

MAGIQ LIMITED

MASTER AGREEMENT FOR REAL-TIME ONLINE SUBSCRIPTION SERVICES

ACCEPTANCE OF AGREEMENT TERMS AND CONDITIONS

WHEN YOU CLICK THE “ACCEPT” BUTTON DURING THE ORDERING PROCESS OR TO DOWNLOAD THE MAGIQ™ MANAGEMENT APPLICATION (MMA) YOU CERTIFY THAT (1) YOU AGREE TO THE TERMS AND CONDITIONS OF MAGIQ™’S MASTER AGREEMENT FOR REAL-TIME SUBSCRIPTION SERVICES (“THIS AGREEMENT”), INCLUDING ALL RELATED SERVICES (ONLINE OR OFFLINE) (“THE SERVICES”), (2) THAT YOU HAVE FULL AUTHORITY TO LEGALLY BIND THE CUSTOMER ENTITY USING THE SERVICES TO THIS AGREEMENT, AND (3) THAT YOU WILL AT ALL TIMES ABIDE BY THE PRIVACY CONDITION SET OUT IN SECTION 5.1 OF THIS AGREEMENT. IF YOU CANNOT COMPLY WITH ALL OF THESE CONDITIONS YOU ARE NOT ENTITLED TO USE THE SERVICES AND YOU MUST CLICK THE “DO NOT ACCEPT” BUTTON.

1. INTRODUCTION

The Services offer a range of products and capabilities designed to facilitate “ON DEMAND DIGITAL MARKETING”, based on captured Visitor Data used to build Visitor profiles and record key events and customer states, including historical data relating to those Visitors. In real time Magiq™ can help You to provide Visitors with the most relevant content (including location-specific and search-specific content), generate action lists of qualified sales leads for Your Customer sales teams, and generate lists of “at-risk” customers.

with its principal website at www.magiq.com, and includes its officers, directors, employees, agents and representatives.

2. DEFINITIONS

2.1 **Agreement** means this Master Agreement for Magiq™ Services, including all of these online terms and conditions, any Attachments, all terms and conditions contained in any accepted Order and all terms and conditions on the Magiq™ website, www.magiq.com which relate to materials provided to You by Magiq™ as part of this Agreement. Magiq™ reserves the right to amend any of its terms and conditions at any time after giving You reasonable notice (at least 30 days) of such change.

2.12 **Magiq™’s Marketing Gnomes** means the software and support systems graphically represented as characters which are used to aid and simplify the process of using Magiq™’s products to best effect.

2.13 **MMA** means Magiq™’s Management Application downloadable from the Magiq™ service, which controls the online ordering process, allows You to set Your maximum spending commitments in relation to the licensed Services You have subscribed to, and Your use of the Service via the rules You define.

2.2 **Content** means all audio, visual and written materials and all software provided to You as part of the Services.

2.14 **Order** means an offer by You via the MMA to license Services on a Pay-As-You-Go subscription basis, detailing the Services selected, the License Terms required and the applicable Pay-As-You-Go charge rates. For the avoidance of doubt in the event of any conflict between an Order and the terms and conditions of this Agreement, the latter prevails. Orders are subject to acceptance by Magiq™ which may either be notified to You in writing or implied by Magiq™ granting You access to the Services ordered.

2.3 **Customer** means You and/or the legal person or entity You represent who is the other contractual party to this Agreement.

2.15 **Pay-As-You-Go** means the fees and charges which will be applied by Magiq™ for Your use of the Services, as set out on www.magiq.com and in an Order, and are payable in arrears, by company debit or credit card or against invoice, with monthly billing and subject to strict 30 day payment terms.

2.4 **Data** means any data supplied by You or by any Visitor in connection with the Services, including any personally identifiable information and data about a Visitor, customer, employee, supplier, agent or representative, or any other identifiable individual having dealings with the Visitor, and including any data derived from such supplied data.

