

Please read these terms of service and Our Privacy Policy (together, these “Terms”) carefully as they form a contract between You and Us and govern use of and access to the Service(s) and Websites by You, Your Affiliates, Users and End-Users. In the event of a conflict between these terms of service and Our Privacy Notice, these terms of service shall prevail.

By accessing or using the Service(s) or Websites, or authorizing or permitting any User or End-User to access or use the Service(s) or Websites, You agree to be bound by these Terms. If You are entering into these Terms on behalf of a company, organization or another legal entity (an “Entity”), You are agreeing to these Terms for that Entity and representing to Us that You have the authority to bind such Entity and its Affiliates to these Terms, in which case the terms, “You”, “Your” or related capitalized terms used herein shall refer to such Entity and its Affiliates. If You do not have such authority, or if You do not agree with these Terms, You must not accept these Terms and may not access or use the Service(s) or Websites.

You, as an individual, must be 18 years or older to access or use the Websites and the Service(s).

## 1. YOUR RIGHTS

1.1 These Terms are applicable during Your free trial and during Your subscription to the Service(s) through a Service Plan of Your choice.

1.2 Using Our Service(s): Subject to Your compliance with the Terms and solely during the Subscription Term, You have the limited, non-exclusive, and revocable right to access and use the Service(s) for Your internal business purposes. You shall be responsible for the use of the Service(s) through Your Account by any third parties. You may subscribe to one or more of the Service(s). They may be subject to separate and distinct Service Plans.

1.3 Using our APIs: Where applicable, our APIs must be used according to the API Policies We implement in this regard.

1.4 Using our Mobile Applications: Subject to Your compliance with the Terms and solely during the Subscription Term, You have the limited, non-exclusive, non-transferrable, and revocable right to download, install and use the Mobile Applications to access and use the Service(s).

## 2. YOUR RESPONSIBILITIES

2.1 Your Account: Subject to any limitation on the number of individual Users available under the Service Plan to which You subscribed, access and use of the Service(s) is restricted to the specified number of individual Users permitted under Your subscription to the Service(s). Each User shall be identified using unique login information such as usernames and passwords (“User Login”) and such User Login shall be used only by one individual. If You are a managed service provider and You wish to use the same User Login across Accounts that You manage for Your clients, You acknowledge that it is Your sole responsibility to obtain necessary consents from such clients. Without prejudice to Our obligations under Sections 9 and 10 of these Terms, You are solely responsible for the confidentiality of Service Data and User Login at Your end. You should, therefore, not share Your User Login with any third parties. In any event, unless You notify Us of any unauthorized use or suspicious activity in Your Account, You are responsible for all activities that occur under Your Account. Group Companies will not be liable for any damage or loss that may result from Your failure to protect Your login information, including Your password. Without limiting the foregoing, You are solely responsible for ensuring that Your use of the Service(s) to store and transmit Service Data is compliant with all applicable laws and regulations. You also maintain all responsibility for determining whether the Service(s) or the information generated thereby is accurate or sufficient for Your purposes.

2.2 Your use of the Service(s): You agree not to (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service(s) available to any third party, other than Users and End-Users in furtherance of Your internal business purposes as expressly permitted by these Terms; (b) use the Service(s) to Process data on behalf of any third party other than Your Users and End-Users; (c) modify, adapt, or hack the Service(s) or otherwise attempt to gain or gain unauthorized access to the Service(s) or related systems or networks; (d) falsely imply any sponsorship or association with Us; (e) use the Service(s) in any unlawful manner, including but not limited to violation of any person’s privacy rights; (f) use the Service(s) to send unsolicited communications junk mail, spam,

pyramid schemes or other forms of duplicative or unsolicited messages; (g) use the Service(s) to store or transmit any content that infringes upon any person’s intellectual property rights; (h) use the Service(s) in any manner that interferes with or disrupts the integrity or performance of the Service(s) and its components; (i) attempt to decipher, decompile, reverse engineer, disassemble, reproduce, or copy or otherwise access or discover the source code or underlying program of any Software making up the Service(s); (j) use the Service(s) to knowingly post, transmit, upload, link to, send or store any content that is unlawful, racist, hateful, abusive, libelous, obscene, or discriminatory; (k) use the Service(s) to store or transmit any “protected health information” as that term is defined in 45 C.F.R. 160.103 unless expressly agreed to otherwise in writing by Us; (l) use the Service(s) to knowingly post, transmit, upload, link to, send or store any viruses, malware, Trojan horses, time bombs, or any other similar harmful software (“Malicious Software”); (m) establish a link to Our Websites in such a way as to suggest any form of association, approval or endorsement on Our part where none exists; (n) use the Service(s) for the purposes of cookie tracking, ad exchanges, ad networks, data brokerages, or sending electronic communications (including email) in violation of applicable law; (o) use of the Service(s) for any purpose prohibited by applicable export laws and regulations, including without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology; (p) try to use, or use the Service(s) in violation of these Terms.

