

## **Our terms & conditions**

These General Terms and Conditions apply to the use of Mobipium's Service as defined below. By using the Service, you agree to the General Terms and Conditions. If you do not wish to agree to them, you cannot use the Service.

We advise you to read these General Terms and Conditions carefully so that you are aware of your rights and obligations when using Mobipium's Service.

If you create an Account via the Website, you can download and print these General Terms and Conditions here. If you wish to receive a copy of the General Terms and Conditions, send an email to [affteam@mobipium.com](mailto:affteam@mobipium.com) requesting a copy.

### **Article 1. Definitions**

1.1 In this agreement the - capitalised - terms listed below are defined as follows, regardless of whether they are used in the singular or plural:

- **General Terms and Conditions:** these general terms and conditions of Mobipium;
- **Affiliate:** any natural person or legal entity that makes use of Mobipium's Service;
- **Affiliate Content:** the content selected by the Affiliate himself which, using the Mobile Service, is offered to end users; this content is not Mobipium Content;
- **Content:** the Affiliate Content and the Mobipium Content together;
- **Account:** the environment managed by the Affiliate which, inter alia, provides access to the management environment of the Tools and Content;
- **Service:** the platform exploited by Mobipium on which it provides the Affiliates with the Tools and the Mobipium Content that enables them to offer the Mobile Service, as described on the Website;
- **End User:** any natural person who makes use of the Content through an Affiliate;
- **IP rights:** all intellectual property and connected rights, such as copyrights, trademark rights, patent rights, design rights, trade

name rights, database rights and related rights as well as rights to knowhow and intellectual property equivalents;

- Log-in Data: the user name and password chosen by an Affiliate;
- Mobile Service: the mobile portal developed by the Affiliate using the Service whereby erotic services, including but not limited to videos, dating and webcams, are offered to End Users;
- Agreement: an agreement between an Affiliate and Mobipium to use the Service, to which these General Terms and Conditions apply in full;
- Tools: Mobipium's software applications enabling the Affiliates to use the Service, comprising inter alia the 'White label builder', 'Redirect script' and 'Linkbuilder', including templates and all relevant documentation;
- Mobipium: Mobipium lda., a private limited company with its registered office and principal place of business at Avenida do Infante 8, 3ºM 9000-015 Funchal, Portugal, [www.mobipium.com](http://www.mobipium.com), [info@mobipium.com](mailto:info@mobipium.com), Tel. +351 218 004 607, listed in the Trade Register of the Chamber of Commerce under file number PT510555730;
- Mobipium Content: the material (including image material) made available by Mobipium via the Account and the Website, comprising inter alia photos and videos; this material is not Affiliate Content;
- Website: Mobipium's website, the web address of which is [www.mobipium.com](http://www.mobipium.com), as well as all underlying pages;

## **Article 2. Applicability**

2.1. These General Terms and Conditions apply to all offers, quotations and proposals made by Mobipium as well as to the Agreement and all other agreements to which Mobipium is a party, insofar as the parties have not in writing stipulated terms and conditions that vary from these General Terms and Conditions.

2.2. Variations, amendments and additions to these General Terms and Conditions shall only be valid if agreed in writing between the Affiliate and Mobipium.

2.3. Mobipium shall at all times be entitled to alter and/or update these General Terms and Conditions. The most up-to-date General Terms and Conditions shall be available on the Website or shall be brought to the

attention of the Affiliate while using the Service. If the Affiliate continues using the Service after these General Terms and Conditions have been altered and/or updated, the Affiliate thereby irrevocably accepts the altered and/or updated General Terms and Conditions. If the Affiliate does not consent to the altered and/or updated General Terms and Conditions, he will have no option other than to terminate the Service and remove the Account.

2.4. If any provision of these General Terms and Conditions turns out to be void or voidable or is for any reason invalid either wholly or in part, the other provisions of these General Terms and Conditions shall remain fully in force. Mobipium shall replace the invalid provision with one that is valid and whose legal consequences, taking into account the content and purport of these General Terms and Conditions, most closely correspond to those of the invalid provision.

