



TERMS OF USE & END USER AGREEMENT (“TERMS”)

Last Updated 1/3/2024

We are Magenium Solutions, LLC, which includes our affiliates and contractors (“Magenium”, “we”, “us”, “our”, “Party”).

We are a Microsoft Solutions Partner that extends premier support services to Users through Magenium’s premier support for partners agreement with Microsoft (the “Services”). These Terms constitute a legally binding agreement made between you, whether personally or on behalf of an entity (“you”, “User” or “Party”) and Magenium, concerning your access to and use of the Services. You agree that by accessing the Services, you have read, understood, and agreed to be bound by all of these Terms. IF YOU DO NOT AGREE WITH ALL OF THESE LEGAL TERMS, THEN YOU ARE EXPRESSLY PROHIBITED FROM USING THE SERVICES AND YOU MUST DISCONTINUE USE IMMEDIATELY.

THESE TERMS OF USE REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE. ANY DISPUTE, CLAIM OR REQUEST FOR RELIEF RELATING IN ANY WAY TO YOUR USE OF THE SERVICES WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF MINNESOTA, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY EXCLUDED FROM THE TERMS OF USE.

Supplemental terms and conditions or documents that may be posted on the Services from time to time are hereby expressly incorporated herein by reference. We reserve the right, in our sole discretion, to make changes or modifications to these Terms at any time and for any reason. We will alert you about any changes by updating the “Last updated” date of these Terms, and you waive any right to receive specific notice of each such change. It is your responsibility to periodically review these Terms to stay informed of updates. You will be subject to, and will be deemed to have been made aware of and to have accepted, the changes in any revised Terms by your continued use of the Site after the date such revised Terms are posted.

1. SERVICES

The information provided when using the Services is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject us to any registration requirement within such jurisdiction or country. Accordingly, those persons who choose to access the Services from other locations do so on their own initiative and are solely responsible for compliance with local laws, if and to the extent local laws are applicable.

All Services are subject to availability. We reserve the right to discontinue any Services at any time for any reason. We also expressly reserve the right to develop Services products at our sole discretion. Prices for all Services are at our sole discretion and are subject to change.

For the avoidance of doubt, any Microsoft services are performed only by Microsoft, its Affiliates, and any person or third-party delivering support as directed by Microsoft (including but not limited to full time employees, subcontractors, and outsourced service providers).

2. USER REPRESENTATIONS

By using the Services, you represent and warrant that: (1) all registration information you submit will be true, accurate, current, and complete; (2) you will maintain the accuracy of such information and promptly update such registration information as necessary; (3) you have the legal capacity and you agree to comply with these



Terms; (4) you are not a minor in the jurisdiction in which you reside; (5) you will not access the Site through automated or non-human means, whether through a bot, script or otherwise; (6) you will not use the Site or the Services for any illegal or unauthorized purpose; and (7) your use of the Site and/or the Services will not violate any applicable law or regulation.

In order for Magenium to extend Services to you, certain End Customer access rights must be established between Magenium and you. Establishing permissions is a two-part process where Magenium establishes GDAP, and Azure subscription "Support Request Contributor" rights to each Azure subscription (collectively known as "Permissions").

You agree to participate in and partake in the on-boarding in order to establish your Permissions. Further, you agree to maintain the Permissions for the entirety of the time in which the Services are being provided to you.

If you provide any information that is untrue, inaccurate, not current, or incomplete, or otherwise breach any of the above representations or warranties, or you fail to maintain your Permissions, we have the right to suspend or terminate your account and refuse any and all current or future use of the Services.

3. TERM AND TERMINATION

These Terms shall remain in full force and effect while you use the Services. WITHOUT LIMITING ANY OTHER PROVISION OF THESE TERMS, WE RESERVE THE RIGHT TO, IN OUR SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY, DENY ACCESS TO AND USE OF THE SERVICES (INCLUDING BLOCKING CERTAIN IP ADDRESSES), TO ANY PERSON FOR ANY REASON OR FOR NO REASON, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY, OR COVENANT CONTAINED IN THESE TERMS OR OF ANY APPLICABLE LAW OR REGULATION. WE MAY TERMINATE YOUR USE OR PARTICIPATION IN THE SERVICES OR DELETE YOUR ACCOUNT AND ANY CONTENT OR INFORMATION THAT YOU POSTED AT ANY TIME, WITHOUT WARNING, IN OUR SOLE DISCRETION. In addition to terminating

Services, we reserve the right to take appropriate legal action, including without limitation pursuing civil, criminal, and injunctive redress.