2.16 **Security Policy** means Magiq™’s Security and Service Continuity Procedures which can be found at www.magiq.com

2.5 **Data Protection Legislation** means the UK Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, all applicable US federal, state and local laws and regulations and all other data protection legislation and regulations relating to the protection of personal data in the jurisdiction(s) where a Site is located or where personal Data is sourced or used.

2.17 **Services** means all Magiq™ products and related services identified in Orders and to which You are granted access under this Agreement, such access and use of storage being resident on a US or EU based cloud computing service as designated by You on the applicable Order.

2.6 **Effective Date** means the date this Agreement is accepted by You clicking the “Accept” button, or the date You commence using the Services if earlier.

2.18 **Site** means any and all websites operated by You directly or indirectly by means of an agency relationship and which utilise the Services or to enhance Visitor experiences at the Site(s) or enhance the effectiveness of Your marketing strategies.

2.7 **IPRs** means, in relation to Magiq™, all intellectual and industrial property rights of Magiq™ in the Services or related software and technology (including without limitation processes, techniques, algorithms and user interfaces), registered, unregistered and pending, and further means, in relation to both Magiq™ and generally, the inclusion without limitation of all patents and patent applications, design rights and applications, copyrights, database rights, trade secrets, know-how, trade and service marks, internet domain names and applications and any other similar protected rights in any country of the world.

2.19 **User** means any individual or entity designated and authorized by You to place Orders and/or to access the Services by means of User accounts and/or to manage Your use of the Services.

2.8 **License** means a non-exclusive restricted license granted to You by Magiq™ when You Order Service subscriptions via the MMA, which licenses You to use Magiq™ software and processes to access and utilise the Services during the License Term, provided that You are and at all times remain in full compliance with the License conditions contained in section 4 of this Agreement.

2.20 **Visitor** means any person who visits a Site covered by this Agreement during the currency of this Agreement or any Order.

2.9 **License Administrator** means You or anyone designated by You who is authorized to place Orders under this Agreement, manage Your use of the Services and create User accounts.

2.22 **You and Your** means you as the Customer, being a Site owner or the agent of a Site owner, and any User.

2.10 **License Term** means the period during which an Order is in effect, commencing when Magiq™ sends You a confirmatory email advising You that your monthly Services have commenced, and continuing until cancelled by Your service of notice to that effect, or by Magiq™ for cause or if the Services You have licensed are discontinued for any reason.

3. DESCRIPTION OF SERVICES

3.1 The Services comprise a series of discrete products as described and detailed on www.magiq.com including Chameleon, Retain, Locale, Prospect, Smart and any future products which may be offered by Magiq™. All of these products are designed to facilitate “On Demand Digital Marketing” by various means, utilising real-time Data analysis techniques to improve Visitor experiences at Your Sites, sales yields from Your Sites, and the quality and accuracy of management information which You can derive from Your Sites. Magiq™ reserves the right to change or discontinue its offering of any Service after giving You reasonable notice (at least 30 days) of such change or discontinuance.

2.11 **Magiq™** means Magiq Limited, a company incorporated in the United Kingdom as company number 07050346 with its registered office at 15-18 Venture West, New Greenham Park, Newbury, Berkshire RG19 6HN, United Kingdom, and

3.2 All Magiq™ products are internet cloud-based, utilising virtual servers in a seamless manner to deliver results in real time. Instructions on product usage are contained on Magiq™’s websites, wikis and forums. All Magiq™ products are based on the gathering and building of Visitor profiles from every Site visit. Real-time “session states” are created which contain all the Data about a session, including all historic Visitor Data. Optionally, key events are recorded and specific Visitor states are produced which have been defined by You.

