

## General Terms and Conditions for electronic services available at [www.smsapi.com](http://www.smsapi.com) [version of 01.03.2022 v.1.1]

General Terms and Conditions ("GTC") governing Customer's access to and use of electronic services available at [www.smsapi.com](http://www.smsapi.com), provided by Link Mobility Poland Sp. z o.o., having its registered office in Gliwice (44-100), Poland, ul. Toszecka 101, registered in the National Court Register maintained by the Regional Court in Gliwice under number (KRS) 0000350201, NIP: 969-156-67-36, REGON: 241520885, with the share capital of PLN 100 000 ("LINK").

### Section I – General Provisions

- 1.1. These GTC constitute the basis for LINK's provision of services to the Customer by electronic means, as required in art. 8 item 1 point 1 of the Act of 18<sup>th</sup> July 2002 on the provision of services by electronic means (consolidated text: Dz.U.2020.344 with later amendments). Moreover, these GTC constitute the template of the agreement within the meaning of art. 384 et seq. of the Polish Civil Code, and they are made available free of charge to the Customer before entering into an agreement under URL address [www.smsapi.com](http://www.smsapi.com).
- 1.2. The GTC specify the principles and technical conditions for entering into and executing the Agreement (the "Agreement"), whose subject matter is the Customer's access and use of the services provided by electronic means, named "SMSAPI System", especially through the website available on the Internet under URL address [www.smsapi.com](http://www.smsapi.com) (the "Website").
- 1.3. The Customer is obliged to get acquainted with the content of this GTC and adhere to the GTC and the addendums thereto- an integral part to the GTC. Customer's acknowledgement and acceptance of the aforementioned provisions shall be indicated through the declaration submitted during the registration of the Account in the SMSAPI System. The Customer shall be obliged to ensure that all Users get acquainted with the content of these GTC and adhere to the GTC and the addendums thereto.
- 1.4. For the purposes of the GTC, the following definitions are established:
  - a. **SMSAPI System** – an automated system for sending and/or receiving Messages by the Customer to/from End Users of Customer's choice, that is made available by electronic means, especially through the Website.
  - b. **Website** – in accordance with point 1.2.
  - c. **Account** – the profile of the Customer created in the SMSAPI System that includes the identification data provided by the Customer. The Account has a unique login (user name) and password.
  - d. **Services** – SMSAPI service/s provided by LINK to the Customer under these GTC.
  - e. **LINK (or "Service Provider")** – LINK Mobility Poland Sp. z o.o., with its registered office in 44-100 Gliwice, Poland, ul. Toszecka 101.  
Link Mobility Poland sp. z o.o., considering its partner and linked enterprises, having regard to the definition included in the Attachment no. I to the Commission Regulation (EU) No 651/2014 of 17<sup>th</sup> June 2014 *declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty*, shall be considered as a large enterprise in the meaning of the Act of 8<sup>th</sup> March 2013 on counteracting undue delays in commercial transactions.
  - f. **Customer (or "Service Recipient")** – a natural or legal person that is an entrepreneur, that uses the Services provided by LINK for its own commercial purposes and has an active Account in SMSAPI System.
  - g. **User** – a natural person who has been authorized by Customer to log in and use the Services on Customer's behalf (including the Customer that is a natural person).
  - h. **Consumer** – a Customer who is a natural person, concluding an Agreement directly related to their business activity, where it is apparent from the content of this Agreement that it does not have for that person a professional character, arising in particular from the subject of his business activities, disclosed under the regulations on the Central Register and Information on Economic Activity.
  - i. **Operator** – any telecommunication operator, aggregator, Internet Service Provider (ISP), which LINK cooperates with through SMSAPI System.
  - j. **End-User** – any subscriber of a mobile service used through an Operator's network, to which LINK is connected in any way.
  - k. **Agreement** – in accordance with point 3.1. and 3.2.
  - l. **Postpaid Agreement** – in accordance with point 4.4.1.
  - m. **Pricing Appendix** – in accordance with point 4.4.1.
  - n. **Settlement Period** – in accordance with point 4.4.1.
  - o. **Remuneration** – in accordance with point 4.4.3.
  - p. **Monthly Minimum Fee** – in accordance with point 4.4.3.b.
  - q. **Initial Limit** – in accordance with point 4.4.6.
  - r. **Point** – Prepaid Point, Postpaid Generated Point, or Postpaid Settlement Point
  - s. **Prepaid Point** – in accordance with point 4.3.2.
  - t. **Prepaid Package** – in accordance with point 4.3.3.
  - u. **Postpaid Generated Point** – in accordance with point 4.4.2.
  - v. **Postpaid Settlement Point** – in accordance with point 4.4.2. and 4.4.6.
  - w. **Message** – a message comprising numerals and/or text and/or audio and/or videos and/or other medias as applicable, which is composed by the Customer and/or the User and conveyed to be sent through SMSAPI System to an End-User, or composed by an End-User and conveyed to be sent through Operators' networks by SMSAPI System to the Customer.
  - x. **Content** – an information contained in a text message or any binary message, including any executable code, or any multimedia message comprising text, audio or video, numerals, symbols, animation, graphics, photographs and other materials in digital electronic form, provided by Customer, contained in a Message sent by the Customer by the use of the Services, as well as any content that Customer transfers to LINK.
  - y. **Sender Name** – identifier (if applicable) of the Customer as the sender of the Messages at the beginning of Message's Content (e.g. company/brand name), representing a combination of letters and/or numbers. Sender Name can be up to 11 characters long. Acceptable characters are: a-z A-Z 0-9 . & @ - + \_ ! % [space]\*, (valid phone number is not acceptable). Each added Sender Name may be verified by LINK's customer support team as well as the Customer shall be required to provide any additional statement or documents in the case of usage of a company/brand name, trademarks etc.
  - z. **Special Characters** – the characters not included on the following list:  

@ £ \$ ¥ è é ù ò Ç Ø ø Å å \_ ^ { } \ [ ~ ] | Æ æ ß É ! " # ¤ % & ' ( ) \* + , - . / : ; < = > ? 0 1 2 3 4 5 6 7 8 9 A B C D E F G H I J K L M N O P Q R S T U V W X Y Z a b c d e f g h i j k l m n o p q r s t u v w x y z Ä Ö Ñ Ü Š ž ä ö ñ ü à and "space" and "enter".
  - aa. **Individual Message** – a single SMS Message or one part of a related SMS Message. In case of an Individual Message sent in FAST Option, a multiplier 1,5 shall in any case be applied (1 Individual Message FAST = 1,5 Individual Messages).

- bb. **SMS Message** – a text or binary Message as defined in GSM 03.38 Specification. LINK applies the customary commercial usage of universal standards for GSM networks, including in particular the usage of the 7-bit alphabet – GSM 03.38, i.e., 3GPP TS 23.038 (originally GSM recommendation 03.38), and the 16-bit alphabet – UCS-2, i.e. Universal Coded Character Set defined within the standard ISO/IEC 10646, depicting the standard "Unicode". Whenever any dispute regarding the usage of one or the other of the aforementioned alphabets rises, the 16-bit alphabet – UCS-2 shall be applicable and any and all calculations for initiated by the Customer number of SMS Messages for sending shall be based on the latter.

For the purposes of calculating the number of SMS Messages and their length (single (stand-alone) Message or related (connected) SMS Messages), the following rules shall apply:

Length of a single (stand-alone) SMS Message:

- 1) without Special Characters: contains maximum 160 characters;
  - 2) with Special Characters: contains maximum 70 characters.
- \*The characters ^ { } [ ] ~ \ | € as well as "enter" are counted as two characters.

Length of a related (connected) SMS Message (SMS Message forming part of SMS Message that is longer than single SMS Message):

- 1) without Special Characters: contains maximum 153 characters;
  - 2) with Special Characters: contains maximum 67 characters.
- \*The characters ^ { } [ ] ~ \ | € as well as "enter" are counted as two characters.

Calculating the number of related SMS Messages:

When the Content of SMS Message includes more characters than the maximum length of a single (stand-alone) SMS Message provided above, the number of all SMS Messages shall be calculated as number of related (connected) SMS Messages as follows:

- 1) without Special Characters: the number of related SMS Messages (N) shall be equal to the number of characters (n) divided by 153 (the result shall be rounded up to the nearest integer) i.e.  $N = n / 153$ ;
  - 2) with Special Characters: the number of related SMS Messages (M) shall be equal to the number of characters (m) divided by 67 (the result shall be rounded up to the nearest integer) i.e.  $M = m / 67$ .
- \*The characters ^ { } [ ] ~ \ | € as well as "enter" are counted as two characters.

- cc. **SMS PRO Message** – SMS Message , initiated from a Sender Name chosen and initiated by the Customer and accepted by LINK, as long as LINK's connection to a given destination operates an alphanumeric Sender Name (otherwise the messages will be delivered with a numeric Sender Name).

- dd. **FAST Option** – Messages with "FAST Option" chosen, treated as priority and settled with multiplier 1.5 in relation to the base rate.

