

GENERAL TERMS AND CONDITIONS OF AFFILIATION

The Terms and Conditions below govern the contractual relation between you ("the AFFILIATE") and Echovox S.A. ("ECHOVOX") and are applicable to all transactions carried out with Echovox, whether online or not, in respect of the affiliation service.

ECHOVOX operates the website www.bizmobil.com, www.m-boost.com, mobile.multivea.com and mobile.m-boost.com, hereinafter referred to as "the Sites".

Under the brand name BIZMOBIL and M-BOOST, the said Sites offer on-line internet services, in particular the downloading of "content" items, including those of a graphic and auditory nature designed for mobile telephony, hereinafter referred to as "the Services".

THE AFFILIATE operates one or more internet websites. In its professional capacity the AFFILIATE approached ECHOVOX with a view to offering internet users, namely all natural persons on the worldwide web likely to visit and/or use an internet site, hereinafter referred to as "Internet users", who might visit its site(s), direct access to the Services offered by ECHOVOX.

For the said purpose ECHOVOX established an affiliation program aimed at enabling Internet users connecting to the AFFILIATE's site(s) to be redirected to the Services offered by ECHOVOX.

1. PURPOSE

The purpose of these general terms and conditions is to define the technical and commercial terms and conditions of the relationship between ECHOVOX and the AFFILIATE pursuant to the affiliation program established by ECHOVOX to promote the Services to Internet users.

The terms and conditions for the Services themselves shall be provided to Internet users as part of the General terms and conditions of use and downloading, which are freely accessible on the ECHOVOX Sites.

2. TERMS AND CONDITIONS OF AFFILIATION

2.1. Application for Registration

All registration applications for the ECHOVOX affiliation program must be made by filling in and validate this document.

An affiliation candidate's registration application shall be given material effect by double-clicking the icon "I accept" on the Sites, and shall imply unconditional acceptance by him of these general terms and conditions.

ECHOVOX brings it to the attention of the AFFILIATES that in carrying out their functions as intermediaries whether as natural or legal persons they may be bound by various declaratory obligations.

2.2. Technical Interconnection

THE AFFILIATE accepts that the technical functions of the interconnection system for its site with that of ECHOVOX currently in use by ECHOVOX may be freely replaced by any other technical function at ECHOVOX's discretion.

Further, ECHOVOX reserves the right at any time without compensation or requirement to give reasons to suspend, alter or remove link(s), or the AFFILIATE's White Pages.

By "link(s)", the Parties mean any banner, text, icon, code (computer language) or other thing made available to the AFFILIATE by ECHOVOX for the purpose of connecting an Internet user to ECHOVOX's Services, hereinafter referred to as "the Link".

By "White Pages", the Parties mean the AFFILIATE's Internet pages, created by the AFFILIATE possibly using the tools offered by ECHOVOX, by means of which Internet users access the Services offered by ECHOVOX, hereinafter referred to as "the White Pages".

The validity of the provisions hereof shall in no wise be affected by such alterations.

2.3. Oversight of the Relationship

ECHOVOX reserves the right to amend these General Terms and Conditions at any time, provided that it advises the AFFILIATE by any means of its choosing and observes the requirement to give such notice as is reasonable having regard to the significance of the amendment.

In the event of disagreement the AFFILIATE shall remain free to terminate contractual relations in accordance with the terms set out in the following clause.

3. TERM OF AGREEMENT

The agreement shall come into force as of the effective date of the provision by ECHOVOX of the Link between the Parties unless otherwise agreed.

It is entered into for an indefinite term and hence may be rescinded at any time by either Party by certified letter with acknowledgment of receipt subject to a notice period of one (1) month.

4. ECHOVOX'S OBLIGATIONS

4.1. Development of its Site

ECHOVOX undertakes to continue development of its Site and its Services and to ensure that they are in good working order, so as to give all Internet users maximum satisfaction.

4.2. Responsibility for Interface

ECHOVOX agrees to make available to the AFFILIATE all items (banners, logos, et alia) enabling the AFFILIATE to provide on its site the link(s) allowing Internet users visiting its site to access all Services offered by ECHOVOX.

4.3. Provision of Statistics

ECHOVOX undertakes to give the AFFILIATE free access to its personal account data showing the number of connections to the Services by Internet users via its site.

