

## Terms and Conditions

Welcome to the Rogerthat websites (including <https://rogerth.at> and <http://www.rogerthat.net> and sites that redirect to any of the afore listed) (the "Website") or Rogerthat mobile application. The Website and Rogerthat mobile application are made available to you subject to your unconditional acceptance of all the terms, conditions, and notices set forth and referenced on the Website or through the Rogerthat mobile application, and in these Terms and Conditions (including (without being exhaustive) the Privacy Policy), as may be modified or complemented from time to time as set forth herein (collectively "the Agreement"). Please read the Agreement carefully, as it sets forth the legally binding terms and conditions for your use of the Website, the Rogerthat mobile application, and the services, features, content, applications and widgets available on or through the Website or otherwise offered by Mobicage NV, including through means of the Rogerthat mobile application (collectively the "Services"). For the purposes of the Agreement, references to the Website shall include references to the Rogerthat mobile application and references to Services shall include services made available by Mobicage NV whether through the Website, the Rogerthat mobile application or otherwise.

The terms "Mobicage", "we", "us", "our" refer to Mobicage NV, a limited liability company incorporated under Belgian law, having its registered office at Antwerpse Steenweg 19, 9080 Lochristi, Belgium, VAT-BE-0835.560.572. The term "you" refers to the user visiting the Website and/or registering on the Website and/or accessing or using the Services.

### 1. Your unconditional consent

By visiting, accessing or using the Website and/or the Services or by registering on the Website, you unconditionally agree to be bound by the Agreement.

If you do not agree to any part of the Agreement, please do not visit, access or use the Website and Services.

Be sure to return to this page periodically to review the most current version of the Agreement. We reserve the right at any time, at our sole discretion, to change or otherwise modify the Agreement, and your continued access to or use of the Website and/or Services shall signify your acceptance of the updated or modified Agreement.

### 2. Your membership and registration

You may browse the Website and view its content without registering, but as a condition to using certain aspects of the Services you are required to register with Mobicage.

By registering to our Website and as a condition to you using the Services, you warrant that (i) you are providing current, complete, accurate and true information, (ii) if you have a Website account, you will safeguard your account information and will supervise use of your account by anyone other than yourself, and (iii) that you are legally competent and legally authorised to register for an account and use the Services. You agree to keep your contact information accurate and up to date.

You shall not:

- provide any false personal information, create an account on behalf of anyone other than yourself, or impersonate another individual when creating an account;
- use another person's personal data (e.g. name, photograph), ID or password without such person's permission, or use the Website or the Services while impersonating another person;
- use a user name or account that is subject to any rights of a person other than yourself without such person's authorization;
- use a user name that is offensive, vulgar, obscene or otherwise unlawful.

Without prejudice to any other remedies or sanctions available to us, Mobicage is at liberty to cancel or suspend your account at any time at its discretion, without justification or prior warning and without liability on Mobicage's part.

### **3. Your account security**

You are solely responsible for the consequences of using the Website and the Services.

You are solely responsible for safeguarding your account information (incl. any passwords or access codes that you use to access or use the Services) and for any activities or actions by anyone using your account. You will not share your passwords or access codes, let anyone else access your account unsupervised or do anything else that might jeopardize the security of your account.

You must notify Mobicage immediately of any breach of security or unauthorized use of your account. Although Mobicage will not be liable for your or anyone else's damages and losses caused by any unauthorized use of your account, you will be liable for all damages and losses suffered by Mobicage or third parties due to such unauthorized use and you will fully indemnify Mobicage in this respect.

### **4. Your use of the Website and the Services**

Subject to your compliance with the Agreement, Mobicage hereby grants you permission to use the Website and the Services, provided that:

- you will use the Website and the Services solely for your personal and non-commercial use, except as expressly permitted otherwise by Mobicage;
- you will not use the Website or the Services in an irregular manner or for any unlawful purpose;
- you will at all times use the Website and the Services in strict compliance with the Agreement and applicable law;
- you will use the Website and the Services as a normal, careful and reasonable human being;
- you will not access, monitor or copy any content or information of the Website using any robot, spider, scraper, or other automated means or any manual process for any purpose without our express written permission;
- you will not violate the restrictions in any robot exclusion headers on the Website or bypass or circumvent other measures used to prevent or limit access to the Website;

