



TERMS & CONDITIONS

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These Terms & Conditions together with the signed Agillic Order Form ("Order Form") form an Agreement between the Client and Agillic A/S ("Agillic").

Any reference to the Client in the Agreement shall also be a reference to the Client's affiliates listed in the Order Form.

In these Terms & Conditions, Client and Agillic are individually referred to as a "Party" and collectively as "Parties".

1. DEFINITIONS

- 1.1 The **Agillic Omnichannel Marketing Automation Platform** (the "Platform") is a "software as a service" (SaaS) solution, enabling the Client to work with data-driven insights and content to create, automate, and send personalised communication at scale across multiple channels through a single tool.
- 1.2 The latest documentation of the Platform is available via <https://support.agillic.com> and <https://developers.agillic.com>

2. RIGHTS AND OBLIGATIONS

- 2.1 The Parties hereby represent and warrant that:
 - 2.1.1 they have full power and capacity to execute and deliver on the Agreement; perform its obligations under the Agreement; and use the Platform contemplated by the Agreement; and
 - 2.1.2 the execution, delivery, and performance by the Parties of its obligations under the Agreement and the use of the Platform do not contravene or conflict with (i) any applicable law or regulation or any order of any government or other official authority, body, or agency or any judgement, order or decree of any court having jurisdiction over it, or (ii) the provisions of its constitutional documents.
- 2.2 The Client hereby represents and warrants that:
 - 2.2.1 it has full power and capacity to execute and deliver the Agreement; perform its obligations under the Agreement; and use the Platform contemplated by the Agreement on behalf of its affiliates listed in the Order Form;
 - 2.2.2 it will only use the Platform as described in the Agreement and will not use the Platform in any unlawful manner that could result in a violation of applicable laws to which it is subject to including, without limitation, all consumer regulation, marketing regulation, personal data protection regulation, and tax law;
 - 2.2.3 it will only use the Platform to send emails, SMSs and other types of communication to recipients that have granted sufficient consent to receive such communication from the Client or other valid legal base is present; and
 - 2.2.4 it will ensure that emails, SMSs, and other types of communication sent using the Platform include the option for the recipients to opt out of such

communication and that the recipients do not receive communication from the Client after having requested to opt out.

- 2.3 If Agillic becomes aware that the Client is in breach of any of the warranties above including but not limited to if the Client sends communication to recipients, which have not granted positive permission to receive communication from the Client (commonly known as “spam”), then Agillic shall have the right to suspend the Client’s access to the Platform with immediate effect. In this case, subscription fees and other payments under the Agreement shall still be payable by the Client.
- 2.4 Agillic shall have a right to limit the Client’s access to Platform features e.g. API with three (3) weeks prior notice if the Client continuously makes excessive use of storage, bandwidth, CPU, memory, threads, API calls etc. and does not follow Agillic’s instructions to remedy the issue.
- 2.5 The Client’s access to and use of Public API is subject to following obligations:
 - The Client must have retry procedures in place to handle 5xx responses.
 - The Client must respect 503 errors and retry with an exponential backoff.
 - The Client must respect Agillic’s rate limiting of i) max twenty (20) concurrent API calls, ii) max payload size capped at 20MB, iii) max five (5) times as many API calls as active recipients to Production environment, and iv) max five thousand (5,000) daily API calls to Staging environment.
- 2.6 If the Client is in violation of these obligations or if Agillic detects unauthorised third-party access to the Public APIs, Agillic may immediately suspend the offending use.

3. NO WARRANTY

- 3.1 To the extent permitted by applicable law, the Platform is provided to the Client on an "as is" basis without warranty of any kind.
- 3.2 Without limiting the generality of the foregoing, Agillic disclaims to the extent permitted by law any and all warranties, express or implied, including, without limitation, any (a) warranties of merchantability or fitness for a particular purpose, (b) warranties against infringement of any third party intellectual property or proprietary rights; (c) warranties relating to delays, interruptions, errors or omissions in the Platform; (d) warranties relating to the accuracy or completeness of information or data in the Platform, and (f) other warranties relating to performance, non-performance, or other acts or omissions of Agillic.

