

Terms and Conditions – Gameye B.V.

Version:1.0

Date: March 21, 2019

These Terms and Conditions apply to all agreements and services provided by Gameye B.V., established in Rotterdam and registered with the Chamber of Commerce under registration number 69742987, hereafter referred to as 'Provider'.

- 1.1 **Agreement:** all agreements between Provider and Customer of which these Terms and Conditions form an integral part.
- 1.2 **Application Programming Interface (API):** the connection made available to Customer that allows software programs to communicate with each other.
- 1.3 **Business Days:** Monday through Friday, excluding any holidays observed in the Netherlands and holidays observed and announced by Provider;
- 1.4 **Customer:** a legal entity that concludes an Agreement with Provider in order to use the Services.
- 1.5 **Intellectual Property:** all intellectual property rights and related rights, including but not limited to copyrights, database rights, domain name rights, trademark rights, brand rights, model rights, related rights, patent rights and rights to know-how.
- 1.6 **Normal Business Hours:** 09:30 am to 6.00 pm CET / CEST time, during each Business Day.
- 1.7 **Personal Data:** any personal data within the meaning of article 4 of the General Data Protection Regulation (GDPR).
- 1.8 **Services:** any services that Provider provides to Customer or has an obligation to provide to Customer under this Agreement, such as the API.
- 1.9 **Statistical Purposes:** using information that does not contain Personal Data, but aggregate data, for the improvement of the Services;
- 1.10 **Terms and Conditions:** the terms in this document.
- 1.11 **Website:** <https://gameye.com>.

Article 2. Conclusion of the Agreement

- 2.1 To use the Services, Customer has to obtain an account and login information (username and password) on the Website of Provider.
- 2.2 During the registration process, Customer is required to provide its credit card information in order to pay for and use the Services.
- 2.3 The Agreement is deemed to have come into effect on the date and time when Customer has completed the registration process.

Article 3. Use of the Services

- 3.1 The Services are offered for the purpose of using the Website and obtaining access to the API that can be integrated with the platform of Customer for playing game sessions.
- 3.2 By using the Services, Customer is allowed to choose the server location and can set up the game sessions on its own platform.
- 3.3 Customer is responsible for complying with applicable legislation and regulations while making use of the Services. In particular, Customer represents and warrants that its collection of Personal Data complies with the relevant privacy legislation. Customer

will indemnify and hold Provider harmless against and from all possible claims of third parties relating to the non-compliance with applicable legislation and regulations while making use of the Services.

- 3.4 Customer must not use the Services in a way that:
- i) is libellous, defamatory, insulting, racist or discriminating, or incites hate;
 - ii) infringes third-party rights, in any case including but not limited to Intellectual Property rights;
 - iii) violates the privacy of third parties, in any case including but not limited to distributing third-party personal data without permission or necessity, or repeatedly harassing third parties by providing them with unsolicited communications;
 - iv) contains hyperlinks, torrents or similar information of which Customer is aware or should be aware that it refers to material that infringes third-party rights;
 - v) is otherwise illegal or causes damage or injury to any person or property.
- 3.5 If Provider discovers that Customer violates any of the provisions as described in article 3.4, or receives a complaint alleging the same, then Provider may intervene to end the violation by:
- i) sending a warning to Customer containing a notification to end the violation;
 - ii) temporarily restrict Customer's access to use the Services.
- 3.6 Customer must secure access to the accounts by protecting the username and password against third party access. In particular, Customer must keep the username and password strictly confidential. Provider may assume that all actions undertaken from Customer's account after logging in with the username and password is authorized and supervised by Customer. This means that Customer is liable for these actions.

