

# MagToGo Mobile Event App Platform

## *Terms of Use*

This document (these “Terms of Use” or “Terms”) sets forth terms and conditions under which MagToGo, a California limited liability company with offices located at 650 5th Street, Suite 205, San Francisco, CA, 94107 (“MagToGo”) provides you (“Customer”, “You”, “Your”) a license to use MagToGo’s mobile application platform (“Event App Platform”). The Event App Platform consists of the web-based content management portal at [cms.magtogo.com](http://cms.magtogo.com) (“CMS”) for input of content by You and a mobile application component on one or more platforms (the “Software”). You may customize a specific instance of the Software for a specific event or events and make available the Software for download and use by Your attendees.

### **1. Order form**

These Terms are incorporated by reference into each order form executed by Customer and MagToGo (“Order Form”), pursuant to which the Customer receives the right to access and use the Event App Platform. These Terms and the Order Form together comprise a binding written agreement between Customer and MagToGo, effective as of the date of mutual execution of the Order Form by MagToGo and Customer (the “Agreement”). MagToGo may amend these Terms at any time in its sole discretion, effective upon posting the amended Terms at <http://www.magtogo.com/terms-of-use/> where the prior version of the Terms was posted, or by communicating these changes through any written contact method we have established with You.

### **2. Services**

#### **2.1. Access and Capabilities**

Upon acceptance of this Agreement and receipt of any applicable payments, MagToGo will provide Customer with login access to the CMS for the term of this Agreement.

#### **2.2. Customer Content**

All event data, materials, and content (“Content”) required for the Software to operate properly must be supplied by Customer through the CMS. Failure to provide all Content required for successful operation of the Software does not invalidate this Agreement or Customer’s obligation to pay for the Event App Platform. MagToGo will provide Customer with templates and documents detailing the type and format of the information needed to upload Content into the CMS. You represent and warrant that all Content is correct and current and that provision and/or use of such Content hereunder shall not violate or infringe the intellectual property, privacy or publicity rights of any third party, and that all placements of Content have been approved for MagToGo’s use. You shall defend, indemnify and hold MagToGo harmless from and against all claims, damages, liabilities, fines, costs and expenses including reasonable legal fees incurred by MagToGo or which are agreed by MagToGo to be paid by way of settlement or compromise, arising out of any breach of the foregoing representation and warranty or any violation of applicable law by You. You grant MagToGo a limited, non-

exclusive right to use the Content (including copyright, trademark, patent, publicity or other rights) for MagToGo to provide the Event App Platform.

### **2.3. Mobile App Stores and Platforms**

Use of the Software to deploy a mobile application for Your event will be subject to approval rules and procedures established by the third parties that operate and control the applicable online marketplaces for mobile device applications, including Apple and Google. You acknowledge and agree that (i) You, Your employees and any agents acting on Your behalf shall abide at all times by such approval rules and procedures and any changes thereto; (ii) MagToGo has no control over such approval rules and procedures, and cannot be responsible for ensuring performance or availability of any online marketplace for mobile device applications; and (iii) MagToGo is not liable for any delays in the delivery or deployment of Your mobile applications caused by changes to, or Your failure to adhere strictly to, any such approval rules or procedures.

### **2.4. Supported Devices**

Devices currently supported and available with a native, compiled app include iOS 5.0.1 and above for iPhone, and iPod Touch iOS 5.0.1 for optimized app for iPad; Android OS 2.3 and above for Android phones and Android tablets, and BlackBerry OS 5.0 and above for most BlackBerry devices. Submission is made to Apple iTunes / App Store and Android Market. No submission is made to BlackBerry World. The Blackberry native app will be distributed via the MagToGo servers. MagToGo also provides a web application version of the mobile application that can be accessed from any mobile device or a desktop computer with an Internet connection and a compatible browser. Some features may not be available on all supported devices or the web application version.

### **2.5. Build Process and Timeline**

You will be assigned an Operations Manager shortly after submission of Your signed Order Form. The Operations Manager will work with You to create a timeline, including deadlines for You to Content for configuring the Software for Your event (the "Timeline"). MagToGo is not responsible for delays resulting from any failure by You to comply with the agreed upon Timeline. Once You provide the Content, You agree that the Operations Manager will be given a reasonable period of time to build a demo version of the mobile application for Your event. Thereafter You will have an opportunity to review and make changes prior to submission of the mobile application to the applicable third party marketplaces like Apple iTunes / App Store and Android Market. A timely release of Your mobile application requires that all Content be submitted and approved for submission to the third party marketplaces no later than 14 days prior to Your agreed upon mobile application launch date. CMS shall continue to be available to You to add and modify Content before, during and after Your Event.

