

Magnalogix Master Service Agreement Terms and Conditions

Last Updated: 10/01/10

This Master Services Agreement (“Agreement”) dated October 1st, 2010 is made between Magnalogix.com LLC., a Nevada corporation with its principal place of business at 6785 W.Russell Rd Suite 210 Las Vegas , NV 89118 (“Magnalogix”) and Customer (“Client”). By entering into a Magnalogix Order Form, which identifies the products and services that Customer is purchasing, Customer agrees to these Magnalogix Master Service Agreement Terms and Conditions, which together with the Order Form, constitute an agreement between Magnalogix and Customer. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these Magnalogix Master Service Agreement Terms and Conditions.

- 1. HOSTED PREDICTIVE DIALER: 1a. Description.** Magnalogix agrees to provide you with non-exclusive, revocable access to their “Hosted Predictive Dialer”, which consists of software that enables you to process calls from data selected by you. All data will be scrubbed against National & State DNC before being loaded into any campaign and every 30 days thereafter. The “Hosted Predictive Dialer” is proprietary to Magnalogix and is protected by intellectual property laws and international intellectual property treaties. Your access to Hosted Predictive Dialer is licensed and not sold, and is revocable as set forth herein. U.S. Long distance, DNC Scrubbing and automated Safe Harbor messaging is included in the monthly service fee. **1b. Accessibility.** You agree that from time to time the “Hosted Predictive Dialer” may be inaccessible or inoperable for any reason including, without limitation, to: *(i)* equipment malfunctions; or *(ii)* periodic maintenance procedures or repairs which Magnalogix may undertake from time to time; or *(iii)* causes beyond the control of Magnalogix or which are not reasonably foreseeable by Magnalogix. Magnalogix shall promptly notify you of such event and shall endeavor to resume performance of the “Hosted Predictive Dialer” as soon as practicable.
- 2. Service:** Magnalogix hereby grants Customer a non-exclusive, non-transferable, non-sublicenseable right and license to use the Magnalogix Web-based service (“Service”) for its internal business purposes only. Customer may not access the Service if they are a direct competitor of Magnalogix, except with Magnalogix’s prior written consent. In addition, Customer may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.
- 3. COMPLIANCE WITH LAWS:** You assume all liability and responsibility for your use of the “Hosted Predictive Dialer” in compliance with any federal, state or local laws pertaining to the use of telephones, email, fax, automated telephonic equipment and other telephony and telecommunications products and services. A violation of any such laws may result in substantial penalties and other sanctions. You agree that Magnalogix will not be responsible for your use of the “Hosted Predictive Dialer”. You agree that you shall be responsible for all costs and expenses of any kind, including reasonable attorneys’ fees, incurred by Magnalogix in connection with or related to any actual, alleged or threatened violations by you of Federal, State or Local laws. If using the “Hosted Predictive Dialer” for any business to consumer telemarketing purposes, in-house or jobbed out, you must supply Magnalogix with a valid Subscriber Access Number (SAN) and valid Subscriber Organization, available from the National Do Not Call Registry.

- 4. ACCOUNT CHARGES:**

 - 4a. Monthly Service Fees.** Your first months' service fee is payable immediately upon order of the "Hosted Predictive Dialer". Monthly service fees for subsequent months will be charged to your credit card 30 days after service started each month. The renewal date is determined by the date Magnalogix sends you your account information and loads your first list on the "Hosted Predictive Dialer" **or** if you enter a requested start date, that date will be your renewal date.
 - 4b. Payment.** Monthly service fees are payable by credit card, check or wire transfer. The Magnalogix Credit Card Authorization Form must be completed in its' entirety and sent back to Magnalogix prior to setting up your account. Charges will appear on your credit card statement as "Magnalogix". You are also authorizing Magnalogix to charge your designated credit card account on the renewal date established. You also understand that you waive all rights to reverse, or otherwise charge back this payment, at any time.
 - 4c. No Waiver.** Failure of Magnalogix to charge your credit card or to invoice you in a timely manner for any amounts due under this Agreement shall not be deemed as a waiver by Magnalogix of its rights to payment for such amounts, and all outstanding amounts shall remain due and owing.
 - 4d. Non-Payment.** Magnalogix may immediately terminate your account and Hosted Predictive Dialer service at any time in Magnalogix' sole discretion for declined credit cards, past due invoices, any other non-payment of account charges, and any other breach of this Agreement, and you will be responsible for all related, reasonable fees and costs incurred as a result of such action. Customer agrees to pay the Monthly License Fees based on the User Pricing Schedule as specified in the Order Form. Customer agrees to pay all fees starting on the Effective Date and all monthly fees on the first day of each month there after for the entire Term of the Agreement. Customer may add additional User Licenses during the Term by executing an additional written Order Form. User Licenses added by Customer during the Term will be coterminous with the preexisting Term and cannot be removed before the end of the Term. Additional Users added mid-month will be charged a pro-rated amount for the current month. All payment obligations are non-cancelable and all amounts paid are non-refundable. Customer is responsible for paying for all User licenses ordered for the entire Term, whether or not such User licenses are actively used.