2.5. No general terms and conditions or other conditions of the Affiliate shall be binding upon Mobipium and any such terms and conditions are hereby explicitly rejected. In the unlikely event that both these General Terms and Conditions and the Affiliate's general terms and conditions are applicable, these General Terms and Conditions shall prevail.

### **Article 3. Service**

3.1. During the term of the Agreement the Affiliate undertakes, as a non-exclusive Affiliate, to promote the Mobipium Content using the Mobile Service.

3.2. Under the conditions laid down in these General Terms and Conditions, Mobipium grants the Affiliate a limited, personal, revocable, non-exclusive, non-sub-licensable and non-assignable right to access to and use of the Service for the purposes described in these General Terms and Conditions and under conditions regarding the payments concerned.

3.3. The Affiliate may not sell, hire out or dispose of the Service or grant limited rights to it or make it available to a third party in any manner or for any purpose whatever.

3.4. The Affiliate may not copy, alter, adjust, decompile, reverse-engineer, apply scripts or in any manner visually or otherwise manipulate the

Service, including - but not limited to - the landing page of Mobipium with the Mobipium Content, nor instruct a third party to perform aforementioned actions.

3.5. Alterations made to the Service by an Affiliate must be submitted for the assessment of Mobipium in the manner referred to in the Service. The Affiliate may not launch his Mobile Service before Mobipium grants its approval. The approval of alterations is solely at the discretion of Mobipium.

3.6. Any (natural) person who has reached the minimum age of eighteen (18) years may use the Service and/or create an Account. If the Affiliate has not yet reached the age of eighteen (18) years and/or objects to the content of the Website or the Content and/or is in a geographical area in which access to the Website and/or use of the Service is prohibited, he must immediately discontinue his visit to the Website and/or use of the Service and remove any Account he may have.

3.7. The Affiliate guarantees that he shall at no time directly contact the holder of rights to the Mobipium Content if that party is not Mobipium, unless the Affiliate has an existing relationship with that rights holder.

3.8. The Affiliate shall implement the Mobile Service on the Affiliate's website as soon as possible following its publication. The Affiliate shall amend his website and integrate the Mobile Service in such a way that the maximum possible traffic to the Affiliate and Mobipium Content can be generated.

3.9. The Affiliate warrants that it holds all the rights to the domains and sub-domains used by it.

#### **Article 4. Account**

4.1. Before using the Service, the Affiliate must create an Account in the manner indicated on the Website. Using the Account, the Affiliate can then alter and/or remove his data as well as examine statistics.

4.2. The Affiliate warrants Mobipium that the information provided on creating the Account is complete, truthful and correct. It is therefore not

permitted to create an Account in someone else's name. When registering, the Log-in Data must also be chosen.

4.3. If for any reason the Affiliate's data are not or no longer up to date, complete or correct, the Affiliate must without delay update his data so that they are once again up to date, complete and/or correct.

4.4. The Affiliate himself is responsible for keeping the Log-in Data secret. As soon as the Affiliate knows or has reason to suspect that his Log-in Data are in the possession of non-authorised persons or if he knows and/or suspects that his Account is being abused, the Affiliate must notify Mobipium immediately notwithstanding the Affiliate's own responsibility to take immediate and appropriate action, for example by altering his Log-in Data. The Affiliate accepts and acknowledges that he is at all times responsible and liable for all and every use of the Service made via his Account. The Affiliate indemnifies Mobipium against all damage and costs arising from and/or related to third parties' use of the Service via the Affiliate's Account.

## **Article 5. Content**

5.1. Using the Account, the Affiliate can choose Content that he wishes to make available to the End User. The Affiliate may not modify or adapt the Mobipium Content in any manner or use it in any manner other than for the purpose as described within the Service.

5.2. Aside from the Mobipium Content, the Affiliate can also choose to make Affiliate Content available via the Mobile Service. The Affiliate is fully liable and responsible for the Affiliate Content which he communicates to the public and reproduces by means of the Mobile Service. The Affiliate indemnifies Mobipium against all third-party claims which are in any way related to or arise from the use of the Affiliate Content.