- ee. **HLR Number Check** – service that allows to verify the home GSM network of a given number.

- ff. **Confidential Information** – any provision of the Agreement or information disclosed by either party in any form, before, during and/or after execution of the Agreement, relating in particular to the provision of Services or any details to either party's business, whether marked as confidential or identified as confidential in any other way, including, but not limited to information on: network access codes, trade secrets, processes, techniques, software (including source codes and object codes), computer records, hardware configuration, designs, plans, developments, inventions, drawings, product information, business or marketing plans and projections, details of agreements or arrangements with third parties and customers, and customers' lists.

- gg. **Provision of the Services by Electronic Means** – provision of the Services without simultaneous presence of both parties (from the distance), through the transfer of data on the recipient's request, sent and received by means of electronic equipment for processing (including digital compression) and storage of data,

which is entirely sent, received or transmitted by the means of a telecommunication network, within the meaning of the Telecommunication Law.

- hh. **Means of Electronic Communication** – technical solutions, including the teleinformation devices and the software tools cooperating with them, allowing individual communication at distance by using data transmission between the teleinformation systems, especially the electronic mail.

- ii. **Teleinformation System** – a set of computer devices cooperating with each other and the software, which makes it possible to process and store, as well as send and receive the data through the telecommunication networks, by means of a terminal appropriate for the given type of network, within the meaning of the Telecommunication Law.

- jj. **Technical Specification** – the collection of specifications and/or technical information and requirements with regard to LINK's Teleinformation System, necessary for the use of this system for the purposes of the provision of Services. The Technical Specification constitutes an appendix to the GTC and is available at [smsapi.com/docs](https://smsapi.com/docs).

- kk. **Telecommunications Legislation** – the EU Directives 2002/19/EC (Access Directive), 2002/20/EC (Authorisation Directive), 2002/21/EC (Framework Directive), and 2002/22/EC (Universal Service Directive) with later amendments, hereunder 2009/140 and 2018/1972 (EECC), and any local implementations in national law, as well as any other applicable EU or national legislation regulating the telecommunications sector, including in particular the Act of 16st July 2004 Telecommunication Law (consolidated text: Dz.U.2021.576 with later amendments, "Telecommunication Law").

- ll. **Data Protection Legislation** – EU General Data Protection Regulation 2016/679 ("GDPR") and the EU Directive on privacy and electronic communications ("ePrivacy Directive"), and national provisions on the protection of privacy in the country in which the controller or processor is established, as amended, replaced or superseded from time to time, including laws implementing or supplementing the GDPR and ePrivacy Directive.

Terms defined in the GDPR article 4 shall be understood in accordance with the GDPR definition.

## Section II – Scope

- 2.1 The GTC cover LINK's provision of the Services by electronic means to the Customer and Customer's access and the use of SMSAPI System, especially through the Website.
- 2.2 The access defined in point 2.1 above is provided with the use of an Account assigned to the Customer (operating via its Users).
- 2.3 The Customer is not entitled to make the Account access data in the form of login (user name) and password, or any other authorization data (ie. API credentials, OAuth tokens) available to third parties, unless otherwise agreed. The Customer shall ensure that any and all account information, including in particular passwords, other logon information and all activity related to the Customer's use of the Services, are kept and treated as Confidential Information under the Agreement. If Account information is made available to third parties, or the Customer becomes aware of anything else that may jeopardize the security and integrity of the Services, the Customer shall immediately change such Account information, and immediately notify LINK.
- 2.4 Unless otherwise agreed, the Customer is required to actively use the Account at least once during a period of 12 (twelve) consecutive months. In the case LINK identifies a lack of Account's activity for a period longer than 12 consecutive months, the Account, and all related data, may be removed or suspended by LINK without prior notification.
- 2.5 The Customer is not allowed to transfer Account or share its usage to/with another entity without LINK's prior express consent.

### Section III – Conditions for Entering Into Agreement, Account Approval, Execution and Termination of the Agreement

3.1 Access to and use of SMSAPI System requires an agreement to be in place between the parties.

3.2 The Agreement as specified in point 3.1 is entered into by the Customer's registration of the Account in the SMSAPI System. Within 7 days from the registration date, LINK is entitled to reject the registration of the Account, which is tantamount to the withdrawal from the Agreement, and results in the return of the equivalent of the Prepaid Points as specified in point 4.3.2, which have been purchased and not utilized by the Customer until such withdrawal.

For the purposes of Account registration's and Services' control, the Customer shall provide any and all information (including documents – both official (public) and private) requested by LINK and related to the identity of the Customer, its legal representatives, Users, employees, contractors and others, their legal and/or financial status (in particular bank accounts), the Customer's eligibility to enter into an Agreement (proof of entrepreneur status, certificate of incorporation etc.), as well as any other requested information at LINK's own discretion. For further verification, LINK may also- at its own discretion and at any point- require the Customer to deliver to LINK's registered office a signed copy of these GTC, in a written or a document form.

For avoidance of any doubt, successful registration of the Customer's Account and conclusion of the Agreement depends entirely on LINK's own discretion and corporate policies. LINK is not obliged to provide any statement or reason for Account's non-registration or Agreement's rejection.

3.3 By the registration of the Account, the Customer provides certain contact information. LINK is entitled to send to the Customer's address, e-mail address or via telephone number, given at the registration, all information (incl. notifications) connected with the Agreement or the performance thereof, as well as with the functioning of the SMSAPI System and/or the Services. Until provision of new contact information in a proper manner, the contact information given at the registration shall be regarded as applicable for contact / notification / exchange of information with the Customer.

3.4 The Consumer has the right to withdraw from the Agreement within 14 days without giving a reason and incurring costs, subject to paragraphs 3.5 – 3.8.

3.5 Should the Consumer withdraw from the Agreement, LINK retains the right to remuneration for the Services provided until such a withdrawal.

3.6 In order to exercise the right of withdrawal referred to above, the Consumer must give LINK notice of withdrawal. The period for withdrawal shall be deemed to have been observed if the notice of withdrawal is sent, before its expiry, to the e-mail: support@smsapi.com or in writing to the address indicated in point 1.4.e.

3.7 LINK shall immediately confirm to the Consumer receipt of the notice of withdrawal from the Agreement, by e-mail sent to the address provided by the Account's registration, or provided later at the Account.

3.8 Should the Consumer withdraw from the Agreement, they will receive a refund of the amount due under the Agreement without undue delay, and in any event no later than within 14 days from the date when the Customer notifies LINK of the withdrawal from the Agreement and indicates the way refund shall be made.

### Section IV – Payment conditions

4.1 For the provision of services, LINK is entitled to a remuneration as stipulated hereunder.

4.2 Payment shall be made based on either prepaid or postpaid settlement, as specified in point 4.3- 4.4, whereas the default form shall be prepaid.

4.3 Prepaid settlement.

4.3.1. Prepaid settlement shall be deemed as a default form of payment.

4.3.2. Settlement of the remuneration shall be based on the points purchased by the Customer ("**Prepaid Point(s)**"). Within SMSAPI System one Prepaid Point has the nominal value equivalent to EUR 1.00 (one Euro), VAT excluded, unless clearly stated otherwise. This value can be utilized only for the acquisition of the Services within the functionalities of SMSAPI System, i.e. in particular for sending and/or receiving of Messages.

4.3.3. In order to pay for the Services the Customer shall purchase Prepaid Points within the functionalities of SMSAPI System- either as separate Prepaid Points, or as a package of Prepaid Points ("**Prepaid Package**").

4.3.4. The Customer shall pay the single net price of EUR 1.00 (one Euro), VAT excluded, for one Prepaid Point (EUR 1 = 1 Point). At the time of purchase of Prepaid Points/ Prepaid Package, the net price paid by Customer- resident of Poland for tax purposes, shall be increased by the value of relevant VAT rate (example: a Prepaid Package containing 100 Prepaid Points is offered on SMSAPI System for the price of EUR 100 and upon its purchase by Customer- resident of Poland for tax purposes, they shall pay EUR 123 for it (when VAT rate amounts to 23%).

4.3.5. The Prepaid Points shall be automatically settled upon initiation by the Customer of Messages' sending via the SMSAPI System and/or usage of additional services available on SMSAPI System. The settlement rate shall be based on applicable LINK price list describing the number of Prepaid Points (or the nominal value in EUR) required for initiation of Messages' sending or usage of additional services.

The Customer hereby agrees that in case the Customer has any overdue payments resulting from the Postpaid Agreement, any payment resulting from the purchase of Prepaid Points may firstly be set off by LINK against the settlement of Postpaid Agreement.

4.3.6. The settlement rate of points required for initiation of Messages' sending/ usage of additional services, as referred to in point 4.3.5. above, depends primarily on the type of Message and the Operator to which network it is directed. Detailed information on the applicable settlement rate of points is published on the Website and/or on the Account. The Customer is obliged to check the current applicable settlement rate before initiating the sending process of the Message/ the usage of any additional services available within the SMSAPI System.

