

## Terms of Service Updated July 10, 2024

Please read these Standard Terms of Use (“Terms”) carefully. By using the Service (defined below) or signing up for an account, you’re agreeing to these Terms, which will result in a legal agreement between you and Credit Admiral Software d/b/a Kraken Automations (collectively, “Kraken Kraken,” “we,” or “us”).

We’ll start with the basics, including a few definitions that should help you understand these Terms. Kraken offers an online marketing platform (the “App”) that allows you to manage your contacts, to create, send, and manage certain marketing campaigns, including, without limitation, emails, advertisements, and mailings (each a “Campaign,” and collectively, “Campaigns”), to send text messages (for both informational or marketing purposes) (“Text Messaging”), and to create and manage web pages and websites to reach your people (each, a “Site,” and collectively, “Sites”) among other things. The App is offered through our website, <https://www.KrakenAutomations.com>. Kraken Automations has employees, officers, directors, independent contractors, and representatives (“our Team”). As a customer of the Service or a representative of an entity that’s a customer of the Service, you’re a “Member” according to this Agreement (or “you”). A “Contact” is any person that you, a Member, may contact through our Service. In other words, a Contact is anyone on a Member's distribution list about whom a Member has given us information or is anyone who has otherwise interacted with a Member via the Service. For example, if you are a Member, a subscriber to your email marketing campaigns or a shopper to your Website or Landing Page would be considered a Contact.

These Terms, (collectively, the “Agreement”) define the terms and conditions under which you’re allowed to use the Service in accordance with the Agreement, which in addition to our [Global Privacy Statement](#) and [Cookie Statement](#), describe how we’ll treat your account and the data we collect and process about you, your end users, and your contacts and customers while you’re a Member. If you don’t agree to these Terms, you must immediately discontinue your use of the Service.

## I. Account

### 1. Eligibility

In order to use the Service, you must:

1. be at least eighteen (18) years old and able to enter into contracts;
2. complete the account registration process;
3. agree to these Terms and the other terms and conditions linked in these Terms that form part of the Agreement;

4. provide true, complete, and up-to-date contact and billing information;
5. not be based in comprehensively embargoed and comprehensively sanctioned jurisdictions, including Cuba, Iran, North Korea, Syria and the regions of Crimea, Zaporizhzhia and Kherson, the Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR) in Ukraine, and Russia , or are not otherwise prohibited from using the Platform under the laws and regulations of the United States, or any other applicable jurisdiction;
6. and not be included in lists maintained by the United States or other applicable jurisdictions prohibiting transactions with and the export of US products to certain entities, people and jurisdictions.

By using the Service, you represent and warrant that you meet all the requirements listed above, and that you won't use the Service in a way that violates any laws or regulations. Note that by representing and warranting, you are making a legally enforceable promise.

Kraken Automations may refuse service, close accounts of any Members, and change eligibility requirements at any time.

## 2. Term

When you sign up for an account and agree to these Terms, the Agreement between you and Kraken Automations is formed, and the term of the Agreement (the "Term") will begin. The Term will continue for as long as you have a Kraken Automations account or until you or we terminate the Agreement in accordance with these Terms, whichever happens first. If you sign up for an account on behalf of a company or other entity, you represent and warrant that you have the authority to accept these Terms and enter into the Agreement on its behalf.

## 3. Closing Your Account

You or Kraken Automations may terminate the Agreement at any time and for any reason. You may do so by terminating your Kraken Automations account or we may do so by giving notice to you that we are terminating the Agreement. We may suspend the Service to you at any time, with or without cause. We won't refund or reimburse you in any situation. If your account is inactive for 24 or more months, we may terminate your account and you won't be entitled to a refund for any prepaid amounts or reimbursement. Once your account is terminated, you acknowledge and agree that we may permanently delete your account and all the data associated with it, including your Campaigns. Usernames are unique and can only be used once. If your account has been terminated, the username will no longer be available for use on any future accounts and cannot be reclaimed.

## 4. Changes

We may change any of the Terms by posting revised Terms on our Kraken Automations Site. Unless you terminate your account, the new Terms will be effective immediately upon posting on the effective date indicated in the new Terms, as applicable, and apply to any continued or new use of the Service. We may change the Service, Add-ons, or any features of the Service at any time, and we may discontinue the Service, Add-ons, or any features of the Service at any time, and we are not in any way liable to you for any modification, suspension, termination, or discontinuation.

## 5. Account and Password

You're responsible for keeping your account name and password confidential. You're also responsible for any account that you have access to and any activity occurring in such account (other than activity that Kraken Automations is directly responsible for that isn't performed in accordance with your instructions), whether or not you authorized that activity. You'll immediately notify us of any unauthorized access or use of your accounts. We're not responsible for any losses due to stolen or hacked passwords. We don't have access to your current password, and for security reasons, we may only provide you with instructions on how to reset your password. We have the right to update any of your contact information in your account for billing purposes. In addition, you represent and warrant that all information you provide to us when you establish an account, and when you access and use the Service, is and will remain complete and accurate. We may contact you, or any seat, authorized user, or login added to your account, based on the information provided in your account.