5.3. It is not permitted to make Affiliate Content available:

- a. which, at the discretion of Mobipium, is discriminating with regard to appearance, race, religion, sex, culture, origin or is otherwise deemed hurtful, offensive or inappropriate;

- b. in which personal data of minors are requested or in which personal data of others are made available;
- c. which contains viruses, Trojan horses, worms, bots or other software which can damage automated work or make it unusable or inaccessible or delete it, or which can appropriate it or which are intended to circumvent technical protection measures of the Website and/or the computer systems of Mobipium;
- d. which is based on untruths and/or is misleading or subsists in the assumption of a false identity and/or which wrongly suggests that the Affiliate is involved with Mobipium;
- e. which infringes the rights of Mobipium and/or third parties, including but not limited to IP rights or rights concerning the protection of privacy;
- f. is contrary to these General Terms and Conditions or any applicable laws or regulations, is in any other manner unlawful or which could prejudice the interests and reputation of Mobipium;

5.4. Mobipium reserves the right, without prior notice, to abridge, alter, refuse and/or remove Affiliate Content and/or Mobipium Content if this is necessary in Mobipium's opinion, without this resulting in any right to damages and/or liability on the part of Mobipium.

## **Article 6. Availability of the Service**

6.1. Mobipium is at all times entitled, without prior announcement and without in any way becoming liable to the Affiliate, (i) to make procedural and technical alterations and/or improvements to the Website and/or the Service and (ii) to (temporarily or permanently) discontinue, limit or remove the Website, the Service or the Account.

6.2. The Affiliate is himself responsible for the purchase and/or proper operation of the infrastructure and reliable telecom facilities (including internet connection) which are required for using the Service. Mobipium is not responsible or liable for costs arising from the use of telecom facilities and charged via the telecom provider.

6.3. Mobipium is in no way liable to the Affiliate for any damage that arises from or is the result of any (temporary) unavailability or (interim) breakdown of the Website and/or Service.

## **Article 7. Payments**

7.1. Mobipium shall make payments to the Affiliate. The payments shall be made and calculated in the manner described on the Website. All payments will be made and calculated in US Dollars.

7.2. Mobipium may at any time alter the amounts of the payments listed on the Website. If the Affiliate does not agree with any alteration, he will have no option other than to terminate the Service and remove the Account.

7.3. Mobipium is entitled to suspend and/or withhold any payment as referred to in Article 7.1, to the discretion of Mobipium, if:

- the Affiliate acts in breach of these General Terms and Conditions;
- a fraud alert is filed against the Affiliate;
- an investigation regarding fraud of the Affiliate is initiated or announced by a competent authority and/or Mobipium; or
- if Mobipium has established or suspects an instance of fraud by the Affiliate in the use of the Service.

7.4. The payments owed by Mobipium to the Affiliate shall be calculated on a monthly basis. If any payment amounts to less than USD 250 (in words: two hundred and fifty dollars), it shall be suspended until it exceeds USD 250 (in words: two hundred and fifty dollars).

7.5. Payment shall be made on a self-invoicing basis. Mobipium shall prepare the invoice listing the payments owed in the previous month, within 5 (five) days after said month has ended, and submit it for the Affiliate's verification. If the Affiliate does not agree with the invoice, he must object to it in writing within five (5) days after reception of the invoice. In that case Mobipium shall prepare a new invoice. If the Affiliate does not object to an invoice, Mobipium endeavors to make payment within ten (30) days after the date of reception of the corresponding invoice by the Affiliate.

7.6. If Mobipium fails to pay an invoice in a timely manner and this failure is not the cause of default on the part of the Affiliate, the Affiliate shall inform Mobipium of this in writing. If there is a justified complaint,

Mobipium shall make payment as soon as possible. The Affiliate shall not be entitled to any statutory interest, suspension and/or set-off.

7.7. All payments that Mobipium makes to the Affiliate depend on the payments of the End Users to Mobipium. If Mobipium does not receive a payment from an End User, the Affiliate does not receive payment for the use of the Content by that End User.

7.8. Affiliates who are liable to pay VAT must submit their VAT number to Mobipium. Affiliates without a VAT number declare that they know that all payments that Mobipium makes to them will be notified to the tax authorities at the end of the calendar year.