4.4. Preparation of a Statistical Summary

ECHOVOX agrees to prepare on a monthly basis a summary statement of all connections to the Services by Internet users through the AFFILIATE over the preceding month to show the whole of the data needed for the calculation of the commission agreed upon in clause 6 hereof.

ECHOVOX agrees that each of the said monthly statements shall be accessible by the AFFILIATE on-line.

4.5. Payment to the AFFILIATE for Acting as Intermediary

ECHOVOX agrees to pay the AFFILIATE the commission agreed upon in clause 6 hereinbelow, in accordance with the terms there accepted.

4.6. Indemnification of the AFFILIATE

ECHOVOX agrees to indemnify the AFFILIATE against any legal actions with respect to the content or data relating to the Services, on the proviso that it be advised by the AFFILIATE of the existence of any dispute calculated to put it at risk of liability and that it shall be put on notice to prepare a defence thereto appropriately and in a timely manner.

5. THE AFFILIATE'S OBLIGATIONS

5.1. Responsibility for Interface

THE AFFILIATE agrees to place link(s) and/or White Pages on its Internet site to enable continuous and permanent access by its Internet users to the Services ECHOVOX makes available pursuant to its telephony-oriented content publishing operations.

In relation thereto the AFFILIATE agrees to make use solely of those items made available to it by ECHOVOX as provided without alteration thereof in any manner whatsoever.

Likewise the AFFILIATE agrees not to present the Link(s) in a way calculated to give rise to confusion in the minds of Internet users between its Internet site and that of ECHOVOX.

5.2. ID Number

The AFFILIATE shall have sole responsibility for use of the ID number and the password given by ECHOVOX to the AFFILIATE and must in no event disclose them to a third party.

In the event of unauthorised use of its ID number and password the AFFILIATE must advise ECHOVOX thereof without delay.

5.3. Acceptance of Changes to the Sites

THE AFFILIATE acknowledges that it has been advised of and accepts that the content of the Services and features offered by ECHOVOX may be developed over time in terms of quantity, nature and quality at ECHOVOX's discretion without affecting the terms and conditions hereof and without prejudice to each Party's right of rescission provided for under the provisions of clause 10.

5.4. Guarantee of compliance of site and its operation

THE AFFILIATE undertakes to honour the whole of the legal, contractual and technical obligations imposed upon it hereunder.

If for any reason it experiences any difficulty in adhering to the said undertaking, it agrees to advise ECHOVOX thereof without delay.

THE AFFILIATE further agrees to indemnify ECHOVOX against any action at law or claim by any third party arising from the content of the AFFILIATE's site.

THE AFFILIATE undertakes to make all declarations it may be called upon to make in the course of its activities in compliance with statutory provisions applicable to it within the prescribed time limits so that no liability claim against ECHOVOX shall arise therefrom.

Likewise the AFFILIATE, whether a natural or a legal person, hereby declares and warrants to ECHOVOX that it has by itself or by its employees at its own cost and at its sole responsibility carried out all administrative formalities required of it in relation to the various relevant bodies, taxation offices and social security authorities et alia in such a manner that ECHOVOX shall in no event suffer liability to any third party whatsoever. In default thereof the AFFILIATE agrees to compensate ECHOVOX for any loss it may suffer as a consequence of such a breach .

6. COMMISSION

6.1. Amount of Commission

Each Internet user customer shall be identified by means of a unique number enabling identification of connections to ECHOVOX's Services, in order to calculate the payment due to the AFFILIATE.

The AFFILIATE's commission shall be fixed according to the number of connections to the Services made through it. The applicable rates shall be those current at the time of the aforesaid connections. In all events, the terms and conditions in force shall be permanently accessible on the ECHOVOX Site.

The total commission payable shall be calculated on the basis of the data appearing in the statistical statement to which the AFFILIATE has free access in accordance with the terms set out in clause 4.4 hereof.

There shall be no right to a commission where calls shall not have been made in good faith, where there is abuse or pirating of telephone lines or fraudulent conduct, the foregoing being understood to be without prejudice to ECHOVOX's right to claim compensation for the loss or damage suffered and its right to terminate this agreement with immediate effect without prior notice, the foregoing expressly overriding the provisions contained in clause 10 hereof.