## 6. Account Disputes

We don't know the inner workings of your organization or the nature of your personal relationships. You won't request access to or information about an account that's not yours, and you'll resolve any account-related disputes directly with the other party. We decide who owns an account based on a number of factors, including the content in that account, and the contact and profile information listed for that account. In cases where differing contact and profile information is present or we are unable to reasonably determine ownership, we'll require you to resolve the matter through proper channels outside of Kraken Automations.

When a dispute is identified, we may suspend any account associated with the dispute, including disabling login and sending capabilities, to protect the security and privacy of the data held within the account until the dispute is properly resolved.

# II. Payment

## 7. 1 Month Promotional Free Trial Membership

From time to time at our discretion, we may offer a promotional, free trial period of 1 month for a Paid Marketing Plan ("Trial Period"). To activate the Trial Period, you will be required to (1) enroll for the eligible Paid Marketing Plan of your choice, and (2) provide

valid payment information to us at the time of enrollment. Free trial offer does not include Websites Plans and associated transaction fees or add-on/one-time fees, such as transactional email charges, Facebook ads or Google ads. If you exceed the permitted number of contacts or email sends during your Free Trial, Kraken Automations may adjust your contact tier to a more cost effective option at the end of your Free Trial once billing begins. We will notify you if we automatically adjust your tier or plan, and you will have the option to modify your contacts or audience counts, or select another plan. Upon the expiration of the Trial Period, you will be charged on a monthly basis at the then-current rate for the Paid Marketing Plan you have selected and your current contact tier until you cancel, change to a different paid monthly marketing plan. Prior to the expiration of the Trial Period, we will notify you of the upcoming expiration of your Trial Period. If the payment method we have on file for you is declined, you must provide to us a new, valid payment method for the Paid Marketing Plan or we reserve the right, without further notice, to immediately suspend or cancel your continued use of the Paid Marketing Plan.

To be eligible for the Trial Period, you must be a new Kraken Automations customer and sign up for a Paid Marketing Plan using the "Free for 1 Month" option (or other like wording). The 1 Month Promotional Free Trial Membership offer cannot be combined with any other Kraken Automations offer(s) and is available for a limited time. Offer is provided through a 100% discount to your recurring monthly Kraken Automations plan charges for the first monthly bill immediately following fulfilling the eligibility criteria. You can pause your subscription or delete your Kraken Automations account at any time via the Settings section in the Account & Billing area. Pausing your Paid Marketing Plan or deleting your Kraken Automations account will become effective immediately.

## 8. Kraken Automations Text Messaging

Members are billed on a recurring monthly billing cycle for the credit plan selected at the then-current price. These fees are in addition to your then-current monthly marketing plan. When you set-up your Text Messaging credit plan, your payment will be prorated based on the days remaining in your current billing cycle; you will immediately receive access to use the credits until the end of that billing cycle. To provide uninterrupted service, we will automatically charge for and renew a Member's Text Messaging plan unless the Member opts out of automatic renewal in the App or by contacting customer support. On or before the first day of your next billing cycle, you will be charged the full amount of the Text Messaging fees for your selected credit plan. Kraken Automations reserves the right to deactivate your Text Messaging credit plan for any failed payment and you may lose access to certain features in your account.

You can deactivate your Text Messaging account via the Settings section in the Account & Billing page. Deactivating your Kraken Automations account will disable your ability to utilize Text Messaging immediately. To reactivate your Text Messaging credit plan, you will need to contact our support team to reinitiate the on-boarding process and obtain a new business phone number. If you downgrade your account from an eligible paid marketing plan, you will have access to your Text Messaging credit plan until the

end of that billing cycle. The following billing cycle your Kraken Automations Text Messaging credit plan will be deactivated and any unused credits will be forfeited.

## 9. Debit and Credit Cards

As long as you're a Member with a Paid Marketing Plan or are otherwise utilizing paid features of the Service or have an outstanding balance with us, you'll provide us with valid debit or credit card ("card") information and authorize us to deduct your charges against that card. You'll replace the information for any card that expires with information for a valid one. If your card is automatically replaced with a new card by a payment processor, you acknowledge and agree that we are authorized to deduct any charges on your account against the new card. Anyone using a card represents and warrants that they are authorized to use that card, and that any and all charges may be billed to that card and won't be rejected. If we are unable to process your card order for any reason, we'll try to contact you by email and may suspend your account until your payment can be processed.

## 10. Refunds

You won't be entitled to a refund or credit from us under any circumstance. However, we may, at our sole discretion, offer a refund, discount or credit.

## 11. Billing Changes and Taxes

We may change any of our fees, including our charges for Monthly at any time by posting a new pricing structure to our Kraken Automations Site or in your account and/or sending you a notification by email. Quoted fees don't include sales or other transaction-based taxes of any kind.