### **2.6. On-site Support**

Subject to availability and pre-approval from the MagToGo support team, MagToGo can provide a support representative on location at the rate of \$600 per day including travel days ("On-Site Support"). You will provide airfare, a room at the primary event hotel, and transportation to and from the airport and event venue. Each request for On-Site Support shall be submitted in writing in an Order Form and is subject to availability and acceptance,

and when accepted will be invoiced accordingly.

### **3. Support**

#### **3.1. Support Methods**

MagToGo will make available a help link in all versions of the Mobile App. Users receive support by submitting the details of their problem via the help form.

While MagToGo will make a telephone number available to Customer to access MagToGo support for the duration of the Term, the preferred method to make service requests is the ticket system in the CMS. No phone support is provided to users.

App users and the Customer can additionally access support via '[support@magtogo.com](mailto:support@magtogo.com)'.

#### **3.2. Support Service Level Agreement**

After the app has been launched, MagToGo will respond to all attendee support requests within one business day. MagToGo will respond to Customer support issues in accordance with the MagToGo escalation policy available at [www.magtogo.com/escalation-policy/](http://www.magtogo.com/escalation-policy/).

#### **3.3. Support Sessions**

The Service includes two interactive meetings - a kickoff meeting to design the Mobile App and a build meeting to 1) upload the initial Content to create the Mobile App, and 2) to provide training in the use of the CMS.

#### **3.4. Additional Support**

The Service includes 2 hours of free support. Additional support hours are available at a rate of \$100/hour.

#### **3.5. Text Messaging Rates**

The Event App Platform is capable of sending text messages to individual Mobile App users, in addition to Push Notifications. There is a \$250 fee for use of this service. Additionally, text message rates are \$0.10 per text message sent to each Mobile App user. Text message services are billed separately at the end of the event.

### **4. Pricing and Payments**

#### **4.1. Pricing**

The pricing and payment terms for the Event App Platform are as set forth in the applicable Order Form signed by You and MagToGo.

#### **4.2. Payments**

All payment is due within 30 days of receipt of invoice. 100% of all due payments must be received before submission of Your mobile application(s) to their respective stores and marketplaces or enterprise distribution can commence.

Customer will pay MagToGo in accordance with the payment schedule set forth in the Order Form, provided, however, if the Mobile App is not completed to Customer's reasonable satisfaction by close of business 7 calendar days before the Launch Date, Customer shall

provide written notice to MagToGo and shall not be obligated to make any further payments to MagToGo and MagToGo will reimburse to Customer all payments made pursuant to this Agreement by Customer (“Guarantee”). In the event the Customer exercises Guarantee, MagToGo shall have no further obligation under this Agreement and Customer may not use any of the services provided by MagToGo. If the Customer does not exercise Guarantee all payments under this agreement, remain due and payable.

## **5. Term**

This Agreement shall remain in effect for the term set forth on the applicable Customer Order Form

## **6. Termination**

Either party may terminate this agreement upon written notice to the other party of a breach of obligations by that party regarding this Agreement unless the breach is cured within thirty (30) days after such notice. All disclaimers of warranties and limitations of liability shall survive any termination of this Agreement. You may terminate this Agreement upon ninety (90) days prior written notice; however, You will not be entitled to a refund of any sums paid to MagToGo and all fees specified on any Order Form shall continue to be payable pursuant to the terms thereof.

Your License to use the CMS and Software will continue so long as You remain in compliance with the Agreement. Upon termination, You shall cease using the Software and any other components of the Event App Platform and shall destroy all copies of the same in any form. MagToGo may terminate this Agreement in the event Customer breaches this Agreement by failing to provide payment when due under the terms of the Payment Schedule set forth in the Order Form. In the event MagToGo terminates this Agreement, it shall have no obligation to deliver Content, Software, or the CMS to Customer or Customer's users.

## **7. License**

Subject to Your acceptance and continuing adherence to these Terms, MagToGo grants You a non-exclusive and non-transferable license to access and use the Event App Platform during the term hereof solely for the purpose of configuring and deploying a mobile application for Your event(s). Except for the foregoing license, no other rights to any component of the Event App Platform are granted hereunder.

### **7.1. No Title**

7.2. This license confers no title or ownership in the Event App Platform or any component thereof. This license is not a sale of any rights in the Event App Platform including any instances of the Software contained in the mobile applications published for Your event(s). The Event App Platform is owned by MagToGo and You must treat it like any other copyrighted material.

### **7.3. Modifications**

7.4. The Software requires modification to suit Your event needs. All modifications must be performed by MagToGo. All modifications will be defined in a MagToGo Event App Platform Order Form.

**7.5. No De-compilation**

7.6. You may not copy or modify the Software, reverse engineer it or disassemble/de-compile the Software.

**7.7. No Source Code**

You will not have license to any source code for the Software.