2.3 You shall be responsible for any loss of data or attempted or actual access or use of the Service(s) through Your Account in violation of these Terms.

2.4 If We inform You that a specified activity or purpose is prohibited with respect to the Service(s), You will ensure that You immediately cease use of the Service(s) for such prohibited activity or purpose.

### 3. ACCESS TO THE SERVICE(S)

3.1 You may not be able to access or use the Service(s) (a) during planned downtime for upgrades and maintenance to the Service(s) (of which We will use commercially reasonable efforts to notify You in advance through Our Service(s)) (“Planned Downtime”), or (b) during any unavailability caused by circumstances

beyond Our reasonable control, such as, but not limited to, acts of God, acts of government, acts of terror or civil unrest, technical failures beyond Our reasonable control (including, without limitation, inability to access the internet), or acts undertaken by third parties, including without limitation, distributed denial of service attacks.

3.2 We will use commercially reasonable efforts to schedule Planned Downtime for weekends (Pacific Time zone) and other off-peak hours.

### 4. CHANGES TO THE SERVICE(S) AND WEBSITES

4.1 Our Service(s): We may update the Service(s) from time to time and You may receive notifications of such upgrades, enhancements or updates (“Updates”). Any new or modified features added to or augmenting or otherwise modifying the Service(s) or other updates, modifications or enhancements to the Service(s) are also subject to these Terms and We reserve the right to deploy Updates at any time.

4.2 Websites: We may also change content on Our Websites at any time. However, please note that any of the content on Our Websites may be out of date at any given time, and We are under no obligation to update it. For clarity, this sub-section refers to Our Websites excluding the Service(s). We may discontinue or change any part of Our Websites, that does not affect the Service(s), without notifying You. Our Websites may contain links to websites, content and resources provided by third parties (“Third Party Links”). These Third Party Links are governed by their own terms and privacy policies and You agree that We have no control over these Third Party Links and are not responsible for Your access or use of these Third Party Links.

### 5. INTELLECTUAL PROPERTY RIGHTS

5.1 Ownership of IPR: Except for the rights granted to You under Section 1, all rights, title and interest in and to all Our patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights in or related to the Service(s), including the Websites, and any part of it (collectively, “Intellectual Property Rights”) shall belong to and remain exclusively with Us. We are the owner or the

licensee of all Intellectual Property Rights in Our Websites, and the content or material published on it. Those works are protected by copyright laws and treaties around the world. You must not use any part of the content on Our Websites for commercial purposes without obtaining a license to do so from Us or Our licensors. Further, We claim no intellectual property rights over the content You upload or provide to the Service(s).

5.2 Grant of License to Us: We shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable and perpetual license to incorporate into the Service(s) or Websites or otherwise use any suggestions, enhancement requests, recommendations or other feedback We receive from You.

5.3 Grant of License to You: Our product and service names, and logos used or displayed on the Service(s) or Websites are Our registered or unregistered trademarks (collectively, “Marks”), and You may only use such Marks to identify You as a user of the Service(s) You have subscribed to.

5.4 Reservation of Rights: All rights not expressly provided to You herein are reserved.

## 6. OTHER SERVICES

Certain other services (“Other Services”) such as integrations, Apps and Custom Apps are made available to You through the MarketPlace or other forums where applications are developed for their integration with the Service(s). These Other Services are governed by their own terms and privacy policies and You agree that We are not responsible for Your use of these Other Services where You choose to enable these Other Services and integrate them into Our Service(s). By enabling the Other Services, You understand and agree that We do not provide any warranties whatsoever for Other Services and We are not liable for any damage or loss caused or alleged to be caused by or in connection with Your enablement, access or use of any such Other Services, or Your reliance on the privacy practices, data security processes or other policies of such Other Services. You understand

that We are not responsible for providing technical support for Other Services and that We are not responsible for the data hosting and data transfer practices followed by providers of such Other Services. To this extent, You shall address any comments, queries, complaints or feedback about such Other Services to the respective developers or publishers as specified in the Market Place or other forums.