- 5. CANCELLATION:** Client has the right to cancel service at anytime. The Client must cancel via our web form at <http://cancel.magnalogix.com> there is no exceptions to this. At such time the client will still have service that has been pre-paid including their last month if that applies. If cancellation of service is not received within 48 hours of the renewal date, your card will be automatically charged for the following month. Should this happen you have a grace period of 48 hours AFTER the renewal date to be issued a full refund. After this grace period you will not be eligible for a refund. **5a. Refund Policy** All sales are final. There is no refund outside of our defined grace period. Magnalogix reserves the right to reimburse for non-use of the "Hosted Predictive Dialer" per a client account review. Non-use is defined as not utilizing our system entirely for a significant amount of time.

- 6. CUSTOMER SUPPORT:** Customer support is provided Monday through Friday, 8AM to 5PM PST, excluding holidays. For after-hours support please visit <http://support.magnalogix.com> to submit trouble tickets via our Help desk.

- 7. TERM:** This Agreement begins on the Effective Date and extends for the Term specified on the Order Form (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term. Collectively the Initial Term and all renewal terms shall be referred to herein as the "Term". Either party may terminate this Agreement and reduce the number of User Licenses, effective only upon the expiration of the Term, by notifying the other party in writing at least thirty (30) days prior to the expiration of the Term. Any changes to the Magnalogix MSA are considered effective upon the next renewal Term, after the changes are implemented, and are binding and agreed from the new Term.

- 8. TERMINATION FOR CAUSE:** Any breach of your payment obligations or unauthorized use of the Service will be deemed a material breach of this Agreement. Magnalogix, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, Magnalogix may terminate a free account at any time in its sole discretion. Customers agrees and acknowledges that Magnalogix has no obligation to retain the Customer Data, and may delete such Customer Data, if Customer has materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.
- 9. USER LICENSES:** Customer agrees that the Service may only be used by that number of unique users specified in the Order Form (“Users” or “User Licenses”). User licenses are for named Users only and cannot be shared or used by more than one User but may be reassigned from time to time to new Users replacing former Users.
- 10. Restrictions:** Customer agrees not to **(i)** modify, copy or create derivative works based on the Service or Magnalogix Technology;**(ii)** create internet “links” to or from the Service, or “frame” or “mirror” any content forming any part of the Service other than on Customer’s own intranets or otherwise for its own internal business purposes; or **(iii)** disassemble, reverse engineer or decompile the Service or the Magnalogix Technology for any purpose or reason.
- 11. Magnalogix Responsibilities:** Magnalogix agrees to use commercially reasonable efforts to make the Service generally available 12 hours a day, 7 days a week, except for: **(i)** planned downtime (which Magnalogix shall schedule to the extent reasonably practicable during evening and weekend hours); or **(ii)** downtime caused by circumstances beyond Magnalogix’s reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other material labor problems, computer or telecommunications failures or delays involving hardware or software not within Magnalogix’s possession or reasonable control, and network intrusions or denial of Service attacks. Magnalogix agrees to use commercially reasonable efforts to protect data and other information stored by Customer in Magnalogix’s database.
- 12. Customer Responsibilities:** Customer is responsible for all activities of Customer’s Users and that which occur under Customer’s Users’ accounts. Without limiting the generality of the foregoing, Customer shall: **(i)** have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data; **(ii)** use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Magnalogix promptly of any such unauthorized use; and **(iii)** comply with all applicable local, state, federal and foreign laws in using the Service.
- 13. Use:** Customer agrees to use the Service solely for its internal business purposes as contemplated by this Agreement and further agrees that it will not: **(i)** license, sublicense, sell, resell, rent, lease, assign, distribute, timeshare or otherwise commercially exploit or make the Service available to any third party, other than as contemplated by this Agreement; **(ii)** send spam or otherwise duplicative or unsolicited messages in violation of applicable law; **(iii)** send or store infringing, obscene, threatening, libelous or otherwise unlawful or tortious material, including material violative of third party privacy rights; **(iv)** send or store material containing software viruses, worms, Trojan horses or harmful computer codes, files, scripts, agents or programs; **(v)** interfere with or disrupt the integrity or performance of the Service or the data contained therein; or **(vi)** attempt to gain unauthorized access to the Service or its related systems or networks.

