Mobify™ Website Terms of Use

Last Updated: [July 22, 2019]

PLEASE CAREFULLY READ THESE MOBIFY WEBSITE TERMS OF USE BEFORE USING THE WEBSITES. THESE TERMS OF USE FORM A BINDING CONTRACT THAT GOVERNS YOUR USE OF THE WEBSITES, EXEMPTS MOBIFY AND OTHER PERSONS FROM LIABILITY OR LIMITS THEIR LIABILITY, SPECIFIES THE JURISDICTION FOR RESOLUTION OF DISPUTES, AND CONTAINS OTHER IMPORTANT PROVISIONS.

BY USING THE WEBSITES, YOU ACKNOWLEDGE THAT YOU HAVE READ, ACCEPT AND AGREE TO BE BOUND BY AND COMPLY WITH THESE TERMS OF USE, AS AMENDED FROM TIME TO TIME IN ACCORDANCE WITH SECTION 2. IF YOU DO NOT ACCEPT AND AGREE TO BE BOUND BY THESE TERMS OF USE, YOU MUST IMMEDIATELY STOP USING THE WEBSITES.

YOU REPRESENT AND WARRANT TO MOBIFY THAT YOU HAVE REACHED THE AGE OF MAJORITY IN YOUR JURISDICTION OF RESIDENCE, HAVE THE CAPACITY TO ENTER INTO LEGALLY BINDING OBLIGATIONS UNDER APPLICABLE LAW, AND IF YOU ARE USING THE WEBSITES ON BEHALF OF ANOTHER PERSON OR A CORPORATE ENTITY, YOU HAVE HAS THE AUTHORITY TO BIND SUCH PERSON OR ENTITY TO THESE TERMS OF USE.

1. Your Acceptance of these Terms of Use

These Mobify Website Terms of Use (“Terms of Use”) form a legal agreement between you and Mobify Research and Development Inc. (“Mobify”, “us”, “we”, “our”) regarding your access to and use of the Mobify websites which make reference to these terms including www.mobify.com (collectively, the “Websites”). The term “you” refers to the person or entity browsing, accessing or otherwise using the Websites (“use” or “using” in these Terms of Use mean any of the foregoing).

2. Changes

Except where prohibited by applicable law, Mobify in its discretion may change these Terms of Use at any time by posting the changed Terms of Use on the Websites. The changed Terms of Use are effective immediately upon posting on the Website, unless the changed Terms of Use expressly state otherwise. It is your responsibility to check the “Last Updated” date at the top of these Terms of Use and regularly review any changes since the previous version. By using the Websites after these Terms of Use have been changed, you signify your acceptance and agreement to the changed Terms of Use. You may not change, supplement or amend these Terms of Use in any manner.
3. Permissible Users

The Websites may be used only by individuals who are the age of majority in their jurisdiction of residence and who can form legally binding contracts under applicable law. The Websites may not be used by an individual in jurisdictions where access to or use of the Websites or any part thereof may be illegal or prohibited. You may not use the Websites if you breach these Terms of Use or if your permission to use the Websites has been suspended or terminated by Mobify.

4. Other Agreements; Additional Terms

These Terms of Use relate to the Websites only. These Terms of Use do not alter in any way the terms or conditions of any other agreement that may apply to your use of the Websites (“Other Mobify Agreements”). If there is a conflict or inconsistency between the terms and conditions of Other Mobify Agreements and these Terms of use, then the provisions of the Other Mobify Agreements will govern to the extent of such conflict or inconsistency. For example, if you are employed by a legal entity that is a customer of Mobify’s products or services, then some of the terms and conditions of the agreement(s) governing such customer’s use of Mobify’s products or services may apply to your use of the Websites.