4. **LICENSE AND IPRs**
- 4.1 Magiq™ grants You a non-exclusive, non-transferable, limited License to use Magiq™'s software and the Services solely for Your internal business purposes for the limited duration of the applicable Order and provided that this Agreement remains current. **It is a fundamental Condition of this License that you observe at all times the Privacy Condition in section 5.1 of this Agreement.**
- 4.2 You may not sell, transfer, assign, license, sub-license, distribute or make available to any third party any of the Services or Content, or create any internet links to the Services or create any derivative works from the Services or Content, or attempt to reverse engineer the Services for any purpose, or copy any of the ideas, features or graphics from the Services or Content, or exceed the licensed uses covered by Your Orders.
- 4.3 Notwithstanding section 4.2, You may appoint an agent or agency to use the Services on Your behalf, provided that You first notify Magiq™ and on the basis that such appointment is entirely at Your own risk and that You hold Magiq™ fully indemnified from and against all resulting fees and charges and any losses arising from misconduct or abuse of the Services or any other breaches of this Agreement by such agent or agency.
- 4.4 All rights, title and interest and all IPRs in Magiq™ products and the Services are exclusively owned by Magiq™ and/or its licensors. Licenses do not confer or imply any rights of ownership in any of the Services or Content or in any Magiq™ IPRs.
- 4.5 All IPRs in any Data and in any derivative information generated from Data belong to You and will remain your property at all times and for all purposes. Magiq™ will not make any use of Data except in connection with the provision of the Services and will not copy or make the Data available to any third party, except and to the limited extent required by lawful demand.
5. **DATA PROTECTION**
- 5.1 **Privacy Condition.** In the course of receiving or using the Services **You will ensure that all Your Sites contain an appropriate Privacy Policy** which complies with all applicable Data Protection Legislation and which, as a minimum, **(a)** clearly and conspicuously informs Visitors that the Site is being monitored by monitoring software and may capture information provided by the Visitor, or is recording the Visitor's use of the Site for commercial or service quality purposes, and **(b)** represents that You will comply at all times with the provisions of all applicable Data Protection Legislation. In addition, You will, whenever reasonably necessary to comply with Data Protection Legislation, provide an "opt-out" option allowing Visitors to limit or decline having Data captured from their visit (using the Magiq™ provided opt-out functions if appropriate). Magiq™'s own Privacy Policy may be found on www.magiq.com/privacy.aspx and the page shown at www.magiq.com/magiqprivacy.aspx is an example of a privacy page for a Site using Magiq™'s software.
- 5.2 In connection with Your use of the Services, these are hosted online applications and Magiq™ may need to notify all Users of the Services, including You, of important announcements relating to the Services, either via its websites, wikis or by email to the email address You supplied in the sign-up process or by subsequent notice. You agree to such notifications and You also agree that Magiq™ can disclose that You are a Customer and the Services You are using.
- 5.3 You have sole responsibility for the legality, accuracy, integrity, quality and ownership of the IPRs or rights of use in all Data contained on or generated from your Sites. Although Magiq™ will take reasonable measures to safeguard the security of Your Data, Magiq™ otherwise disclaims all responsibility for the security or corruption of Your Data, or for any failure to store or retain Data beyond the scope of a particular Service or in the event of Your breach of this Agreement. Upon termination of this Agreement Your right to access or use or receive Data will cease with immediate effect and Magiq™ has no responsibility to retain Data following termination of this Agreement or suspension of Services.
6. **YOUR RESPONSIBILITIES**
- 6.1 All activity which occurs under User accounts is Your responsibility and you will abide by all applicable laws and regulations in relation to Your use of the Services, whether international, national, state or local.
- 6.2 When Orders are placed You will be given the option of selecting either a US or a European location for the servers which will supply the Services to You. It is Your sole responsibility to determine the most appropriate location having regard to your compliance obligations with the applicable Data Protection Legislation.