## 7. BILLING, PLAN MODIFICATIONS AND PAYMENTS

7.1 Subscription Charges: Unless otherwise specified in the Supplementary terms, except during Your free trial, all charges associated with Your Account (“Subscription Charges”) are due in full and payable in advance, in accordance with Section 7.2, when You subscribe to the Service(s). Unless specified otherwise in a Form, the Subscription Charges are based on the Service Plans You choose and are payable in full until You terminate Your Account in accordance with Section 8. You will receive a receipt upon each receipt of payment by Us. You may also obtain a payment receipt from within the Service(s).

7.2 Payment methods: You may pay the Subscription Charges through Your credit card, or other accepted payment method as specified in a Form. For credit card payments, Your payment is due immediately upon Your receipt of Our invoice. You hereby authorize Us or Our authorized agents, as applicable, to bill Your credit card upon Your subscription to the Service(s) (and any renewal thereof). For payments through other accepted methods, Your payment is due within thirty (30) days of Our invoice date unless otherwise stated in a Form.

7.3 Renewal: Your subscription to the Service(s) will renew automatically for a Subscription Term equivalent in length to the then expiring Subscription Term. Unless otherwise provided for in any Form, the Subscription Charges applicable to Your subscription to the Service(s) for any such subsequent Subscription Term shall be Our standard Subscription Charges for the Service Plan to which You have subscribed as of the time such subsequent Subscription Term commences. You acknowledge and agree that, unless You terminate Your Account in accordance with Section 8, Your credit card will be charged automatically for the applicable Subscription Charges.

7.4 We may use a third party service provider to

manage credit card and other payment processing; provided, that such service provider is not permitted to store, retain or use Your payment account information except to process Your credit card and other payment information for Us. You must notify Us of any change in Your credit card or other payment account information, either by updating Your Account or by emailing Us at [support@magoware.tv](mailto:support@magoware.tv)

7.5 Refunds: Unless otherwise specified in these Terms or a Form or a Service Plan, all Subscription Charges are nonrefundable. No refunds shall be issued for partial use or non-use of the Service(s) by You. You shall be eligible for a pro-rated refund of the Subscription Charges for the remainder of the Subscription Term if You terminate Your Account as a result of a material breach of these Terms by Us.

7.6 Late Payments/Non-payment of Subscription Charges: We will notify You if We do not receive payment towards the Subscription Charges within the due date for Your Account. For payments made through credit cards, We must receive payments due within a maximum of five (5) days from the date of Our notice and for payments through other accepted methods, We must receive payments within a maximum of fifteen (15) days from the date of Our notice. If We do not receive payment within the foregoing time period, in addition to Our right to other remedies available under law, We may (i) charge an interest for late payment @ 1.5% per month and/or; (ii) suspend Your access to and use of the Service(s) until We receive Your payment towards the Subscription Charges as specified herein and/or; (iii) terminate Your Account in accordance with Section 8.2.

7.7 Upgrades and Downgrades: You may upgrade or downgrade within a Service Plan or between two Service Plans. You understand that downgrading may cause loss of content, features, or capacity of the Service(s) as available to You before downgrading Your Account. We will not be liable for such loss. When You upgrade or downgrade, the new Subscription Charges become immediately applicable. Upon upgrade, the new Subscription Charges for the subsisting month would be charged on a prorated basis and Your credit card will be charged automatically. Subsequent months will be charged in full according to the new Subscription Charges. Upon downgrade, You will be offered a refund for the payment made for the subsisting month in the

form of credits credited to Your Account. These credits will be offset against the new Subscription Charges payable in the subsequent months.

7.8 Applicable Taxes: Unless otherwise stated, the Subscription Charges do not include any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction (collectively "Taxes"). You are responsible for paying the Taxes that would be levied against You by government authorities. We will invoice You for such Taxes if We believe We have a legal obligation to do so and You agree to pay such Taxes if so invoiced.