Your access to and use of certain functionalities provided in or through the Websites may be subject to additional terms and conditions presented to you by Mobify or its service providers. Such additional terms and conditions are incorporated herein by reference. If there is a conflict or inconsistency between the terms and conditions of such additional terms and these Terms of Use, then the provisions of these Terms of Use will govern to the extent of such conflict or inconsistency, unless the conflicting term in the additional terms expressly states that the conflicting term in these Terms of Use do not apply. If you do not accept and agree to such additional terms and conditions, you may not be able to, and you should not, access or use those functionalities. For clarity, such additional terms and conditions do not include the Other Mobify Agreements.

5. Personal Information Privacy

By using the Websites you consent to the collection, use, retention, disclosure and deletion of information about identifiable individuals in accordance with Mobify’s Privacy Policy available here: [http://www.mobify.com/privacy/], as amended from time to time in accordance with the terms of the Privacy Policy or as otherwise permitted by applicable law.

You represent and warrant to Mobify that you will only provide Mobify with information about identifiable individuals in respect of which you have provided all notices and disclosures, obtained all applicable third party consents and permissions and otherwise have all authority, in each case as required by applicable laws, to enable Mobify to make the Websites available and for any other purpose indicated in the Mobify Privacy Policy.
6. Permissible Use

You may use the Websites solely for lawful purposes and solely in accordance with applicable law and in the manner permitted by the Websites. Using the Websites for any other purpose or in any other manner is strictly prohibited.

The Websites and their content may not be copied, reproduced, imitated, republished, translated, uploaded, posted, publicly displayed, communicated or made available to the public, transmitted, modified, indexed, catalogued, mirrored or distributed in any way, in whole or in part, for any purpose whatsoever, without the express prior written consent of Mobify.

7. Ownership

All rights, title and interest, including all intellectual property rights, in the Websites and their content (including all text, graphics, interfaces, images, video, sounds, music, artwork, designs, computer code, data, and other elements available on or through the Websites, and the design, structure, selection, arrangement and look and feel of those elements and the Websites as a whole) and any update, adaptation, translation, customization or derivative work thereof, will remain with Mobify and its licensors. The Websites and all such content are made available or licensed and not “sold” to you. All rights not expressly granted to you in these Terms of Use are reserved.

8. Feedback

If your give feedback about the Websites or any Mobify products or services (including any ideas or suggestions for enhancements or improvements) to Mobify (by direct communication or by posting comments with your feedback on the Websites), then Mobify and its suppliers and licensors and their respective successors, assigns and licensees may use and commercialize the feedback in any way and for any purpose without providing any compensation or attribution to you or any other person.

9. Trademarks

MOBIFY™, the Mobify logo and related trademarks and symbols are registered or unregistered trademarks and service marks owned or licensed by Mobify. Other product and company names and logos appearing on the Websites may be registered or unregistered trademarks, service marks or trade names of their respective owners. Any use of the trademarks, service marks or trade names displayed on the Websites is strictly prohibited, and nothing appearing on the Websites will be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of those trademarks, service marks or trade names.
10. Linked Sites; Third Party Content

For your convenience, the Websites may provide: (a) links or references to other Internet sites or resources and businesses operated by other persons (collectively, “Linked Sites”); and (b) access to third party content, websites or services (“Third Party Content”). Linked Sites and Third Party Content are independent from Mobify, and Mobify does not endorse, and has no responsibility or liability for or control over, Linked Sites or Third Party Content. Your use of Linked Sites and Third Party Content and your dealings with the owners or operators of Linked Sites and Third Party Content are at your own risk, and you will not make any claim against Mobify arising from, connected with, or relating to your use of Linked Sites or Third Party Content or your dealings with the owners or operators of Linked Sites or Third Party Content.

11. Prohibited Activities

You will not: (a) circumvent the ordinary navigational structure or presentation of the Websites or their content; (b) access or obtain the Websites’ content or other data by any means that is not purposely made available to you by the Websites; (c) gain unauthorized access to any part of the Websites or their content, or any related system, network, service or data, by hacking, password mining or any other means; or (d) test or tamper with the security of the Websites or interfere with the proper working of the Websites, any transaction being conducted through the Websites, or any other person’s use of the Websites.