- 6.3 Passwords and account access in relation to the Services are Your responsibility and you agree to promptly report to Magiq™ any breaches of Site security which could affect the integrity of the Services, or losses of passwords, and any unauthorized use of the Services.
- 6.4 You agree that you will use all reasonable efforts to prevent any copying or distribution of Content outside the scope of the Services.
7. **PRICES AND PAYMENTS**
- 7.1 The Services are supplied on a Pay-As-You Go basis, subject to a minimum monthly fee. All applicable fees and charges to User accounts are shown for each of the Services on www.magiq.com and by subscribing for a Service You agree to pay the fees and charges for that Service. All payments are non-cancellable and non-refundable. Payments will be made in US dollars. You can review Your current fees and charges at any time via the MMA.
- 7.2 Payment for Services selected will be made in arrears. You will have the option of using company debit or credit cards or paying against invoice.
- 7.3 You will receive a detailed monthly billing based on Your combined usage of all the Services you have subscribed for, and payment of such bills is strictly 30 days' net. If You believe that a bill is incorrect you must notify Magiq™ with the details within 15 days of the invoice date. If bills are paid late, without prejudice to its rights at law, Magiq™ will suspend all Services until payment has been received and may irretrievably delete all your Visitor Data and Service definitions. Interest for late payment may also be applied at the rate of 1% per month.
- 7.4 You agree to provide Magiq™ with complete and accurate billing information, including full Customer name, address, email address and telephone contact details. You further agree to promptly notify Magiq™ of any changes. False or fraudulent information may result in the immediate termination of Services, without prejudice to any other legal remedies available to Magiq™.
- 7.5 Magiq™ reserves the right to amend its fees and charges at any time. Current fees and charges will appear on www.magiq.com when introduced. Revised fees and charges will not be applied retrospectively to existing Orders. Any changes to fees and charges will become effective from the commencement of the month following announcement of the change. Magiq™ will give You a minimum 30 days' notice of any changes. For the avoidance of doubt any applicable sales and value added taxes will always be applied at the prevailing rates.
8. **WARRANTIES, INDEMNITIES AND LIMITATIONS OF LIABILITY**
- 8.1 THERE ARE NO WARRANTIES, CONDITIONS, GUARANTEES OR REPRESENTATIONS, MADE OR GIVEN IN RELATION TO THE SERVICES, WHETHER EXPRESSED OR IMPLIED BY STATUTE OR OTHERWISE, ORALLY OR IN WRITING, INCLUDING BUT NOT LIMITED TO WARRANTIES OF QUALITY, SATISFACTORY PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.
- 8.2 Each party to this Agreement represents and warrants that it has full legal power and authority to enter into this Agreement and to deploy and use the Services, and that it has obtained and will maintain throughout this Agreement all registrations, permits, licenses and approvals or exemptions necessary to operate and use the Services.
- 8.3 Magiq™ warrants that:
- (i) in providing the Services it will exercise all reasonable professional skill and care to ensure that the Services are provided in accordance with the Service descriptions detailed in www.magiq.com
 - (ii) it is either the sole and exclusive owner or an authorised licensee of all IPRs used in connection with the supply of the Services and that it will keep in force any relevant licenses, approvals, authorisations and consents which may be reasonably necessary in connection with the supply of the Services;
 - (iii) It operates and regularly reviews and updates anti-virus programmes when performing the Services and that it will use all commercially reasonable endeavours to maintain the Services free of bugs and viruses, but the Services cannot be warranted unconditionally to be virus-free and You are strongly recommended to operate Your own effective anti-virus programmes;
 - (iv) Magiq™ has no control over the network where its technology operates or the flow of data to or from its network and servers. Third party actions can at times disrupt the operation of the Services. Magiq™ therefore cannot warrant that the Services will at all times be uninterrupted and error-free. However Magiq™ warrants that it will use all commercially reasonable efforts to avoid or remedy network problems, utilising industry-standard best practices to maintain the highest levels of Service and security reasonably possible;
 - (v) Magiq™ operates only the security and service continuity procedures for collected or processed Data as described in its Security Policy. Magiq™ warrants that it will adhere to its Security Policy at all times, but subject to it doing so You agree and accept