- you will not take any action that imposes or may impose an unreasonable or disproportionately large load on our infrastructure, nor engage in any activity that interferes with or disrupts our servers and networks;
- you will not publish or link to malicious content intended to damage or disrupt another user's browser or computer or to compromise a user's privacy;
- you will not create serial accounts for disruptive or abusive purposes. Mass account creation for the afore listed purposes, or resulting in the afore listed purposes (or any other breach of the Agreement) may result in suspension of all related accounts;
- you may not use the Services for the purpose of spamming (i.e. sending unsolicited bulk messages). What constitutes spamming will be determined by Mobicage in its reasonable discretion;
- you may not (try to) hack Mobicage or the account of other users;
- you may not engage in username squatting (i.e. the bad faith registration of a legal name other than your own, or of a name that is otherwise commonly used to identify a person (e.g. nicknames), other than yourself, as a user name). Mobicage shall determine in its sole discretion what actions it considers to constitute username squatting;
- you will not deep-link to any portion of the Website for any purpose without our express written permission, nor frame, mirror, or otherwise incorporate any part of the Website into any other website without our prior written permission;
- you will not (attempt to) duplicate, transfer, give access to, copy or distribute any part of the Website or Services in any medium without Mobicage's prior written authorization;
- to the maximum extent such prohibition is permitted under applicable law and except as expressly agreed otherwise by Mobicage, you will not (attempt to) reverse engineer the software or communication protocol underlying the Website or Services, nor write any software that imitates (or allows to imitate) the communication protocol or interfaces (or allows to interface) with the servers, nor will you translate, alter, modify, decompile, disassemble or otherwise create derivative works of any part of the Website, the Services and/or the (underlying) software or communication protocol;
- you will not use Mobicage's or a third party's trade names, trademarks, service marks, logos, domain names or other distinctive brand features without having obtained Mobicage's or such third party's (as applicable) express prior written consent.

Accounts engaging in any of these actions (or any other breach of the Agreement) may be investigated for abuse. Without prejudice to any other remedies or sanctions available to us, Mobicage is at liberty to cancel or suspend your account at any time at its discretion, without justification or prior warning and without liability on Mobicage's part.

The Services that Mobicage provides are always evolving and the form and nature of the Services that Mobicage provides may change from time to time without prior notice. In addition, Mobicage may discontinue the Website or stop (permanently or temporarily) providing the Services or any feature within the Services to you or to users generally without

prior notice, at its discretion and without liability. Mobicage also reserves the right to impose limits on use and storage at its sole discretion at any time and without prior notice.

The Services of Mobicage are free of charge to the extent expressly specified on the Website and subject to such restrictions as may be set out on the Website or otherwise notified by Mobicage. Service Users are subject to the “Terms and Conditions for Service Users” specified below, in addition to the other terms and conditions of the Agreement.

## **5. Content posted by you**

For the purposes of the Agreement, “Content” shall mean any information, text, graphics, photo’s or other materials, including any feedback, comments, suggestions or ideas contained in such material, added, created, uploaded, submitted, distributed, posted or otherwise made available on the Website or otherwise to Mobicage, by users of the Website and the Services, including yourself.

Mobicage takes no responsibility and assumes no liability in respect of any Content provided by you. If you do not agree to the related terms and conditions set out in the Agreement, please do not provide us with any Content. You shall be solely responsible for the Content you provide and for obtaining the necessary authorizations to make the Content available through the Website or otherwise to Mobicage and to have such Content used by Mobicage as set forth herein. You shall be solely responsible for any consequences related to the use of your Content by Mobicage, other users and our third party partners. You shall ensure that any Content that you post or submit on the Services or otherwise make available strictly complies with the terms of the Agreement. You should only provide Content that you are comfortable sharing with others as your Content may be accessed or viewed by others. You agree not to share Content that is confidential and/or proprietary without having obtained the necessary authorisations and you acknowledge and agree that any Content you provide shall be deemed non-confidential.

You warrant that you have obtained the necessary authorizations to make available any Content and to have it used by us for the purposes set out herein. You also warrant that the Content you make available is otherwise compliant with the requirements set out in the Agreement, and you acknowledge and agree that we are under no obligation to verify such compliance of any Content you make available. We cannot be held responsible or liable towards you, including in respect of third-party claims made against you, based on any Content made available by you. You agree to promptly notify us ([info@mobicage.com](mailto:info@mobicage.com)) upon becoming aware that any of the warranties set out herein are not or no longer true.