"Tax" or "Taxes" means all applicable taxes, including but not limited to indirect taxes such as goods and services tax ("GST"), value added tax ("VAT"), sales tax, fees, duties, levies, or other similar taxes. Unless otherwise stated, any consideration, amount payable, prices, fees, payment terms and/or any other amounts are exclusive of Taxes. In the event that any amount payable by you to Kraken Automations is subject to Taxes, Kraken Automations shall collect the full amount of those Taxes from you and said collection shall not reduce or somehow impact the amount to which Kraken Automations is entitled. You will reimburse and indemnify Kraken Automations for any Taxes, interest, and penalties that Kraken Automations may be compelled to pay on account of your non-payment. You must pay any applicable Taxes. In the event that any payments and/or amount payable by you to Kraken Automations is subject to (i) any withholding or similar tax; (ii) any Taxes not collected by Kraken Automations; or (iii) any other Taxes or other government levy of whatever nature, the full amount of that tax or levy shall be solely your responsibility and shall not reduce the amount to which Kraken Automations is entitled under the Agreement. You will indemnify and hold Kraken Automations harmless against any and all claims by any competent tax authority related to any such withholding or similar taxes and any penalties and/or interest thereon.

## III. Rights

### 12. Feedback and Proprietary Rights

We own all proprietary rights in the Service and Kraken Automations Site, including, but not limited to, patents, trademarks, service marks, trade secrets, copyrights, and other intellectual property rights. You will respect our proprietary rights in the Service and Kraken Automations Site, and you may only use our brand assets according to our brand guidelines.

You shall retain all right, title, and interest in and to the material, content, data, and information (including your personal information and the personal information of others) you submit to Kraken Automations in the course of using the Service or which Kraken Automations otherwise retrieves or accesses at your direction or with your permission (collectively, your “Content”). Subject to these Terms, you grant us permission to use or disclose your Content (including any personal information therein) only as necessary to provide the Service to you and/or as otherwise permitted by these Terms, including as further provided under Section 16 and Section 17. You represent and warrant that: (i) you own or have otherwise obtained all necessary rights, releases, and permissions to submit all your Content to the Service and to grant the rights granted to us in these Terms and (ii) your Content and its submission and use as you authorize in these Terms will not violate (1) any applicable law, (2) any third-party intellectual property, privacy, publicity, or other rights, or (3) any of your or third-party policies or terms governing your Content.

You may provide or we may ask you to provide suggestions, comments, input or other feedback (“Feedback”) regarding the Service. If you provide us with any Feedback, then you grant us a perpetual, irrevocable, royalty-free, non-exclusive, worldwide, sublicensable, and transferable license to use, reproduce, publicly display, distribute, modify, and publicly perform the Feedback as we see fit. Any Feedback you choose to provide is given entirely voluntarily. You understand that you will not receive any compensation for your Feedback, and that we may use any Feedback you provide to improve the Service or to develop new features and services.

### 13. Privacy

Your privacy is important to us. We will never, under any circumstances sell or give your information to any third party, PERIOD. Your information is safe with us.

In order to properly support and serve you, we occasionally need to reach out and contact you and may do so in a variety of ways such as via text message, email or messaging functionality in the Service. We want to provide you with options for receiving communications from us, and as such, you may opt-in or opt-out of receiving certain types of communications from us or sign up to receive certain kinds of messages from us. You will need to notify us of any changes to your contact details to ensure your preferences are updated.

You may provide us with your telephone number as part of your customer record or registration or via other methods. You understand and agree that we may use your telephone number to send automated text messages and pre-recorded voice messages to the telephone number you provide for other limited purposes, including: providing you with important critical notices regarding your use of the Service, or fulfilling a request made by you through the Service.

Additionally, we may use your telephone number to contact you about special offers unless you opt out of such marketing. By providing a telephone number in connection with the Service, you verify that you are the current subscriber or owner of that number. In addition, you expressly agree that Kraken Automations and its affiliates may contact you by telephone or text message (including through the use of artificial voices, prerecorded voice messages and/or autodialed calls and text messages) to the telephone number you provide or to any number provided to us on your behalf, for various purposes including verifying your identity, providing you with important notices regarding your account or use of the Service, fulfilling your requests or letting you know about promotions or other services we think we may be of interest to you.

Your consent to receive automated calls and texts is completely voluntary, and you may opt out any time. You acknowledge that if you do not opt out, we may contact you even if your number is listed on a do-not-call list or if you cancel your account or terminate your relationship with us. You do not have to agree to receive promotional calls or texts as a condition of purchasing any goods or services.

