

**MOBIECLICK B.V.****General Terms and Conditions**

Effective Date: 13 March 2025 version 1.0

Mobieclick B.V. (hereinafter also “Mobieclick” , “we” or “our” ) provides innovative marketing solutions for businesses. We use the following general terms and conditions ( “Terms” ) for our services.

We may update these Terms from time to time. We will notify you of any material changes via email or through a notice on our website. Your continued use of the Service after such notification constitutes acceptance of the updated Terms. If you do not agree with these Terms or any future modifications, you must stop using our Service immediately and let us know your objections to the changes.

These Terms have been lodged with the Chamber of Commerce ( “KVK” ) in Enschede. A copy of these Terms and Conditions is available upon request or can be accessed through the KVK. These Terms can also be found on our website and through the link presented to you when you created your account.

**1. Definitions**

- 1.1. Mobieclick offers a marketing platform (the “Platform” ) that allows you to create marketing campaigns, manage contacts, send text messages, and manage marketing assets (the “Service” ). The Service is accessible through our websites, including mobieclick.com, and any other website or mobile application owned, operated, or controlled by Mobieclick (collectively, “The Website” ).
- 1.2. “Customer” (or “you” ) refers to users of the Service.
- 1.3. A “Contact” is any person you may reach through our Service or who has interacted with you via the Service.
- 1.4. “Customer Content” means all material, content, data, and information (including personal information and the personal information of others) submitted by the Customer to Mobieclick in the course of using the Service or which Mobieclick retrieves or accesses at the Customer's direction or with their permission.

**2. Additional Terms for Future Services**

- 2.1. Mobieclick may, at its discretion, introduce additional services, features, or Add-ons to the existing Service (collectively referred to as “Future Services” ). These Future Services may be subject to additional, specific terms of service ( “Additional Terms” ) that supplement or modify the present Terms.
- 2.2. By agreeing to these Terms , you acknowledge and agree that:
  - a. You will read and review any Additional Terms associated with Future Services before using them.
  - b. Your use of any Future Service constitutes acceptance of the corresponding Additional Terms.
  - c. In the event of a conflict between these Terms and any Additional Terms, the Additional Terms shall prevail with respect to the specific Future Service.

**3. Account and Eligibility**

- 3.1. To be eligible for a Mobieclick account, you must meet the following criteria:
  - a. be a registered business entity in:
    - i. a Member State of the European Union, or
    - ii. another territory where we officially operate;
  - b. be able to enter into agreements;
  - c. complete the account registration process, which includes:
    - i. agreeing to these Terms and the other terms and conditions that form part of the agreement between you and us,
    - ii. providing true, complete and up-to-date contact and billing information,
    - iii. providing a valid company registration number;
  - d. not be based in comprehensively embargoed and comprehensively sanctioned jurisdictions or be otherwise prohibited from using the Platform under the laws and regulations of the Netherlands, or any other applicable jurisdiction.
- 3.2. By creating a Mobieclick account, you affirm that you meet these eligibility criteria and that you are authorized to enter into this agreement on behalf of the business entity you represent. You also represent and warrant that you won't use the Service in a way that violates any laws or regulations.
- 3.3. Mobieclick reserves the right to:
  - a. request documentation verifying your business registration status and location,
  - b. refuse service and close, suspend or terminate accounts of any Customer that do not meet eligibility requirements and
  - c. change eligibility requirements at any time,

**4. Term of Agreement**

- 4.1. When you sign up for an account and agree to these Terms, the duration of the Agreement (the “Duration” ) begins. The Duration will continue for an indefinite period.

## **5. Termination**

- 5.1. Either party may terminate without cause ( “*opzeggen*” ) this Agreement for any reason, with a notice period of three months. The Customer can terminate their account by submitting a notice via the designated cancellation form available on the Mobieclick website.
- 5.2. Mobieclick reserves the right to terminate with cause the Customer's account and terminate ( “*ontbinden*” ) the agreement for future obligations between Mobieclick and the Customer. Furthermore, Mobieclick may suspend ( “*opschorten*” ) the Service to the Customer at any time if the Customer breaches any of the Terms.
- 5.3. Mobieclick may, at its discretion, terminate the Customer's account if it remains inactive for a period of 24 months or more. In such cases, Mobieclick will notify the Customer via email of the account termination. Upon termination, Mobieclick reserves the right to permanently suspend any current campaigns associated with the Customer's account. Customers may reactivate their account solely for the purpose of retaining its data and contacts within a period of 90 days following the initial account termination date. After this period, all customer data will be permanently deleted.
- 5.4. The Customer acknowledges and agrees that upon account termination, Mobieclick will permanently delete the Customer's account and all associated data, including any current Campaigns, historical data and customer contacts in accordance with the data retention terms specified in this Agreement.