4.3.7. LINK is entitled to change the settlement rates i.e. number of Prepaid Points required for a given type of Message or for additional services within the SMSAPI System, at any time and without prior notice. The applicable settlement rates shall be displayed on the Website, on the Account in a price list section or in any other way ensuring easy access to the information, without any obligation for LINK to inform the Customer in any other way. The aforementioned changes shall not require the approval by the Customer for their effectiveness/applicability. The applicable rates shall be those of the date when the Customer uses the Services.

4.3.8. The payments for the purchased Prepaid Points/ Prepaid Packages shall be made:

- a) by the electronic service for on-line electronic payments;
- b) by bank transfer made from Customer's bank account to LINK's bank account, whereas prior to making any payments via bank transfer, the Customer must generate a pro-forma invoice.

4.3.9. The SMSAPI System enables activating the automated re-charge of the Account by the means of the electronic service for on-line electronic payment. The Customer shall be fully and exclusively liable for the consequences of activating the automated re-charge of the Account.

4.3.10. Upon request of LINK, the Customer shall provide proof of: (a) payment (bank document); (b) ownership of the bank account (the bank account must be owned by and opened in the name of the Customer).

- 4.3.11. The sale and subsequent activation/settlement of the purchased Prepaid Points/ Prepaid Package depends on the receipt and confirmation by LINK of the entire price as per the applicable price list. Each purchase shall be confirmed by a VAT invoice. The Customer hereby agrees that the VAT invoice shall be deemed delivered upon it is made available on the Account.
- 4.4 Postpaid settlement.
- 4.4.1. Postpaid settlement shall be available only after conclusion of a separate agreement between the Parties ("**Postpaid Agreement**") and shall be made on monthly basis ("**Settlement Period**" = calendar month). The Postpaid Agreement forms part of the Agreement. The Postpaid Agreement shall include a pricing appendix ("**Pricing Appendix**") that may specify also, but not exclusively, the price for one Message, depending on the volume of Messages sent in a given month. For each and every matter not regulated in the Pricing Appendix, a price list published on the Account and/or on the Website shall be auxiliary applied.
- 4.4.2. Unless specified otherwise, the settlement of the remuneration shall be based on the rates for one Message, depending on the number of Postpaid Generated Points, generated by the Customer in this month (1 Individual Message/ 1 HLR Number Check = 1 "Postpaid Generated Point"), or the adequate number of packages of these points.
- The ultimate amount of compensation due is settled in conversion to the "**Postpaid Settlement Points**", or the adequate number of packages of these points.
- 4.4.3. The Customer is obliged to pay LINK, for each and every Settlement Period, a remuneration ("**Remuneration**") comprising of:
- the amount equal to the product of multiplying the number of Messages sent by the Customer in a given Settlement Period (i.e. the Messages which sending was initiated), and the rate assigned to one Message in accordance with the Pricing Appendix.
  - the **Monthly Minimum Fee** instead of the amount specified in point a) above- in case the amount calculated in accordance with point a) above is lower than monthly minimum fee specified in the Pricing Appendix;
  - the amount constituting a remuneration for additional services:
    - that results from the number and type of additional services purchased, calculated on the basis set out in the Pricing Appendix or in any other relevant agreements;
    - that results from the price list for additional services, published on the Account and/or on the Website - for the scope not covered in accordance with point (i) or (ii) above.
- 4.4.4. LINK is entitled to change the remuneration due for one Message/ other Service, as specified in the Pricing Appendix, upon the one month's notice, effective at the end of a calendar month. The Customer shall be informed of the remuneration's change by e-mail notice. Should the Customer not accept the remuneration's change, they are entitled to terminate the Agreement, effective at the end of a calendar month, whereas to be valid the notice of termination must be delivered to LINK in writing within 14 days from the date when the notice of remuneration's change is sent by LINK.
- 4.4.5. The Remuneration shall be paid within 14 days from the date the VAT invoice is issued by LINK, by a bank transfer made to a bank account indicated on the invoice. The Customer hereby agrees that the VAT invoice shall be deemed delivered upon it is made available on the Account.
- 4.4.6. The Customer is eligible to utilize, in a given Settlement Period- within the postpaid settlement- such number of Postpaid Settlement Points that does not exceed the **Initial Limit** specified in the Pricing Appendix. The Customer may request LINK to increase the Initial Limit by sending e-mail to the address: [support@smsapi.com](mailto:support@smsapi.com). The change in the Initial Limit depends on LINK's own discretion and it does not require any additional annex to the Postpaid Agreement. LINK reserves the right to condition the increase in the Initial Limit upon the Customer's payment of a Deposit in an amount specified by LINK in an e-mail.
- 4.4.7. In case of any delay in payment, LINK shall be entitled to:
- charge statutory interest for late payment in commercial transactions; and
  - limit or stop the Provision of Services to the Customer (both settled postpaid and prepaid), including also the decrease in the Initial Period- until the date of total payment of the amount due, and
  - charge compensation for recovery costs in the amount specified in the Act of 8<sup>th</sup> March 2013 on counteracting undue delays in commercial transactions, and
  - require the Customer to pay a recovery costs exceeding the compensation, in the amount equal to 20% of the value of non-paid or not-fully paid invoice(s)- in case LINK conveys the claim to vindication, and the Customer does not satisfy the claim in whole within the time-limit specified in the payment request; and
  - request settlement of any further claims LINK may be entitled to under the applicable law (including in particular the supplementary damages).
- 4.4.8. For each and every matter not regulated in the Postpaid Agreement, any other relevant agreements, or in point 4.4.1-4.4.7 above (postpaid settlement), rules specified in point 4.3.1-4.3.11 above (prepaid settlement) shall be auxiliary applied.
- 4.5 The Points (prepaid, postpaid generated, postpaid settled) are a digital content, designed to address precise needs, that can be used only in a limited way, i.e. in order to acquire only the limited range of the Services and/or settle the Services. The Points cannot be used in any other way than specified in this section. The Points are subject neither to exchange, nor return. Points might have an expiration date assigned to them, which depends on the respective purchased Package/separate Points.
- For avoidance of any doubt, the Points do not constitute electronic money under the definition of Article 2 point 2 of the Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.
- 4.6 LINK shall not be liable for any fees, commissions or other additional costs incurred by the Customer or applied by his bank, or by any electronic payment system, in connection with the transaction, including- but not exclusively- costs incurred in relation with any currency exchange rate applied.
- 4.7 LINK shall not be liable for any interruptions in functioning of bank systems, electronic payment systems or any other external payment service providers' systems.
- 4.8 Prices, and any other Remuneration's components, may be subject to annual adjustment equivalent to the increase in the average monthly gross wage and salary in enterprise sector index (including profit sharing payments), published by Statistics Poland (GUS) for the previous year . No prior notification of this change shall be required for its effectiveness.
- 4.9 The Customer hereby agrees that the delivery of VAT invoices in an electronic form, by making its available on the Account, or alternatively by sending it to the e-mail address indicated by the Customer by the Account's registration, or provided later at the Account, shall be deemed as a default form of invoices' delivery. Nevertheless, the Customer is entitled to require LINK to deliver them an invoice in a paper-form, to the correspondence address indicated by the Customer by the Account's registration, or provided later at the Account. The delivery of an invoice in a paper-form is subject to the additional fee in the amount specified in the relevant price list. No further notification of the change in the additional fee shall be required for its effectiveness.
- 4.10 Any provision of the GTC, including also any fee due under the GTC, shall neither exclude nor limit LINK's right to pursue in the full amount any claims LINK may be entitled to under the applicable law.