4. SUPPORT

4.1 Agillic offers support on the Platform to the Client as set out in the Service Level Agreement (“SLA”).

5. FEES AND PAYMENTS

5.1 The Client shall for the use of the Platform pay Agillic:

- The Subscription Fees, as per the Order Form, calculated yearly at contract anniversary based on the number of yearly unique active recipients (hereinafter referred to as an “UAR”);
- An UAR is defined as a recipient identified by the ‘AGILLIC_ID’ field which has been targeted with one or more outbound communications through the Platform within the period. Note, that the same email address may count as more than one UAR if multiple recipients with the same email are created. Deleted recipients are included in the annual UAR count. Recipients solely targeted by transactional emails are not included in the UAR count except if the Platform’s pdf-channel is used to generate attachments.
- Transaction Fee and other agreed fees as per the Order Form;
- Additional Subscription Fees (if applicable); and
- Overrun Fees according to 5.4.

5.2 The Subscription Fee covering the first year of the License Period is invoiced by Agillic upon the Parties' signing of the Agreement. Subscription Fees for following License Periods are invoiced in advance two (2) months before the commencement of such following License Periods.

5.3 Transaction Fees are calculated monthly at the end of each month and invoiced no later than on the 14th in the following month.

5.4 If the number of UARs during a License Period exceeds the agreed number of UARs (“Overrun”), as stated in the Order Form, the Client will be charged an Overrun Fee equal to the Total subscription fee / Total UAR x 1.25 x Overrun. Overrun Fee, if applicable, is invoiced separately.

5.5 The number of UAR’s shall be calculated individually per instance.

5.6 Overrun Fee shall be calculated as a total of the instances for the Client including all affiliates unless UAR’s are specified per affiliate and has each their instance according to the Order Form.

5.7 All invoices are due for payment fourteen (14) days from the day of the invoice. Agillic may apply a late charge on overdue invoices at a rate of 1.5 percent per month or the maximum interest rate allowed by applicable law, from the day after the due date until the outstanding invoice or part thereof has been paid in full.

5.8 All fees and amounts payable under the Agreement are exclusive of VAT and other taxes and duties.

6. NEW VERSIONS

6.1 The Client accepts that the Platform will be updated on an ongoing basis without prior notice to the Client in accordance with the SLA. Agillic represents and warrants that key functionalities will be included in any new version of the Platform.

7. LIABILITY

7.1 Neither Party shall be liable for indirect losses, such as loss of profit, information, data, good-will, business or anticipated savings or any other indirect loss.

7.2 Agillic shall not (even within the areas where stricter liability is imposed) be liable for losses resulting from: breakdown/lack of access to IT systems or damage to data stored in such systems which can be attributed to the events mentioned below, regardless of whether Agillic or an external contractor is responsible for operating such systems;

7.2.1 failure in Agillic's power supply or telecommunications, non-availability of the Platform, e.g., due to maintenance down-time, legal measures or administrative decrees, natural disasters, war, riot, civil unrest, sabotage, terrorism or vandalism (including computer virus, cyber terrorism, including but not limited to hacking and other cyber-crime), third-party hardware failure, data backup failure;

7.2.2 strike, lockout, boycott or blockade, regardless of whether the conflict is directed against or initiated by Agillic itself or its organisation and regardless of the reason for the conflict. This also applies if the conflict only affects some of Agillic's operations; or

7.2.3 other circumstances which are beyond Agillic's control.

7.3 Notwithstanding anything to the contrary in the Agreement, Agillic's total liability under the Agreement shall be limited to the Subscription Fee paid by the Client to Agillic under the Agreement during the latest twelve-month period prior to the damaging event.

7.4 The limitations of liability as described above do not apply to situations where a Party has caused the damage through intent or gross negligence.

8. INDEMNIFICATION

8.1 Notwithstanding anything to the contrary in the Agreement, a Party shall indemnify, defend and hold harmless the other Party from and against any losses, claims, damages, liabilities, including legal fees and expenses, arising out of any third party claim due to or arising out of the first mentioned Party's violation of the Agreement, including but not limited to a claim arising out of a breach of the first mentioned Party's representations or warranties made hereunder.