## **6. Account and Password**

- 6.1. The Customer is responsible for keeping their account name and password confidential. The Customer is also responsible for any account that they have access to and any activity occurring in such account (other than activity that Mobieclick is directly responsible for that isn't performed in accordance with your instructions), whether or not you authorized that activity.
- 6.2. The Customer will immediately notify us of any unauthorized access or use of your accounts. We're not responsible for any losses due to stolen or fraudulently acquired passwords. We have the right to update any of your contact information in your account for billing purposes. In addition, the Customer represents and warrants that all information provided to us when you establish an account, and when you access and use the Service, is and will remain complete and accurate.
- 6.3. We may contact you, or any authorized user, or login added to your account, based on the information provided in your account.

## **7. Account Ownership Disputes**

- 7.1. Mobieclick acknowledges that it is not privy to the internal operations or organizational structure of its Customers. The Customer shall not request access to or information about an account that does not belong to it.
- 7.2. Upon identification of a dispute, Mobieclick reserves the right to suspend any account associated with the dispute. This may include disabling login and sending capabilities to protect the security and privacy of the data held within the account until the dispute is resolved.
- 7.3. Mobieclick determines account ownership based on various factors, including but not limited to the content within the account, and the contact and profile information associated with that account.
- 7.4. The Customer acknowledges and agrees that Mobieclick's decision regarding account ownership is final and binding, subject to any legal requirements or court orders.
- 7.5. In cases where conflicting contact and profile information is present, or where Mobieclick is unable to reasonably determine ownership, the Customer will be required to resolve the matter through appropriate channels outside of Mobieclick's platform.

## **8. Subscription and Billing**

- 8.1. Mobieclick offers a subscription-based marketing service. Customers are billed monthly for their subscription and the number of SMS text messages used during that period. The subscription fee is paid in advance, while SMS usage charges are calculated at the end of the billing period. Both charges will be automatically deducted from the Customer's designated account via the payment method selected.
- 8.2. By signing up for the Mobieclick service, the Customer explicitly authorizes Mobieclick to collect the monthly subscription fee and SMS usage charges. The Customer must ensure that their designated account has sufficient funds to cover these charges.
- 8.3. The billing cycle begins on the day the customer establishes their account with Mobieclick and renews on the same day each month thereafter. The first subscription payment is due immediately upon account creation, covering the period until the next billing date.
- 8.4. Subsequent subscription fees will be charged monthly in advance on the billing date.
- 8.5. SMS usage charges are calculated based on actual consumption during each billing period. These charges will be added to the invoice separately from the subscription fee and billed at the end of each billing period.
- 8.6. Any changes to the subscription, including cancellation, will take effect from the next billing cycle unless otherwise specified.
- 8.7. If the automatic payment collection fails or the fee is not paid on time, the Customer will be considered in default without requiring further notice. In such cases, the Customer may be liable for additional administration charges, calculated from the date of default until full payment is received. In such cases, the Customer is liable for a compensation of the commercial statutory interest ( “*wettelijke handelsrente*” ) and a compensation of the extrajudicial collection costs which is contractually agreed between parties to be 15% of the amount due or at least the statutory compensation of the extrajudicial collection costs (according to “*Besluit vergoeding voor buitengerechtelijke incassokosten*” ).
- 8.8. Mobieclick reserves the right to modify the subscription fees and SMS usage charges. Any changes will be communicated to the Customer in advance.
- 8.9. In case of any billing disputes, the Customer should contact Mobieclick's customer support immediately. Customers are not permitted to offset any fees due against claims they may have on Mobieclick without prior consent.

- 8.10. Customers are responsible for ensuring that their payment details, including credit card information, are always up to date in the Mobieclick system. This is crucial for uninterrupted service and to avoid any payment-related issues.
- 8.11. When a Customer's credit card is approaching its expiration date, it is the Customer's responsibility to update the card information in their Mobieclick account. If a Customer's card is automatically replaced by their bank or payment processor, the Customer acknowledges and agrees that Mobieclick is authorized to continue charging the new card for any fees associated with their account.
- 8.12. By providing credit card details, the Customer represents and warrants that they are authorized to use that card, and that any and all charges may be billed to that card and will not be rejected. This authorization remains valid for both initial and replacement cards.
- 8.13. In the event that Mobieclick is unable to process a Customer's payment for any reason, we will attempt to contact the Customer via email. Mobieclick reserves the right to suspend or alter the services provided to the Customer's account until the payment can be successfully processed.
- 8.14. Repeated payment failures or prolonged periods with outdated payment information will result in account suspension ("*opschorting*") or termination ("*ontbinding*"). Mobieclick is not responsible for any service interruptions or data loss resulting from payment issues due to outdated or invalid payment information.
- 8.15. All amounts payable under this Agreement shall be denominated and paid in Euros (€). Any conversion of foreign currency to Euros shall be made at the European Central Bank's reference exchange rate applicable on the date of invoice.