#### Section V – Duration and termination of the Agreement

- 5.1 The Agreement is entered into for an indefinite period of time unless otherwise specified .
- 5.2 Each party may terminate the indefinite-time Agreement upon two-weeks' notice, effective at the end of a calendar week. The notice require for its effectiveness to be sent by the Customer to the e-mail: [support@smsapi.com](mailto:support@smsapi.com), or by LINK to the e-mail address indicated by the Customer by Account's registration, or provided later at the Account.
- 5.3 The Agreement based on postpaid settlement, including the Postpaid Agreement, is entered into for a definite period of time, until the last day of the 24<sup>th</sup> month following the month of the Agreement/ Postpaid Agreement conclusion.
- 5.3.1. After the date of expiry of the period referred to in point 5.3, the Agreement/ Postpaid Agreement, shall be automatically extended for an indefinite period of time. Each party may give the other party a notice of the intention to not continue the Agreement/ Postpaid Agreement, effective at the end of the period referred to in point 5.3. The notice shall be delivered to the other party not later than 30 days before the expiry of the period referred to in point 5.3. The notice requires for its effectiveness to be made in writing.
- 5.3.2. After the date of expiry of the 30-days period referred to in point 5.3.1, each party may terminate the Agreement upon one-month notice, effective at the end of a calendar month. The notice requires for its effectiveness to be made in writing. The 2-weeks period specified in point 5.2. shall not apply.
- 5.3.3. In case LINK terminates the Agreement/ Postpaid Agreement before expiration of the term for which it has been concluded, LINK shall be entitled to charge an additional fee that amounts to the product of multiplying the number of months the Agreement/ Postpaid Agreement shall have remained in force, and the **Monthly Minimum Fee**.
- 5.3.4. For avoidance of any doubt, for each and every matter related to the termination of the Agreement based on postpaid settlement, that is not regulated in point 5.3.-5.3.3. above, in the Postpaid Agreement, or in any other relevant agreements, rules relevant to Agreement based on prepaid settlement shall be auxiliary applied.
- 5.4 LINK may terminate the Agreement (prepaid or postpaid) without prior notice in the following cases:
- If, at LINK's own discretion, continuation of the provision of the Services is not commercially justifiable (including in case of price increase by the Operators towards LINK) or in the event of an objective impossibility or significant difficulty for LINK to provide completely or partially the Services. Termination of an Agreement resulting from the aforementioned results in the return of the equivalent of the Points, which have been purchased and not utilized by the Customer until such termination.
  - In case of any identified breach under these GTC or applicable legislation.
  - If the Customer is suspected to have provided false or misleading information related in particular, but not exclusively, to issues specified in point 3.2.
  - If there are justified grounds to suspect that the Customer becomes insolvent or is unable to pay its debts as they fall due or will go in the foreseeable future into liquidation either voluntarily or as required by law.
  - If the Customer's Account has been unactive for 12 consecutive months.
- 5.5 LINK does not return the equivalent of Points not utilized by the Customer before the termination of the Agreement, nor any payment/ costs related to Points' purchase, unless clearly stated otherwise.
- Customer shall be considered a sole sender of the Messages incoming from the Customer's Account.
- 6.1.2. Customer shall ensure that before any Message is sent or any Content is made available, all necessary rights, authorizations, licenses, consents, and permissions have been obtained or granted in accordance with applicable law.
- 6.1.3. The Customer shall use the Services in accordance with any user instructions and other policies and guidelines provided by LINK.
- 6.1.4. The Customer shall ensure that Users comply with this Agreement. In any case, Customer is entirely liable for User's acts and omissions.
- 6.2 The Customer is obliged to abstain from abusing/misusing the Services, including but not limited to:
- indicating false or misleading denoting of the sender;
  - sending Messages to End-Users without legal basis according to applicable law or not in compliance with the provisions of the applicable law;
  - allowing the Services to be used for communication through unregulated channels (such as P2P, grey routes) and/or sending Messages not for Customer's own commercial purposes;
  - sending more than 20 messages to the same telephone number within 60 seconds;
  - using the Services for sending Messages constituting SPAM under the applicable law and/or sending Messages as follows:
    - that are unsolicited (which may constitute breach with applicable legislation or Operator policies), in particular Messages that contain unsolicited commercial information, within the meaning of the Electronic Services Act of 18 July 2002;
    - which Content serves (implicitly or explicitly) any purposes related to charity, advertising services/products of any Operator and/or gambling, in particular Messages which subject is games of chance and betting, within the meaning of the Gambling Game Act of 19 November 2009r.
  - delivering by or to the Teleinformation Systems, and/or/including also SMSAPI System, any data/information/Content that:
    - causes interferences in the operation of or overloads the Teleinformation Systems of LINK or any third party that takes direct or indirect part in providing the Services, including but not limited to Operators. The Customer is responsible for ensuring that the Content is (i) free from any viruses, Trojan horses, worms or other detrimental code, including links enabling downloading malicious software (ii) in the agreed format, and is (iii) unable to affect or jeopardize the Services delivered by LINK or LINK's or its sub-contractor's infrastructure, system, network, services or other customers;
    - infringes the rights and/or interests of LINK, third parties, commonly accepted social norms, as well as using the Services not in compliance with the law applicable at the place of sending or at the place to which the Message is sent;
    - advertises or promotes (Customer's or third party's) service/s that use value-added numbers, which are connected with collecting increased charges for messages or subscription of payable service, in particular Premium SMS.
- 6.3 Should the Customer be in breach with point 6.1 or 6.2, LINK shall be entitled to refrain from providing the Services to the Customer, without having to terminate the Agreement, regardless of other rights to which LINK is entitled.
- 6.4 As of the day of the termination of the Agreement between the parties, the Customer is obliged to stop using the SMSAPI System.
- 6.5 LINK has a right of control over the fulfillment of the Customer's obligations under the Agreement and at its own discretion may suspend and/or remove the Account of the Customer.
- 6.6 The Customer is solely and entirely responsible for the form and the Content of Messages being sent with the use of the SMSAPI System.

## Section VII – Maintenance works

- 7.1 LINK reserves the right to conduct Teleinformation System related maintenance works, which may cause difficulties or make it impossible for the Customer to use the Services. The dates for and expected durations of such maintenance works will be published on the Website or sent by e-mail before the beginning of said works.
- 7.2 In special cases that may influence safety or stability of the Teleinformation System, LINK has a right to temporarily stop or limit the provision of the Services, without prior notification, as well as to conduct the maintenance works aiming at recovering the safety or stability of the Teleinformation System.
- 7.3 Difficulties or lack of possibility to use the Services because of the reasons indicated in point 7.1 or 7.2 shall not justify any claims against LINK.

#### **Section VIII – Privacy and personal data processing**

- 8.1. LINK ensures the confidentiality of the Content of the Messages initiated for sending through the Services, as well as of the information on the entities by and to which the Messages are sent, unless such information is in the public domain as a matter of principle or its disclosure is necessary for the correct provision of the Services. The Information as referred to above may be revealed only in accordance with the applicable law.
- 8.2. LINK takes the matters of protection and security of personal data seriously and will process such information in accordance with applicable Data Protection Legislation and the Agreement. In order to provide the Services, LINK may process personal data about Users and others who access the Services. LINK may disclose personal data to third parties as set out in the Agreement.
- 8.3. The way of dealing with personal data, scope and responsibilities of LINK in the processing of personal data are described in the Data Processing Appendix, which constitutes a written agreement for entrusting the processing of personal data between LINK and the Customer, i.e., a documented instructions in accordance with art. 28, par. 3 (a) of GDPR.
- 8.4. The security requirements regarding the processing of personal data by the processor are set out in the Security Appendix.
- 8.5. In order to facilitate the Services, contact details as part of the Account shall be provided for various purposes, e.g. accounting/financial, technical support, marketing, etc. The Customer is obliged to properly inform all individuals/Users who have been or will be listed in the Account about the fact of providing their data within the Services and about their rights as data subjects.
- 8.6. The Customer, the User/s, and persons who have been listed in the Account, have the right to access and correct their personal data and request discontinuation of the processing.
- 8.7. The Customer, User/s, and other persons who have been listed by the Customer in the Account may be informed of:
- changes in the GTC, price lists or privacy policy;
  - changes directly related to the provision of services within the SMSAPI System, including such as service updates, updates of technical terms and documentation;
  - payment status for the performed Services (on invoice issuance, on the payment status), including rebate codes for Services;
  - activities of the educational nature or related to the operation or improvements of the SMSAPI System.
- 8.8. Any Information related to the mentioned in the section above may be sent, depending on the need, via one of the available channels, by processing the contact data provided in the Account, i.e., traditional mail to the registered address (or mailing address etc.), e-mail address (including by an automated ticket service), phone number (SMS, phone calls, application) or by a chat service.
- 8.9. LINK is not liable for any processing of personal data performed by any of the payment service providers.
- 8.10. To the extent permitted by law, LINK shall not be liable for damage incurred by the Customer or third parties as a result of

the personal data processing being not in compliance with the provisions of this section, other provisions of the GTC, the Agreement, or any other related agreement. In case any such claim arises, the Customer shall be obliged to immediately satisfy such claim. Should LINK be obliged to satisfy such claim- the Customer is obliged to immediately indemnify LINK against it.

- 8.11. Other relevant information on personal data processing is available in the privacy statement/policy of the SMSAPI System.

#### **Section IX - Confidentiality**

- 9.1. The Customer must not use any Confidential Information, nor disclose it to any person, neither during nor after the term of the Agreement, except for the use or disclosure for the performance of the Customer's rights or obligations under the Agreement, or if required by applicable law.
- 9.2. The Customer shall treat as confidential and protect Confidential Information concerning LINK with a degree of care at least equivalent to the protection of its own Confidential Information.
- 9.3. Confidential Information shall not include information that is:
- already in the possession of the receiving party without an obligation of confidentiality; or
  - rightfully provided to the receiving party by a third party without a breach of any separate nondisclosure obligation; or
  - already publicly available without breach of the Agreement.

#### **Section X – Warranty disclaimer by LINK**

- 10.1. The Services are provided "as is". LINK shall endeavor to realize the messaging properly, but it does not guarantee the delivery of each and every message.
- 10.2. To the extent permitted by law, LINK disclaims all warranties, either expressed or implied, statutory or otherwise, including without limitation warranties of functionality, fitness for a particular purpose or non-infringement.
- 10.3. LINK does not warrant that the Services will be error-free, that the use of the Services will be uninterrupted or error-free. The Customer accepts and agrees that Messages may not reach the intended recipient, and that the Customer carries all risks related to the use of the Services.