that Magiq™ will not be responsible or liable for any loss or corruption of any Data or for collection or analysis of 100% of all Data supplied in connection with a Service.

Magiq™ does not warrant the suitability of particular Services for Your business. It is Your sole responsibility to select Services You deem appropriate for Your business purposes.

- 8.4 Magiq™ indemnifies You from and against all claims, costs, damages, losses and expenses (including attorneys' fees and costs) arising out of or in connection with any third party claim that any of the Services infringe that third party's IPRs, provided that You promptly notify Magiq™ of any such claim and give Magiq™ sole control over its defence and/or settlement and co-operate fully in the same at Magiq™'s expense. This indemnity will not apply to any claim arising as a result of Your use of the Services in combination with any other product or service.
- 8.5 You warrant that all Data provided or collected by or for You in connection with the Services has not been misused and does not infringe the IPRs of any third party and you indemnify Magiq™ from and against all claims, costs, damages, losses and expenses (including attorneys' fees and costs) and any other financial liabilities arising out of or in connection with its use or distribution of Data in the proper performance of the Services.
- 8.6 MAGIQ™ WILL NOT BE LIABLE IN ANY EVENT FOR ANY DAMAGES RESULTING FROM ANY FAILURE BY YOU TO PERFORM YOUR OBLIGATIONS UNDER THIS AGREEMENT, NOR FOR LOSS OF VISITOR DATA, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF ANTICIPATED SAVINGS, NOR FOR ANY DAMAGES THAT ARE INDIRECT OR SECONDARY CONSEQUENCES OF ANY ACT OR OMISSION OF MAGIQ™, WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE OR ACTUALLY FORESEEN.
- 8.7 EXCEPT IN THE CASE OF PERSONAL INJURY OR DEATH MAGIQ™'S MAXIMUM LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER IN CONNECTION WITH THIS AGREEMENT (WHETHER IN THE FORM OF THE ADDITIONAL COST OF REMEDIAL SERVICES OR OTHERWISE) WILL BE FOR DIRECT COSTS AND DAMAGES ONLY, AND WILL BE LIMITED TO EITHER (WHERE THE EVENT IS COVERED BY MAGIQ™'S INSURANCE POLICIES), THE AMOUNT WHICH MAGIQ™ ACTUALLY RECOVERS FROM ITS INSURERS UNDER THOSE POLICIES, TO A MAXIMUM OF ONE MILLION POUNDS STERLING (£1,000,000) OR IN ALL OTHER CASES, AN AGGREGATE SUM EQUIVALENT TO THE PRICE PAID TO MAGIQ™ IN THE YEAR OF CLAIM FOR THE SERVICES THAT ARE THE SUBJECT OF YOUR CLAIM, PLUS DAMAGES LIMITED TO TWENTY-FIVE PER CENT (25%) OF THE SAME AMOUNT FOR ANY ADDITIONAL COSTS REASONABLY NECESSARILY AND IDENTIFIABLY INCURRED BY YOU IN OBTAINING ALTERNATIVE SERVICES.