7.9 User Benefits: Apart from the credits provided to You when You downgrade, We may, at Our sole discretion, offer You certain benefits such as discounts on Subscription Charges, extension in Subscription Term for no extra payments from You, with regard to the Service(s). These benefits are specific to Your Account and the Service(s) identified while offering these benefits. They are not transferable. The benefits may have an expiry date. If they do not have an expiry date, they will expire upon completion of twelve (12) months from their date of offer.

## 8. CANCELLATION/ SUSPENSION AND TERMINATION

8.1 We shall not be liable to You or any other third party for cancellation/ suspension or termination of Your Account, or access to and use the Service(s), if such suspension or termination is in accordance with these Terms.

8.2 Free trial Customers: If You are on a free trial for any of Our Service(s), Your Account may be cancelled/ suspended or terminated in the following manner:

8.2.1 We may suspend Your access to and use of Your Account or the Service(s) if You are in violation of the Terms. We will notify You of Your activities that violate these Terms and, at Our sole discretion, provide You with a period of fifteen (15) days ("Cure Period") to cure or cease such activities. If You do not cure or cease such activities within said Cure Period or if We believe that Your breach of these Terms cannot be cured, Your Account shall be terminated and all associated Service Data shall be deleted immediately and permanently.

8.2.2 You may terminate Your Account at any time on or before the expiry of Your free trial. In such cases, all associated Service Data shall be



deleted immediately and permanently.

**8.2.3** Where you do not terminate Your Account or renew Your Account on or before the expiry of Your free trial, We may suspend Your Account. We shall retain any associated Service Data for a period of 6 months beyond which Your Account shall be terminated and all associated Service shall be deleted immediately and permanently.

**8.3** Customers on a Service Plan: If You are on a Service Plan for any of Our Service(s), Your Account may be cancelled/ suspended or terminated in the following manner:

**8.3.1** In addition to suspension for late payment or non-payment of Subscription Charges, We may suspend Your access to and use of Your Account or the Service(s) if You are in violation of the Terms. We will notify You of Your activities that violate these Terms and, at Our sole discretion, provide You with a period of fifteen (15) days ("Cure Period") to cure or cease such activities. If You do not cure or cease such activities within said Cure Period or if We believe that Your breach of these Terms cannot be cured, Your Account shall be terminated. Any associated Service Data shall be retained for a period of 14 days from the date of termination of Your Account beyond which it shall be deleted during the normal course of operation.

**8.3.2** You may elect to cancel/ terminate Your Account at any time from within Our Service(s), if You pay for Your Account through credit card. If payment for Your Account is made through other accepted payment methods as specified in the Form, You may request to terminate Your Account by writing to [support@magoware.tv](mailto:support@magoware.tv) Any associated Service Data shall be retained for a period of 14 days from the date of termination of Your Account beyond which it shall be deleted during the normal course of operation. **Please note that if you choose to cancel/ terminate your account in any case, a non refund policy shall be applied due to upfront expenses that Magoware undertakes.**

**8.3.3** We may suspend Your Account upon expiry or non-renewal of Your Subscription Term. We shall retain any associated Service Data for a period of 1 month beyond which Your Account shall be terminated and all associated Service shall be deleted immediately and permanently.

**8.4 Effect of Terminating Your Account:**

**8.4.1** Data Export: We strongly recommend that You export all Service Data before You terminate Your Account. In any event, following the

termination of Your Account either by You or Us, unless otherwise specified elsewhere herein or in the Supplemental Terms, Service Data will be retained or deleted in accordance with Sections 8.2 or 8.3 as applicable to You. Where the Service Data is retained as described herein, You may contact Us within such data retention period to export Your Service Data. Service Data cannot be recovered once it is deleted. Further, when Service Data is migrated from one data center to another upon Your request, We shall delete Service Data from the original data center after 14 days from such migration.

**8.4.2** Charges: If Your Account is terminated in accordance with Sections 8.2 or 8.3 of these Terms, in addition to other amounts You may owe Us, You must immediately pay any then unpaid Subscription Charges associated with the remainder of such Subscription Term, unless waived by Us in writing. This amount will not be payable by You, or You may be eligible for a prorated refund of the Subscription Charges, as the case may be, where You terminate Your subscription to the Service(s) or terminate Your Account as a result of a material breach of these Terms by Us, provided that You provide notice of such breach to Us and afford Us not less than thirty (30) days to reasonably cure such breach.