#### **Section XI – Liability**

- 11.1. The Customer shall indemnify LINK against all damages, losses, costs, expenses and other claims because of a third party arguing that the use by the Customer of any derivate work, created by using the Content or the Services, constitutes an infringement of any Intellectual Property Rights. The Customer shall bear full responsibility for the type, content, quality and organization of the Customer service, including the Content of the Messages sent. The Customer's liability for breach of the Agreement shall not be limited in any way, unless it is required by the applicable law.
- 11.2. LINK, to the extent permitted by the applicable law, shall not be liable for errors and breaks in the provision of the Services that result in particular from failures or incorrect functioning of the Teleinformation Systems, unless they are caused by circumstances attributable entirely and exclusively to a proven case of intentional misconduct or gross negligence.
- 11.3. LINK shall not be liable for the lack of possibility to access the Services that results from incorrect registration or unsuccessful login attempt by the Customer/User, or for the consequences of the capture of logon data by any third party. Moreover, LINK shall not be liable for the consequences of activating the automated re-charge of the Account by the means of the electronic service for on-line electronic payment.
- 11.4. LINK shall not be liable for indirect damages, including also lost benefits or profits.
- 11.5. The above restrictions do not apply to damages caused by fraud, gross negligence or intentional misconduct.

- 11.6. LINK's total aggregate liability to the Customer, resulting from the legal relationship covered by the Agreement, or in any other case this GTC apply to, within each twelve (12)-month period, will in no event exceed the fees paid (paid amounts for purchased Points/packages) by the Customer in the period of 12 consecutive months prior to the date of the event giving rise to this liability, excluding Operator fees and taxes relevant to the Customer for the same period of time.
- 11.7. In the case of damage or loss, LINK has, in particular, a right to claim auxiliary compensation.
- 11.8. Any provision of the GTC must not be interpreted as either excluding or limiting LINK's right to pursue in the full amount any claims LINK may be entitled to under the applicable law.

#### Section XII – Complaint Procedure

- 12.1. Complaints can be submitted due to the failure to provide, correctly provide, or correctly settle the Services.
- 12.2. The complaint shall be submitted through electronic mail to the e-mail address: [support@smsapi.com](mailto:support@smsapi.com). The Customer is obliged to provide in its complaint the data/ information allowing for identification of the Message sent.
- 12.3. The complaint can be filed within 7 days from the date of sending the Message to which such complaint applies.

The consumer has the right to lodge a complaint up to 12 months after the detection of the circumstances referred to in point 12.1.
- 12.4. The complaint about the failure to provide or failure to correctly provide the Service must in particular include the subject matter of and the circumstances that justify such claim, as well as a precise description of the Customer's claim.
- 12.5. LINK shall handle the complaint within 14 days from the complaint submission date. If the complaint cannot be handled during the above period of time, LINK shall during the said period inform the Customer in writing or by e-mail about the reasons for such delay and the expected timeframe of complaint handling.
- 12.6. A breach of the complaint procedure justifies the complaint rejection.
- 12.7. The right to pursue claims arising from the Agreement in court proceedings shall be vested in the Customer after the complaint procedure has been exhausted.

#### Section XIII - European Electronic Communications Code (EECC) Rights Waiver

- 13.1. Pursuant to recital 259 of EECC's preamble, art. 102, para 1, 2, 3 and 5 of EECC, if the Customer is a microenterprise, small enterprise, or not for profit organisation, it hereby explicitly waives the right to:
  - (a) have the Agreement made available to the Customer in a durable medium;
  - (b) have a summary of the Agreement provided to the Customer; and
  - (c) be notified when the usage of the Services based on volume or time limits reaches the limits of the Customer's tariff plan, if applicable.
- 13.2. In addition, pursuant to art. 105, para 1 and 2 of EECC, the Services purchased by the Customer may set out a commitment period. In the event this period is longer than the maximum statutory period, the Customer hereby explicitly waives the right to a shorter commitment period.
- 13.3. If the Customer does not wish to waive the foregoing rights, it shall contact LINK's customer support team.

#### Section XIV – Final Provisions

- 14.1. LINK has the right to perform audits of the Customer's books and records, to interview relevant Customer representatives, and to access the Customer's services, products, content and/or hardware, for the purpose of and within the scope needed to

validate that the Customer's use of the Services is compliant with the Agreement.

If an audit reveals non-compliance by the Customer, the Customer shall remedy such breach immediately after receipt of notice from LINK. Such remedy shall be without prejudice to any other rights or remedies applicable under the Agreement.

- 14.2. The Customer agrees to place its name, trade mark and/or logo on the LINK's website. The Customer authorizes LINK to place its name, trade mark and/or logo in internal materials used for the needs of LINK, as well as in other information, promotional and marketing materials.
- 14.3. These GTC do not authorize LINK to use, in any other manner than the one resulting from the GTC, the Agreement or any other related agreement, trademarks, advertising slogans, trade names or other intellectual property rights to which the Customer is entitled.
- 14.4. All declarations of the parties which are related to the Agreement shall be sent to the addresses of the Customer or other persons listed in the Account, or to e-mail addresses as indicated by the Account's registration, or provided later at the Account. The Customer is however obliged to immediately inform LINK about any changes of the contact data by sending e-mail to the address: [support@smsapi.com](mailto:support@smsapi.com). If the Customer has not notified LINK of the change in the manner set out herein, all notices served at the contact data set out in the Account until that happens shall be considered validly served.
- 14.5. LINK reserves the right to monitor, store and archive the Content of the Messages sent, and the IP addresses of the computers from which the Messages are sent, to which the Customer gives consent. The data is stored in order to prove the sending of Messages in the case of dispute/ infringement of the GTC, and also in order to ensure compliance and assistance to the competent authorities in cases related to the Services.
- 14.6. If any provision of this GTC, appendices thereto, the Agreement, or any other related agreement, is deemed invalid or ineffective, in whole or in part, this shall not prejudice the validity of other provisions. The provision deemed invalid or ineffective shall be replaced by such a provision that to the fullest possible extent allowed by the law achieves the purpose of the replaced provision.
- 14.7. These GTC, in a version of 1<sup>st</sup> March 2022, shall become effective from 1<sup>st</sup> April 2022, unless the Parties expressly agreed otherwise. These GTC replaces in whole the "Regulations for Provision of Prepaid Services by LINK Mobility Poland Sp. z o.o. of 01.01.2021", and any of their previous or changed versions, together with any and all attachments thereto. Should the Customer not accept the GTC's change, they are entitled to terminate the Agreement, effective on March 31<sup>st</sup>, 2022, whereas the notice of termination, in order to be valid, must be delivered to LINK in writing within 14 days from the date when the notice of GTC's change is sent by LINK and must be additionally delivered to LINK by e-mail within the same timeframe (scan of the letter sent).
- 14.8. LINK reserves the right to introduce changes to the GTC.
- 14.9. The appendices to these GTC are its integral part and an integral part the Agreement between the parties, hereunder in particular:
  - a) Appendix no. 1 – Data Processing Appendix;
  - b) Appendix no. 2 – Security Appendix;
  - c) Appendix no. 3 – Scope Appendix;
  - d) Appendix no. 4 – Standard Contractual Clauses Appendix;
  - e) Appendix no. 5 – the Technical Specification available at [smsapi.com/docs](https://smsapi.com/docs)
- 14.10. The GTC and the Agreement shall be governed and interpreted under the laws of Poland.
- 14.11. In the absence of an amicable solution any dispute arising out of or in connection with these GTC or the Agreement must be brought to the competent courts in Gliwice, Poland.

## Appendix no. 1 – Data Processing Agreement

### 1. Introduction

This Data Processing Agreement (“DPA”) is entered into by LINK and the Customer, and constitutes an integral part of an Agreement (“Agreement”) between the parties, concluded within the framework of “LINK General Terms and Conditions for electronic services available at [www.smsapi.com](http://www.smsapi.com)” (“GTC”), together with the Scope Appendix, the Security Appendix; the Standard contractual clauses (“SCC”) Appendix and any other agreed appendices.

When the data exporter, as defined in the SCC appendix, is based in Switzerland, the references to the GDPR in the SCC should be understood as references to the Federal Act on Data Protection of 19 June 1992 and its revised version of 25 September 2020 (FADP) insofar as the data transfers are subject to the FADP.

When the data exporter, as defined in the SCC appendix, is based in Switzerland, the SCC clauses also protect the data of legal entities until the entry into force of the revised FADP.

“Data Protection Legislation” shall mean the EU General Data Protection Regulation 2016/679 (“GDPR”) and the EU Directive on privacy and electronic communications (ePrivacy Directive), and national provisions on protection of privacy in the country in which the Controller or Processor is established, as amended, replaced or superseded from time to time, including laws implementing or supplementing the GDPR and ePrivacy Directive.

Terms defined in the GDPR article 4 shall be understood in accordance with the GDPR definition.