You understand and agree, for any text messages sent to you in connection with the Service, that: (a) message frequency may vary, (b) message and data rates may apply, and Kraken is not responsible for these charges, (c) you may reply HELP for information, (d) you can reply STOP to opt out at any time (though if you do, you agree to receive a single message confirming your opt-out) and (e) neither Kraken Automations nor mobile carriers involved in the text messaging are liable for delayed or undelivered messages. To opt out of automated voice calls, you must provide us with written notice revoking your consent by contacting us as described in the "How to Contact Us" section of our Privacy Statement, and including your full name, mailing address, account number and the specific phone number(s) you wish to opt out of such calls.

## IV. Rules and abuse

### 14. General Rules

By agreeing to these Terms, you promise to follow these rules:

1. You won't send spam!
2. You won't use purchased, rented, or third-party lists of email addresses.
3. You'll comply with our [Use Policy](#), which forms part of these Terms.

Kraken Automations doesn't allow accounts that promote or incite harm toward others or that promote discriminatory, hateful, or harassing Content. To this end, we may suspend or terminate your account if you send a Campaign, create or manage a Site, or otherwise create or distribute any Content that we determine, in our sole discretion, contains either of the following:

- A Threat of Physical Harm. This means any statement, photograph, advertisement, or other Content that in our sole judgment could be reasonably perceived to threaten, advocate, or incite physical harm to or violence against others.
- Hateful Content. This means any statement, image, photograph, advertisement, or other Content that in our sole judgment could be reasonably perceived to harm, threaten, promote the harassment of, promote the intimidation of, promote the abuse of, or promote discrimination against others based solely on race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, disease, or immigration status.

We also may suspend or terminate your account if we determine, in our sole discretion, that you are either:

- an organization that has publicly stated or acknowledged that its goals, objectives, positions, or founding tenets include statements or principles that could be reasonably perceived to advocate, encourage, or sponsor Hateful Content or A Threat of Physical Harm;
- a person that has publicly made a comment or statement, or otherwise publicly made known a position, including by membership in an organization as discussed above, that could be reasonably perceived as Hateful Content or A Threat of Physical Harm; or
- a person or organization that has acted in such a way as could be reasonably perceived to support, condone, encourage, or represent Hateful Content or A Threat of Physical Harm.

Kraken Automations also does not allow the distribution of Content that is, in our sole discretion, materially false, inaccurate, or misleading in a way that could deceive or confuse others about important events, topics, or circumstances.

If you violate any of these rules, then we may issue a warning to, suspend, or terminate your account.

## 15. Reporting Abuse

If you think anyone is violating any of these Terms, please notify us immediately. If you received spam you think came from a Kraken Automations Member, please report it to our [Abuse Team](#). If you think anyone has posted material that violates any protected marks or copyrights, then you can notify us via email at [support@krakenautomations.com](mailto:support@krakenautomations.com)

## 16. Bandwidth Abuse/Throttling



You may only use our bandwidth for your Content, Campaigns and Sites. We provide image and data hosting only for your use of the Service, so you may not host images or data on our servers for anything else. We may throttle your sending or connection through our API at our discretion.

## 17. Compliance with Laws and Regulations

You represent and warrant that your use of the Service will comply with all applicable laws and regulations, including as may be amended or adopted over time. You're responsible for determining whether the Service is suitable for you to use in light of your obligations under any regulations like HIPAA, GLBA, Data Protection Laws (as defined in the [Data Processing Addendum](#)), anti-corruption and anti-bribery laws and regulations, United States and any other applicable economic sanctions, and export control laws and regulations ("Global Trade Laws and Regulations"), laws or regulations applicable to artificial intelligence features or Content, or other applicable laws. If you're subject to regulations (like HIPAA) and you use the Service, then we won't be liable if the Service doesn't meet those requirements. Likewise, we won't be liable if your use of an AI Model or any Outputs (each, as defined below) doesn't meet requirements under applicable laws and regulations (including any applicable carrier requirements). You may not use the Service for any unlawful or discriminatory activities, including acts prohibited by the [Federal Trade Commission Act](#), [Fair Credit Reporting Act](#), [Equal Credit Opportunity Act](#), [Children's Online Privacy Protection Act](#), [Telephone Consumer Protection Act](#), or any other applicable laws.

If you collect any personal information pertaining to a minor and store such information within your Kraken Automations account, you represent and warrant that you have obtained valid consent for such activities according to the applicable laws of the jurisdiction in which the minor lives.

You agree, represent, and warrant to Kraken Automations that:

1. If and to the extent required by Data Protection Laws, you will clearly post, maintain, and abide by a publicly accessible privacy notice on the digital properties from which the underlying data is collected that (a) satisfies the requirements of applicable Data Protection Laws, (b) describes your use of the Service, and (c) includes a link to our [Global Privacy Statement](#).
2. You will get and maintain all necessary permissions and valid consents required to lawfully transfer data to Kraken Automations and any Third-Party Integrations (defined below) and to enable such data to be lawfully collected, processed, and shared by Kraken Automations and such third parties for the purposes of providing the Service or as otherwise directed by you.
3. You will comply with all laws, rules, and regulations applicable to the Campaigns sent through the Service, including those relating to (a) acquiring consents (where required) to lawfully send Campaigns, (b) the Content of Campaigns, and (c) your Campaign deployment practices.