## **9. VAT and Taxation**

- 9.1. Value Added Tax (VAT) Treatment: All prices for Mobieclick services, including subscription fees and SMS charges, are exclusive of VAT.
- 9.2. For Customers within the European Union (EU), Mobieclick applies the reverse charge mechanism for VAT. Clients are responsible for self-assessing and reporting VAT in their own VAT returns under this mechanism.
- 9.3. Customers within the EU must provide a valid VAT identification number. Mobieclick reserves the right to charge Dutch VAT if a valid EU VAT number is not provided or verified.
- 9.4. For Customers in non-EU European countries (e.g., Switzerland), Mobieclick will not charge VAT. These clients are responsible for any applicable local taxes or import VAT in their jurisdiction.
- 9.5. All invoices issued by Mobieclick will clearly state "VAT reverse charged" for EU business clients and "VAT not applicable" for non-EU European clients.
- 9.6. Mobieclick reserves the right to adjust its pricing and VAT treatment in the event of changes to applicable VAT rates or rules.
- 9.7. Clients are responsible for providing accurate and up-to-date VAT information. Any penalties or interest resulting from incorrect VAT treatment due to inaccurate client information will be the client's responsibility.
- 9.8. This VAT treatment complies with Dutch tax law and EU VAT regulations. In case of any discrepancies between this clause and applicable laws, the prevailing legislation shall take precedence.

## **10. Contacts and Data Management**

- 10.1. Contacts are stored securely within the Mobieclick database. These Contacts remain in our system for the Duration
- 10.2. Contacts opt in directly to receive text messages from the Customer exclusively via the Mobieclick service. This ensures compliance with SMS marketing regulations and protects the privacy of contacts.
- 10.3. Mobieclick is responsible for maintaining the security of the Contacts and adheres to all European laws regarding data protection. We do not share or provide contact data to any third parties.
- 10.4. While maintaining an active subscription or account, Customers can access only their Contacts' data through the Mobieclick platform.
- 10.5. If you decide to terminate your account (and therefore the agreement) with Mobieclick, we will retain your account data and associated contacts for a period of 90 days from the date of account termination. This retention period allows for account reactivation and data retrieval if requested.
- 10.6. After the 90-day retention period, all personal data associated with your account, including your contacts stored in the Mobieclick database, will be permanently deleted, unless retention is required by applicable law or regulation and/or retention is necessary for the establishment, exercise, or defense of legal claims.
- 10.7. Mobieclick may anonymize and aggregate contact data for internal analytics and service improvement purposes but will never use this data in a way that could identify individual contacts or Customers.
- 10.8. Mobieclick will remove any Contact from a Customer's account if the Contact opts out of the service or in any other manner requests Mobieclick to remove their data from the platform. Mobieclick is not obligated to inform the Customer of any removal of a contacts data from the platform.
- 10.9. Mobieclick reserves the right to remove any Contacts from the system that are found to be in violation of applicable laws or our terms of service.
- 10.10. Customers must promptly notify Mobieclick of any opt-out requests received directly by the Customer.
- 10.11. In the event of a data breach, Mobieclick will notify affected Customers and contacts as required by applicable laws.

## **11. Exporting the Contacts**

- 11.1. Customers can only export their Contacts if these contacts expressly agree and re-opt-in directly with the Customer. This re-opt-in process must be conducted through the Mobieclick platform as follows:
  - a. Mobieclick will send an SMS to each Contact on behalf of the Customer, asking if they wish to re-opt-in (this means that the Contact is asked if they agree with the Customer receiving their information). The Customer shall bear all the costs associated with the re-opt-in process;
  - b. The option to re-opt-in is valid for 14 days from the date the SMS is sent;
  - c. If a Contact does not respond within the 14-day period, it will be considered that the Contact does not wish to re-opt-in.