**8. Mutual Indemnification**

Each party to this Agreement (the “Indemnifying Party”) shall defend, indemnify, and hold harmless the other party (the “Indemnified Party”), the Indemnified Party’s directors, officers, employees, partners, agents, attorneys, and affiliates, from and against any claim, loss, cost, expense, and liability, including reasonable attorney’s fees and costs, to the extent resulting from any negligent or intentionally wrongful act or omission on the part of the Indemnifying Party or breach of this Agreement by the Indemnifying Party provided that the Indemnified Party provides the Indemnifying Party with prompt written notice of such claim or action and reasonable assistance in the defense of such action.

**9. Confidential Information and Privacy**

MagToGo considers Your data that You input and host on the CMS website to be Your personal property. As a policy, we do not examine any of Your data except at Your request and only for the purposes of providing You with technical support. MagToGo will not use Your data for MagToGo’s benefit or the benefit of a third party, or for any reason other than providing software and services as contemplated hereunder. Notwithstanding the foregoing, information related to the use of the Software by Your customers and others (usage statistics) will remain the property of MagToGo for its own use.

All Your Content that Magtogo uses to build the Software will not be used by MagToGo to market, sell, or directly communicate with any exhibitors, sponsors, or attendees other than to provide support. Such information shall remain the property of the Customer.

Each party agrees not to use any Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party’s employees, except to those employees of the receiving party with a need to know such information in furtherance of this Agreement or its enforcement.

**10. Governing Law**

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should a dispute occur between the parties hereto arising out of or in relation to implementation of this Agreement, the parties hereto agree that venue of the dispute shall be in San Francisco, California. The parties hereby waive the right to trial by jury.

**11. Force Majeure**

**12.**

Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of such party. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire, and the unavailability of materials, third party communication services, utilities or any cause or condition beyond their control, but the inability to meet financial obligations is expressly excluded.

### **13. Counterparts**

This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

### **14. Assignment**

Neither the Customer nor MagToGo may assign its rights or responsibilities under this Agreement (in whole or in part) without the prior written consent of the other party, which consent shall not be unreasonably withheld.

### **15. Entire Agreement**

This Agreement contains the entire agreement of the parties and supersedes any prior oral or written statements, agreements, or representations. In the event that one or more of the provisions of this Agreement shall be found illegal, invalid, or unenforceable to any extent, then such provisions shall be deemed struck and other provisions of this Agreement shall remain in full force and effect.

No employee, agent, representative, or affiliate of either MagToGo or the Customer has authority to bind MagToGo or the Customer to any oral representations or warranty concerning the Services or other obligations. Any oral or written representation or warranty not expressly contained in this Agreement shall be void and will not be enforceable.

### **16. Warranties**

MagToGo warrants to Customer that for a period of thirty (30) days prior to the event and sixty (60) days following the event, the Event App Platform will perform in accordance with the product documentation furnished to You.

If MagTogo receives notice of non-performance as stated in Section 16.1 during the warranty period, MagToGo will, at its own discretion, either repair or replace the Software or element that proves to be defective. If MagToGo is unable to correct a defect that you have stated to Magtogo during the warranty period, you will be entitled to terminate this agreement and obtain a full refund of any and all fees associated with the Software. The warranty set forth in Section 16 does not apply to defects resulting from improper or inadequate maintenance or configuration of the Software or CMS performed by You.

#### **16.1. No Other Warranty**

16.2. MagToGo does not warrant that the Services or MagToGo technology will; (a) meet customer's requirements; or (b) be uninterrupted, error-free or secure. Except for the express warranties set forth in section 15.1 and this section 15.3,

Customer's use of the Services and MagToGo technology is at Customer's own risk. MagToGo hereby disclaims, any and all other express and/or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement and title, and any warranties arising from a course of dealing, usage or trade practice.

**16.3. Disclaimer of Actions Caused by and/or Under the Control of Third Parties**

MagToGo does not and cannot control the flow of data to or from MagToGo's network and other portions of the Internet. Such flow depends in large part on the performance of Internet Services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). MagToGo cannot guarantee that such events will not occur. Accordingly, MagToGo disclaims any and all liability resulting from or related to such events and Customer assumes the risk of all such events.

**17. Limitation of Liability**

In no event will MagToGo be liable for the results of information obtained through use of the Services, MagToGo technology or decisions made by users of the Services or MagToGo technology. In no event will either party be liable to the other party or any third party for any loss of profits, loss of use, business interruption, loss of data, cost of cover or indirect, special, incidental or consequential damages of any kind in connection with or arising out of the furnishing, performance or use of the Services or MagToGo technology, whether alleged as a breach of contract or tortious conduct, including negligence, even if MagToGo has been advised of the possibility of such damages. MagToGo's liability under this agreement for damages will not, in any event, exceed the lesser of: (a) the aggregate fees paid by Customer to MagToGo under this Agreement during the twelve month period preceding the date on which the cause of action arose; or (b) the actual direct damages sustained by Customer. The parties acknowledge that MagToGo has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

Last Updated: April 25th, 2013