4. MODIFICATIONS AND INTERRUPTIONS

We reserve the right to change, modify, or remove the contents of the Services at any time or for any reason at our sole discretion without notice. However, we have no obligation to update any information on our Services. We will not be liable to you or any third party for any modification, price change, suspension, or discontinuance of the Services. We cannot guarantee the Services will be available at all times. We may experience hardware, software, or other problems or need to perform maintenance related to the Services, resulting in interruptions, delays, or errors. We reserve the right to change, revise, update, suspend, discontinue, or otherwise modify the Services at any time or for any reason without notice to you. You agree that we have no liability whatsoever for any loss, damage, or inconvenience caused by your inability to access or use the Services during any downtime or discontinuance of the Services. Nothing in these Terms will be construed to obligate us to maintain and support the Services or to supply any corrections, updates, or releases in connection therewith.

5. DISCLAIMER OF WARRANTIES.

THE SERVICES ARE PROVIDED ON AN AS-IS AND AS-AVAILABLE BASIS. YOU AGREE THAT YOUR USE OF THE SERVICES WILL BE AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MAGENIUM DISCLAIMS AND EXCLUDES, ON MAGENIUM'S BEHALF AND ON BEHALF OF MICROSOFT, MAGENIUM'S PARTNERS, SUPPLIERS AND SUBCONTRACTORS, ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, WARRANTIES OR



CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY CONDITION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SERVICES, SERVICE DELIVERABLES, HOTFIXES, PRODUCTS OR ANY OTHER MATERIALS OR INFORMATION.

WE MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE SERVICES' CONTENT OR THE CONTENT OF ANY WEBSITES OR MOBILE APPLICATIONS LINKED TO THE SERVICES AND WE WILL ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (1) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS, (2) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SERVICES, (3) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (4) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICES, (5) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE SERVICES BY ANY THIRD PARTY, AND/OR (6) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY SERVICES OR CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES. WE DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES, ANY HYPERLINKED WEBSITE, OR ANY WEBSITE OR MOBILE APPLICATION FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND WE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND ANY THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

6. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, NEITHER MAGENIUM NOR MAGENIUM'S SUPPLIERS, SUBCONTRACTORS AND CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), SPECIAL, OR INCIDENTAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS OR REVENUES ARISING IN CONNECTION WITH THE AGREEMENT, SERVICES DESCRIPTION, ANY STATEMENT OF SERVICES, SERVICES, SERVICE DELIVERABLES, HOTFIXES, PRODUCTS OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. IN ANY EVENT, WHATEVER THE LEGAL BASIS FOR USER'S CLAIMS, MICROSOFT'S TOTAL LIABILITY (AND THAT OF MAGENIUM, AND ITS PARTNERS, SUPPLIERS AND SUBCONTRACTORS) WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TO DIRECT DAMAGES UP TO THE AMOUNT PAID IN THE AGGREGATE FOR THE SERVICES GIVING RISE TO THE CLAIMS.

7. INDEMNITY

You agree to indemnify, defend, and hold Magenium, its subsidiaries, affiliates, directors, officers, employees, and agents harmless from and against all claims, demands, liabilities, loss, damage, cost, and expense of whatsoever nature, including attorney's fees, arising from, resulting from, or in any way connected with: (1) use of the Services; (2) breach of these Terms; (3) any breach of your representations and warranties set forth in these Terms; (4) your violation of the rights of a third party, including but not limited to intellectual property rights, contractual provisions, or restrictive covenants; or (5) your or your agent's negligence, gross negligence, willful misconduct, or violation of any law or regulation. Notwithstanding the foregoing, we reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate, at your



expense, with our defense of such claims. We will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it.

8. MANDATORY ARBITRATION- APPLICABLE TO THE FULL EXTENT PERMITTED BY LAW.

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH US AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

You agree that any dispute between you and Magenium arising out of or relating to your use of the Services (collectively, "Disputes") will be resolved by the following procedures:

Governing Law: These Terms and the resolution of any Disputes shall be governed by and construed in accordance with the laws of the State of Minnesota, USA, without regard its conflict of laws principles.

Agreement to Arbitrate: You and Magenium both agree to resolve any Disputes through final and binding arbitration, except as set forth under Exceptions to Agreement to Arbitrate below.