4. You will provide all notices and obtain all necessary consents required by applicable Data Protection Laws to enable Kraken Automations to deploy cookies and similar tracking technologies (like web beacons or pixels) lawfully on and collect data from the devices of contacts and end users in accordance with and as described in our Cookie Statement. You shall have the sole responsibility for the accuracy, quality, and legality of your use and collection of your Contacts' data within Text Messaging.
5. To the extent Kraken Automations processes your Content protected by Data Protection Laws as a processor on your behalf (all as defined in the DPA), you and Kraken Automations shall be subject to and comply with the Kraken Automations [Data Processing Addendum](#) ("DPA"), which is incorporated into and forms an integral part of these Terms. The DPA sets out our obligations with respect to data protection and security when processing your Content on your behalf in connection with the Service.
6. All the content and material you provide or use in connection with the Service does not infringe upon or violate any copyright, trademark, privacy, publicity, or other proprietary right of any third party.

## V. Liability

### 18. Limitation of Liability

To the maximum extent permitted by law, you acknowledge and agree that (i) you assume full responsibility for any loss that results from your use of the Service, including any downloads from the Kraken Automations Site; (ii) we and our Team won't be liable for any indirect, punitive, special, or consequential damages, including any loss of data, profits, revenues, business opportunities, goodwill, or anticipated savings under any circumstances, even if they're based on negligence or we've been advised of the possibility of those damages; and (iii) in any calendar month, the total liability of Kraken Automations and our third-party providers, licensors, distributors, or suppliers to you arising out of or relating to the Agreement—whether in contract, tort (including negligence), breach of statutory duty, or otherwise—will be no more than what you paid us for the Service the preceding month.

You are liable for any Content sent through the Service. Without limitation to the other provisions of these Terms, it is your responsibility to review all Content prior to sending any Campaign through the Service. Kraken Automations is not liable for any Content you send through the Service. For the avoidance of doubt, in no instance will we or our Team be liable for any losses or damages you suffer if you use the Service in violation of these Terms, regardless of whether we terminate or suspend your account due to such violation.

We are not liable for your relationship with your Contacts and how you interact with them, including your collection of personal information or your collection of consent to communicate with your Contacts via Text Messaging. If applicable law requires, you must obtain consent directly from your Contacts in the manner prescribed by applicable law. It is your responsibility to consult with a licensed attorney to make sure your use of Text Messaging is compliant with all applicable laws.

## 19. No Warranties

Except as expressly stated in these Terms, the Service is provided as-is and, to the fullest extent permitted by law, we don't provide warranties, conditions, or undertakings of any kind in relation to the Service, either express or implied. This includes, but isn't limited to, warranties of merchantability and fitness for a particular purpose, data loss, merchantability, or non-infringement or any warranties with respect to the accuracy, reliability, or availability of any content or information made available in or through the Service (including any Output, as defined below), which are, to the fullest extent permitted by law, excluded from the Agreement. Since Members use the Service for a variety of reasons, we can't guarantee that it'll meet your specific needs.

## 20. Indemnity

You agree to indemnify and hold us and our Team harmless from any losses, damages, judgments, fines, and costs, including legal fees and expenses in connection with any claims you make that aren't allowed under these Terms due to a "Limitation of Liability" or other provision. (Indemnity is an agreement to compensate someone for a loss.) You also agree to indemnify and hold us harmless from any losses, damages, judgments, fines, and costs, including legal fees and expenses, in connection with any claims arising out of or relating to (i) your Content, Campaigns, or Sites, (ii) your use (or any third-party's use) of the Service, (iii) your violation of any laws or regulations, (iv) third-party claims that you or someone using your password did something that, if true, would violate any terms of the Agreement, (v) any misrepresentations made by you, (vi) a breach of these Terms or any representations or warranties you've made to us, or (vii) your use of and reliance on an AI Model (defined below) including, but not limited to, your Outputs (defined below) and failure to abide by Section 30 of these Terms.

## 21. Equitable Relief

Your violation of these Terms may cause irreparable harm to us and our Team. Therefore, we have the right to seek injunctive relief or other equitable relief if you violate these Terms (meaning we may request a court order to stop you).

# VI. Other Important Stuff

## 22. Text Messaging

If your application for a designated number in the United States (or equivalent in your jurisdiction) has been approved, and you have selected a monthly credit plan, you can use Text Messaging to send promotional and marketing-related messages to Contacts who opt in to receive such messages. By using Text Messaging, you acknowledge and consent to your contact details being passed to and stored by Kraken Automations and the SMS Provider(s) and acknowledge and understand that certain data about your use of Text Messaging will be shared with the SMS Provider(s), including, but not limited to,

the contents and metadata of each message. Such data will be shared with the SMS Provider(s) for the purpose of providing the Service to you.

