

## **MobiKite Reseller Agreement Terms & Conditions**

MobiKite and Reseller are each referred to as “**Party**” and jointly as “**Partners**” -

### **0. Preamble**

- 0.1 MobiKite, Inc. (MobiKite) is an Illinois Corporation that develops and distributes Mobile Tools Management software and services (“**MTMS**”) that enable SMB Clients to create, publish and manage their “**Mobile Services**” including Mobile Coupons, Mobile Client Loyalty, Text Messaging, Email Marketing, Client Data Base, etc. (“**Mobile Tools**”) provided by their Agency or Media Group Provider (“**Partners**”).
- 0.2 Reseller is an Agency, Media Group or other service provider serving various digital marketing, advertising and other services to their direct clients.
- 0.3 Reseller intends to distribute, market and resell MobiKite’s Mobile Tools to its business customers / end clients.

The Partners shall agree on a reseller relationship as follows:

### **1. Subject Matter**

- 1.1 Subject of the resale shall be MobiKite’s “**Mobile Tools**”: this refers to MobiKite’s whole product portfolio as described on [www.MobiKite.com](http://www.MobiKite.com), including the modules “Reseller Dashboard and End User Client Dashboard” and the services available including Mobile Coupons, Mobile Client Loyalty, Text Messaging, Email Marketing, Client Data Base, etc.. MobiKite consistently improves and updates its services and will notify Reseller of any product changes in a timely manner.
- 1.2 Reseller shall distribute, market and resell Mobile Tools to business customers (“**Clients**”) in its own name and for its own account (“**Business Resale**”).

### **2. General Obligations of Reseller**

- 2.1. Reseller shall promote, market and advertise the Products in a bundle or individually to SMB/Enterprise Clients at its own digression.
- 2.2. Reseller shall obtain the prior written consent of MobiKite in any event of an intended use of copyright, trademark or otherwise protected material, including but not limited to logos, brand and Partners names, graphical artwork, relating to the Products, MobiKite, its affiliated companies, its licensors, and its Partners. Reseller upon respective request by MobiKite shall immediately cease and desist from using any copyright, trademark or otherwise protected material.
- 2.3. Reseller shall neither directly, nor indirectly through contractual relationships with any competitor of MobiKite, offer and/or sell services similar or identical to MobiKite’s MTM services (“**Competing Business**”). This is considered a material obligation that is of essence to MobiKite. Upon breach of this obligation MobiKite may terminate the Agreement without notice. Claims for damages remain unaffected whereas it is presumed unless proven otherwise that all revenues out of such businesses or out of the contractual relationships with the MobiKite competitor or competitors are minimum lost profits to MobiKite.

### **3. General Obligations of MobiKite**

- 3.1. During the term of this Reseller Agreement MobiKite shall make available its Products for Business Resale by the Reseller.
- 3.2. MobiKite shall at its own expense ensure that the rights to operate and distribute the Products remain in force during the term of this Reseller Agreement, if in its sole discretion it is economically justifiable and reasonable to do so.
- 3.3. MobiKite shall reasonably assist in and react to Product related issues put forward by Reseller which cannot be resolved by Reseller without the support by MobiKite within two business days. This includes technical support for integrating Clients into the MobiKite Platform.

### **4. Reseller Management Console and other tools**

- 4.1. MobiKite will provide a Reseller a Web Based Management Console. The interface is constantly adapted and improved. All functions of the Mobile Tools Platform can be accessed through most web browsers.
- 4.2. MobiKite hereby grants Reseller the non-exclusive right to use the programs and tools developed and made available to Reseller according to this Section. The right is transferable only to Reseller and Reseller Clients and only in order to file orders and manage Clients Mobile Campaigns in the MobiKite platform, under the condition that the Client abides by the limitation of its use.

### **5. Business Resale Distribution**

- 5.1. In Business Resale, Reseller shall market and conclude contracts in its own name and for its own account. Reseller shall have no power to represent MobiKite.
- 5.2. Reseller shall submit all Business Resale orders to the MobiKite Platform, e.g. through the Reseller Dashboard: Reseller shall open, administrate, manage and delete Client Accounts and assign account managers as the Reseller sees fit. This is not in any way the responsibility of MobiKite. If a Client already has a preexisting MobiKite account, MobiKite may refuse opening another one or delete the extra.
- 5.3. Once an order / account is pushed live by Reseller, MobiKite shall provide platform and technical support to ensure the hosting environment and platform services are functioning and delivering acceptable functionality.
- 5.4. Reseller shall provide 1<sup>st</sup> and 2<sup>nd</sup> level support to its Clients for all Business Resale. If necessary, Reseller shall contact the MobiKite community management and support functions for 3<sup>rd</sup> level support requests.