Framing, mirroring, scraping or data-mining the Websites or any of their content in any form and by any means (including robots, spiders, or other automatic devices, programs or methodologies or any similar or equivalent manual process) is strictly prohibited. You may not use any collaborative browsing or display technologies in connection with your use of the Websites or to post comments, communications or any other data of any kind to or on the Websites with the intention that the posting may be viewed by other users of the Websites.

Deep links to any of the Websites without the express written permission of Mobify are strictly prohibited. Mobify in its discretion may cancel and revoke any permission it may give to link to the Websites at any time and without any notice or liability.

12. User Content

Certain parts of the Websites may include discussion forums and places for users to post comments and submit content (collectively, “User Content”). Mobify is not obliged to monitor or policy the use of the Websites or screen, police, edit or remove User Content, although Mobify reserves the right to do so in its discretion and without any notice or liability to you or any other person.

Mobify reserves the right to refuse to post or to remove any User Content, in whole or in part, that Mobify in its discretion considers to be unacceptable, undesirable, or in violation of the these Terms of Use.
By submitting User Content and as a condition of your continued access to and use of our Websites: (a) you agree to abide by all applicable federal, provincial, state, territorial, local and other laws and regulations; and (b) you agree not to:

- Submit any User Content that is protected by or otherwise subject to any third party intellectual property or proprietary rights (including any privacy and publicity rights) unless you own or have permission from the rightful owner of such rights to post such User Content and to grant Mobify all of the rights granted herein;

- Upload, post, comment, e-mail or otherwise transmit any statements, material or User Content: (i) that constitutes unsolicited or unauthorized advertising, promotional materials, “junk mail,” “spam,” or any other form of solicitation or commercial electronic message; (ii) that is harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, racially, ethnically or otherwise objectionable, or an unfair product comparison; (iii) that contains any form of destructive software such as a virus, worm, Trojan horse, time bomb, cancelbot, or any other harmful components or any other computer file, program or code, designed to interrupt, destroy or limit the functionality of any computer software, hardware or telecommunications equipment; or (iv) that otherwise encourages criminal conduct or that would give rise to civil liability or otherwise violate any law or regulation in any jurisdiction; or (v) to harvest or otherwise collect or store any information (including personally identifiable information) about other users of the Websites, including e-mail addresses, without the express consent of such users; (vi) to gain unauthorized access to the Website, other computer systems or networks connected to the Website, through password mining or any other means; (vii) to interfere with or disrupt networks or servers connected to the Websites or violate the regulations, policies or procedures of such networks; or

- For the purpose of misleading others, create a false identity of the sender or the origin of User Content, forge headers or otherwise manipulate identifiers in order to disguise the origin of any User Content;

If you post or submit User Content to the Websites including in their blogs, support forums, and any other discussion forums: (a) you are fully responsible for the User Content; (b) you hereby grant to Mobify a perpetual, worldwide, non-exclusive, irrevocable, royalty-free, sublicensable (through multiple tiers) and transferable right and license to use, reproduce, distribute, edit, modify, translate, reformat, prepare derivative works based upon, display publicly, perform publicly and otherwise exploit (including but not limited to over the Internet, broadcast television or any other uses or media) your User Content, in whole or in part; (c) you waive your moral rights to the User Content; (d) you hereby grant each other person using the Websites a non-exclusive license to access your User Content through the Websites; and (d) you represent and warrant to Mobify and all other persons using the Websites that their use of the User Content does not and will not violate or infringe the rights (including intellectual property, privacy and personality rights) of any other person or any applicable laws.
Mobify has the right to refuse, remove or delete any User Content and/or to terminate your access to the Websites if Mobify determines, in its sole and absolute discretion, that your User Content was provided in a manner that violated these Terms of Use. Mobify takes no responsibility for and expressly disclaims any and all liability in connection with any User Content.