7.9. Affiliates declare that they know that they must file a tax return for income tax and/or corporation tax. Mobipium may not in any way be held liable for any failure to file a proper tax return on the Affiliate's part.

7.10. Paying visitors are registered by means of the information from payments service providers. This information is then provided to the Affiliate by way of statistics, which may include an online function, an online invoice overview or a webmaster monitor. The data shown therein are not in any way binding for the final invoicing. Inaccuracies or differences that are the result of rounding off, subsequent calculation and breakdowns are strictly reserved.

7.11. If the payment service provider cannot or is unwilling to pay Mobipium the revenue generated, Mobipium shall not be required to pay such revenue to the Affiliate as long as it cannot be collected from the payment service provider.

7.12. If any act and/or omission of the Affiliate in the use of the Service leads to or causes a fine or any other financial measure to be imposed on or taken against Mobipium, Mobipium shall pass on the fine and/or financial measure to the Affiliate in full. Mobipium is entitled to set off the fine and/or financial measure against amounts owed by the Affiliate, in accordance with article 7.13.

7.13. Mobipium reserves the right to set off any outstanding payments against amounts owed by the Affiliate.



## **Article 8. Duration and termination**

8.1. The Affiliate may at any time cease using the Service and remove his account. If an Affiliate removes an Account, Mobipium shall immediately render the Account and the Mobile Service inaccessible and remove the Affiliate's data and any Affiliate Content within a reasonable period of time, unless there are reasons to keep them for a longer period of time.

8.2. On removing an Account, the Mobile Service including any Affiliate Content may following its removal continue to be disclosed for a limited period of time via the Website and/or third-party websites. Mobipium is not liable for any damage resulting from or caused by this disclosure of the Mobile Service and/or the Affiliate Content.

8.3. In addition to the other (legal) remedies at Mobipium's disposal, Mobipium may at all times, without giving reasons and without prior explanation, (temporarily) restrict, suspend or discontinue the Affiliate's activities relating to Mobipium, temporarily or permanently terminate and/or remove an Account or Mobile Service, terminate the provision of services and refuse to provide services to the Affiliate, specifically, but not exclusively, if: (i) the Affiliate acts in breach of these General Terms and Conditions; (ii) Mobipium takes the view that an Affiliate's actions may cause damage and/or liability for Mobipium or other Affiliates.

8.4. The payments owed, as referred to in Article 8, shall be paid to the Affiliate after the Service is terminated in accordance with that article.

## **Article 9. Privacy**

9.1. On creating an Account while the Service is being provided and on visiting the Website, (personal) data of the Affiliate shall be provided to Mobipium. These (personal) data shall be processed in accordance with Mobipium's Privacy Statement and the applicable laws and regulations. The Privacy Statement can be found here

9.2. Personal data of End Users that Mobipium receives via the Mobile Service become the property of Mobipium.

## **Article 10. IP rights**

10.1. The IP rights relating to the Service, including but not limited to the Website, the Mobipium ny Content and the Tools, shall be vested in Mobipium and/or its licensors.

10.2. No provision in these General Terms and Conditions shall be construed as an assignment or waiver of any IP rights relating to the Service to the Affiliate.

10.3. The Affiliate in principle retains the IP rights relating to the Affiliate Content he uses. The Affiliate acknowledges and agrees that by making available / uploading his Affiliate Content to Mobipium he automatically grants a cost-free, worldwide, irrevocable, sub-licensable and transferrable licence to Mobipium to use, communicate to the public and reproduce this Affiliate Content insofar as it is related to providing the Service.

10.4. The Affiliate warrants Mobipium that he holds all the rights relating to the Affiliate Content and that he is fully entitled to license the IP rights to Mobipium.

10.5. The Affiliate is at no time entitled to register or apply for the registration of any right relating to a work, design, drawing, trademark and/or trade name that is identical or confusingly similar to any work, design, drawing, trademark and/or trade name that is protected by an IP right belonging to Mobipium. Thus the Affiliate may not use or file a domain name that is identical or confusingly similar to any trademark, trade name or other distinctive sign used and/or registered by Mobipium. Nor may the Affiliate use any sign and/or word regarding which Mobipium may exercise IP rights within the context of search engine optimisation, such as registering Google Adwords.