### 2. Scope and commitment

The Parties agree and acknowledge that, in LINK’s performance of services under the Agreement, processing or personal data on customer’s behalf will take place. Customer therefore appoints LINK as data processor. The terms and conditions of data processing are set forth in this DPA. LINK guarantees that it will implement appropriate technical and organizational measures in such a manner that LINK’s processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject.

This DPA covers processing of personal data when LINK processes on the Customer’s behalf as processor (GDPR Article 28.3) or, if the Customer is itself a processor, as a sub-processor (GDPR Article 28.4).

For the purpose of this DPA, Customer shall hold the obligations of Controller, and is fully responsible towards a controller on whose behalf it processes Personal Data by use of LINK’s services. Reference to the “Controller” herein will therefore in all cases be a refer to the Customer.

Subject to the Customer being based in Third Country located outside the European Union (EU) or the European Economic Area (EEA) and without an adequacy decision by the European Commission, the SCC Appendix, Module four shall apply to the processing activities requiring personal data transfers from LINK as processor to the Customer.

LINK as processor, its Sub-processors, and other persons acting under the authority of LINK who have access to the Personal Data shall process the Personal Data only on behalf of the Controller and in compliance with the Agreement and the Controller’s documented instructions, and in accordance with the DPA, unless otherwise stipulated in the Data Protection Legislation.

LINK shall inform the Controller if, in LINK’s opinion, an instruction infringes the Data Protection Legislation.

LINK’s processing of personal data as controller is available in the privacy section of <https://linkmobility.com/privacy/>.

### 3. Obligations of the controller

The Controller warrants that the Personal Data is processed lawfully, for specified, explicit and legitimate purposes. The Controller will not instruct LINK to process more Personal Data than required for fulfilling such purposes.

The Controller is responsible for ensuring that a valid legal basis for processing as defined in the Data Protection Legislation (ref. GDPR Article 6.1) exists at the time of transferring the Personal Data to LINK. If such legal basis is consent (ref. GDPR Article 6.1 (a)) the Controller

warrants that any consent is given explicitly, voluntarily, unambiguously and on an informed basis.

In addition, the Controller warrants that the Data Subjects to which the personal data pertains have been provided with information required under the Data Protection Legislation (ref. GDPR article 13 and 14) on the processing of their Personal Data.

Any instructions regarding the processing of Personal Data carried out under this DPA shall primarily be submitted to LINK. In case the Controller instructs a Sub-processor appointed in accordance with section 10 directly, the Controller shall immediately inform LINK hereof. LINK shall not in any way be liable for any processing carried out by the Sub-processor as a result of instructions received directly from the Controller, and such instructions result in a breach of this DPA, the Agreement or Data Protection Legislation.

### 4. Confidentiality

LINK ensures that its employees, its Sub-processors, and other persons who process the personal data by authority of LINK have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

The Controller is subject to a duty of confidentiality regarding any documentation and information, received by LINK, related to LINK or LINK’s Sub-processors’ implemented technical and organizational security measures, or information which LINK’s Sub-processors have defined as confidential. However, Controller may always share such information with supervisory authorities, if necessary, to act in compliance with Controller’s obligations under Data Protection Legislation or other statutory obligations.

### 5. Security

The security requirements applying to LINK’s processing of Personal Data is governed by the Security Appendix.

### 6. Access to Personal Data and fulfilment of Data Subjects’ rights

Unless otherwise agreed or dictated by applicable law, the Controller is entitled to request access to personal data being processed by LINK on behalf of the Controller.

If LINK, or a sub-processor, receives a request from a Data Subject relating to processing of Personal Data processed on behalf of the Controller, LINK shall send such request to the Controller, for the Controller’s further handling thereof, unless otherwise stipulated in statutory law.

Taking into account the nature of the processing, LINK shall assist the Controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Controller’s obligation to respond to requests for exercising the Data Subject’s rights stipulated in Data Protection Legislation, including the Data Subject’s right to (i) access to its Personal Data, (ii) rectification of its inaccurate Personal Data; (iii) erasure of its Personal Data; (iv) restriction of, or objection to, processing of its Personal Data; and (v) the right to receive its Personal Data in a structured, commonly used and machine-readable format (data portability). To the extent Customer requests assistance exceeding the requirements towards processors in the GDPR, LINK shall be compensated for such assistance at LINK’s then current rates.

### 7. Other assistance to the Controller

If LINK, or a Sub-processor, receives a request for access or information from the relevant supervisory authority relating to the registered Personal Data or processing activities subject to this DPA, LINK shall notify the Controller, for the Controller’s further processing thereof, unless LINK is entitled to handle such request itself.

If the Controller is obliged to perform a Data Protection Impact Assessment and/or Prior consultation with the supervisory authority in connection with the processing of Personal Data under this DPA, LINK shall provide assistance to the Controller, taking into account the nature of processing and the information available to LINK. To the extent Customer requests assistance exceeding the requirements towards processors in the GDPR, the Customer shall bear any costs accrued by LINK related to such assistance.



## 8. Notification of Personal Data Breach

LINK shall notify the Controller without undue delay after becoming aware of a Personal Data Breach. The Controller is responsible for notifying the Personal Data Breach to the relevant supervisory authority in accordance with GDPR article 33.

The notification to the Controller shall be sent to the e-mail indicated by the Account's registration, or provided later at the Account, in accordance with the Agreement concluded under GTC, and as a minimum describe (i) the nature of the Personal Data Breach including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned; (ii) the likely consequences of the Personal Data Breach; (iii) the measures taken or proposed to be taken by LINK to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

In the event the Controller is obliged to communicate a Personal Data Breach to the Data Subjects, LINK shall assist the Controller, taking into account the nature of processing and the information available to LINK. The Controller shall bear any costs related to such communication to the Data Subject.

## 9. Transfer to Third Countries

Transfer of Personal Data to countries located outside the European Union (EU) or the European Economic Area (EEA) and without an adequacy decision by the European Commission, hereunder by disclosure or provision of access, may only occur in case of documented instructions from the Controller.

For transfer to sub-processors in Third Countries, the documented instructions are described in section 10 below, and is subject to EUs standard contractual clauses as provided in the SCC Appendix, Module three - transfers from LINK as processor to a sub-processor in a Third Country.

The Customer accepts and understands that transfer to operators in Third Countries that is necessary to transmit messages to recipients located in such countries is not covered by the requirements herein.

## 10. Use of sub-processors

The Controller agrees that LINK may appoint another processor, hereinafter referred to as sub-processor, to assist in providing the services and processing Personal Data under the Agreement, provided that LINK ensures that the data protection obligations as set out in this DPA and in Data Protection Legislation are imposed upon any Sub-processor by a written agreement; and that any Sub-processor provides sufficient guarantees that they will implement appropriate technical and organizational measures to comply with Data Protection Legislation and this DPA, and will provide the Controller and relevant supervisory authorities with access and information necessary to verify such compliance.

LINK shall remain fully liable to the Controller for the performance of any Sub-processor.

Applicable sub-processors are listed in Scope Appendix. LINK may update the list to reflect any addition or replacement of Sub-processors by notification to the Customer at least 3 months prior to the date on which such Sub-processor shall commence processing of Personal Data. Any objection to such changes must be provided to LINK within 3 weeks of receipt of such notification or publication on the website. In case of an objection from Customer as to the supplementing or change of a Sub-processor, LINK may terminate the Agreement and this DPA with 1 months' notice.

By entering into this DPA, the Customer grants LINK authority to secure any legal basis for Transfer to Third Countries for any Sub-processor approved in accordance with the procedure stipulated above. If Customer is not itself controller, Customer will ensure such grant from controller. Upon request, LINK shall provide the Controller with a copy of the EUs standard contractual clauses under the SCC Appendix, Module three or description of the legal basis for Transfer.

LINK shall provide reasonable assistance and documentation to be used in Controller's independent risk assessment in relation to use of Sub-processors or Transfer of Personal Data to a Third Country.

## 11. Audits

LINK shall, upon request, provide the Customer with documentation of implemented technical and organizational measures to ensure an appropriate level of security, and other information necessary to demonstrate LINK's compliance with its obligations under the DPA and relevant Data Protection Legislation.

Controller and the supervisory authority under the relevant Data Protection Legislation shall be entitled to conduct audits, including on-premises inspections and evaluations of Personal Data being processed, the systems and equipment used for this purpose, implemented technical and organizational measures, including security policies and similar, and Sub-processors. Controller shall not be given access to information concerning LINK's other customers and information subject to confidentiality obligations.

Controller is entitled to conduct such audits one (1) day per year, upon no less than two weeks' notice. If Controller appoints an external auditor to perform the audits, such external auditor shall be bound by a duty of confidentiality. Controller shall bear any costs related to audits initiated by Controller or accrued in relation to audits of Controller, including compensation to LINK to the extent Controller requires support exceeding the requirements in the GDPR. LINK shall nevertheless bear such costs if an audit reveals non-compliance with the DPA or Data Protection Legislation.

## 12. Term and termination

The DPA is valid for as long as LINK processes Personal Data on behalf of the Controller.