- d. Only the Contacts who affirmatively respond to the re-opt-in SMS within the 14-day period will be eligible for export.
- 11.2. The Customer agrees to comply with all applicable data protection and privacy laws throughout this process.
- 11.3. Contacts for whom the Customer already holds a valid and current opt-in shall be exempt from the re-opt-in process described above. For the purposes of this clause:
  - a. A 'valid and current opt-in' is defined as an explicit, affirmative consent given by the contact to receive communications from the Customer, which complies with all applicable data protection and privacy laws.
  - b. The Customer must be able to provide verifiable proof of such valid and current opt-in upon request by Mobieclick.
  - c. The Customer is solely responsible for ensuring the validity and currency of their opt-ins, and for maintaining accurate records thereof.
  - d. Any contacts found to have a valid and current opt-in will be automatically excluded from the re-opt-in process and will be eligible for export without undergoing the re-opt-in process.
- 11.4. If a contact does not re-opt in with the Customer during the account termination process, the Customer will no longer have access to that contact's data.
- 11.5. If a Customer terminates their account (and thereby the agreement) without following the re-opt-in process, they will lose access to their Contacts. Mobieclick will permanently delete these contacts from our system, and they will not be archived.

## **12. Intellectual Property Rights**

- 12.1. Mobieclick owns all intellectual property rights in the Service and Mobieclick platform (collectively, "Mobieclick Property"), including, but not limited to, patents, trademarks, service marks, trade secrets, copyrights, and other intellectual property rights. Customers must respect Mobieclick's proprietary rights in the Mobieclick Property and may only use Mobieclick's brand assets in accordance with our Brand Guidelines. All rights not expressly granted to the Customer are reserved by Mobieclick.
- 12.2. If Customer breaches the intellectual property rights of Mobieclick, it will be liable to compensate all the damage Mobieclick incurred.

## **13. Customer Content**

- 13.1. Customers shall retain all right, title, and interest in and to the Customer Content. Subject to these Terms, Customers grant Mobieclick a non-exclusive, worldwide license to use, reproduce, modify, and distribute Customer Content solely as necessary to provide the Service and/or as otherwise permitted by these Terms.
- 13.2. The Customer represents and warrants that:
  - a. They have all necessary rights to submit Customer Content to the Service.
  - b. Their use of Customer Content as authorized in these Terms will not violate any applicable law, third-party rights, or any policies governing Customer Content.
  - c. Breach of these warranties may result in termination of the Customer's account and/or legal action.

## **14. Feedback**

- 14.1. Customers may voluntarily provide suggestions, comments, or other feedback ("Feedback") regarding the Service. By providing Feedback, Customers grant Mobieclick a perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, modify, and distribute the Feedback for any purpose. Mobieclick may use Feedback to improve the Service or develop new features without any compensation to the Customer. Providing Feedback is entirely optional.

## **15. Privacy & Data Processing**

- 15.1. At Mobieclick, we are committed to protecting your privacy and ensuring compliance with European privacy laws, including the General Data Protection Regulation (GDPR). This clause outlines our practices regarding communications and data usage.
- 15.2. To provide optimal support and service, we may contact you via SMS, email, or through the Mobieclick platform. You have the right to opt-in or opt-out of receiving certain types of communications from us. It is your responsibility to keep your contact details updated to ensure your preferences are accurately reflected.
- 15.3. We may only use Customers' contact information for marketing purposes including special offers related to Mobieclick services and not the contact information of the Customers contacts. Customers have the right to opt-out of such marketing communications at any time.
- 15.4. Customers' consent to receive automated communications is voluntary. You may opt-out at any time by following the instructions provided in the communication or by contacting our customer support. Opting out of promotional communications will not affect your receipt of essential service-related messages.
- 15.5. In compliance with GDPR, Mobieclick collects and processes only the data necessary for providing our services. Mobieclick implements strict data protection measures and do not share personal information with third parties without explicit consent, except as required by law.
- 15.6. Under GDPR, the Customer has the following rights regarding their own and/or company data:
  - a. Access your personal and/or company data,
  - b. Rectify inaccurate personal and/or company data,
  - c. Request erasure of your personal and/or company data,
  - d. Restrict processing of your personal and/or company data,
  - e. Data portability of your personal and/or company data,
  - f. Object to processing of your personal and/or company data