## **Article 11. Guarantees and indemnifications**

11.1. The Affiliate accepts that the Service, including in any event the Tools, Content and Website, contains solely the functionality and other properties that the Affiliate encounters when he starts using the Service ("as is basis"). Thus Mobipium expressly excludes explicit and tacit guarantees, undertakings and indemnifications of any kind, including but

not limited to guarantees, undertakings and indemnifications regarding the quality, security, lawfulness, integrity and accuracy of the Service.

11.2. More specifically, Mobipium does not issue guarantees regarding the availability and functionality and quality of the Affiliate's Mobile Services on mobile devices or the availability and quality of the Content, including the availability and/or the quality of the Content in different countries and/or in different languages.

11.3. The Affiliate acknowledges that Mobipium is not a party to any agreement and/or any other (legal) relationship on whatever ground between the Affiliate and the End User. The Affiliate fully indemnifies Mobipium against any damage and costs that Mobipium may suffer or incur as a result of any dispute between the Affiliate and the End User.

11.4. The Affiliate is liable to Mobipium for and shall fully indemnify Mobipium against any damage and costs that Mobipium may suffer or incur as a result of (i) any actions of the Affiliate in the use of the Service, including but not limited to the use of the Website, the Account, the Tools and/or the Mobipium Content, publishing Affiliate Content, making available Content to the End User, (ii) breach of these General Terms and Conditions, (iii) an unlawful act of the Affiliate and/or any infringement by the Affiliate of IP rights and/or any other rights of other Affiliates or third parties.

11.5. The Affiliate shall compensate any costs and damage that Mobipium incurs or suffers in relation to such liability.

## **Article 12. Liability**

12.1. Mobipium does not accept any liability for financial loss and/or any other loss resulting from an attributable failure in the performance of the Service, including but not limited to damage resulting from or relating to the use of the Service, the Website, the Content and/or the Tools or the impossibility of using them and/or on account of an unlawful act or otherwise, where this is permitted under mandatory law.

12.2. Notwithstanding article 12.1. the Affiliate acknowledges and accepts that Mobipium holds no responsibility whatsoever regarding the content and availability Third Party Content, nor the consequences of using this

Third Party Content. The Affiliate shall direct any and all (alleged) claims it has and/or receives regarding Third Party Content to the party from which this specific content originates, which is displayed in the Account.

12.3. If Mobipium is liable to the Affiliate for damage on whatever ground, Mobipium shall be liable solely for direct damage suffered by the Affiliate as a result of a failure attributable to Mobipium to perform its obligations, on account of an unlawful act or otherwise up to an amount not exceeding that of the payments made by Mobipium to the Affiliate in the year preceding that in which the event that caused the damage occurred. Mobipium's overall liability, on whatever ground, shall at no time exceed USD 250 (in words: two hundred and fifty dollars).

12.4. Any liability on Mobipium's part for indirect loss, including but not limited to consequential loss, loss and/or damage of data, loss of profit and loss of revenue, loss of savings, reduced goodwill, damage by business interruption and damage as a result of claims from End Users is excluded. Also excluded is liability on Mobipium's part on account of mutilation, destruction or loss of information, data and/or documents and/or damage through delays in the transmission of data traffic.

12.5. The restriction of liability stated in this article applies equally to any indemnification obligations that may lie with Mobipium.

12.6. This restriction of liability is not however intended to exclude Mobipium's liability for intent and/or gross negligence on the part of Mobipium itself ("own actions") and/or Mobipium's managing board.

12.7. No right to damages shall exist unless the Affiliate notifies Mobipium in writing of the damage promptly after it has arisen. Any claim for damages against Mobipium shall become extinguished by the mere lapse of twelve (12) months after the claim has come into being.

### **Article 13. Miscellaneous**

13.1. These General Terms and Conditions and the use of the Service and the Website is governed by Portuguese law.

13.2. All disputes that may arise between the Affiliate and Mobipium shall be submitted to the competent court in the district of Madeira, unless mandatory law provides that the dispute must be submitted to a different court.

13.3. Mobipium may assign the rights and obligations arising from these General Terms and Conditions to third parties and it shall notify the Affiliate thereof.