13. Complaints; Copyright Infringement Notices

Mobify will respond as it considers appropriate, in its discretion, to all notices and complaints regarding alleged violations of these Terms of Use or other alleged misconduct, including removing any and all offending User Content from the Websites without any notice or liability to your or any other person. Mobify is not required to assess or otherwise determine the validity or legitimacy of any complaints or demands they may receive regarding any User Content or otherwise used in connection with the Websites before Mobify takes remedial action regarding the User Content.

If you have a complaint regarding the Websites or User Content posted on the Websites, please send an email with details of your complaint to feedback@mobify.com.

Mobify is registered with the United States Copyright Office as a Service Provider (refer to the Digital Millennium Copyright Act 17 USC 512). If you believe that information posted on Mobify’s website constitutes an infringement of your copyright under United States law, please provide Mobify’s Copyright Agent with the following information:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

- Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

- Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number and if available, an email address at which the complaining party may be contacted.

- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law.

- A statement that the information in the notification is accurate, and under penalty of perjury
that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please send the information to Mobify’s Copyright Agent using the following contact information:

Copyright Agent
725 Granville Street
Suite #420
Vancouver, BC, Canada, V7Y 1C6

Email: feedback@mobify.com
Phone: +1 (866) 502 5880

14. Malicious Code

The downloading and viewing of content is done at your own risk. Mobify does not guarantee or warrant that the Websites are compatible with your computer system or that the Websites, or any links from the Websites, will be free of viruses, worms, trojan horses or disabling devices or other code that manifests contaminating or destructive properties. You are responsible for implementing safeguards to protect the security and integrity of your computer system, and you are responsible for the entire cost of any service, repairs or connections of and to your computer system that may be necessary as a result of your use of the Websites.

15. Communications not Confidential

We do not guarantee the confidentiality of any communications made by you through the Websites. We do not guarantee the security of data transmitted over the Internet or public networks in connection with your use of the Websites.

16. Disclaimer

THE LAWS OF CERTAIN JURISDICTIONS, INCLUDING QUEBEC, MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF LEGAL WARRANTIES, CONDITIONS OR REPRESENTATIONS. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS IN THESE TERMS OF USE (INCLUDING THE FOLLOWING DISCLAIMERS) MAY NOT APPLY AND YOU MAY HAVE ADDITIONAL RIGHTS.

YOUR USE OF THE WEBSITES IS AT YOUR OWN RISK. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE WEBSITES ARE PROVIDED “AS IS”, “AS AVAILABLE” AND “WITH ALL FAULTS”, AND WITHOUT ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR
GUARANTEES OF OR RELATING TO ANY OF THE FOLLOWING: ACCURACY, ACCESSIBILITY, AVAILABILITY, COMPLETENESS, DURABILITY, ERRORS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, LACK OF VIRUSES OR OTHER DISABLING OR HARMFUL CODE, PERFORMANCE, QUALITY, RESULTS, SUITABILITY, SECURITY, TIMELINESS, TITLE, TRUTHFULNESS, QUIET ENJOYMENT, UNINTERRUPTED SERVICE, OR WORKMANLIKE EFFORT; ALL OF WHICH ARE HEREBY WAIVED BY YOU AND DISCLAIMED BY MOBIFY TO THE FULLEST EXTENT PERMITTED BY LAW.