You understand and agree that we may limit the number of messages or the time of day you can send messages as part of Text Messaging. In the United States and if otherwise applicable in your jurisdiction, you are required to submit an application to receive a number. Kraken Automations (or a network carrier) may deny your application for any reason (or no reason), without prior notice to you.

By using Text Messaging, you promise not to:

1. send SMS messages to anyone you do not have the required consent to contact or without the required opt-out method or language within the SMS message;
2. send any unsolicited messages (spam) or confuse, deceive, defraud, mislead, or surprise people with your communications;
3. take any action that imposes an unreasonable or disproportionately large load on Kraken Automations infrastructure; and
4. impersonate any person or entity or falsely state or otherwise misrepresent an affiliation with a person or entity.

You will comply with all laws, rules, regulations, best practices, policies, or carrier requirements applicable to Text Messaging (including, but not limited to, SHAFT restrictions and quiet hours). You will immediately (and in any event, within the time period prescribed under applicable laws, rules, or regulations) honor opt-out, unsubscribes, or other requests from Contacts who do not want to be contacted via Text Messaging.

You also agree that in connection with Text Messaging that you shall maintain the following information on your website: (a) name, (b) address, (c) contact information, including email and telephone number, (d) VAT number (if the activity is subject to VAT), and (e) any additional information required by regulated professions. If required under applicable law, rule, or regulation, you must clearly identify the person or entity on whose behalf the SMS message was made.

You acknowledge that Text Messaging may only be available in certain languages and subject to certain limitations (e.g., restrictions on use for certain types of customers or certain purposes). You agree to comply with any such restrictions or limitations.

## 23. Generative AI Features

Kraken Automations may offer or integrate with certain artificial intelligence features as part of the Service (each, an "AI Model"), including to help you create Campaigns or other content ("Content Generation"), analyze your performance, organize Contacts, and more. For clarity, any such AI Model is part of the Service and your use of the AI Model is considered part of your use of Kraken Automations.

You are responsible for ensuring that any summary, text, instructions or other Content you make available while using the features of the AI Model (collectively, "Inputs") are appropriate and permissible under these Terms. For the avoidance of doubt, such Inputs are "Content" for purposes of these Terms.

Use of the AI Model may result in content, materials, data, visuals, metrics, insights, optimizations, recommendations, and other output generated and/or provided by the AI Model (collectively, "Outputs") that are inaccurate or otherwise not fit for use (including from a legal and/or business perspective), and Kraken Automations make no warranties, express or implied that the AI Models or any Outputs are free from error or bias. You are solely responsible for such Outputs, which is also your "Content" for the purposes of these Terms. You must carefully review the resulting Outputs before you add it to a Campaign, rely on such Outputs, or otherwise use such Outputs to ensure everything is accurate, lawful, and otherwise appropriate and is not detrimental to Kraken Automations and the general public. And, you agree to have adequate rights to use such Outputs and any Content. You shall ensure that your use of any Output does not violate the intellectual property or proprietary rights of Kraken Automations or any third party. You are not required to use any such Outputs or Content, and you are free to and should modify them as appropriate to ensure compliance with these Terms. You also acknowledge and agree that any Outputs may not be protectable under copyright or other intellectual property, proprietary rights, or other law. Kraken Automations makes no warranties or representations, express or implied, that the Output or other Content is protectable under any law. Where appropriate or in the event such a disclaimer is required by Kraken Automations, you will include as part of any Campaign or Content that you develop using the AI Model a disclaimer to end users to communicate that the applicable Content may contain errors and should be independently verified.

Due to the nature of generative artificial intelligence, Outputs may not be unique and the AI Model may generate and/or provide the same or similar Output for you as it generates and/or provides for other users. For clarity, Outputs for other users are not considered your Content.

Without prejudice to any of our other rights, you acknowledge and agree that Kraken Automations leverages certain third parties to provide AI Models, including to generate Outputs and to process and store Inputs and Outputs in private hosting environments. By using the AI Model, you authorize and agree that such third parties may access, use, and store any Inputs and Outputs pursuant to their relevant terms and privacy policies.

Without limiting Kraken Automations rights otherwise set forth in these Terms, by using the AI Model, you hereby grant Kraken Automations (and their agents, employees, officers, directors, independent contractors, affiliates, subsidiaries and representatives) a worldwide, non-exclusive, irrevocable, transferable, royalty-free, fully paid-up, sublicensable (through multiple-tiers) license to access, use, modify, display, publicly perform, distribute, copy, create derivatives from (including derivative works of) and process any and all Inputs and Outputs (including any intellectual property contained

therein or embodied thereby) for any purpose, including to develop and improve the AI Model and for purposes stated in our [Global Privacy Statement](#).