Article 4. **Term and termination**

- 4.1 The Agreement enters into force as soon as Customer has completed the registration process and then remains in force until Customer or Provider terminates the Agreement.
- 4.2 Customer can terminate the Agreement by sending a notification to Provider. After receiving the notification, Provider will delete the account of Customer. Termination of the Agreement by Customer is only permitted when the outstanding amounts have been paid by Customer.
- 4.3 Provider may suspend or terminate the Agreement with immediate effect by providing a written notice to Customer in the event that:
- i) Customer applies for suspension of payments, a petition for bankruptcy of Customer has been filed, or the business of Customer is dissolved or terminated;
 - ii) Customer fails to comply with its obligations under the Agreement, or fails to do so fully or on time;
 - iii) Provider has a good reason to believe that Customer will not comply with its obligations under the Agreement; or
 - iv) Customer has not used the Services in twelve (12) months after the first log in. In such event, Provider shall first send a reminder to the e-mail address connected to the account of Customer.

Article 5. **Availability and maintenance**

- 5.1 Provider will use reasonable endeavours to realize the uninterrupted availability of its Services, but offers no guarantees in this regard unless otherwise agreed by means of a SLA. Provider also makes no promises or guarantees as to security, availability and integrity of data transfers while making use of the Services, unless it explicitly states otherwise.
- 5.2 Provider regularly carries out maintenance, adjustments or improvements of the Services. Should maintenance, adjustments or improvements require a reduced or total unavailability of the Services, then Provider will attempt to carry out such maintenance as much as possible outside Normal Business Hours or during non-Business Days and will endeavour to notify Customer in advance of the scheduled maintenance. However, Provider is in no case liable to compensate any damage arising in connection with such maintenance. If Provider considers that there is a danger to the functioning of its Services, Provider will have the right to implement all measures it considers reasonably necessary to avert or prevent this danger. Since the Services are provided over the public internet, Customer is itself responsible for acquiring appropriate internet access and suitable anti-virus protection and the like. Provider accepts no liability in this regard.
- 5.3 All provisions in regard to availability and maintenance will be executed on a best effort basis.
- 5.4 From time to time, Provider shall release updates to the Services that address bugs or add new features. Provider shall make such updates available to Customer as soon as practicable.

Article 6. **Intellectual Property**

- 6.1 The Services are the Intellectual Property of Provider (or its licensor). The Services may not be copied or used without the prior written permission of Provider, except and to the extent permitted by mandatory law. Provided that Customer complies with its payment obligations, Customer will receive a non-exclusive and non-transferable license to use the Services during the term of the Agreement.
- 6.2 Information which Customer stores or processes using the Services is and remains Customer's property (or the property of Customer's suppliers or licensors). Provider receives limited license to use this information for the Services, including the use of the information for Statistical Purposes and for future aspects thereof.
- 6.3 Except to the extent expressly permitted in the Agreement or required by law on a non-excludable basis, the license granted by Provider to Customer under 6.1 is subject to the following prohibitions:
 - i) Customer may not sub-license its right to access and use the Services, unless specified otherwise by Provider;
 - ii) Customer may not permit any unauthorized person to access or use the Services;
 - iii) Customer may not decrypt, decompile or reverse engineer the source code, unless prior permission is given by Provider.

Article 7. **Compensation for the Service**

- 7.1 The prices for the use of the Services, as communicated by Provider, are binding. Customer shall pay the fees set out in the invoice for the use the Services that Provider will send to Customer.

- 7.2 The invoice can contain the number of game sessions that were created by Customer by using the Services and/or Services provided by Provider, purchased server capacity and the total price that must be paid by Customer.
- 7.3 Payment can be made through a direct credit card collection.
- 7.4 Each invoice is due and payable fourteen (14) days after the invoice date, unless the Agreement specifies otherwise. If Provider has not received payment within five days after the due date, and without prejudice to any other rights and remedies of Provider:
- i) Provider shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and the statutory commercial interest, as referred to in Section 6:119a of the Dutch Civil Code, shall accrue on the outstanding amount.
 - ii) Furthermore, Customer shall be obliged to pay all the judicial and extrajudicial collection costs, including the costs of lawyers, bailiffs and debt-collection agencies and the full amount of the remaining period of the Agreement is due and payable immediately to Provider.
- 7.5 All prices are in the EURO (€) currency and excluding VAT unless the invoice states otherwise.