**9. CONFIDENTIALITY**

**9.1** If You choose, or You are provided with, a user identification code, password or any other piece of information as part of Our security procedures, You must treat such information as confidential. You must not disclose it to any third party. We have the right to disable any user identification code or password, whether chosen by You or allocated by Us, at any time, if in Our reasonable opinion, You have failed to comply with any of the provisions of these Terms.

**9.2** Confidentiality obligations: Each of us will protect the other's Confidential Information from unauthorized use, access or disclosure in the same manner as each of us protects our own Confidential Information, and in any event, no less than reasonable care. Except as otherwise expressly permitted pursuant to these Terms, each of us may use the other's Confidential Information solely to exercise our respective rights and perform our respective obligations under these Terms and shall disclose such Confidential Information solely to those of our respective employees, representatives and

agents who have a need to know such Confidential Information for such purposes and who are bound to maintain the confidentiality of, and not misuse, such Confidential Information. The provisions of this subsection shall supersede any non-disclosure agreement by and between You and Us entered prior to these Terms that would purport to address the confidentiality of Service Data and such agreement shall have no further force or effect with respect to Service Data.

## 10. DATA PRIVACY AND SECURITY

**10.1 Security of Service Data:** We use appropriate technical and organizational measures to protect the Service Data that we Process. The measures we use are designed to provide a level of security appropriate to the risk of Processing your Service Data.

**10.2** You understand that We and our Group Companies shall Process Service Data in accordance with Applicable Data Protection Laws and the Data Processing Addendum which are incorporated into these Terms by reference and in accordance with Our Privacy Notice. You acknowledge and agree that Group Companies may also access or disclose information about You, Your Account, Users or End-Users, including Service Data, in order to (a) comply with the law or respond to lawful requests or legal process; (b) protect Group Companies' or Our customers' or partners' rights or property, including enforcement of these Terms or other policies associated with the Service(s); (c) act on a good faith belief that such disclosure is necessary to protect personal safety or avoid violation of applicable law or regulation. Further, at Our sole discretion, any suspected fraudulent, abusive, or illegal activity by You may be referred to law enforcement authorities.

## 11. DATA MIGRATION

During Your Subscription Term, You may request Us to import data into Your Account ("Data Migration"). You hereby understand and acknowledge that We and/or Our Group Companies may access and process Your data in connection with providing You support during such Data Migration.

## 12. COMMUNICATIONS FROM US

Apart from the communications specified in Our Privacy Notice, We may contact You directly via

email to notify You if You are in violation of these Terms;

- A. A specific activity or purpose is prohibited with respect to the Service(s), so that You immediately cease use of the Service(s) for such prohibited activity or purpose; or
- B. You maintain an exceptionally high number of Users, an unusually high monthly ticket ratio per Users, an unusually high level of open tickets or other excessive stress on the Service(s).

## 13. DISCLAIMER OF WARRANTIES

The websites and the service(s), including all server and network components are provided on an "as is" and "as available" basis, without any warranties of any kind to the fullest extent permitted by applicable law. We expressly disclaim any and all conditions, representations, warranties or other terms, whether express or implied, including, but not limited to, any implied warranties of merchantability, title, fitness for a particular purpose, and noninfringement.

You acknowledge that we do not warrant that the service(s) or websites will be uninterrupted, timely, secure or error-free and you further acknowledge that we do not warrant that the access to the service(s), which is provided over the internet and various telecommunications networks, all of which are beyond our control, will be uninterrupted, timely, secure, error-free or free from viruses or other malicious software.

The content on our website is provided for general information only. It is not intended to amount to advice on which you should rely. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the content on our websites. No information or advice obtained by you from us or through the service(s) or websites shall create any warranty not expressly stated in these terms.

## 14. LIMITATION OF LIABILITY

To the fullest extent permitted by applicable law, in no event will we, our affiliates, officers, directors, employees, agents, suppliers or licensors be liable to any person for any indirect, incidental, special, punitive, cover or consequential damages (including, without limitation, damages for lost profits, lost revenue, lost sales, lost goodwill, loss of use or lost content,

impact on business, business interruption, loss of anticipated savings, loss of business opportunity) however caused, under any theory of liability, including, without limitation, contract, tort, warranty, breach of statutory duty, negligence or otherwise, even if we have been advised as to the possibility of such damages or could have foreseen such damages. To the maximum extent permitted by applicable law, our aggregate liability and that of our affiliates, officers, employees, agents, suppliers and licensors, relating to the service(s), will be limited to an amount equal to the lower of (a) twelve months of the subscription charges for the service(s) to which the claim relates; or (b) the subscription charges paid by you, for the service(s) to which the claim relates prior to the first event or occurrence giving rise to such liability. You acknowledge and agree that to provide you with the rights to access and use the service(s) in accordance with section 1, we have limited our potential liability and allocated risks based on the subscription charges, which would have been substantially higher if we were to assume any further liability other than as set forth herein.

