

# Flowmatik Terms of Use

This Terms of Service ("Agreement") governs your use of and access to the Services provided by Flowmatik B.V. ("Company", "we", "us", or "Flowmatik").

This Agreement is effective as of the date you submit your registration on Flowmatik (the "Effective Date"). If you are accepting on behalf of your employer or another entity, you represent and warrant that:

- you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions;
- you have read and understand this Agreement; and
- you agree, on behalf of the party that you represent, to this Agreement.

If you don't have the legal authority to bind your employer or the applicable entity, please do not check the box "I Agree with the End User License Agreement" upon registration. You represent and warrant that, if an individual, you are at least 18 years old and otherwise legally competent in all respects to be bound by this Agreement.

Except changes in legislation relating to mandatory arbitration and class action waiver, we may modify the terms of this Agreement upon a reasonable prior written notice to you. You will have an opportunity to review and accept the modified Agreement. Any such acceptance shall become effective upon the commencement of your next renewal term. If you fail to accept such modified Agreement, we reserve the right to terminate your access and use of the Service and API upon the termination of your Subscription Term.

## The service

These general terms and conditions of use ("General Terms and Conditions of Use") shall govern the use of the website [www.flowmatik.com](http://www.flowmatik.com) and related platform(s) ("Website"), which belongs to Flowmatik. During the Subscription Term, and subject to all terms and conditions of this Agreement, we will use commercially reasonable efforts to provide the Services to you consistent with your Service Plan. We may provide the Services using third party vendors or service providers. You agree to pay Company the fees, in the amounts and at the times specified in your selected Service Plan. The purpose is to provide information about the activity of the Company and enable the use of the services offered by Flowmatik ("Service" or "Services"), consisting in the creation of different types of online 'flows' and the subsequent storage of the same.

## Your account

Your account is non transferable and may not be used by others. Failing to comply may result in termination of your account and corresponding data. You are solely responsible

for the choice, loss, theft or unauthorized use of any code or password, and the consequences derived therefrom.

## Payments

### **Your plan**

Your Service Plan includes certain restrictions on your use of the Services. In order to use the Services in excess of any such limitations, you must upgrade your Service Plan accordingly for your usage level.

### **Free accounts or Trial**

If you signed up for a plan and are in the free trial period or on the free plan, you will be permitted to access and use the Services until the end of your Trial Period corresponding with your plan. Upon the termination of such trial period, you must select a Service Plan other than a "Free Trial" and begin paying Subscription Charges as set forth in this Agreement. Trial periods shall be as set forth in your Service Plan, as otherwise agreed to in writing by the you and us.

You understand that any Trial Period or otherwise free account that has been inactive (the user has not logged into the Flowmatik system or no one engaged with a 'live flow for six or more months is subject to termination and deletion of all Customer Content. Flowmatik will attempt to notify you of such pending termination by sending an e-mail to address stored for your account, but is under no obligation to do so.

For all non-paid or free accounts you agree to allow Flowmatik to place a Flowmatik branding on your flows and communication.

### **Providing incorrect information**

If you provide any information that is untrue, inaccurate, not current or incomplete, or that impersonates another person, including organizations or entities, or if Flowmatik has reasonable grounds to suspect that the information you provide is untrue, inaccurate, not current or incomplete, or impersonates another person, Flowmatik may suspend or terminate your account and refuse to allow you to use the service at any time. All registration data will be stored and used in accordance with the our Privacy Policy.

### **Billing information**

In order to set up an account with us, you must provide Company with accurate and complete billing information including legal name, address, telephone number.

If you are paying via credit card, PayPal, ACH debit or other electronic means of payment, you must provide valid information for such payment method (credit card number, ACH routing and account number...etc). By submitting such information, you give us permission to charge all Subscription Charges and any other fees incurred for using the Services via such payment method. We reserve the right to terminate this Agreement and your access to and use of the Services if you do not provide a valid payment method information or the payment

of fees hereunder, or if any Subscription Charges or other charges are not otherwise timely paid.

### **Payment terms**

The subscription charges are billed in advance upon commencement of your subscription term, and thereafter on a monthly basis, except as otherwise agreed to or as set forth in a service plan or an addendum, and are non-refundable except as otherwise set forth herein. Upon any change in your service plan, the recurring billing date for your subscription charge will reset to the day the change is made.

### **Upgrade your service plan**

If you upgrade your service plan, you will be charged the corresponding subscription charge immediately and receive a pro-rata credit for the unused portion of the subscription charge for your prior service plan.

### **Downgrade your service plan**

If you downgrade your service plan, you will be charged the subscription charge for the lower service plan immediately. If and to the extent a credit balance exists on your account following a change to your service plan, we will charge your payment method on file once such credit has been exhausted. There will be no refunds or credits for partial months of service, upgrade/downgrade refunds. For any upgrades or downgrade in service plan level, your payment method on file will automatically be charged the new rate beginning with the next billing cycle. Any add-on features or services not provided in your service plan will be billed in accordance with specific terms provided at the time the add-on features or service is requested by you.