You are in any event (without being limitative) prohibited from making available on the Website or otherwise through the Services (i) any unlawful, threatening, harassing, libelous, slanderous, defamatory, abusive, hateful, offensive, obscene, or pornographic material or content, or other material or content that may be embarrassing to any person or entity or that may violate rights of publicity and/or privacy or that may otherwise violate any applicable law; (ii) any commercial Content (including, but not limited to, solicitation of funds, advertising, or marketing of any goods or services); (iii) any Content that infringes, misappropriates or violates any copyright, database rights, trademark, patent right or other proprietary right of

any third party; we ask that you please reference or cite sources appropriately and refrain from any plagiarism; (iv) Content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, national or international law; (v) private information of any third party, including, without limitation, surname, addresses, phone numbers, email addresses, social security numbers and credit card numbers; or (vi) viruses, corrupted data or other harmful, disruptive or destructive files, including by posting Content that causes pop-ups or attempts to install software, or otherwise impacts the Website, the Services and/or its users with malicious code.

Mobicage takes no responsibility and assumes no liability for any Content made available by you or any third party, or for any loss of or damage thereto, nor does Mobicage assume any liability for mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter in the Content. Mobicage makes no guarantees or representations as to the validity, completeness, truthfulness, accuracy, reliability or legal status of any Content. Your use of the Website and the Services is at your own risk. As a provider of interactive services, Mobicage is only acting as an intermediary, a repository of the Content, and is not liable for any statements, representations or Content provided by its users in any public forum or other interactive area. Although Mobicage has no obligation to screen, edit or monitor any of the Content posted to or distributed through any interactive area, Mobicage reserves the right, and has absolute discretion, to remove, screen or edit without notice any Content posted or stored on the Website or otherwise through the Services at any time and for any reason, and you are solely responsible for creating backup copies of any Content you post or store on the Website or otherwise through the Services at your sole cost and expense.

Any user opinions submitted on the Website or otherwise through the Services represent the individual users' opinions and do not represent, nor can they be considered to represent, Mobicage's opinions or an endorsement, recommendation, or approval of any such opinion.

While we expect you to show proper consideration for other's privacy and for topics that may be considered objectionable or inflammatory (e.g. politics, religion), Mobicage shall determine, at its sole discretion, what Content is appropriate in respect of the Website and the Services. Without prejudice to any other remedies and sanctions available to us, Mobicage reserves the right at all times, at its discretion, without having to provide any justification and without liability, to:

- (i) remove, suspend, block, edit or modify any Content, without notice to you;
- (ii) to access, read, retain, copy and disclose any Content as Mobicage deems necessary to (i) satisfy any applicable law, regulation, legal process, governmental request, court or legal order, (ii) enforce the Agreement, including investigation of potential violations thereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights and property of Mobicage or any third party and to protect the safety and security of the Website, the Services and their users.

You shall be solely liable for and indemnify us against any damages, losses, costs (including legal costs and attorneys' fees) and liabilities suffered and incurred by us, including as a result of any third-party claim, resulting from any violation of the Content related restrictions and warranties set forth herein, or in respect of any other harm resulting from your posting of Content to the Website or otherwise making Content available through the Services.

Mobicage's IPR Infringement Complaint Policy with respect to claims by third parties that the Website, the Services or any Content infringes third party intellectual property rights, can be found further down in these Terms and Conditions.

## **6. Mobicage's use of Content**

By making available Content on the Website or otherwise through the Services, you hereby grant Mobicage a worldwide, non-exclusive, irrevocable, royalty-free, fully paid-up, perpetual, sub-licensable, transferable and assignable license to (i) use, copy, process, adapt, modify, translate, publish, transmit, reproduce, distribute, create derivative works from, destroy, (publicly) display, and perform the Content, in any form, in any (media) formats and through any (media) channels, whether now known or hereafter devised, whether or not in connection with the Website, the Services and Mobicage's and its affiliates' (and their successors') business, including without limitation for promoting and distributing part or all of the Services (and derivative works thereof), and (ii) use the name that you submit in connection with such Content, provided that Mobicage shall not be under any obligation to reference you as a source in respect of its use of such Content. You acknowledge that Mobicage may choose, at its discretion, to provide attribution to any feedback or comments provided by you. You further grant Mobicage the right to pursue at law any person or entity that violates your or Mobicage's rights in the Content.