We may use your Inputs and Outputs, including Customer Data, for machine learning purposes in order to develop and improve the AI Model, the Services, and similar products and features, and you instruct us to process Customer Data for such purposes. You may select preferences about your data by visiting your account settings.

You acknowledge that AI Models may only be available in certain languages and subject to certain limitations (e.g., restrictions on use for certain types of customers or for certain purposes). You agree to comply with any such restrictions or limitations. Kraken Automations may modify, suspend, discontinue, or further limit use of the AI Model at any time (without any notice to you). We may limit, suspend, or terminate an AI Model or your participation in or access to the AI Model at any time, with or without cause, and we may suspend or terminate your Kraken Automations account if you violate any of our terms or policies. If we do any of the foregoing, we are not in any way liable to you for any modification, suspension, termination, discontinuation, or limitation. Without limitation, the laws and regulations governing artificial intelligence and related technology are uncertain and evolving, and the ability to use the AI Model and/or Outputs may be adversely impacted in the future.

You agree to use the AI Model in (and any Outputs) in full compliance with these Terms

#### 24. Choice of Law

The State of Alabama laws and the Federal Arbitration Act will govern all disputes arising out of or relating to the Service and the Agreement, regardless of conflict of laws rules.

#### 25. Dispute Resolution

If you are a U.S. customer:

You and Kraken Automations agree that, except as provided below, any dispute, claim or controversy arising out of or relating in any way to the Service or this Agreement (a "Claim") will be determined by binding arbitration or small claims court, instead of in courts of general jurisdiction.

Either you or Kraken Automations can seek to have a Claim resolved in small claims court if all the requirements of the small claims court are satisfied. Either you or Kraken Automations may seek to have a Claim resolved in small claims court in your county of residence or the small claims court in closest proximity to your residence, and you may also bring a claim in small claims court of Fulton County, Georgia.

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and is

subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. You agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this arbitration provision, and that you and Kraken Automations are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of the Agreement and/or the termination of your Service.

If you elect to seek arbitration, you must first send to Kraken Automations a written Notice of your Claim ("Notice of Claim"). The Notice of Claim to Kraken Automations should be sent in care of our registered agent Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808. The Notice of Claim should include both the mailing address and email address you would like Kraken Automations to use to contact you. If Kraken Automations elects to seek arbitration, it will send, by certified mail, a written Notice of Claim to your address on file. A Notice of Claim, whether sent by you or by Kraken Automations, must (a) describe the nature and basis of the claim or dispute and (b) set forth the specific amount of damages or other relief sought.

You and Kraken Automations agree that good-faith informal efforts to resolve disputes often can result in a prompt, low-cost and mutually beneficial outcome. You and Kraken Automations therefore agree that, after a Notice of Claim is sent but before either you or Kraken Automations commence arbitration or file a claim in small claims court against the other, we will personally meet, via telephone or videoconference, in a good-faith effort to confer with each other and try to resolve informally any Claim covered by the Agreement. If you are represented by counsel, your counsel may participate in the conference as well, but you agree to fully participate in the conference. Likewise, if Kraken Automations is represented by counsel, its counsel may participate in the conference as well, but Kraken Automations agrees to have a company representative fully participate in the conference. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in the informal dispute resolution process required by this paragraph.

If we do not reach an agreement to resolve the Claim within sixty (60) days after the Notice of Claim is received, you or Kraken Automations may commence an arbitration proceeding by filing a Demand for Arbitration or, alternatively, by filing a Claim in small claims court. You agree that you may not commence any arbitration or file a claim in small claims court unless you and Kraken Automations are unable to resolve the claim within 60 days after we receive your completed Notice of Claim and you have made a good faith effort to resolve your claim directly with Kraken Automations during that time. If a Claim qualifies for small claims court, but a party commences an arbitration proceeding, you and Kraken Automations agree that either party may elect instead to have the Claim resolved in small claims court, and upon written notice of a party's election, the American Arbitration Association ("AAA") will administratively close the arbitration proceeding. Any dispute about whether a Claim qualifies for small claims court shall be resolved by that court, not by an arbitrator. In the event of any such dispute, the arbitration proceeding shall remain closed unless and until a decision by the small claims court that the Claim should proceed in arbitration. You may download or

copy a form of notice and a form to initiate arbitration at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. The arbitration will be conducted by the AAA before a single AAA arbitrator under the AAA's rules, which are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879, except as modified by these Terms. Unless Kraken Automations and you agree otherwise, any arbitration hearings will take place in the county (or parish) of either your residence or of the mailing address you provided in your Notice of Claim.