- 15.7. The rights stated above apply only to the personal and/or company data of the Customer and not to the personal data of the Customer's contacts. As a data processor, Mobieclick processes contact data on behalf of our Customers, who remain the data controllers for their contacts' information.
- 15.8. When a contact opts in to receive text messages from the customer exclusively via Mobieclick, their contact details are processed by Mobieclick on behalf of the Customer. Under GDPR, the contact may interact directly with Mobieclick regarding their data rights or directly with the Customer.
- 15.9. In the event that Mobieclick receives a direct request from a Customer's contact to remove, alter, or otherwise exercise their rights under GDPR regarding their personal data, Mobieclick reserves the right to process such requests without prior notification to the Customer. This includes, but is not limited to, requests for erasure, rectification, or restriction of processing. Mobieclick will act in accordance with its obligations as a data processor under GDPR to fulfil these requests promptly. The Customer acknowledges that Mobieclick may take such actions to ensure compliance with data protection regulations and to respect the rights of data subjects.
- 15.10. If a Customer's contact requests the Customer to remove or change their data, the Customer must promptly inform Mobieclick of this request via the contact opt-out facility provided in the Customer dashboard. Customers remain responsible for ensuring they have the necessary rights and permissions to process their contacts' data.
- 15.11. Mobieclick, as the data processor, will at all times, if requested, assist the Customer in fulfilling data subject requests in accordance with GDPR requirements. This includes requests for access, rectification, erasure, restriction of processing, data portability, and objection to processing.
- 15.12. To exercise these rights or for any privacy-related inquiries, please contact our Data Protection Officer.
- 15.13. We may update our privacy practices from time to time. Any significant changes will be communicated to you and will require your renewed consent where applicable.

## **16. Service Availability and Notification Downtime**

- 16.1. Mobieclick will conduct planned maintenance during off-peak hours. Customers will be notified by email at least 48 hours in advance of any scheduled maintenance.
- 16.2. Excused Downtime shall include:
  - a. Scheduled maintenance,
  - b. Emergency maintenance required to address critical security issues or prevent service degradation,
  - c. Outages due to circumstances beyond Mobieclick's control, including but not limited to:
    - i. External internet failures outside Mobieclick's network
    - ii. Force majeure events (e.g., natural disasters, acts of war, government actions)
- 16.3. Customers may report service availability issues through the following channels:
  - a. Email: [support@mobieclick.com](mailto:support@mobieclick.com)
  - b. Notification via the Customer dashboard.
- 16.4. Mobieclick will notify Customers of unexpected downtime within 30 minutes of detection, via email, SMS and the Customer dashboard.
- 16.5. Mobieclick will notify Customers of a resolution of unexpected downtime within two hours of the resolution, via email and the Customer dashboard.

## **17. Cookie Policy**

- 17.1. Mobieclick uses cookies and similar technologies on our website and services. This clause explains how we use these technologies, why we use them, and your rights to control their use.
- 17.2. We use the following types of cookies:
  - a. Strictly necessary cookies – these are essential for the website to function properly,
  - b. Functional cookies – these enhance your experience by remembering your preferences,
  - c. Analytics cookies – these help us to understand how visitors use our site.
- 17.3. We use the cookies to improve website functionality, to analyse user behaviour to enhance our services and to personalize content for your needs.
- 17.4. By using our website, you consent to the use of cookies as described in this policy. You can manage your cookie preferences at any time through our cookie settings panel.
- 17.5. Some cookies are placed by third-party services that appear on our pages. We do not control these third parties' use of cookies. Please refer to their respective privacy policies for more information.
- 17.6. You can change your cookie settings at any time by clicking on the "Cookie Settings" link in the footer of our website. You may also adjust your browser settings to refuse cookies, but this may limit your ability to use some features of our site.
- 17.7. Cookie data is retained for a maximum of 13 months, after which it is automatically deleted.
- 17.8. We may update this Cookie Policy periodically. The latest version will always be available on our website.

## **18. Campaign Review and Copyright Indemnification**

- 18.1. Mobieclick reserves the right to review any Customer's campaigns before or after they are launched. This review process is intended to ensure compliance with our policies and applicable laws.
- 18.2. Customer indemnifies Mobieclick against any claims, damages, or losses arising from copyright infringement or illegal use of copyrighted material in their campaigns. Mobieclick cannot be held responsible or liable for any breaches of copyright or unlawful use of copyrighted material in Customer campaigns, save for intent or deliberate recklessness.
- 18.3. Mobieclick retains the right to terminate or suspend any campaign that is deemed inappropriate, violates our policies, or infringes upon third-party rights. This determination is at Mobieclick's sole discretion.
- 18.4. Customers are solely responsible for ensuring that all content used in their campaigns, including but not limited to text, images, and videos, is either original or properly licensed for use. By using our service, Customers warrant that they have obtained all necessary rights and permissions for the content in their campaigns.