You acknowledge and agree that Mobicage may freely modify or adapt your Content in order to transmit, display or distribute it over computer networks and in various media and/or make changes to your Content as are necessary to conform and adapt that Content to any requirements and limitations of any networks, devices, services or media, or otherwise.

You agree that Mobicage may insert advertising in any messages you send using the Services.

You further acknowledge that, when you delete your Content, it will be removed from the Website and the Services, but that any removed Content may persist in backup copies at or under the control of Mobicage or with users who have previously accessed or downloaded your Content.

## **7. Intellectual Property Rights**

The Website, the Services, and the information they contain are provided to you at no charge, solely for your personal and non-commercial use (except as expressly permitted otherwise by Mobicage). All information made available on the Website by Mobicage is provided for information purposes only.

All rights, title and interest in the Website and the Services, including any intellectual and industrial property rights (e.g. copyright and database rights (non-exhaustive list)) therein, are and shall remain the exclusive property of Mobicage.

All rights, title and interest in the content of the Website and the Services (other than the Content which is governed by Section 6 (Mobicage's use of the Content) hereof), including any intellectual and industrial property rights therein, are and shall remain the exclusive property of Mobicage or its licensors (as applicable).

Mobicage shall own all right, title and interest, including any intellectual and industrial property rights, in the Mobicage (and its product and services related) trademarks, trade names, company name, service marks, logos, domain names and other Mobicage distinctive brand features.

Nothing contained in the Agreement shall be construed as, nor shall your use of the Website or the Services result in, conferring by implication or otherwise, any license or right to the Website, the Services or their content (other than the Content which is governed by Section 6 (Mobicage's use of the Content) hereof), except for the restricted user rights set forth herein. The Website, the Services and their content may not be reproduced or distributed, whether in whole or in part, in any way, without the express prior consent of Mobicage, except that you may reproduce such material for your purely personal, non-commercial use, provided that you do not modify such materials in any way, that you reference the Website as the source of the materials and that you keep intact all notices on any copies of the materials.

Any software that is made available for download from the Website (the "Software") is the copyrighted work of Mobicage or its licensors. Your use of such Software is governed by the terms of the end user license agreement, if any, which accompanies, or is included with, the Software (the "License Agreement"). You may not install or use any Software that is accompanied with or includes a License Agreement unless you first agree to the terms of the License Agreement. For any Software made available for download on the Website not accompanied by a License Agreement, we hereby grant to you a restricted, personal, non-exclusive, non-transferable, non-assignable, non-sub-licensable, revocable license to use the Software solely to the extent necessary for viewing and otherwise using the Website and the Services in accordance with the Agreement and for no other purpose. Except for the restricted user rights expressly set forth herein, you shall not be granted any rights in the Software. Please note that all Software, including, without limitation, all HTML code and Active X controls contained on the Website, is owned by Mobicage or its licensors, and may be protected by intellectual property rights. Any reproduction or redistribution of the Software is expressly prohibited, and may result in severe civil and criminal sanctions including penalties. Without limiting the foregoing, copying or reproduction of the Software to any other server or location for further reproduction or redistribution is expressly prohibited. The Software is warranted, if at all, only in accordance with the terms of the License Agreement.

You agree that any software or materials which may be made available by Mobicage hereunder subject to an open source license ("Open Source Software") shall be and shall remain subject to the terms and conditions of the original providers. Open Source Software

licenses for components of the Services released under an open source license constitute separate written agreements. To the extent the Open Source Software licenses conflict with the terms of the Agreement, the Open Source Software license shall govern your agreement with Mobicage hereunder for the specific included Open Source Software components of the Services.

Mobicage reserves all rights not expressly granted in and to the Website, the Services and their content.

For any questions or requests with respect to the reproduction of any part of the Website, the Services or their content, please contact [info@mobicage.com](mailto:info@mobicage.com). If you are aware of infringement of our rights in the Website or the Services, or of our brand, please let us know by mailing us at the above email address. If you believe in good faith that material hosted by us infringes your (intellectual or industrial) property rights, please proceed to the IPR Infringement Complaint Policy (specified below) and follow the instructions set forth therein.

## **8. IPR Infringement Complaint Policy**

This IPR infringement complaint policy (the "IPR Infringement Complaint Policy") is an integral part of the Agreement.