Article 8. Liability

- 8.1 Provider's liability for loss and/or damages resulting from a failure in the performance of the Agreement, an unlawful act or otherwise, is limited to the amount that Customer has paid during the three (3) months immediately preceding the breach or the act giving rise to liability (exclusive of VAT) but shall in any event not exceed the amount of EUR 5.000 on an annual basis.
- 8.2 Provider is only liable for direct loss and/or damage arising from an attributable failure in the performance of the Agreement. Direct loss and/or damage is solely understood to mean any and all loss and/or damage consisting of:
- i) the damage caused directly to tangible objects ("property damage");
 - ii) reasonable and demonstrable costs Customer has had to incur in demanding that Provider properly performs the Agreement, unless the defective performance is not attributable to Provider;
 - iii) reasonable costs to determine the cause and the extent of the direct loss and/or damage;
 - iv) reasonable and demonstrable costs incurred by Customer to prevent or limit the direct loss and/or damage, insofar as Customer can demonstrate that such costs have resulted in limitation of the direct loss and/or damage;
 - v) reasonable and demonstrable costs for having the Agreement fulfilled by a third party, where Provider, after receiving notice from Customer, fails to ensure proper performance within the reasonable term stipulated in the notice.
- 8.3 Any limitation or exclusion of liability stipulated in the Agreement shall not apply in the event that the loss and/or damage is attributable to (1) wilful misconduct or deliberate recklessness of Provider's management, (2) death or bodily injury, or (3) any other matter for which it is unlawful to limit or exclude liability.
- 8.4 Unless performance by Provider is permanently impossible, Provider shall only be liable due to an attributable failure in the performance of the Agreement if Customer declares Provider to be in default in writing without delay and grants Provider a reasonable term to remedy the breach, and Provider culpably fails to fulfil its

obligations also after this term has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give Provider the opportunity to respond adequately.

- 8.5 Any right to claim compensation is at all times subject to the condition that Customer notifies Provider of the loss and/or damage in writing within no more than thirty (30) days of its discovery.
- 8.6 In the event of force majeure, Provider will under no circumstances be liable for compensation and Provider will under no circumstances be bound to comply with its obligations under the Agreement. Force majeure includes, but is not limited to, failures or outages of the Internet or the telecommunication infrastructure, a (D)DOS or comparable attack, power failures, civil unrest, mobilization, war, transport disruptions, strikes, lockouts, business interruptions, stagnation in deliveries, fire and floods.

Article 9. **Privacy and Security**

- 9.1 For the avoidance of doubt, all terms regarding the processing of Personal Data stated in the Agreement are only applicable insofar not otherwise agreed upon between Provider and Customer in a separate data processing agreement.
- 9.2 In the event Personal Data are being processed by using the Services, Provider shall perform the role of processor (or sub-processor) within the meaning of applicable data protection laws and regulations, such as the EU General Data Protection Regulation (hereinafter referred to as: "GDPR"). Customer is responsible for entering into contractual arrangements with its end-users regarding the processing of their personal data, having regard to the agreements between Provider and Customer as contemplated in this Agreement, or as otherwise agreed to in writing.
- 9.3 Customer shall notify Provider of the purposes of the processing to the extent not already specified in the Agreement. In case applicable privacy legislation requires a Data Protection Impact Assessment (DPIA), or when a prior consultation within the meaning of article 36 of the GDPR must be conducted before the intended processing under the Agreement may be carried out, then Provider shall provide Customer with assistance to the extent necessary and reasonable. Provider may charge reasonable costs for the aforementioned assistance.
- 9.4 Provider may process the Personal Data in countries within the European Economic Area. Processing of Personal Data in countries outside the European Economic Area is allowed when the legal requirements for such processing have been fulfilled.
- 9.5 Within the framework of the Agreement, Provider is hereby authorized to engage third parties (sub-processors). On request of Customer, Provider shall inform Customer about which sub-processors are engaged by Provider. Provider shall inform Customer about any planned changes in the sub-processors that are used, in which case Customer has the right to object to the proposed change in sub-processors. Such objection must be received by Provider in writing and within two weeks after the date on which Provider has informed Customer about the proposed change in sub-processors. Furthermore, such objection must be supported by valid and reasonable arguments. Should Customer object to such change, then Customer and Provider will jointly endeavor to find a reasonable solution. If there is no suitable solution, then Provider is allowed to make the planned change in the used sub-processors and Customer is allowed to terminate the Agreement on the date that Provider will actually make the change in the sub-processors that are used.