In jurisdictions which do not permit the exclusion of implied warranties or limitation of liability for incidental or consequential damages, our liability will be limited to the greatest extent permitted by law.

The limitations and exclusions also apply if this remedy does not fully compensate you for any losses or fails of its essential purpose.

## 15. INDEMNIFICATION

15.1 If use of the Service(s) by You has become, or in Our opinion is likely to become, the subject of any IP Claim (defined below), We may at Our own option and expense (a) procure for You the right to continue using the Service(s) as set forth hereunder; (b) replace or modify the Service(s) to make it non-infringing; or (c) if options (a) or (b) are not commercially and reasonably practicable as determined by Us, terminate Your subscription to the Service(s) and repay You, on a prorated basis, any Subscription Charges You have previously paid Us for the corresponding unused portion.

15.2 Indemnification by Us: Subject to Your compliance with these Terms, We will indemnify and hold You harmless, from and against any claim brought against You by a third party alleging that the Service(s) You subscribed to

infringes or misappropriates such third party's valid patent, copyright, or trademark (an "IP Claim"). We shall, at Our expense, defend such IP Claim and pay damages finally awarded against You in connection therewith, including the reasonable fees and expenses of the attorneys, provided that (a) You promptly notify Us of the threat or notice of such IP Claim; (b) We have or will have the sole and exclusive control and authority to select defense attorneys, defend and/or settle any such IP Claim; and (c) You fully cooperate with Us in connection therewith. We will have no liability or obligation with respect to any IP Claim if such claim is caused in whole or in part by (i) compliance with designs, data, instructions or specifications provided by You; (ii) modification of the Service(s) by anyone other than Us; or (iii) the combination, operation or use of the Service(s) with other hardware or software where the Service(s) would not by themselves be infringing.

15.3 Sections 15.1 and 15.2 state Our sole, exclusive and entire liability to You and constitute Your sole remedy with respect to an IP Claim brought by reason of access to or use of the Service(s) by You.

15.4 Indemnification by You: You will indemnify and hold Group Companies harmless against any claim brought by a third party against Us, and their respective employees, officers, directors and agents arising from or related to use of the Service(s) by You in breach of these Terms or matters which You have expressly agreed to be responsible pursuant to these Terms; provided that We promptly notify You of the threat or notice of such a claim.

## 16. ASSIGNMENT; ENTIRE AGREEMENT; REVISIONS

16.1 You shall not, directly or indirectly, assign all or any Your rights under these Terms or delegate performance of Your duties under these Terms without Our prior written consent. We may, without Your consent, assign Our agreement with You under these Terms to any member of the Group Companies or in connection with any merger or change of Our control or the sale of all or substantially all of Our assets provided that any such successor agrees to fulfill its obligations pursuant to these Terms. Subject to the foregoing restrictions, these Terms will be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and

assigns.

16.2 These Terms, together with any Form(s) and Supplemental Terms, constitute the entire agreement, and supersede any and all prior agreements between You and Us with regard to the subject matter hereof. These Terms and any Form(s) shall prevail over the terms or conditions in any purchase order or other order documentation You or any Entity You represent provides (all such terms or conditions being null and void), and, except as expressly stated herein, there are no other agreements, representations, warranties, or commitments which may be relied upon by either party with respect to the subject matter hereof. In the event of a conflict between any Form and these Terms, these Terms shall prevail.

16.3 We may amend these Terms from time to time, in which case the new Terms will supersede prior versions. Please read these Terms of use carefully before You start to use Our Service(s) or Websites, as these will apply to Your use of the Service(s) and Our Websites. Please check these Terms from time to time to take notice of any changes We made, as they will be binding on You. We will notify You not less than ten (10) days prior to the effective date of any amendments to these terms of service and Your continued use of the Service(s) following the effective date of any such amendment may be relied upon by Us as Your acceptance of any such amendment. With respect to amendments to the Supplemental Terms, We will notify You as aforementioned only if the Supplemental Terms are applicable to You. Our failure to enforce at any time any provision of these Terms does not constitute a waiver of that provision or of any other provision of the Terms.