### **(i) Infringement notification**

If you believe in good faith that the Website, the Services, or Content hosted by us infringe your intellectual property rights ("IPR"), please provide the written information requested below. The procedure outlined below is to be used exclusively for notifying Mobicage that your IPR has been infringed.

Please provide the following information in the following format:

1. A clear identification of the copyrighted work or other intellectual property you claim to have been infringed.
2. A clear identification of the material you claim is infringing the copyrighted work or other intellectual property, and information that will allow us to locate that material on the Website, the Services or the Content, such as a link to the infringing material.
3. Your contact information so that we can reply to your complaint, preferably including an email address and telephone number.
4. Include the following statement: "I have a good faith belief that the material that is claimed as IPR infringement is not authorized by the IPR owner, its agent, or the law."
5. Include the following statement: "I hereby confirm, acting in good faith, that the information in this notification is accurate and that I am the IPR owner of, or am authorized to act on behalf of the IPR owner in respect of, an exclusive right that is allegedly infringed."
6. The notice must be signed by the person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Notices of claims of IPR infringement in accordance with this IPR Infringement Complaint Policy should be emailed to [info@mobicage.com](mailto:info@mobicage.com), with the message "Infringement Notification" in the header of the email.

We suggest that you consult your legal advisor before filing a notice or counter-notice. Also, please note that we may hold you liable for damages and costs (including legal costs and attorneys fees) suffered or incurred by us as a result of you making a false claim of IPR infringement.

We will review and address all notices that comply with the requirements set out above.

(ii) Repeat infringer policy

Mobicage adopts a policy of terminating, at Mobicage's sole discretion, users or account holders who are deemed to be repeat infringers. Mobicage may also, at its sole discretion, limit access to the Website and/or suspend or terminate the accounts of any users who infringe any third party's IPR, whether or not there is any repeat infringement.

## **9. Warranty Disclaimer**

Save to the extent required by applicable law, Mobicage does not accept any fiduciary duty to you. You access and use the Website and the Services is at your own risk.

The Website and Services are made available to you "as is" and "as available", without warranty of any kind, for your information and personal use only (except as expressly permitted otherwise by Mobicage). To the fullest extent permitted by applicable law, Mobicage, its officers, directors, employees, and agents disclaim all warranties, express or implied, in connection with the Website, the Services and their content, including the Content, and your use thereof. Mobicage makes no warranties or representations regarding the accuracy, currency, availability, suitability or completeness of the content available on the Site and through the Services, and to the maximum extent permitted under applicable law, Mobicage disclaims all warranties that the Website and Services are free from viruses or other harmful components, and the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement. Mobicage does not make any warranty (i) that the Website and Services shall meet your requirements or expectations, (ii) that the Website and Services shall be available on an uninterrupted, timely, secure or error-free basis, (iii) that the results that may be obtained from the use of the Website and Services shall be accurate and reliable, and (iv) regarding the quality of the Website and the Services. In particular (without being exhaustive), Mobicage assumes no liability or responsibility for any:

- errors, mistakes, or inaccuracies of content (including Content),
- personal injury or property damage, of any nature whatsoever, resulting from your access to and use of our Website and Services,
- any unauthorized access to or use of our servers and/or any content, including Content, personal information and/or financial information, stored therein,
- any interruption or cessation of transmission to or from our Website or Services,
- any bugs, viruses, trojan horses, or the like which may be transmitted to or through our Website or Services through the actions of any third party, including users, and/or
- any errors or omissions in any content or for any loss or damage of any kind incurred as a result of the use of any content, including Content.

Mobicage does not warrant, endorse, recommend, guarantee, or assume responsibility for any product or services advertised or offered by a third party through the Website, the Services or any hyperlinked website or featured in any user submission or other advertising, and Mobicage will not be a party to or in any way be responsible for monitoring any transaction between you and third-party providers of products or services.

The above disclaimer does not affect legal rights which cannot be excluded under applicable law.

## **10. Hyperlinks to third party sites**

The Website may contain hyperlinks to third party websites that are not owned or controlled by Mobicage. Such hyperlinks are provided for your reference and convenience only. Mobicage has no control over and assumes no responsibility for, nor does Mobicage make any representations or warranties as regards the content, privacy, or practices of any third party websites. Mobicage has not reviewed these websites and therefore cannot and does not make any representation regarding the quality or reliability of such sites and their content. In addition, Mobicage will not and cannot censor or edit the content of any third-party site. By accessing the Website and/or using the Services, you expressly acknowledge and agree that Mobicage shall not be responsible for any damages, claims or other liability arising from or related to your use of any third-party website. It is your responsibility to take the necessary precautions to ensure that whatever hyperlinks you select or software you download (whether from the Website or third party websites) is free from viruses, worms, Trojan horses, defects and other items of a destructive nature. Our inclusion of hyperlinks to third party websites does not imply any endorsement of such website or the material, advertisers or links contained on such websites, or any association with their operators.