Further, the AFFILIATE hereby acknowledges that it has been advised of and accepts the variable nature of the terms of remuneration, having regard to the constraints to which ECHOVOX itself is subject with respect to various operators, intermediaries and other partners to which it is contractually bound.

Any amendment to the terms of remuneration shall be brought to the AFFILIATE's attention at least fifteen (15) days before it takes effect. Failing objection by the AFFILIATE, it shall be deemed to have been accepted by it, and shall have effect as a rider hereto, save that it may exercise the rescissory right available to it under the terms of clause 10.

6.2. Commission Invoicing

a. Standard Invoicing

The AFFILIATE shall be responsible for sending a monthly invoice for its commission on the basis of the summary statement referred to in clause 4.4.

The aforesaid invoice shall be addressed to ECHOVOX and paid by any means of its choosing within a period of fifteen (15) days of receipt of the same, provided it be in accordance with summary statement.

b. Self Invoicing

Subject to statutory provisions to the contrary ECHOVOX offers to the AFFILIATE who is desirous thereof to carry out invoicing itself with no additional costs or fees to be borne by the AFFILIATE.

In the said event the AFFILIATE wishing to choose that option shall be given the requisite documentation for setting up the said self-invoicing procedure.

Once the entire structure is in place and the authority is duly ratified, ECHOVOX shall commence invoicing commission on the AFFILIATE's account.

In such event payments shall be made within a period of fifteen (15) days of its issue at the latest.

6.3. Minimum Invoicing

Should the monthly commission amount to less than fifty (50) € before VAT, it is expressly agreed and confirmed between the parties that the AFFILIATE shall accept carry forward settlement of the said amount receivable to the invoice for the following month until such time the amount owing shall reach the said minimum sum.

7. INTELLECTUAL PROPERTY RIGHTS

THE AFFILIATE grants ECHOVOX for the whole of the term hereof a personal non-exclusive licence in respect of trademarks, logos, business names and other distinctive signs featured in the White Pages, and thereby authorises their reproduction and representation in the White Pages.

ECHOVOX remains the one and only proprietor of items used hereunder and remains owner of the royalties for the Services, works provided and any software that may be developed.

Allowing the AFFILIATE the use of links, White Pages and graphic elements confers upon it a mere user right for the purposes of performance hereof. Accordingly, the AFFILIATE in no way has any power to dispose of intellectual property rights attaching to the items appearing on the ECHOVOX Sites or to its Services.

8. PERSONAL DATA

ECHOVOX undertakes to observe all statutory provisions relating to data protection and privacy, and in particular guarantees the security and confidentiality of personal information. In that regard ECHOVOX shall meet all the formal requirements and obligations to make declarations and keep informed the competent authorities and customers with respect to the collection and use of personal data.

Similarly, for its part the AFFILIATE undertakes to comply with all the hereinafore referred to statutory provisions.

ECHOVOX shall be the sole owner of the data database it has constructed by collecting information from customer Internet users and shall have sole responsibility for processing the personal data required for use of the Services offered.

For its part the AFFILIATE shall have exclusive ownership of and sole responsibility for the database it constructs itself using its own resources.

9. LIABILITY

9.1. The AFFILIATE's Liability

ECHOVOX shall in no wise be held liable for the content of one or more of the AFFILIATE's Internet sites. The AFFILIATE shall indemnify ECHOVOX against any actions at law grounded on the content and/or information disseminated by the AFFILIATE on its internet site(s).

ECHOVOX cannot be held liable for such problems arising from connections to the Services as shall be attributable to the AFFILIATE's failure to adhere to its technical instructions or other obligations, in particular those of an ethical nature, nor to failure by internet users accessing the Services through the AFFILIATE's site(s) to honour the various obligations upon them.

Likewise, in the event of total or partial failure by the AFFILIATE to perform any whatsoever of the obligations imposed upon it hereunder no attempt may be made to hold ECHOVOX liable.

If notwithstanding the foregoing such an attempt should be made ECHOVOX would turn to the AFFILIATE to bear the final burden thereof.

9.2. ECHOVOX's Liability

ECHOVOX shall perform its obligations as carefully as possible in accordance with the custom of its profession and shall comply with the accepted practice then prevailing with respect to provision of the agreed services pursuant to the obligation to use the best means available.