9. TERMINATION

- 9.1 This Agreement is a Master Agreement which will remain in force for a minimum period of one year, and which may then be terminated on notice by either party at any time without cause. Once established, it is intended that this Agreement remain in place as an "umbrella" governing individual Orders which are cancellable by notice effective at the end of the month in which the notice is served, subject to a minimum period of one month.
- 9.2 If either party is in material or persistent default of this Agreement the other party is entitled to serve immediate notice of termination of this Agreement if the default remains unremedied (if capable of remedy) 30 days after notice has been given to the defaulting party specifying the default and the action required to correct it. In addition during any time while You remain in unremedied breach Magiq™ may terminate User passwords and suspend accounts and Service use.
- 9.3 If either party ceases to carry on business, or commits an act of bankruptcy, or is adjudicated bankrupt, or enters into liquidation (whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction), or makes an arrangement with creditors, or is made subject to an administration order, or enters into a USA Chapter 11 or Chapter 13 reorganization, or has a receiver or manager appointed over all or any part of its assets, or generally becomes unable to pay its debts as they fall due, then without prejudice to any other rights or remedies available to it the other party will have the right to terminate this Agreement immediately by notice.
- 9.4 On termination of this Agreement for any reason, You must immediately cease all use of the Services. Magiq™ reserves the right to remove any domain name server entries relating to the Services at any time after the termination of this Agreement, and will not be liable for any resulting impact on Your Sites.
- 9.5 On termination of this Agreement any fees and charges then remaining unpaid in respect of any of the Services will become immediately due and payable. Fees and charges paid will not be refundable.
- 9.6 Any termination of all or part of this Agreement will be without prejudice to any other rights or remedies of the parties under this Agreement or at law & will not affect any accrued rights or liabilities of either party at the date of termination.

GENERAL

- 10.1 This Agreement is the entire agreement between the parties in relation to its subject-matter. No changes to this Agreement may be made except with the agreement of both parties after the Effective Date
- 10.2 Neither party is authorised to hold itself out as the agent, partner or representative of the other party, nor to enter into any binding commitment on behalf of the other party, nor to make any representations or statements about the other party without the other party's prior express written authority.
- 10.3 You are not authorised to use Magiq™ trademarks or logos for any purpose unless application has first been made to, and, in its sole discretion, approved by Magiq™.
- 10.4 This Agreement is non-exclusive between the parties and entry into it by each party does not preclude or prevent that party from entering into similar agreements with other parties, provided always that any such other agreements do not constitute a breach or have the effect of breaching in any way any of the terms and conditions in this Agreement.
- 10.5 No failure, delay, relaxation or indulgence on the part of either party in the exercising of any power or right conferred upon that party in this Agreement, will operate as a waiver of such power or right, or of any other power or right under this Agreement, on any subsequent occasion.
- 10.6 This Agreement is not transferable or assignable by either party without the prior written consent of the other party except that Magiq™ may assign this Agreement to its parent company.
- 10.7 If the whole or any part of this Agreement is or becomes or is declared illegal, invalid or unenforceable in any jurisdiction for any reason, in the case of the illegality, invalidity or unenforceability of the whole of this Agreement it will terminate immediately in relation to the jurisdiction in question; in the case of the illegality, invalidity or unenforceability of part of this Agreement, that part will be severed from this Agreement in the jurisdiction in question without prejudice to the remaining parts of this Agreement, which will continue in full force and effect.
- 10.8 All notices and other communications in connection with this Agreement must be in writing and will be deemed to have been duly given (a) at the date and time shown on a signed delivery receipt, if delivered by courier or other messenger during normal business hours of the receiving party, (b) at the date and time sent if transmitted by fax and a successful transmission report is generated by 1700 hours (local time of the recipient) on the same business day and in any other case on the next following business day, or (c) on the third business day following mailing, if mailed by ordinary mail, first class postage pre-paid, in each case addressed to the most recent address or facsimile number previously notified to the sending party. The Parties agree that notices will not be sent by email for reasons of security.
- 10.9 This Agreement will be governed and construed in accordance with the laws of England and Wales. Each party hereby irrevocably agrees that the courts of England and Wales will have non-exclusive jurisdiction to resolve any claim of whatever nature arising out of or relating to this Agreement or its breach. Magiq™ will have the right to sue to recover fees and charges in any jurisdiction in which You are doing business or have assets, and to sue for breach of IPRs in any country where it appears that an infringement, or a breach of the Agreement relating to IPRs, might be taking place.
- 10.10 You authorise the use by Magiq™ of Your name and logo solely for the purpose of inclusion of the existence and value of this Agreement in Customer lists used by Magiq™ in its marketing presentations.