## **19. Rules and Abuse**

- 19.1. By agreeing to these Terms, you promise to adhere to the following rules:
- You will not send spam through the Mobieclick platform,
  - You will not use purchased, rented or third-party lists of phone numbers,
  - You will comply with the Acceptable Use Policy
  - You will comply with our API Use Policy
- 19.2. Mobieclick does not allow accounts that promote or incite harm toward others or that promote discriminatory, hateful, or harassing Content. We may suspend or terminate your account (and thereby the agreement) if you send an SMS campaign or otherwise create or distribute any Content that we determine, in our sole discretion, contains either of the following:
- A threat of physical harm: any statement, message, or other Content that in our sole judgment could be reasonably perceived to threaten, advocate, or incite physical harm to or violence against others.
  - Hateful content: any statement, message, or other Content that in our sole judgment could be reasonably perceived to harm, threaten, promote the harassment of, promote the intimidation of, promote the abuse of, or promote discrimination against others based solely on race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, disease, or immigration status.
- 19.3. We may suspend and terminate your account (and thereby the agreement) if we determine that you are:
- An organization that has publicly stated or acknowledged that its goals, objectives, positions, or founding tenets include statements or principles that could be reasonably perceived to advocate, encourage, or sponsor hateful content,
  - A person that has publicly made a comment or statement, or otherwise publicly made known a position, including by membership in an organization as discussed above, that could be reasonably perceived as hateful content or a threat of physical harm.
  - A person or organization that has acted in such a way as could be reasonably perceived to support, condone, encourage, or represent hateful content or a threat of physical harm.
- 19.4. Mobieclick also does not allow the distribution of content that is materially false, inaccurate or misleading in a way that could deceive or confuse others about important events, topics or circumstances. Mobieclick may suspend or terminate your account (and thereby the agreement) if you use the Mobieclick platform to do so.

## **20. Fraudulent Use and Customer Responsibility**

- 20.1. Mobieclick implements technical measures to detect and limit fraudulent traffic. However, these measures do not guarantee the prevention of all fraud. The Customer acknowledges that while Mobieclick makes efforts to prevent fraudulent activities, there is no 100% guarantee against such occurrences.
- 20.2. The Customer shall be responsible for all messages sent via their campaign code, regardless of the source, unless the Customer can demonstrate clear, provable fraud beyond their control. In such cases, Mobieclick will conduct an investigation to determine if fraudulent abuse occurred.
- 20.3. In case of alleged fraudulent activity, the Customer must contact Mobieclick within 7 days of receiving the disputed invoice. Mobieclick, in consultation with its SMS provider, will determine whether unusual and fraudulent traffic has occurred. If fraud is proven to have occurred without the Customer's involvement, Mobieclick shall, in consultation with the Customer, negotiate a suitable solution in accordance with the terms set out under the section Dispute Resolution. If fraud cannot be proven or is found to be within the Customer's sphere of influence, the Customer remains responsible for all costs incurred.

## **21. Compliance with Laws and Regulations**

- 21.1. You represent and warrant that your use of the Mobieclick Service will comply with all applicable European and national laws and regulations, including as may be amended or adopted over time. You are responsible for determining whether the Service is suitable for you to use in light of your obligations under any regulations such as the General Data Protection Regulation (GDPR), ePrivacy Directive, anti-corruption and anti-bribery laws, and other applicable laws.
- 21.2. If you're subject to specific regulations and you use the Service, Mobieclick won't be liable if the Service doesn't meet those requirements. You may not use the Service for any unlawful or discriminatory activities, including acts prohibited by EU consumer protection laws, data protection laws, or any other applicable legislation.
- 21.3. If you collect any personal information pertaining to a minor and store such information within your Mobieclick account, you represent and warrant that you have obtained valid consent for such activities according to the applicable laws of the EU member state in which the minor resides.
- 21.4. You agree, represent, and warrant to Mobieclick that:
- You will clearly post, maintain, and abide by a publicly accessible privacy notice on the digital properties from which the underlying data is collected that (a) satisfies the requirements of applicable EU Data Protection Laws, (b) describes your use of the Service, and (c) includes a link to our Privacy Policy.
  - You will obtain and maintain all necessary permissions and valid consents required to lawfully transfer data to Mobieclick and to enable such data to be lawfully collected, processed, and shared by Mobieclick for the purposes of providing the Service or as otherwise directed by you.
  - You will comply with all laws, rules, and regulations applicable to the Campaigns sent through the Service, including those relating to (a) acquiring consents to lawfully send Campaigns, (b) the Content of Campaigns, and (c) your Campaign deployment practices.
  - You will provide all notices and obtain all necessary consents required by applicable EU Data Protection Laws to enable Mobieclick to deploy cookies and similar tracking technologies lawfully on and collect data from the devices of contacts and end users in accordance with and as described in our Cookie Policy.