ECHOVOX accepts no liability hereunder to remedy loss or damage whether direct or indirect save in the event it be guilty of fraud or serious misconduct.

10. TERMINATION

10.1. Causes

Apart from standard termination which may be exercised at any time by certified letter with acknowledgment of receipt upon condition of prior notice of one (1) month, the agreement may be terminated by either of the Parties by reason of failure by the other Party to meet its obligations, by certified letter with acknowledgment of receipt , after notice of default remaining without cure for fifteen (15) days, without prejudice to the damages the non-defaulting Party may claim.

If at the end of the period of fifteen (15) days, the default has not been rectified the non-defaulting Party may confirm termination hereof by certified letter with acknowledgment of receipt . Termination shall take effect at the date of receipt of the aforesaid letter or on the deadline for withdrawal thereof in the event it has not been withdrawn.

10.2. Consequences

After termination hereof for whatsoever reason :

- THE AFFILIATE shall delete all references on its site to this agreement and/or ECHOVOX ;
- THE AFFILIATE shall destroy any link(s) whatsoever to the Sites or ECHOVOX's Services ;
- THE AFFILIATE shall return the various documents, files and more generally all items that ECHOVOX may have provided to it for the purpose of performing this agreement ;
- ECHOVOX shall prepare balances for any accounts as rapidly as possible. Pursuant thereto ECHOVOX shall pay the commission owed to the AFFILIATE by reason of connections to Services through its agency by Internet users until the date at which rescission hereof shall take effect. Any sum the AFFILIATE may otherwise owe to ECHOVOX shall be deducted therefrom ;

- The confidentiality agreement shall remain on foot in accordance with the terms agreed in clause 12 hereinbelow.

11. FORCE MAJEURE

The Parties shall not be liable for non-performance or delay in performance of their obligations should a force majeure event arise, that is, should there occur events beyond their control such as to render the performance of their obligations impossible, dangerous or disproportionately onerous.

By express agreement between the Parties an interruption to computer and/or telecommunications services due inter alia to failure of telecommunications networks, its service providers or the nature and limitations of the internet network, shall be treated as a force majeure event, as shall any other situation acknowledged at law to be a force majeure event.

12. CONFIDENTIALITY

The Parties mutually undertake not to disclose information, knowledge, technical or commercial documents, methods, or know-how passed on by the other Party, whether or no the same shall have been described as confidential, when entering into or performing this agreement.

The non-disclosure obligation shall not apply where information is provided pursuant to an administrative or judicial demand.

In conclusion neither Party shall be liable for disclosure of information or documents if the same are :

- Already known to the other Party ;
- In the public domain;
- Lawfully obtained from other sources.

Each of the Parties undertakes to see to it that all its employees, agents, and other staff honour the said obligation of confidentiality.

The hereinafore referred to obligations shall remain in force notwithstanding the termination of this agreement for whatever reason.

13. MISCELLANEOUS PROVISIONS

13.1. Scope of Application

These general terms and conditions shall constitute the only contractual relationship between the Parties. They revoke and stand in place of any prior written or verbal agreement of the same nature that may have been made between the Parties.

13.2. Non-waiver

The mere fact that ECHOVOX does not avail itself at one time or another of any whatsoever of the provisions hereof shall not be construed as amounting to a waiver of the right to rely upon the same on a future occasion.

13.3. Independence of the Parties

The terms hereof may not be interpreted so as to make one Party the proxy, agent or legal representative of the other Party. Accordingly, each of the Parties undertakes to do nothing that might be misleading to any third party whatsoever in that respect and to enter into no commitment or make no guarantee in the other Party's name.

13.4 Severability

Should one or more of the provisions of these general terms and conditions be held to be void or declared to be so pursuant to a statute, regulation or final judgment of a court having jurisdiction hereover the other provisions shall retain their full force and scope of application.

14. TRANSFER

The AFFILIATE may not partly or wholly assign or transfer in any manner whatsoever its rights and obligations hereunder, nor substitute a third party in the performance of its obligations without ECHOVOX's express prior written agreement.

15. DISPUTES

These Terms and Conditions as well as the contractual relationship between the AFFILIATE and Echovox are governed by the laws of Switzerland. The exclusive place of jurisdiction shall be Geneva, Switzerland.