In the event of LINK's breach of the DPA or non-compliance of the Data Protection Legislation, the Controller may (i) instruct LINK to stop further processing of Personal Data with immediate effect; and/or (ii) terminate the DPA with immediate effect.

## 13. Effects of termination

LINK shall, upon the termination of the DPA delete all the Personal Data to the Controller unless otherwise stipulated in applicable law. Customer accepts and understands that Personal Data is accessible by it until termination, should Customer require copies of such data before deletion.

Upon Customer's request, LINK shall document in writing to the Controller that deletion has taken place in accordance with the DPA.

## 14. Breach of the DPA and Limitation of liability

Each party's non-conformity with requirements set out in this DPA shall be regarded as a breach of the Agreement by that party, and the party shall ensure that breach is remedied without delay. The party in breach shall update the other party on measures adopted to remedy the non-conformity. Neither party shall be liable to the other party for errors caused by the other party's systems or actions, negligence or omissions, or by general internet or line delays, power failure or other error outside the parties' reasonable control.

Liability limitations in the Agreement apply to liability under this DPA and the SCC Appendix.

## 15. Notices and amendments

All notices relating to the DPA shall be submitted in writing to the email address indicated by the Account's registration, or provided later at the Account, in accordance with the Agreement concluded under GTC.

In case changes in Data Protection Legislation, a judgement or opinion from another authoritative source causes another interpretation of Data Protection Legislation, or changes to the services under the Agreement require changes to this DPA, LINK will propose implementation of such changes into the DPA.

## 16. Governing law and legal venue

The Agreement's terms regarding governing law, dispute resolution method and legal venue agreement shall apply if the location is within the EU or EEA. In other cases, the governing law shall be Polish, and the legal venue shall be the courts of Gliwice.

## Appendix no. 2 – Security Appendix

### **Requirement for information security**

LINK, who according to the Agreement and DPA processes Personal Data on behalf of the Controller, shall implement appropriate technical and organizational measures as stipulated in Data Protection Legislation and/or measures imposed by relevant supervisory authority pursuant to Data Protection Legislation or other applicable statutory law to ensure an appropriate level of security.

LINK shall assess the appropriate level of security and take into account the risks related to the processing in relation to the services under the Agreement, including risk for accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Person Data transmitted, stored or otherwise processed.

All transmissions of Personal Data between LINK and the Controller or between LINK and any third party shall be done at a sufficient security level, or otherwise as agreed between the Parties.

This Appendix contains a general description of technical and organizational measures that shall be implemented by LINK to ensure an appropriate level of security.

To the extent LINK has access to such information, LINK shall provide the Controller with general descriptions of its Sub-processors' technical and organizational measures implemented to ensure an appropriate level of security.

### **Technical and organizational measures**

#### Physical access control

LINK will take proportionate measures to prevent unauthorized physical access to LINK's premises and facilities holding Personal Data. Measures shall include:

- Procedural and/or physical access control systems
- Door locking or other electronic access control measures
- Alarm system, video/CCTV monitor or other surveillance facilities
- Logging of facility entries/exits
- ID, key or other access requirements

#### Access control to systems

LINK will take proportionate measures to prevent unauthorized access to systems holding Personal Data. Measures shall include:

- Password procedures (including e.g. requirements to length or special characters, forced change of password on frequent basis etc.)
- Access to systems subject to approval from HR management or IT system administrators
- No access to systems for guest users or anonymous accounts
- Central management of system access
- Routines of manual lock when workstations are left unattended, and automatic lock within maximum 5 minutes
- Restrictions on use of removable media, such as memory sticks, CD/DVD disks or portable hard drives, and requirements of encryption

#### Access control to data

LINK will take proportionate measures to prevent unauthorized users from accessing data beyond their authorized access rights, and to prevent the unauthorized access to or removal, modification, or disclosure of Personal Data. Measures shall include:

- Differentiated access rights, defined according to duties
- Automated log of user access via IT systems

#### Data entry control

LINK will take proportionate measures to check and establish whether and by whom Personal Data has been supplied in the systems, modified or removed. Measures shall include:

- Differentiated access rights based on duties
- Automated log of user access, and frequent review of security logs to uncover and follow-up on any potential incidents
- Ensure that it is possible to verify and establish to which bodies Personal Data have been or may be transmitted or made available using data communication equipment
- Ensure that it is possible to verify and establish which Personal Data have been entered into data-processing systems, altered or deleted, and when and by whom the Personal Data have been input, altered or deleted

#### Disclosure control

LINK will take proportionate measures to prevent unauthorized access, alteration or removal of Personal Data during transfer of the Personal Data. Measures shall include:

- Use of state-of-the-art encryption on all electronic transfer of Personal Data
- Encryption using a VPN or HTTPS for remote access, transport, and communication of Personal Data
- Audit trail of all data transfers

#### Availability control

LINK will take proportionate measures to ensure that Personal Data are protected from accidental destruction or loss. Measures shall include:

- Frequent back-up of Personal Data
- Remote storage
- Use of anti-virus/firewall protection
- Monitoring of systems in order to detect virus etc.
- Ensure stored Personal Data cannot be corrupted by means of malfunctioning of the system
- Ensure that installed systems may, in the case of interruption, be restored
- Uninterruptible power supply (UPS)
- Business Continuity procedures

#### Separation control

LINK will take proportionate measures to ensure that Personal Data collected for different purposes are processed separately. Measures shall include:

- Restrictions on access to Personal Data stored for different purposes based on duties
- Segregation of business IT systems

#### Job/subcontractor control

LINK shall implement measures to ensure that, in the case of commissioned processing of Personal Data, the Personal Data is processed strictly in accordance with the Controller's instructions. Measures shall include:

- Unambiguous wording of contractual instructions
- Monitoring of contract performance

#### Training and awareness

LINK shall ensure that all employees are aware of routines on security and confidentiality, through:

- Unambiguous regulations in employment contracts on confidentiality, security and compliance with internal routines
- Internal routines and courses on requirements of processing of Personal Data to create awareness

## Appendix no. 3 – Scope Appendix

### Scope of the processing

The DPA concerns LINK's processing of Personal Data on behalf of the Controller in connection with provision of messaging services. The Messaging Services include Controller's access to LINK's solutions for managing messaging to message recipients chosen by Controller for purposes and frequency as chosen by Controller by use of the service. The Agreement will provide further insight into the specific type of messaging services provided to Controller under the Agreement.

### Categories of Data Subjects

The categories of Data Subjects whose personal data may be processed under the DPA are defined by controller. The processing involves processing of Personal Data related to Controller's end-users (recipients and/or senders of messages depending on the Controller's use of the services under the Agreement).

### Types of Personal Data

The Processing relates to the following categories types of Personal Data, subject to the Controller's concrete use of the services:

- Basic Personal Data, such as name, contact details such as email, phone number etc.
- Location data, such as GPS, Wi-Fi location data and location data derived from LINK's network (that is not traffic data as defined below).
- Traffic data: personal data processed in relation to the conveyance of communication on an electronic communications network or billing thereof.
- Data related to content of communication, such as e-mails, voice mails, SMS/MMS, browsing data etc.

Special categories of Personal Data, such as data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or health data, will be processed under the DPA if the services are used by customer to process such data.

### Subject-matter of the processing

The subject-matter of LINK's processing of personal data on the customer's behalf is the provision of services to the Customer that require processing of personal data. Personal data will be subject to processing activities as specified in the Agreement.

### Duration of the processing

The processing will continue for the duration of Customer's contract with LINK. LINK will retain Personal Data for as long as it is necessary to fulfil the purposes for processing.

### Nature of the processing

Personal data will be processed by Customer entering the data into LINK's platform, either through its access to LINK's platform, or by providing data to LINK employees in order for them to enter data to the customer's area of the platform. The data will further be processed in order for messages to be set up as required by customer, and the list of recipients to be correct, before the process for sending the defined messages to the defined recipients is initiated.

### Purpose of the processing

The purpose of engaging LINK to process personal data on customer's behalf is for customer to fulfil its requirements for communication towards recipients.

### Sub-processors

The Sub-processors approved under the DPA are found in the table below and in LINK Mobility sub-processors list - LINK Mobility International (<https://linkmobility.com/list/>).