### **6. Warranty and Indemnification**

- 6.1. Reseller warrants that (I) it will create new client accounts onto the MobiKite Platform only upon request of the respective Client, (II) the Client Content is accurate and not pornographic, unlawful, harassing, defamatory, obscene, inappropriate in any other way, glorifying violence or harmful to minors or violate third party rights.

6.2. Reseller indemnifies MobiKite of all claims that are raised against MobiKite due to the creation of the Client Mobile Tools Account. Reseller shall reimburse MobiKite for all related damages and costs (including appropriate costs of assertion of rights) to the extent that the claims result from Reseller violating the warranties under Section 6.1.

**7. Payment**

7.1. MobiKite service fees are based on the total Business Account Creation or (“BAC”). The BAC is calculated on the first day of each month and payment is due on the first of each new month. Calculations are based on the total number of Live or “Verified Accounts” in the Resellers Account Dashboard on the 1<sup>st</sup> day of each month. All new accounts registered during any given month will not be charged until the next 1<sup>st</sup> day of the preceding month.

7.2. There is a minimum account fee of one (1) location per month. This minimum fee will be later applied to the first client that is registered in Resellers account. The cost per account is automatically determined based on a scaled pricing schedule as defined in 7.2. MobiKite will apply charges for service fees or BAC’s to the Resellers credit card that is on file at the time of registration.

7.3. Pricing Schedule:

<b>Pricing Per Unit / Mobile Tool Box</b>	
<b>Agency Sales Volume</b>	<b>Cost Per Unit</b>
< 100	\$39.00
101 - 400	\$29.00
401 – 1,000	\$24.00
> 1,000	\$19.99
One-Time Agency Onboarding Fee	\$199.00
Minimum Account Requirement	1

7.4. SMS / Text Messaging: Every month Reseller will be allocated 200 outbound SMS text messages per Verified Account into a pool for that Reseller (i.e. 5 clients @ 200 outbound messages = 1,000 text messages in that month). SMS Text Messaging for all accounts will draw from the Resellers SMS pool. The reseller will be charged \$0.01 per message when the pool is exceeded.

7.5. Resellers will be notified of any issues with payment processing of the card on file. Reseller is responsible for updating expired cards and ensuring that payments can and will be covered by the card on file in the Resellers dashboard. In the event Reseller does not provide payment for a period of greater than fifteen (15) days, MobiKite reserves the right to suspend all accounts under Resellers white label platform. In the event an account is suspended a reactivation fee of \$250.00 will apply.

**8. Tax Clause**

8.1. Payments shall be made without any deductions. Taxes, levies, tariffs, dues and the like that arise from Business Resale shall solely be borne by the invoicing Party. Especially with respect to resale to third Partners pursuant to this agreement where value added tax, goods and services tax or any similar taxes apply, the invoicing Party will be solely responsible for the collection and remittance of any and all applicable value-added tax, or other consumption-based taxes under this Agreement.

## 9. Limitations of Liability

- 9.1. MobiKite shall only be liable for misconduct, acts of intent or gross negligence. Such limitation of liability shall not apply (i) if MobiKite has issued a guarantee, (ii) when violating material obligations that are of essence to Reseller and that Reseller can generally rely on, (iii) if personal and/or physical injuries occur, (iv) to defaults or impossibilities on the part of MobiKite.
- 9.2. When violating a material obligation out of any negligence but gross negligence, MobiKite shall only be liable for the damages that are typical for this agreement.
- 9.3. Beyond that, MobiKite shall in no event be liable for any consequential damages of Reseller, such as lost profit, unrealized cost efficiencies or reductions and/or other indirect damages, except for cases of intentional breach.
- 9.4. Any limitation of liability of MobiKite shall also apply to its employees, subsidiaries, representatives and agents.