- e. To the extent Mobieclick processes your Content protected by EU Data Protection Laws as a processor on your behalf, you and Mobieclick shall be subject to and comply with the Mobieclick Data Processing Agreement, which is incorporated into and forms an integral part of these Terms.
  - f. All the content and material you provide or use in connection with the Service does not infringe upon or violate any copyright, trademark, privacy, publicity, or other proprietary right of any third party.
  - g. You will comply with all applicable industry best practices and network carrier's requirements or guidance in connection with the SMS messaging service.
- 21.5. You will comply with all applicable industry best practices and network carrier's requirements or guidance in connection with the SMS messaging service.
- 21.6. You acknowledge and agree that we have your prior written authorization to respond, at our discretion, to any data subject access requests we receive from your Contacts made under EU Data Protection Law, or, alternatively, we may direct any such Contacts to you so that you can respond to the request accordingly.
- 21.7. Mobieclick reserves the right to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other relevant third parties. We may also cooperate with appropriate law enforcement agencies, regulators, or other relevant third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of these Terms.

## **22. Limitation of Liability**

- 22.1. Mobieclick ("the Service") is not liable for any interruptions, delays, failures, or errors in the provision of services that are caused by or result from the actions, inactions, cessation of service, or bankruptcy of third-party service providers upon which the Service relies to deliver its services.
- 22.2. Mobieclick is not liable for any loss of data, profits, revenues, business opportunities, goodwill, or anticipated savings under any circumstances or any other forms of indirect and consequential damages.
- 22.3. The total liability of Mobieclick arising out of or relating to this Agreement—whether in contract, tort (including negligence), breach of statutory duty, or otherwise—will be limited to: (a) the total amount you paid us for the Service in the preceding twelve months, or (b) € 10,000, whichever is lower.
- 22.4. You are solely liable for any Content sent through the Mobieclick Service. It is your responsibility to review all Content prior to sending any Campaign through the Service. Mobieclick is not liable for any Content you send through the Service.
- 22.5. Mobieclick is not liable for your relationship with your Contacts or how you interact with them, including your collection of personal information or your collection of consent to communicate with your Contacts via SMS messaging. You must obtain consent directly from your Contacts in the manner prescribed by applicable EU and national laws.
- 22.6. Nothing in these terms shall limit or exclude our liability for gross negligence, wilful misconduct, death or personal injury caused by our negligence, or any other liability that cannot be excluded or limited under applicable law.

## **23. Indemnification**

- 23.1. The Customer agrees to indemnify and hold Mobieclick and its employees, directors, and affiliates harmless from any reasonable losses, damages, judgments, fines, and costs, including legal fees and expenses, in connection with any claims arising out of or relating to:
- a. The Customer's Content or Campaigns
  - b. The Customer's use of the Mobieclick Service
  - c. The Customer's violation of any laws or regulations
  - d. The Customer adding contacts without a valid opt-in
  - e. Third-party claims that the Customer or someone using the Customer's account did something that violates these Terms
  - f. Any misrepresentations made by the Customer
  - g. A breach of these Terms or any representations or warranties the Customer has made to us
  - h. Service interruptions, delays, failures, or errors caused by Third-Party Providers
- 23.2. The indemnification obligations under this clause do not apply in cases of Mobieclick's gross negligence or willful misconduct.

## **24. Equitable Relief**

- 24.1. Your violation of these Terms may cause irreparable harm to Mobieclick. Therefore, we have the right to seek injunctive relief or other equitable relief if you violate these Terms.

## **25. Third-Party Integrations**

- 25.1. Mobieclick is not responsible for the behaviour of any third parties, linked websites, or other users, including third-party applications, products, or services for use in connection with the Service. Your use of any Third-Party Integration and rights with respect to such Third-Party Integration are solely between you and the applicable third party.