- 9.6 Where a data subject submits a request to Provider regarding his/her personal data (for example, to inspect, correct or delete the data, or to receive a copy of the data), Provider will forward the request to Customer and the request will then be dealt with by Customer. Provider may notify the data subject hereof. On request of Customer, Provider will provide assistance with handling such request to the extent necessary and reasonable. Provider may charge reasonable costs for such assistance.
- 9.7 Provider will use its best efforts to take appropriate technical and organizational measures with respect to the processing of the Personal Data against loss or against any form of unlawful processing (such as unauthorized disclosure, damage, alteration or transfer of personal data). These measures should guarantee a suitable protection level, taking into account the state of technology, the costs of implementation, the risks associated with the processing and the nature of the information to be protected.
- 9.8 Provider will use its best efforts to inform Customer of a personal data breach (as defined in article 4(12) of the GDPR) as soon as reasonably possible, but in any event not later than 48 hours after discovery of the personal data breach. To the extent required by applicable law, Provider will cooperate with the process of informing all relevant supervisory authorities and data subjects of the personal data breach. However, Customer and/or its end-users will remain responsible for reporting the personal data breach in an appropriate and timely manner.
- 9.9 Customer has the right to have audits performed by an independent third party bound by confidentiality to verify Provider's compliance with its obligations regarding the processing of personal data under the Agreement. An audit may only be undertaken once per calendar year. Customer shall inform Provider of the audit at least two weeks before the audit shall take place. Provider shall cooperate with the audit and provide all information reasonably relevant for the audit, including supporting data such as system logs, and employees, as promptly as possible. The findings of the conducted audit will be assessed in mutual consultation and, may or may not be implemented by one of the parties or by both parties together. The costs of the audit, including the costs that Provider has to make to cooperate with the audit, shall be borne by Customer.

Article 10. Warranties and Indemnifications

- 10.1 Customer represents and warrants that:
- i) it has full right to enter into the Agreement and to perform its obligations hereunder;
 - ii) it shall not breach the terms of the Agreement; and
 - iii) its authorized end-users shall not use the Services in violation of anyone's legal right, in violation of the terms of the Agreement, or in violation of applicable law.
- 10.2 Customer shall indemnify and hold harmless Provider from and against all claims, damages or losses resulting from Customer's breach of its warranties above.

Article 11. Changes to the terms

- 11.1 These Terms and Conditions may be amended or supplemented at any time. Provider will inform Customer of any changes one (1) month prior to the date the changes take effect.
- 11.2 Provider may amend these Terms and Conditions at any time if the changes are not significant or are required by applicable mandatory law.

- 11.3 If Customer does not want to accept a change or addition, not being a change or addition pursuant to article 11.2 of these Terms and Conditions, Customer can terminate the Agreement until the date the changes take effect.
- 11.4 Use of the Services after the date of effect shall constitute Customer's acceptance of the changed or added-to Terms and Conditions.

Article 12. Miscellaneous

- 12.1 The Agreement shall be governed by Dutch law, excluding any conflict of law provisions contained in Dutch law.
- 12.2 To the extent not otherwise provided for in mandatory law, all disputes related to the Services or in connection with the Agreement will be submitted to the competent Dutch court in the jurisdiction where Provider has its registered office.
- 12.3 The version of any communication of information as recorded by Provider shall be deemed to be authentic, unless Customer supplies proof to the contrary.
- 12.4 If any provision of the Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- 12.5 Provider has the right to transfer its rights and obligations under the Agreement to a third party that takes over the relevant business activity from it.