## **11. Limitation of Liability**

To the maximum extent permitted under applicable law, Mobicage hereby excludes its, its affiliates', its officers', directors', employees', and agents' liability to you and any third parties for any direct, indirect, incidental, special, punitive, or consequential damages whatsoever resulting from (your access to and use of) the Website, the Services and their content (including the Content), including (without being limitative) loss of data, loss of revenue or profit, loss of anticipated savings, reputational damage.

Mobicage in particular (without being limitative) does not accept any liability resulting from any:

- errors, mistakes, or inaccuracies of content (including Content),
- personal injury or property damage, of any nature whatsoever, resulting from your access to and use of our Website and/or Services,
- any unauthorized access to or use of our secure servers and/or any content (including Content), personal information and/or financial information stored therein,
- any interruption or cessation of transmission to or from our Website or Servers,

- any bugs, viruses, Trojan horses, or the like, which may be transmitted to or through our Website and Services by any third party (including users), and/or
- any errors or omissions in any content or for any loss or damage of any kind incurred as a result of your use of any content (including Content).
- in general, your access to, display of, submission of any Content on, your reliance on, or use of the Website or the Services, or resulting from the delay or inability to access, display or submit any Content on or use the Website or the Services.

## **12. Indemnification**

You agree to defend, indemnify and hold harmless Mobicage, its affiliates, officers, directors, employees and agents, on a full indemnity basis and at Mobicage's first request, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, fines, penalties and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Website or Services in breach of the Agreement; (ii) your violation of any applicable law or any term of the Agreement; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that Contents you posted caused damage to a third party. This defence and indemnification obligation will survive the Agreement and your use of the Services. Mobicage reserves the right to assume the exclusive defence and control of any matter subject to indemnification by you hereunder, in which event you will assist and cooperate with Mobicage in asserting any available defences, at your expense.

## **13. Terms and Conditions for Service Users**

Specific terms apply to Service Users (the "General Terms and Conditions for Service Users" and the "Specific Terms and Conditions for Service Users", jointly the "Terms and Conditions for Service Users"), which are complementary to these Terms and Conditions and an integral part of the Agreement if you are a Service User (as defined herein). Capitalized terms used in the Terms and Conditions for Service Users and not separately defined therein, shall have the meaning ascribed to them in these Terms and Conditions.

For the purposes of the Terms and Conditions for Service Users, Service Use shall mean (and Service User shall be construed accordingly) use of the Services (including Mobicage proprietary tools and applications as may be licensed to the Service User) for connecting with third parties other than for one's personal use, and/or servicing third parties (regardless of whether or not such services are charged for by the Service User).

Such Service User shall be subject to a separate agreement to be concluded between the Service User and Mobicage, comprising among others the Terms and Conditions for Service Users ("the Contract"), on-line or otherwise, at Mobicage's option. In the event of a conflict between these Terms and Conditions and the Contract, the latter shall prevail.

You may request Mobicage to be granted a free trial in respect of the Service Use. Such free trial is to be applied for on-line, on the Website, through means of the designated forms. If granted by Mobicage, such free trial shall be confirmed by email, setting out the details and modalities of the free trial (e.g. the term of the free trial, the number of permitted users). Any

such free trial shall be subject to the following additional terms and conditions, which shall form an integral part of the Agreement:

- (i) Any such free trial granted by Mobicage shall consist of a restricted, personal, non-exclusive, revocable, non-transferable, non-assignable license, without the right to sublicense, to use the Services for the purposes of Service Use, subject to the terms and conditions set forth in the Agreement (“the License”). The extent of the License is as expressly granted, and there are no implied licenses or licenses granted by waiver, estoppel or otherwise under the Agreement.
- (ii) You may not transfer, assign or sublicense the License, in whole or in part, without Mobicage’s express written consent. Any such assignment, transfer or sublicensing without Mobicage’s written consent shall be null and void.
- (iii) You undertake to keep accurate business records of your Service Use of the Services for as long as you are entitled to use them as per the terms of the Agreement. You shall retain those records for at least three years after any termination of your right to use the Services (or such longer period as may be required under applicable law). You shall provide Mobicage with such information and documentation regarding your use of the Services as reasonably requested by Mobicage. You acknowledge and agree that Mobicage may monitor your use of the Services. Mobicage and/or its agents may audit your use of the Services (including by performing site inspections) upon reasonable notice (except where such notice would defeat the purpose of the audit), during normal business hours. If such inspection, or a monitoring as per the above, shows that you acted in breach of the Agreement, without prejudice to any other rights and remedies available to Mobicage, you shall promptly take such actions as reasonably requested by Mobicage. The Parties shall each bear their own cost related to any such review and inspection, provided that in the event of a breach by you as determined by such review or inspection, all costs related to such review and inspection shall be borne by you, without prejudice to any other rights and remedies available to Mobicage hereunder.
- (iv) In addition to the provisions of these Terms and Conditions, you shall be subject to the following provisions:
  - You shall be fully responsible for your activities in respect of the Services, and for your users’ use of the Services made available by and through you.
  - You shall fully comply with the Agreement and you shall ensure that your users fully comply with the Agreement to the extent applicable to them.
  - You (to the express exclusion of Mobicage) shall be the data controller (as defined in the Belgian Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data, as amended (e.g. by the Belgian Act of 11 December 1998)) in respect of any processing by you of third parties’ (including your users’) personal data.
  - You shall fully comply with all applicable laws and regulations and shall be solely responsible for obtaining all necessary permits and authorisations required to perform your business activities pursuant to the License.

- You shall allow your users to easily remove or disconnect from the Services made available by you through means of Mobicage's proprietary application and shall obtain all required consent from your users as required under applicable law.
- We shall provide you with all rights necessary to use the Services, except as may be expressly stipulated or notified otherwise. Any rights granted by Mobicage shall be restricted, personal, non-exclusive, revocable, non-assignable, non-transferable user rights, without the right to sublicense, and except for the limited user rights granted to you under the Agreement, Mobicage shall retain all rights, title and interest to the Services and its proprietary tools and applications.
- You may not sell, transfer, or sublicense our code, APIs, or tools to anyone, nor encumber any of the foregoing. You shall not share your API or SIK key with any third party.
- We do not guarantee that the Services will always be available or fully-functioning.
- You may use your name and logo, and customize the background of the Services, subject always to the conditions and restrictions set out in these Terms and Conditions. You shall not infringe any third party rights (e.g. (without being exhaustive) copyright and database rights) or otherwise engage in any unfair trade practices or unfair competition as a result of so customising the Services, and you shall indemnify and hold Mobicage harmless in this respect on a full indemnity basis at Mobicage's first request.
- You may not place your or third-party advertisements on or in relation to the Services. You shall keep the Services spam-free and shall not engage in any spamming yourself. You shall indemnify and hold Mobicage harmless in this respect on a full indemnity basis at Mobicage's first request.
- Mobicage (and its licensors, as applicable) shall own all rights, title and interest, including any (applications for) intellectual and industrial property rights and the right to apply for registration of such rights, in any changes, additions, or improvements to, and in derivatives of the Services, whether developed by or on behalf of Mobicage or by you or on your behalf.
- You shall conduct business in a lawful and professional manner.
- You shall provide best efforts to ensure satisfactory transactions with your users and you shall refrain from any acts or omissions which could reflect unfavourably on the Services, Mobicage and/or its reputation.
- In the event of a (suspected) breach of any of your obligations hereunder, without prejudice to any other rights and remedies available to Mobicage, Mobicage shall be entitled, at its discretion, to suspend or terminate the License without liability on Mobicage's part.
- You shall indemnify Mobicage, on a full indemnity basis and at Mobicage's first request, against any damages, losses, costs (including legal costs and attorneys' fees) and liabilities suffered and incurred by Mobicage, including as a result of any third-party claim, resulting from any breach by

you or your users of the terms set forth in the Agreement. This defence and indemnification obligation shall survive the Agreement and your use of the Services hereunder. Mobicage reserves the right to assume the exclusive defence, control and settlement of any matter subject to indemnification by you hereunder, in which event you shall assist and cooperate with Mobicage in asserting any available defences, at your expense.