### **Taxes**

All payments are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value added taxes), and you agree to bear and be responsible for the payment of all such charges, excluding taxes based upon our net income. All amounts due hereunder shall be grossed-up for any withholding taxes imposed by any foreign government.

### **Changes to subscription charges**

We may revise Subscription Charges for the Services by providing you written notice (which may be by email or on our website) at least 30 days prior to the start of the following renewal term of your subscription term. Monthly paying customers will be given at least 6 months at their old pricing. For yearly contracts this would be 1 year. By continuing to use or access the Services after such changes come into effect, you agree to be bound by the new or increased charges.

### **Auto renewal of your subscription**

Your Subscription Charge will automatically renew at the end of each billing cycle unless you cancel auto-renewal through your online account management page. You authorize us to continue your subscription charges until cancelled and, on a recurring monthly basis (or whatever recurring basis has been otherwise agreed to in writing), to charge the payment

method you provided the then-current subscription charge if you do not cancel / terminate in accordance with this agreement.

## Termination

You may terminate your agreement with Flowmatik at any moment via your profile section in the Flowmatik application.

Upon any expiration or termination of this Agreement, all rights, obligations and licenses of the parties shall cease, except that:

- all obligations that accrued prior to the Effective Date of termination (including without limitation, all payment obligations) shall survive,
- we may, but shall not be obligated to, delete Customer Content and
- Following any termination or expiration of this Agreement, we reserve the right to delete your account information and all customer content immediately.

## Privacy policy

When a user (e.g. customer, prospect customer, website visitor) provides personal data to Flowmatik, either during registration, navigation, when using the services, making inquiries, requests or simulations through the website, the privacy policy shall apply, which must be previously read and accepted by the user.

## Customer generated content

Flowmatik is owner of the Flowmatik system and its underlying software. When a customer creates a flow, the customer owns the intellectual property of the flow itself. It also owns the data that is inputted by the end user of the flow.

The customer is responsible for the use of content in its flows and should abide respective laws and regulations. Flowmatik is not responsible for the incorrect use of data, images, text etc by the customer.

## End User generated content

When end users engage with flows and leave data, this data falls under the GDPR. The customer that builds and operates the flow is the “data controller” and decides how to store and process the data collected from the end user.

## Disclaimers

Flowmatik parties' liability in connection to the services shall be limited to a total maximum amount equivalent to fees paid to Flowmatik in the last 12 months. This disclaimer shall not apply in case of willful intent, gross negligence or lack of due diligence by Flowmatik parties.

## Warranties

The services are provided "as is" without warranty of any kind. We do not warrant that the services will meet your requirements or that their operation will be uninterrupted or error-free. to the fullest extent permitted by law, company hereby disclaims (for itself and its suppliers) all other warranties, whether express or implied, oral or written, with respect to the services including, without limitation, all implied warranties of title, non-infringement, quiet enjoyment, integration, merchantability or fitness for any particular purpose and all warranties arising from any course of dealing, course of performance or usage of trade.

## Limitation of liability

Except to the extent that any exclusion or limitation of its liability is void, prohibited or unenforceable by applicable law, in no event shall either party (or its suppliers) be liable concerning the subject matter of this agreement, regardless of the form of any claim or action (whether in contract, negligence, strict liability or otherwise), for any (a) matter beyond its reasonable control (including any error or damage attributable to any network or system), (b) loss or inaccuracy of data, loss or interruption of use, or cost of procuring substitute technology, goods or services, (c) indirect, punitive, incidental, reliance, special, exemplary or consequential damages including, but not limited to, loss of business, revenues, profits or goodwill, or (d) any direct damages, in the aggregate, in excess of the amounts paid to us hereunder with respect to the services that gave rise to the claim during the twelve-month period prior to the date the cause of action arose, even if such party has been advised of the possibility of such damages. These limitations are independent from all other provisions of this agreement and shall apply notwithstanding the failure of any remedy provided herein.

You agree to defend, indemnify and hold Flowmatik, its affiliates and its sponsors, partners, other co-branders and the respective directors, officers and employees of each harmless from and against any and all claims, losses, damages, liabilities and costs (including, without limitation, reasonable attorneys' fees and court costs) arising out of or relating to your breach of this agreement or use by you or any third party of the services, except to the extent the foregoing directly result from Flowmatik's own gross negligence or willful misconduct. Flowmatik reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

## Applicable law and jurisdiction

The access to and use of the services shall be governed and construed in accordance with Dutch law. Any dispute that may arise from or in connection to Flowmatik and its services shall be settled under Dutch law and within the Netherlands.