8.2 Either Party reserves the right, at the other Party's expense, to assume the exclusive defence and control of any matter for which a Party is required to indemnify the other Party, and the Parties hereby agree to cooperate with the other Party's defence of these claims.

9. INTELLECTUAL PROPERTY

9.1 The Client acknowledges that all rights, title and interest in the intellectual property in the Platform, including all copyrights, patents and trade secrets therein including, but not limited to, all documentation and manuals relating thereto are and shall remain the sole and exclusive property of Agillic or under the subscription to Agillic. Upon termination or expiry of the Agreement for any reason, all rights and subscriptions of the Client under the Agreement shall terminate.

9.2 All data added by the Client to the Platform shall be the property of the Client, and Agillic may not distribute the data in any way without prior instruction from the Client. Agillic may only access the Client's data as a response to a service request to assist the Client with activities in the Platform, e.g., for the purpose of problem solving, testing, verification etc.

10. DATA PROCESSING

10.1 The Client is the data controller and Agillic is the data processor in respect of personal data processed in the Platform as well as to any other personal data processed by Agillic. The Parties have therefore entered into a Data Processing Agreement ("DPA") governing Agillic's data processing activities on behalf of the Client as set forth in the Order Form.

11. SUB-SUPPLIERS

11.1 Agillic may use sub-suppliers for the delivery of the Platform as specified in the Order Form.

12. CHANGES

- 12.1 The Subscription Fee, stated in the Order Form, will be increased with five (5) percent at each anniversary of the Agreement following the initial agreement period.
- 12.2 Any changes to the Agreement require a written agreement between the Parties, except as set out below.
- 12.3 Agillic shall have the right to carry out changes (including in prices) with immediate effect due to new or changes to legislation, taxes according to law.
- 12.4 Agillic shall have the right to change the SMS transaction fee agreed with the Client by giving a notice of fourteen (14) days in case of general price increases on SMS transactions. Agillic is entitled to adjust the SMS transaction fee.

13. TERMINATION

- 13.1 The Agreement cannot be terminated by the Parties during the Initial Licence Period.
- 13.2 After the expiry of the Initial Licence Period, the Agreement will automatically renew for additional one Subscription Term successive agreement periods, unless terminated by one of the Parties no later than two (2) months prior to the end of an agreement period.
- 13.3 Each Party is entitled to terminate the Agreement for breach:
 - 13.3.1 If the other Party is in material breach thereof and does not rectify such breach within thirty (30) days from obtaining written notice thereof; or
 - 13.3.2 If the other Party is declared bankrupt, enters into composition proceedings or liquidation or can otherwise be assumed to have become insolvent.
- 13.4 Agillic shall have a right to close the Client's access to Platform with immediate effect if the Client:
 - 13.4.1 uses the Platform in a way constituting a criminal act or contrary to applicable law (especially personal data protection legislation and anti-spamming legislation);
 - 13.4.2 uses the Platform in a way constituting a risk of damage for Agillic or a third party; or
 - 13.4.3 the Client does not pay Subscription Fees or other charges pursuant to the Agreement.

- 13.5 Upon expiry of the Agreement, the Client shall have the right to extract data from the Platform within thirty (30) days after expiry. If the Client does not exercise the right to extract data within thirty (30) days after expiry, Agillic shall delete all data.

14. CONFIDENTIALITY

- 14.1 The Parties acknowledge that during the term of the Agreement they may have access to certain confidential, business sensitive and proprietary information of the other party, including but not limited to software code, software usage information, log in details and passwords. The parties agree not to use or disclose this confidential information, except in strict compliance with the provisions of the Agreement and as necessary for the proper use of the software and services.
- 14.2 Agillic shall have the right to mention the Client as reference in its marketing activities (including use of the Client's official logo), both during the term of the Agreement and thereafter.

15. TRANSFER AND CHANGE OF CONTROL

- 15.1 Agillic may assign the Agreement to other entities belonging to the same group of companies which Agillic is part of or in connection with the sale of Agillic's business.

16. DISPUTES

- 16.1 Agreements shall be governed and construed in accordance with Danish Law. Each of the parties irrevocably submits for all purposes to the exclusive jurisdiction of the courts of Denmark.