, and no other measurement or statistics of any kind shall be accepted or have any effect. Company will automatically generate an invoice on behalf of Media Partner based on the above calculation and will remit Considerations based on such invoice.

2. Company will pay the Considerations on a monthly basis, provided that Media Partner's Account balance is greater than GBP 100. If the balance in the Media Partner's Account is lower than GBP 100, then the balance will be carried on to the following month and will continue to do so until a balance of GBP 100 is reached.
3. Considerations shall be made solely for Qualified Actions and Company will not be obligated to remit Considerations, and will be entitled to withhold Considerations or demand a refund (in the event that Considerations have already been paid): (a) in connection with payments that were not fully remitted to Company from its Advertisers, or approved by Advertisers; (b) if determined, by Company, at its sole discretion that Media Partner has engaged in Fraudulent Activity, was in breach of this Agreement or that Considerations were paid for Qualified Actions that are later determined to have not met the requirements set in this Agreement to be a Qualified Action.
4. Company reserves the right to deduct, set off, claw back or charge back (" **Charge Back**") any amount payable or that was actually paid to Media Partner from Media Partner's Account, if applicable. If Media Partner's Account balance is not sufficient to cover the amount of the Charge Back, then Media Partner is obliged to transfer the amount of the Charge Back to Company no later than seven (7) days following Company's demand. Company may demand Charge back: (i) accordance with Article 10.3 above; (ii) if Company is required to refund third parties in connection with the Advertising Material. The Charge Back right will also apply to outstanding balances due to Company under any other agreement between the parties.
5. Media Partner may submit to Company disputes regarding discrepancies in tracking of Qualified Actions (" **Dispute**"). Disputes must be submitted within three (3) days following the end of each calendar month. If the Dispute shows a variation of over 10% and the tracking by Media Partner is done using generally accepted industry methods, then Company and Media Partner agree to make a good faith effort to resolve the Dispute. If the parties are unable to resolve the Dispute, then Company's calculation shall govern.
6. Media Partner will have no right to setoff, withhold or otherwise deduct any amount owed to Company hereunder (and accordingly transfer to Company when due any such amount whether in dispute or not) against any amount owed or claimed to be owed by Company to Advertiser (under any theory of liability).
7. All payments due to Media Partner under this Agreement will be in U.S. Dollars unless agreed otherwise and exclusive of any applicable taxes, including or any other national, state or local tax expressly VAT (" **Taxes**"). Media Partner will be responsible for all Taxes and any related interest and penalties resulting from any payment made hereunder, other than any taxes based on Company's net income.

11. Disclaimer of warranties

1. To the maximum extent permitted by law, without derogating of any of the terms of this Agreement, the Program is provided on an "as is" and "as available" basis,

without warranties or conditions of any kind, either express or implied, including, without limitation, any warranties or conditions of title, performance, non-infringement of third party rights, merchantability or fitness for a particular purpose. In addition, Company does not represent or warrant that: (i) the Program or any part therein will be error free or that any errors will be corrected or (ii) that the operation of the Program or any part therein will be uninterrupted.

2. Company does not guarantee that the Program will always be complete, accurate, safe, secure, bug-free or error-free, or that the foregoing will always function without disruptions, delays or imperfections.

Company may change, suspend or discontinue the Program at any time without notice or liability.

3. Without derogating of any of the terms of this Agreement, to the extent the Program incorporates any third party materials or software that belongs to one or more third parties, then the materials or software are provided "AS IS" and subject to the terms and restrictions of the applicable third party. Each Party makes no warranty whatsoever regarding the third party materials or software, without derogating of any of the terms of this Agreement.

12. Limitation of Liability

1. To the extent permitted by law, in no event shall either Party be liable to the other Party for lost profits or business opportunities, loss of use, loss or inaccuracy of data, cost of procurement of substitute goods or services, software, systems or services, or for special, incidental, indirect, punitive or consequential damages, however caused, and under any theory of liability, whether for breach of contract, tort (products liability, strict liability and negligence), or otherwise, arising from or related with the Agreement, whether or not the Party has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy stated herein.
2. Without derogating from any of the foregoing, in no event will the Company's aggregate liability for any Claim arising out of or related to the Agreement, to the fullest extent possible under applicable law, exceed the lower of: (i) the monthly average of Consideration made under this Agreement with respect to three (3) months preceding any Claim under which such liability shall arise; or (ii) GBP 10,000. Some jurisdictions do not allow the exclusion or limitation of incidental, consequential or other damages, so the above limitations and exclusions may not apply.
3. No action arising under or relating to this Agreement, regardless of its form, may be brought by either Party more than three (3) month after the cause of action has accrued and in any event no later than three (3) months after the expiration and/or termination of this Agreement. The foregoing limitations shall apply notwithstanding any failure of essential purpose of any limited remedy and are fundamental elements of the bargain between the parties.
4. Company remains responsible for product liability.