17. Liability Exclusions; Limitations; Indemnity

THE LAWS OF CERTAIN JURISDICTIONS, INCLUDING QUEBEC, MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF LEGAL WARRANTIES, CONDITIONS OR REPRESENTATIONS. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS IN THESE TERMS OF USE (INCLUDING THE FOLLOWING LIMITATIONS) MAY NOT APPLY AND YOU MAY HAVE ADDITIONAL RIGHTS.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL THE MOBIFY GROUP (AS DEFINED BELOW) BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DAMAGE OR LOSS ARISING FROM, CONNECTED WITH, OR RELATING TO THE WEBSITES, THESE TERMS OF USE OR ANY RELATED MATTER (INCLUDING YOUR USE OF THE WEBSITES). IF, NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION OF THESE TERMS OF USE MOBIFY GROUP IS LIABLE TO YOU OR ANY OTHER PERSON RELATING TO THE WEBSITES, THESE TERMS OF USE OR ANY RELATED MATTER (INCLUDING YOUR USE OF THE WEBSITES), THEN IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL MOBIFY GROUP’S TOTAL AGGREGATE LIABILITY EVER EXCEED CDN$5.00. THIS SECTION 19 APPLIES TO LOSS AND DAMAGE HOWEVER CAUSED AND TO LIABILITY UNDER ANY THEORY (INCLUDING CONTRACT, TORT, STATUTE AND STRICT LIABILITY), REGARDLESS OF ANY NEGLIGENCE OR OTHER FAULT OR WRONGDOING (INCLUDING FUNDAMENTAL BREACH OR GROSS NEGLIGENCE) BY MOBIFY OR ANY PERSON FOR WHOM MOBIFY IS RESPONSIBLE, EVEN IF OTHER REMEDIES ARE NOT AVAILABLE OR DO NOT ADEQUATELY COMPENSATE YOU OR ANY OTHER PERSON FOR THE LOSS AND DAMAGE OR THE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE, OR MOBIFY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF THE LOSS OR DAMAGE BEING INCURRED.

YOU WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE MOBIFY GROUP FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING LEGAL FEES), CLAIMS, COMPLAINTS, DEMANDS, ACTIONS, SUITS, PROCEEDINGS, OBLIGATIONS AND LIABILITIES (INCLUDING LEGAL FEES, EXPENSES AND SETTLEMENT PAYMENTS) ARISING FROM, CONNECTED WITH OR RELATING TO YOUR USE OF THE WEBSITES (INCLUDING YOUR USER CONTENT) OR ANY NEGLIGENCE, MISCONDUCT, OR BREACH OF THESE TERMS OF USE. NOTWITHSTANDING THE
FOREGOING IN THIS SECTION 19, MOBIFY GROUP RETAINS THE RIGHT TO PARTICIPATE (WITH COUNSEL OF THEIR OWN SELECTION AT THEIR SOLE DISCRETION, COST AND EXPENSE) IN THE DEFENSE OF AND SETTLEMENT NEGOTIATIONS RELATING TO ANY SUCH CLAIM, COMPLAINT, DEMAND, ACTION, SUIT OR PROCEEDING.

IN THIS SECTION 19, “MOBIFY GROUP” MEANS MOBIFY AND EACH OF ITS LICENSORS, SUPPLIERS, SERVICE PROVIDERS AND AFFILIATES, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS, SHAREHOLDERS, DISTRIBUTORS, AND REPRESENTATIVES.

18. Changes to the Websites

Notwithstanding any other provision of these Terms of Use, Mobify in its discretion and for its sole convenience may: change, discontinue, modify, restrict, suspend or terminate the Website or any of its content at any time without any notice or liability to you or any other person; and immediately suspend or terminate your permission to access and use the Website at any time without any notice or liability to you or any other person.

19. Term and Termination; Survival

These Terms of Use will commence on the day you first use any of the Websites and will continue into force until terminated by either party (the “Term”). Either party may terminate these Terms of Use as follows: (a) we may terminate these Terms of Use at any time and with immediate effect by giving notice to you, at our discretion, by email (at your current email address on file with us) if you provided an email address to us when you signed up for your account or through the Website; (b) you may terminate these Terms of Use at any time and with immediate effect by requesting (by email or through any then-available interfaces on the Websites) that your access be terminated and ceasing use of the Websites. For greater certainty, if you continue to use any portion of the Websites after these Terms of Use have been terminated, these Terms of Use will continue to apply to the extent of such use.