## 10. Term

This agreement shall come into effect upon acceptance of the terms and conditions below (“**Effective Date**”) and be entered into for a period of twelve (12) months. Either Party may terminate this agreement with effect to the end of the term upon prior written notice to the other Party of at least two months. If and each time neither party terminates this agreement, it will automatically be extended for another 12 months.

The right to terminate this agreement with cause and without notice shall remain unaffected. For instance, either Party may terminate this agreement without notice, if the other Party substantially changes its business model.

After termination, Reseller may only renew or extend old contracts or enter new ones with Clients upon MobiKite’s written consent.

## 11. Confidentiality / Publicity

- 11.1. “**Confidential Information**” refers to:
  - a) This agreement and the terms and conditions herein.
  - b) Proprietary information (whether owned by a Party or a third party to whom a Party owes a non-disclosure obligation) including, without limitation, MobiKites Mobile Platform, Client Information, Know-How, Software Platform, Source Code and copies or derivative works thereof;
  - c) Such information which is identified as confidential at the time of oral disclosure or written (including electronic) form with or without a prominent confidentiality notice and
  - d) Such information that, by the nature of the circumstances surrounding the disclosure, ought to be treated in good faith as proprietary and/or confidential (for example, all information relating to pricing).

Notwithstanding the foregoing, Confidential Information shall not include information which:

- a) Was rightfully known to the receiving party at or prior to the time of disclosure by the disclosing party;
- b) Is or becomes publicly known through no act or omission of the receiving party;
- c) Is received without restrictions from a third party without breach of any obligation of non-disclosure; or
- d) Is independently developed by the receiving party as shown to the satisfaction of the disclosing party by written records.

11.2. In connection with this agreement, each Party may have access to the other Party's Confidential Information. Each Party agrees:

- a) To protect the other Party's Confidential Information using the same degree of care as it uses to protect its own Confidential Information of like nature (but no less than a reasonable degree of care);
- b) Not to use the other Party's Confidential Information for any purposes other than the performance and implementation of this agreement or the maintenance and/or furtherance of the business and strategic relationship between the Partners;
- c) Not to disclose the other Party's Confidential Information to a third party without the prior written consent of the other Party; and
- d) To restrict disclosure of the other Party's Confidential Information to its employees, and/or authorized agents or third Partners having an absolute need of access thereto for the performance and implementation of this agreement, or the maintenance and/or furtherance of the business and strategic relationship between the Partners, and with whom it has a confidentiality agreement to the same or more stringent effect as this Section 11 (Confidentiality/Publicity).

11.3. Nothing herein shall prevent either Party from disclosing the other Party's Confidential Information to any court, governmental entity or government agency as required by law or to a legally established stock exchange pursuant to the relevant rules, regulations and/or requirements; provided, however, that the other Party is – to the extent permissible – promptly notified of such mandated disclosure so as to afford the other Party sufficient time and opportunity to seek a protective order or other appropriate relief as it deems fit in connection therewith.

11.4. Neither Party may publicly disclose any of the specific terms of this agreement to any third party without the express prior written consent of the other Party. Both Partners may publish one or more consensual joint or separate press releases after the signing of this agreement, in which the business relationship is announced.

11.5. Third Partners shall not comprise affiliated companies of MobiKite.

11.6. The obligations under this Section shall remain effective beyond the term of this agreement for two years.

## 12. Miscellaneous

- 12.1. This agreement constitutes the entire agreement between the Partners and is a complete and exclusive statement of the mutual understanding of the Partners. It supersedes all previous written and oral agreements and communications relating to the subject matter of the agreement.
- 12.2. Unless stated otherwise herein, the agreement may only be modified in writing (i.e. originally signed paper documents and facsimile, if the original is provided within a reasonable period of time after the facsimile has been served), unless stricter form is required by law. The same applies to a waiver of this written form requirement.
- 12.3. The agreement is deemed to have been made in and shall be construed pursuant to the laws of shall be governed by the laws of the state of Illinois (other than the conflicts of law's provisions thereof). If any controversy or claim arises out of or in relation to the agreement, or breach thereof, the Partners shall strive to settle the same amicably. If the Partners are unable to amicably resolve the dispute, either Party may file a lawsuit to resolve such dispute.
- 12.4. Should a provision of this agreement or a provision later on included in this agreement be or become null and void as a whole or in part, or should a gap in this agreement become evident, this does not affect the validity of the remaining provisions.