Arbitration Procedures: The American Arbitration Association (AAA) will administer the arbitration under its Consumer Arbitration Rules and the AAA Supplementary Procedures for Consumer-Related Disputes. **The arbitration will be held in the United States county where you live or work, the State of Minnesota, or any other location we agree to.**

One arbitrator will conduct the arbitration. The arbitrator will not conduct any form of class or collective arbitration or join or consolidate claims by or for individuals. The arbitrator, and not any federal, state, or local court or agency, will have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of these Terms, including any claim that all or any part of these Terms is void or voidable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

The current AAA rules will govern payment of all arbitration fees.

Exceptions to Agreement to Arbitrate: Either you or Magenium may assert claims, if they qualify, in small claims court in Minnesota or any United States county where you live or work. Either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Magenium Services, or infringement of intellectual property rights (for example, trademark, trade secret, copyright or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

No Class Actions: You may only resolve Disputes with Magenium on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed under our agreement.

BY AGREEING TO THESE TERMS, YOU HEREBY IRREVOCABLY WAIVE ANY RIGHT YOU MAY HAVE TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL OR IN ANY OTHER REPRESENTATIVE CAPACITY, OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING FILED AGAINST US OR RELATED THIRD PARTIES.

Judicial Forum for Disputes: Except as otherwise required by applicable law, in the event that the agreement to arbitrate is found not to apply to you or your claim, you and Magenium agree that any judicial proceeding (other than small claims actions) will be brought in the federal or state courts of the State of Minnesota. Both you and Magenium consent to venue and personal jurisdiction there. We both agree to waive our right to a jury trial.

Limitation on Claims: Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to your use of the Magenium Services must be filed within one (1) year after such claim or cause of action arose, or else that claim or cause of action will be barred forever.



9. USER DATA

We will maintain certain data that you transmit to the Services for the purpose of managing the performance of the Services, as well as data relating to your use of the Services. Although we perform regular routine backups of data, you are solely responsible for all data that you transmit or that relates to any activity you have undertaken using the Services. You agree that we shall have no liability to you for any loss or corruption of any such data, and you hereby waive any right of action against us arising from any such loss or corruption of such data.

10. Confidentiality and Non-Disclosure

To the extent that non-public and/or proprietary information regarding User, User data, User business processes, other proprietary User information, and/or information regarding the User that is confidential, trade secret, or non-public that Magenium may have access to via provision of the Services, User and Magenium agree, and cause its employees and agents to agree, to hold such information in strict confidence and, unless disclosure thereof is required by law, court order, subpoena or other legal compulsion, not to disclose such information to any third-person without the prior written consent of the other Party.

11. MISCELLANEOUS

- (a) **Exclusion of CISG.** The parties disclaim application of the United Nations Convention on Contracts for the International Sale of Goods.
- (b) **Integration.** Except as otherwise stated and incorporated herein, these Terms constitute the entire and exclusive understanding between agreement between you and us regarding any Magenium Services that you use, and these Terms supersede and replace any and all prior oral or written understandings or agreements between you and us relating thereto.
- (c) **No Assignment.** You may not assign, delegate, or transfer these Terms, by operation of law or otherwise, without Magenium's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and void. Magenium may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of each party and the party's successors and permitted assigns.
- (d) **Waiver.** Magenium's failure or neglect to enforce at any time any right or provision of these Terms will not be considered waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Magenium. Except as expressly set forth in these Terms, the exercise of either party of any of its remedies under these Terms will be without prejudice to its other or subsequent remedies under these Terms or otherwise.
- (e) **Electronic Communications, Transactions, and Signatures & Interpretation.** Accessing the Services, sending us emails, and completing online forms constitute electronic communications. You consent to receive electronic communications, and you agree that all agreements, notices, disclosures, and other communications we provide to you electronically, via email and on the Services, satisfy any legal requirement that such communication be in writing. YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS, AND OTHER RECORDS, AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES, AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED BY US OR VIA THE SERVICES. You hereby waive any rights or requirements under any statutes, regulations, rules, ordinances, or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by any means other than electronic means.

These Terms will not be construed against the drafter.



- (f) **Severability.** If an arbitrator or a court of competent jurisdiction finds any provision of these Terms to be invalid, the court should endeavor to give effect, to the maximum extent permitted by law, to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect.
- (g) **California Users and Residents.** If any complaint with us is not satisfactorily resolved, you can contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite N 112, Sacramento, California 95834 or by telephone at (800) 952-5210 or (916) 445-1254.

12. CONTACT US

In order to resolve a complaint regarding the Services or to receive further information regarding use of the Services, please contact us at: Magenium Solutions LLC, 3025 Highland Parkway, Suite 275, Downers Grove, IL 60515.