13. Indemnification

1. Except as otherwise set forth in this Agreement, each Party (“Indemnifying Party”) shall indemnify, defend, and hold harmless the other Party and its shareholders, directors, officers, employees and agents (“Indemnified Party”), from and against all Claims, and for all Losses that result or arise from Claims, commenced or prosecuted by any third party against the Indemnified Party, which in whole or in part, arise from or is related to a Claim of a third party for a breach of the Indemnifying Party’s representations under this Agreement, reduced to a final adverse, non-appealable judgment made by a court of competent jurisdiction and actually borne by the Indemnified Party.
2. The Indemnified Party will: (i) promptly notify the Indemnifying Party of any Claim; (ii) provide the Indemnifying Party, at the cost of the Indemnifying Party, reasonable information and assistance in defending the Claim; and (iii) give the Indemnifying Party control over the defense and settlement of the Claim; provided, however, that any settlement will be subject to the Indemnified Party’s prior written approval, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Indemnified Party will not be required to allow Indemnifying Party to assume the control of the defense of a Claim, in which case the Indemnified Party will assume the control at Indemnifying Party’s costs, to the extent that the Indemnified Party determines that: (1) such Claim relates directly to the Media Partner’s Assets (if the Media Partner is the Indemnifying Party), or to the Advertising Network (if the Company is the Indemnifying Party); or (2) the relief sought against the Indemnified Party is not monetary damages; in addition, the Indemnified Party may join in the defense of any Claim at its own expense.

14. Confidentiality

During the Term of this Agreement and thereafter, each Party agrees that it will not disclose or use the Confidential Information of the disclosing party (other than for the purpose of this Agreement) without the disclosing Party’s prior written consent. Each Party agrees that it will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own Confidential Information, during the Term and for a period of five (5) years thereafter to prevent the disclosure of the other Party’s Confidential Information other than to its employees, subsidiaries or other agents who must have access to such Confidential Information for such Party to perform its obligations or exercise its rights hereunder, who will each agree to comply with this section. The Confidentiality obligations herein shall survive any termination or expiration of this Agreement.

15. Non-Circumvention

1. Media Partner, including without limitation, other entities which are controlled by Media Partner, explicitly agrees to withhold completely from entering into a business relation with or from approaching Company’s clients either directly or through third parties, inter alia by disclosing our partnership, with regard to user acquisition or performance marketing services for the term of this Agreement and a period of six (6) months after the end of the Agreement, unless Company approves it in writing in advance.

2. Media Partner is personally responsible to follow this commitment and must not use any means to circumvent its obligation.
3. Breach of this clause will result in a contractual penalty to be determined by an independent court in Company's residential country and should not be less than twice the financial loss caused through this unauthorised action with a minimum fee of 750,00 GBP.
4. An obligation to reimburse damages will thereby not be excluded. This also applies to any rights granted to Company.
5. In case Media Partner can prove having entered into a business relation with Company's client (the Advertisers) before entering into a business relation with Company, this clause should not be enforced.

16. Data Protection

1. The Media Partner agrees to provide Company or the Advertisers on request, with figures regarding delivery, the number of clicks, and other advertising-related data.
2. The Media Partner shall store all data reported by Company through the Program (including user data and usage data) in conformity with all legal requirements.
3. The Media Partner shall not transmit any personal data (i.e. data allowing identification of an individual) to Company, unless data protection laws allow for such transmission.

17. Independent Contractors

The Parties hereto are independent contractors and nothing herein constitutes or creates an employer-employee, agency, joint venture or representative relationship between the Parties, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any express or implied power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.

18. Force Majeure

Other than with respect to payment obligations arising hereunder, neither party will be liable, or be considered to be in breach of this Agreement, on account of such party's delay or failure to perform as required under the terms of this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence ("**Force Majeure Event**"). If any such Force Majeure Event occurs including, without limitation, acts of God, fires, explosions, telecommunications, Internet or Advertising Network failure, results of vandalism or computer hacking, storm or other natural occurrences, national emergencies, acts of terrorism, insurrections, riots, wars, strikes or other labor difficulties, or any act or omission of any other person or entity, the affected party will give the other party notice and will use commercially reasonable efforts to minimize the impact of any such event.

19. Changes to the Agreement

Company may make changes to the Agreement from time to time, at its sole discretion. The most current version will be posted on Company's website or Platform or notified by

email to Media Partner. By continuing to access or use of the Company's services, as described in this Agreement after the changes become effective, the Media Partner agrees to be bound by the revised Agreement.

20. Assignment

Each Party may not assign any of its rights or obligations hereunder without the prior written consent of the other Party and assignments in violation of the foregoing shall be void, except in the event of an assignment by the Company to a purchaser of the Company's assets or share capital.

21. Severability

If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of this Agreement shall be enforced to the maximum extent permissible so as to effectuate the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

22. Governing Law

This Agreement and any matters related hereto shall be governed by, and construed in accordance with laws of the *United Kingdom of Great Britain* and Northern Ireland.

23. Entire Agreement

This Agreement and applicable Insertion Order constitute the entire agreement between the Company and Media Partner with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Without derogating from the generality of the foregoing, in the event that the terms of this Agreement are in conflict to the terms of any other agreement, provision, quote, order, acknowledgment, or other communications between the parties, the terms provided herein shall prevail over such conflicting terms (even if the conflicting terms are incorporated in a written instrument signed by the parties herein after the execution of this Agreement unless the Parties specifically referred in such instrument to the name and date of this Agreement and to the amendment of its terms and conditions).

24. Miscellaneous

The captions and headings in this Agreement have been inserted for convenience only and shall not be deemed to limit or otherwise affect any of the provisions of this Agreement. Written notices under this Agreement can be done by email.

25. No waiver

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the other Party. No waiver or consent by either Party to deviate from the provisions of this Agreement shall operate as a waiver of any subsequent right.