#### 17. SEVERABILITY; NO WAIVER

If any provision in these Terms is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by applicable law, and the remaining provisions of these Terms shall remain in effect. Our non-exercise of any right under or provision of these Terms does not constitute a waiver of that right or provision of the Terms.

#### 18. EXPORT COMPLIANCE AND USE RESTRICTIONS; FEDERAL GOVERNMENT END USE PROVISIONS

The Service(s) and other Software or components of the Service(s) which We may provide or make available to You or Users may be subject to U.S. (or other territories) export control and economic sanctions laws. You agree to comply with all such laws and regulations as they relate to access to and use of the Service(s), Software and such other components by You and Users. You shall not access or use the Service(s) if You are located in any jurisdiction in which the provision of the Service(s), Software or other components is prohibited under U.S. or other applicable laws or regulations (a "Prohibited Jurisdiction") and You shall not provide access to the Service(s) to any government, entity or individual located in any Prohibited Jurisdiction. You represent, warrant and covenant that (i) You are not named on any U.S. government (or other government) list of persons or entities prohibited from receiving U.S. exports, or transacting with any U.S. person, (ii) You are not a national of, or a company registered in, any Prohibited Jurisdiction, (iii) You shall not permit Users to access or use the Service(s) in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions, and (iv) You shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which You and Your Users are located. If You are a U.S. federal government department or agency or contracting on behalf of such department or agency, this Service(s) is a "Commercial Item" as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as those terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, the Service(s) is licensed to You with only those rights as provided under the terms and conditions of these Terms.

#### 19. RELATIONSHIP OF THE PARTIES

The parties are independent contractors. These Terms do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship among the parties.



## 20. SURVIVAL

Sections 2 (Your Responsibilities), 5 (Intellectual Property Rights), 7 (Billing, Plan Modification and Payments), 8 (Suspension and Termination), 9 (Confidentiality), 10 (Data Privacy and Security), 13 (Disclaimer of Warranties), 14 (Limitation of Liability), 15 (Indemnification), 20 (Survival), 21 (Notices; Consent to electronic communication) and 23 (Governing Law and Dispute Resolution) shall survive any termination of Our agreement with respect to use of the Service(s) by You. Termination of such agreement shall not limit Your or Our liability for obligations accrued as of or prior to such termination or for any breach of these Terms.

## 21. NOTICES; CONSENT TO ELECTRONIC COMMUNICATIONS

21.1 All notices to be provided by Us to You under these Terms may be delivered in writing (i) by nationally recognized overnight delivery service ("Courier") or US mail to the contact mailing address provided by You on any while subscribing to the Service(s); or (ii) electronic mail to the e-mail address provided for Your Account.

21.2 Our address for a notice to Us in writing by Courier or US Mail is: Magoware, Inc., 2035 Sunset Lake Road Suite B-2, Newark, Delaware 19702 with a CC to [info@magoware.tv](mailto:info@magoware.tv) by electronic mail. All notices shall be deemed to have been given immediately upon delivery by electronic mail, or if otherwise delivered upon receipt or, if earlier, two (2) business days after being deposited in the mail or with a Courier as permitted above.

## 22. ANTI-CORRUPTION

22.1 You agree that You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with these Terms. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Us at [info@magoware.tv](mailto:info@magoware.tv)

## 23. GOVERNING LAW AND DISPUTE RESOLUTION

23.1 These Terms shall be governed by the laws of the State of California without regard to

conflict of laws principles. You hereby expressly agree to submit to the exclusive personal jurisdiction of the federal and state courts of the State of California, San Francisco County, for the purpose of resolving any dispute relating to the Terms or Your access to or use of the Service(s).

23.2 Any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of these Terms to arbitrate, shall be determined by arbitration in San Francisco, California before three arbitrators. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction. ANY ARBITRATION UNDER THESE TERMS SHALL TAKE PLACE ON AN INDIVIDUAL BASIS. CLASS ACTION AND CLASS ARBITRATIONS ARE NOT PERMITTED. YOU UNDERSTAND THAT BY AGREEING TO THESE TERMS, YOU WAIVE YOUR RIGHT TO PARTICIPATE IN CLASS ACTIONS. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.