The arbitrator will be either (1) a retired judge or (2) an attorney specifically licensed to practice law in the State of Georgia or the state of your residence and will be selected by the parties from the AAA's National Roster of arbitrators. The arbitrator will be selected using the following procedure: (a) the AAA will send the parties a list of five candidates meeting this criteria; (b) if the parties cannot agree on an arbitrator from the list, each party shall return its list to the AAA within 10 days, striking up to two candidates, and ranking the remaining candidates in order of preference; (c) the AAA shall appoint as arbitrator the candidate with the highest aggregate ranking; and (d) if for any reason the appointment cannot be made according to this procedure, the AAA may exercise its discretion in appointing the arbitrator. The arbitrator is bound by these Terms. Except as otherwise provided below, all issues are for the arbitrator to decide, including issues relating to the scope and enforceability of this arbitration provision.

You and Kraken Automations agree that an administrative conference with the AAA shall be conducted in each arbitration proceeding, and you and a Kraken Automations company representative shall appear at the administrative conference via telephone. If you fail to appear at the administrative conference, regardless of whether your counsel attends, the AAA will administratively close the arbitration proceeding without prejudice, unless you show good cause as to why you were not able to attend the conference.

The arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The award shall be binding only among the parties and shall have no preclusive effect in any other arbitration or other proceeding involving a different party. Kraken Automations will not seek to recover its attorneys' fees and costs in arbitration from you unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). Judgment on any award may be entered in any court having jurisdiction. This agreement to arbitrate shall not preclude any party to the arbitration from at any time seeking injunctions or other forms of equitable relief in aid of arbitration from a court of appropriate jurisdiction including whether a Demand for Arbitration is filed in violation of these Terms.

Unless you or Kraken Automations seek to have a Claim resolved in small claims court, the arbitrator shall determine all issues of liability on the merits of any Claim asserted by you or Kraken Automations and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. To the extent that you or Kraken Automations prevail on a Claim and seek public injunctive relief (that is, injunctive relief that has the



primary purpose and effect of prohibiting unlawful acts that threaten future injury to the public), the entitlement to and extent of such relief must be litigated in a civil court of competent jurisdiction and not in arbitration. The parties agree that litigation of any issues of public injunctive relief shall be stayed pending the outcome of the merits of any individual Claims in arbitration. Before a court of competent jurisdiction issues any public injunctive relief, it shall review the factual findings of the arbitration award on which any injunction would issue with no deference to the arbitrator.

Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules. You are required to pay AAA's initial filing fee, but Kraken Automations will reimburse you for this filing fee at the conclusion of the arbitration to the extent it exceeds the fee for filing a complaint in a federal or state court in your county of residence or in Fulton County, Georgia. If the arbitrator finds that either the substance of your Claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules and Kraken Automations will not reimburse your initial filing fee. You and Kraken Automations agree that the AAA has discretion to modify the amount or timing of any administrative or arbitration fees due under the AAA Rules where it deems appropriate, provided that such modification does not increase the AAA fees to you or Kraken Automations, and you and Kraken Automations waive any objection to such fee modification.

You and Kraken Automations agree that each may bring claims against the other only in your or its individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. Further, if you have elected arbitration, unless both you and Kraken Automations agree otherwise, the arbitrator may not consolidate any other person's Claims with your Claims and may not otherwise preside over any form of a representative or class proceeding. If Kraken Automations believes that any Claim you have filed in arbitration or in court is inconsistent with the limitations in this paragraph, then you agree that Kraken Automations may seek an order from a court determining whether your Claim is within the scope of the Class Action Waiver. If this Class Action Waiver is found to be unenforceable, then the entirety of this Dispute Resolution Section shall be null and void.

## 26. Force Majeure

We won't be held liable for any delays or failure in performance of any part of the Service, from any cause beyond our control. This includes, but is not limited to, acts of God, changes to law or regulations, embargoes, war, terrorist acts, riots, fires, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, unusually severe weather conditions, and acts of hackers or third-party internet service providers.

## 27. Survivability

Even if the Agreement is terminated, the following sections will continue to apply: Feedback and Proprietary Rights, Compliance with Laws, Limitation of Liability, No Warranties, Indemnity, Dispute Resolution, Choice of Law, Severability, and Entire Agreement.

## 28. Severability

If it turns out that a section of these Terms isn't enforceable, then that section will be removed or edited as little as required, and the rest of the Agreement will still be valid.

## 29. Notices

Any notice to you will be effective when we send it to the last email or physical address you gave us or when posted on our Kraken Automations Site. Please note that, for purposes of providing notice, we may use any email or physical address within your account, including contact information associated with an account's primary contact, billing contact, owner profile, or any other profile or seat associated with the account. Any notice to us will be effective when delivered to us along with a copy us: Kraken Automations 851 E I65 Service Rd S 10<sup>th</sup> Floor Ste 1070 Mobile, AL 36606, or any addresses as we may later post on the Kraken Automations Site.

## 30. Entire Agreement

The Agreement, including these Terms and any Additional Terms you've agreed to by enabling any Add-ons, make up the entire agreement between us in relation to its subject matter and supersede all prior agreements, representations, and understandings. Any Additional Terms will be considered incorporated into the Agreement when you activate or use the corresponding Add-on or feature of the Service.