## **26. Generative AI Features**

- 26.1. Mobieclick may offer certain artificial intelligence features as part of the Service (each, an "AI Model") to help premium customers create SMS campaigns or other content ("Content Generation"). These AI Models are considered part of the Mobieclick Service.
- 26.2. Customer is responsible for ensuring that any content, instructions, or other material they provide while using the AI Model (collectively, "Inputs") are appropriate and comply with these Terms. Such Inputs are considered "Content" under these Terms.
- 26.3. The use of AI Models may result in content, materials, data, insights, recommendations, and other output ("Outputs") that may be inaccurate or unsuitable for use. Mobieclick makes no warranties that the AI Models or Outputs are error-free or

unbiased. Customer is solely responsible for these Outputs, which are also considered their "Content" under these Terms. Customer must carefully review all Outputs before using them in campaigns or relying on them to ensure accuracy, legality, and appropriateness.

- 26.4. Customer acknowledges that Outputs may not be unique and that the AI Model may generate similar Output for other users. Outputs for other users are not considered the Customer's Content.
- 26.5. By using the AI Model, Customers authorize Mobieclick to leverage certain third parties to provide AI Models, generate Outputs, and process and store Inputs and Outputs in private hosting environments.
- 26.6. Customers grant Mobieclick a worldwide, non-exclusive, irrevocable license to access, use, modify, display, distribute, and process any Inputs and Outputs to develop and improve the AI Model and for purposes stated in our Privacy Policy.
- 26.7. Mobieclick may use Inputs and Outputs, including Customer Data, for machine learning purposes to improve our services. Customers can manage their data preferences in their account settings.
- 26.8. AI Models may be subject to language limitations and usage restrictions. Mobieclick reserves the right to modify, suspend, or discontinue AI Models at any time without notice. We may limit or terminate access to AI Models or suspend Customer accounts for violations of our terms or policies.
- 26.9. Customers agree to use the AI Model and Outputs in full compliance with these Terms and Mobieclick's Acceptable Use Policy.

## **27. Assignments**

- 27.1. You may not assign any of your rights under the Agreement to anyone else. We may assign the Agreement and any of our rights and obligations hereunder to any other individual or entity at our discretion.

## **28. Governing Law**

- 28.1. These Terms are governed by and construed in accordance with the laws of the Netherlands, without regard to its conflict of law provisions.

## **29. Dispute Resolution**

- 29.1. In the event of any dispute, controversy, or claim arising out of or relating to these Terms and Conditions, including their validity, interpretation, performance, or termination, the parties shall first attempt to resolve the matter amicably through good faith negotiations.
- 29.2. If the parties are unable to resolve the dispute within 30 days of commencing negotiations, either party may refer the dispute to the competent courts in Almelo, the Netherlands, shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the agreement between Customer and Mobieclick.

## **30. Force Majeure**

- 30.1. Mobieclick will not be held liable for any delays or failure in performance of any part of the Service due to causes beyond our reasonable control. This includes, but is not limited to, acts of nature, changes to law or regulations, embargoes, war, terrorist acts, riots, fires, earthquakes, floods, strikes, power outages, unusually severe weather conditions, and acts of hackers or third-party internet service providers.

## **31. Survivability**

- 31.1. Even if this Agreement is terminated, the following sections will continue to apply: Feedback and Proprietary Rights, Compliance with Laws, Limitation of Liability, No Warranties, Indemnity, Dispute Resolution, Choice of Law, Severability, and Entire Agreement.

## **32. Severability**

- 32.1. If any section of these Terms is found to be unenforceable, that section will be removed or edited as minimally as possible, and the rest of the Agreement will remain valid.

## **33. Waiver**

- 33.1. If Mobieclick does not immediately take action on a violation of these Terms, we are not giving up any rights under the Terms, and we may still take action at a later point.

## **34. Further Actions**

- 34.1. You agree to provide all documents and take any actions necessary to meet your obligations under these Terms.

## **35. Notification of Security Incident**

- 35.1. If Mobieclick becomes aware of a security incident related to our systems or databases containing personal information of you or your contacts, we will notify you as required by law. We will provide you with information about the incident so that you can evaluate the consequences and any legal or regulatory requirements that may apply, unless prevented from doing so by legal, security, or confidentiality obligations.

## **36. Beta Services**

- 36.1. Mobieclick may offer beta, preview, or limited release features ("Beta Services"). These are provided as-is for evaluation or testing purposes only and may contain bugs or errors. We may discontinue Beta Services at any time in our sole discretion. Beta Services are subject to the terms of this Agreement, including the Limitation of Liability and No Warranties sections.

**37. Notices**

- 37.1. Any notice to you will be effective when we send it to the last email or physical address you provided or when posted on our website. Any notice to us will be effective when delivered to: [Insert Mobieclick's official address \_\_\_\_\_].