The following Sections, together with any other provision of these Terms of Use which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of these Terms of Use, will survive expiration or termination of these Terms of Use for any reason: Sections 5 (Personal Information Privacy), 7 (Ownership), 8 (Feedback), 10 (Linked Sites; Third Party Content), 11 (Prohibited Activities), 14 (Malicious Code), 15 (Communications Not Confidential), 16 (Disclaimer), 17 (Liability Exclusions; Limitation; Indemnity), 19 (Term and Termination; Survival), 20 (Governing Law and Disputes); and 21 (Other Matters).

20. Governing Law and Disputes
These Terms of Use, your use of the Websites and all related matters are and will be governed by, and construed and interpreted solely in accordance with, the laws of the Province of British Columbia, Canada and applicable federal laws of Canada, excluding any rules of private international law or the conflict of laws that would lead to the application of any other laws and excluding any law that implements the United Nations Convention on Contracts for the International Sale of Goods.

All disputes arising from, connected with or relating to these Terms of Use, your use of the Websites or any related matter will be resolved before the Supreme Court of British Columbia sitting in the City of Vancouver, and you and Mobify each hereby irrevocably submit and attorn to the original and exclusive jurisdiction of that court in respect of all disputes. For clarity, Mobify in its discretion may commence legal proceedings against you in the courts of any other jurisdiction seeking injunctive relief (or similar urgent legal remedies) to enforce these Terms of Use and protect Mobify’s rights in, to and associated with the Websites and their content.

21. Other Matters

No consent or waiver by Mobify to or of any breach of these Terms of Use by you will be effective unless in writing and signed by Mobify or will be deemed or construed to be a consent to or waiver of a continuing breach or any other breach by you. Except as expressly set forth in these Terms of Use, Mobify’s rights and remedies under these Terms of Use are cumulative and not exhaustive or exclusive of any other rights or remedies to which Mobify may be lawfully entitled under these Terms of Use or at law, and Mobify will be entitled to pursue any and all of its rights and remedies concurrently, consecutively and alternatively. The provisions of these Terms of Use will ensure to the benefit of and be binding upon you and Mobify and your respective successors and permitted assigns. If any provision of these Terms of Use is held by a court or arbitrator of competent jurisdiction to be invalid or unenforceable for any reason, then the provision will be deemed severed from these Terms of Use and the remaining provisions will continue in full force and effect without being impaired or invalidated in any way, unless as a result of the severance these Terms of Use would fail in its essential purpose. You will not assign, transfer, delegate, license, sub-license or grant these Terms of Use or your rights, duties and obligations under these Terms of Use without Mobify’s express prior written consent, which consent may be withheld in Mobify’s discretion. Mobify may, without your consent, assign these Terms of Use or any of Mobify’s rights, duties or obligations under these Terms of Use. In these Terms of Use: (a) a reference to “Terms of Use” and other similar terms refers to these Terms of Use as a whole, and not just to the particular provision in which those words appear; (b) headings are for reference only and do not define, limit or enlarge the scope or meaning of these Terms of Use or any of its provisions; (c) words importing the singular number only include the plural and vice versa; (d) words importing a gender include both genders; (e) “person” includes an individual, corporation, partnership, joint venture, association, trust, unincorporated organization, society and any other legal entity; (f) “including” and “includes” mean including or includes (as applicable) without limitation or restriction; (g) “law” includes common law, equity, statutes, regulations, ordinances and orders in council, and reference to a specific law includes all regulations, and ordinances and orders in council and mandatory
guidelines and directives made or issued under the law; and (h) “discretion” means a person’s sole, absolute and unfettered discretion.

These Terms of Use and the other agreements referred to in Section 4 set forth the entire agreement between you and Mobify regarding your use of the Websites and except as provided in these Terms of Use and such other agreements, there are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between you and Mobify regarding the Websites.

You and Mobify have each expressly requested and required that these Terms of Use be drawn up in the English language. Les parties conviennent et exigent expressément que ce Contrat et tous les documents qui s'y rapportent soient rédigés en anglais.