In the event of a (suspected) breach of any of your obligations hereunder, without prejudice to any other rights and remedies available to Mobicage, Mobicage shall be entitled, at its discretion, to suspend or terminate your Contract, without liability on Mobicage's part. Upon Contract termination, you shall promptly return or destroy, at Mobicage's option and at your expense, all material made available to you by Mobicage in respect of the Service Use. You shall indemnify Mobicage, on a full indemnity basis and at Mobicage's first request, against any damages, losses, costs (including legal costs and attorneys' fees) and liabilities suffered and incurred by Mobicage, including as a result of any third-party claim, resulting from any breach by you or your users of the terms set forth in the Agreement. This defence and indemnification obligation shall survive the Agreement and your Service Use hereunder. Mobicage reserves the right to assume the exclusive defence and control of any matter subject to indemnification by you hereunder, in which event you shall assist and cooperate with Mobicage in asserting any available defences, at your expense.

#### **14. Assignment**

The Agreement, and any obligations, rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Mobicage without restriction.

#### **15. Suspensions of Services**

Without prejudice to any other rights and remedies available to Mobicage, in case of a breach of one or more of your obligations under the Agreement, Mobicage has the right to temporarily or permanently restrict or deny access to your account with immediate effect and without any right for you to compensation or any liability on Mobicage's part.

#### **16. Termination of the Agreement**

Mobicage may discontinue all or any part of the Website or the Services, or terminate your access to all or any part of the Website or the Services, at any time, with or without cause, with or without notice, effective immediately or otherwise, which may result in the forfeiture and destruction of all information associated with your membership. If you wish to deactivate/terminate your account, please send an email to [info@mobicage.com](mailto:info@mobicage.com), explicitly requesting for your account to be deactivated, which request is to be accompanied with a signed copy of an official means of identification (e.g. identity card or passport). All provisions of the Agreement which explicitly or by their nature are intended to survive termination shall survive termination, including, without limitation, intellectual property rights provisions, warranty disclaimers, indemnity and limitations of liability related provisions.

## **17. Applicable Law and Jurisdiction**

The Agreement is exclusively governed by and construed in accordance with the laws of Belgium, excluding its conflict of law principles. Any dispute in connection with or arising from the Agreement shall be finally adjudicated by the competent courts of Ghent, Belgium.

You agree to bring any claim or cause of action arising out of or related to the Website, the Services or this Agreement, to the extent permitted hereunder or under mandatory applicable law, within one (1) year from the date on which the cause of action arose, failure of which shall result in such claim or such cause of action being permanently barred.

## **18. Entire agreement and Severability**

The Agreement constitutes the entire agreement between you and Mobicage concerning the Website and the Services. If any provision of the Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Agreement, which shall remain in full force and effect, and the invalid or unenforceable provision shall be deemed superseded by a valid, enforceable provision which most closely matches the intent of the original provision. You acknowledge and agree that a printed copy of the Agreement and of any notice given in electronic or written form shall be admissible in judicial or administrative proceedings relating to the Agreement to the same extent as other business documents and records originally generated and maintained in printed form.

## **19. Waiver**

No waiver by Mobicage of any term of the Agreement shall be deemed a further or continuing waiver of such term or any other term, and Mobicage's failure to assert any right or provision under these Terms and Conditions shall not constitute a waiver of such right or provision.

## **20. Modification of Terms and Conditions**

Mobicage reserves the right to amend the Agreement at any time. We therefore encourage and urge you to regularly check the Agreement for any changes. Your access to the Website and/or use of the Services following any amendment of the Agreement will signify your acceptance of its revised terms.

## **21. Miscellaneous**

Mobicage shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond Mobicage's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including "line-noise" interference). No agency, partnership, joint venture, or employment relationship is created as a result of the Agreement or you accessing the Website and/or using the Services.

## **22. Language**

Where Mobicage makes available a translation of the English language version of the Agreement, you agree that the translation is provided for your convenience only and that the English language versions of the Agreement will govern your relationship with Mobicage and that, in the event of any contradiction or discrepancy between the English language version of the Agreement and a translation, the English language version shall take precedence.

## **23. Contact**

You may contact Mobicage at [info@mobicage.com](mailto:info@mobicage.com), except where specific contact details have been provided in the Agreement in respect of specific matters, in which case such contact details are to be used.

These Terms and Conditions were last modified:

February, 2012.