The DPA is regarded as an instruction from Customer to transfer Personal Data to the listed sub-processors.

| <b>Sub-Processor</b>   | <b>Type of processing</b>                                   | <b>Country, location</b> |
|--|---|--------------------------|
| Atman S.A, ul. Grochowska 21 a, 04-186 Warszawa, NIP: 1130059989         | Hosting / SMSAPI (customer panel, API, additional services) | Poland                   |
| T-Mobile Polska S.A, ul. Marynarska 12, 02-674 Warszawa, NIP: 1080022032 | Hosting / SMSAPI (customer panel, API additional services)  | Poland                   |
| V.1.1: Added 31.01.2024, Operational from 01.05.2024:                    |   |                          |
| 3S Data Center S.A. ul. Gospodarcza 12, 40-432 Katowice NIP: 9542704989  | Hosting / SMSAPI (customer panel, API, additional services) | Poland                   |

## Appendix no. 4 – Standard contractual clauses (SCC) Appendix

(As per COMMISSION IMPLEMENTING DECISION (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council)

between: LINK, and its affiliates established within EEA, hereinafter “**data exporter**”, and The Customer (MODULE FOUR) or the respective Sub-processor in Third Country (MODULE THREE), hereinafter “**data importer**”

The SCC text is found at: Publications Office (europa.eu) (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021D0914&from=EN>)

### **The Data exporter and Data importer enter into SCC with the following modules:**

- **MODULE ONE:** Transfer controller to controller: **No**
- **MODULE TWO:** Transfer controller to processor: **No**
- **MODULE THREE:** Transfer processor to processor (if and to the extent applicable): **Yes (in case of a sub-processor in Third Country) / No (in case of Customer in Third Country)**
- **MODULE FOUR:** Transfer processor to controller (if and to the extent applicable): **Yes (in case of Customer in Third Country) / No (in case of a sub-processor in Third Country)**

**Specifications required for each applicable module follow below:**

### **Specifications relevant to MODULE THREE: Transfer processor to processor**

#### **Clause 7 – The Parties agree that this clause shall be included:**

Docking clause (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A. (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A. (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

#### **Clause 9– The Parties agree that Option 2 part of the clause shall apply to them:**

[OPTION 2: GENERAL WRITTEN AUTHORISATION The data importer has the controller’s general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of any intended changes to that list through the addition or replacement of sub-processors at least 3 months in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).]

#### **Clause 11– The Parties agree that this optional part of the clause shall not be included:**

[OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

#### **Clause 17 – The Parties agree that Option 1 part of the clause shall apply to them:**

[OPTION 1: These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary

rights. The Parties agree that this shall be the law of the state in which the data exporter is established.]

- When the data exporter is based in Switzerland the Parties agree these Clauses shall be governed by the law of:
  - Switzerland (when the data transfer is exclusively subject to the FADP)
  - Norway (when the data transfer is subject to both the FADP and the GDPR)

#### **Clause 18:**

(a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.

(b) The Parties agree that those shall be the courts of the state in which the data exporter is established.

- When the data exporter is based in Switzerland the Parties agree that any dispute arising from these Clauses shall be resolved by the courts of:
  - Switzerland (when the data transfer is exclusively subject to the FADP)
  - Norway (when the data transfer is subject to both the FADP and the GDPR)

(c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.

- The Parties agree that the term ‘member state’ must not be interpreted in such a way as to exclude data subjects in Switzerland from the possibility of suing for their rights in their place of habitual residence (Switzerland) in accordance with Clause 18 c.

(d) The Parties agree to submit themselves to the jurisdiction of such courts.

### **Specifications relevant to MODULE FOUR: Transfer processor to controller**

#### **Clause 7 – The Parties agree that this clause shall be included:**

Docking clause (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A. (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A. (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

#### **Clause 11 – The Parties agree that this optional part of the clause shall not be included:**

[OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

#### **Clause 17:**

These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of the state in which the data exporter is established.

- When the data exporter is based in Switzerland the Parties agree these Clauses shall be governed by the law of:
  - Switzerland (when the data transfer is exclusively subject to the FADP)
  - Norway (when the data transfer is subject to both the FADP and the GDPR)

#### **Clause 18:**

Any dispute arising from these Clauses shall be resolved by the courts of the state in which the data exporter is established.

- When the data exporter is based in Switzerland the Parties agree that any dispute arising from these Clauses shall be resolved by the courts of:
  - Switzerland (when the data transfer is exclusively subject to the FADP)
  - Norway (when the data transfer is subject to both the FADP and the GDPR)

## ANNEX I

### A. LIST OF PARTIES

MODULE THREE: Transfer processor to processor / MODULE FOUR:  
Transfer processor to controller

#### Data exporter(s):

1. **Name:** Link Mobility Poland Sp. z o.o. and its affiliates as listed in the "Subsidiary companies" section on LINK Mobility sub-processors list (<https://linkmobility.com/list/>).  
**Address:** ul. Toszecka 101, 44-100 Gliwice, Poland and Link Mobility Poland Sp. z o.o.'s affiliates' addresses as listed in the "Subsidiary companies" section on LINK Mobility sub-processors list (<https://linkmobility.com/list/>).  
**Contact person's name, position and contact details:** DPO: Jan Wiczorkiewicz, +48601690816, jan.wiczorkiewicz@linkmobility.com  
**Activities relevant to the data transferred under these Clauses:** provision/use of communication services towards recipients  
**Role (controller/processor):** processor(s).

#### Data importer(s):

- relevant to MODULE THREE:
  1. **Name:** name of Sub-processor in Third Country as listed in LINK Mobility sub-processors list (<https://linkmobility.com/list/>)  
**Address:** address of Sub-processor in Third Country as listed in LINK Mobility sub-processors list (<https://linkmobility.com/list/>)  
**Contact person's name, position and contact details:** as listed in LINK Mobility sub-processors list (<https://linkmobility.com/list/>)  
**Activities relevant to the data transferred under these Clauses:** provision/use of communication services towards recipients  
**Role (controller/processor):** controller
- relevant to MODULE FOUR:
  2. **Name:** name of the Customer under the meaning of the GTC  
**Address:** address of the Customer, provided as contact information in the Customer's Account according to the GTC  
**Contact person's name, position and contact details:** as provided by the Customer in the contact information in the Customer's Account according to the GTC  
**Activities relevant to the data transferred under these Clauses:** provision/use of communication services towards recipients  
**Role (controller/processor):** processor

### B. DESCRIPTION OF TRANSFER

MODULE THREE: Transfer processor to processor / MODULE FOUR:  
Transfer processor to controller

#### Categories of data subjects whose personal data is transferred

- Regarding MODULE THREE: . The processing involves processing of personal data related to end-users of data exporter's Customer (recipients and/or senders of messages depending on the data exporter's Customer use of the services under the Agreement).
- Regarding MODULE FOUR: The processing involves processing of personal data related to data importer's/controller's end-users (recipients and/or senders of messages depending on the importer's/controller's use of the services under the Agreement).

#### Categories of personal data transferred

The personal data transferred concern the following categories of data:

- Basic Personal Data, such as name, contact details such as email, phone number etc.
- Location data, such as GPS, Wi-Fi location data and location data derived from data exporter's network (that is not traffic data as defined below).
- Traffic data: personal data processed in relation to the conveyance of communication on an electronic communications network or billing

## ANNEX II – TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

MODULE THREE: Transfer processor to processor

**Description of the technical and organizational measures implemented by the data importer(s) to ensure an appropriate level of security:** the Security Appendix applies respectively.

thereof.

- Data related to content of communication, such as e-mails, voice mails, SMS/MMS, browsing data etc.

If applicable to the specific service - **special categories of personal data**, such as data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or health data.

#### The frequency of the transfer:

- continuous basis

#### Nature of the processing

- Regarding MODULE THREE: Personal data will be processed by data exporter's Customer entering the data into data exporter's or data importer's platform, either through its access to said platform, or by providing data to data exporter's or data importer's employees in order for them to enter data to the data exporter's Customer's area of the platform. The processing includes deriving statistical data related to the provision of the services – such as delivery statuses and other information prescribed under the service contract between data exporter and data exporter's Customer. The data will further be processed in order for messages to be set up as required by data exporter's Customer, and the list of recipients to be correct, before the process for sending the defined messages to the defined recipients is initiated.
- Regarding MODULE FOUR: Personal data will be processed as a result of entering the data by data importer or data importer's client into data exporter's platform, either through its access to said platform, or by providing data to data exporter's employees in order for them to enter data to the data importer or data importer's client's area of the platform. The processing includes deriving statistical data related to the provision of the services – such as delivery statuses and other information prescribed under the service contract between data exporter and data importer. The data will further be processed in order for messages to be set up as required by data importer or data importer's client, and the list of recipients to be correct, before the process for sending the defined messages to the defined recipients is initiated.

#### Purpose(s) of the data transfer and further processing

- Regarding MODULE THREE: Fulfillment of data exporter's Customer's requirements for communication towards recipients.
- Regarding MODULE FOUR: Fulfillment of data importer or data importer's client's requirements for communication towards recipients.

#### The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

- The processing will continue for the duration of data importer's contract with data exporter. Personal Data shall be retained for as long as it is necessary to fulfil the purposes for processing.

#### Subject matter, nature and duration of the processing for transfers to (sub-) processors:

- As described respectively above.

### C. COMPETENT SUPERVISORY AUTHORITY

MODULE THREE: Transfer processor to processor

#### Competent supervisory authority/ies in accordance with Clause 13

- The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 is the one competent in the state in which the data exporter is established
- When the data exporter is based in Switzerland the parties establish a parallel supervision:
  - The Federal Data Protection and Information Commissioner (FDPIC), insofar as the data transfer is governed by the FADP
  - The Norwegian Data Protection Authority, insofar as the data transfer is governed by the GDPR