14. Proprietary Rights to Service and Data: 13a. In providing the Service, Magnalogix utilizes *(i)* certain audio and visual information, documents, software and other works of authorship and *(ii)* other technology, software, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material and information (collectively “Magnalogix Technology”), which is covered by intellectual property rights owned by or licensed to Magnalogix (collectively “Magnalogix IP Rights”). Other than as is expressly set forth in this Agreement, no license or other rights in or to the Magnalogix Technology or the Magnalogix IP Rights are granted to Customer, and all such licenses and rights are expressly reserved. Customer grants to Magnalogix a royaltyfree, worldwide, perpetual, irrevocable and fully transferable right and license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or its Users relating to the operation of the Service. **13b.** All Customer data, including lead source data, data contained in files uploaded to the Service by Customer, and data contained in Service generated documents such as PDF attachments (collectively “Customer Data”), is the sole and exclusive property of Customer and its licensees. Magnalogix may make such Customer Data non-personally identifiable by either combining it with information about other leads or transactions (aggregating the Customer Data with information about other customers and leads), or by removing characteristics (e.g., lead name) that make the information personally identifiable to Customer. This process is known as de-personalizing the Customer Data. Customer grants to Magnalogix a royalty-free, worldwide, perpetual, irrevocable and fully transferable right and license to use the Customer Data in connection with the operation of the Service, and Magnalogix’s performance of its obligations under this Agreement, and to use de-personalized Customer Data to create and develop analytical and statistical analysis relating to the use of the Customer Data (“Magnalogix Analytical Data”). Magnalogix is expressly authorized to make any commercial use of the Magnalogix Analytical Data including without limitation, sharing such Magnalogix Analytical Data with third parties; provided, Magnalogix does not sell, trade, or otherwise transfer outside of Magnalogix any part of the Customer Data that personally identifies any third party sales lead.

15. Confidentiality: 14a. Confidential Information: As used herein, “Confidential Information” means all confidential and proprietary information of a party (“Disclosing Party”) disclosed to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms of this Agreement, the Service, the Magnalogix Technology, business and marketing plans, technology and technical information, product designs and business processes. Confidential Information shall not include any information that: *(i)* is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; *(ii)* was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; *(iii)* was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or *(iv)* is received from a third party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. **14b.** Mandatory Legal Disclosure: A Receiving Party may disclose Confidential Information or the terms of this Agreement to the extent required by any applicable law, regulation or court; provided however, that the Receiving Party will (to the extent it is legally permitted to do so) notify the Disclosing Party in writing, promptly after becoming aware of its obligations to make such a disclosure and will permit the Disclosing Party to seek to challenge or limit such required disclosure. Further, each party may disclose the terms of this Agreement or Confidential Information of the other for the limited purpose of enforcing its rights under this Agreement before a Court of competent jurisdiction, provided that such disclosure will be accomplished in such a manner so as to protect the rights of the parties to this

Agreement to the maximum extent reasonably possible. **14c.** Remedies: If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Paragraph, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any of their available remedies are inadequate.

- 16. *Warranty and Disclaimer:*** CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ITS USE OF THE SERVICE. MAGNALOGIX DOES NOT WARRANT THE SERVICE IS ERROR FREE, WILL MEET CUSTOMER REQUIREMENTS OR EXPECTATIONS, OR THE PERFORMANCE OR THE RESULTS THAT MAY BE OBTAINED BY USING THE SERVICE. MAGNALOGIX WARRANTS ONLY THAT THE SERVICE WILL PERFORM MATERIALLY IN ACCORDANCE WITH THE USER GUIDE; OTHERWISE, MAGNALOGIX MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE. MAGNALOGIX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SOME JURISDICTIONS PROHIBIT LIMITING LIABILITIES, SO IN CERTAIN JURISDICTIONS THIS LIMITATION MAY NOT APPLY TO YOU.
- 17. *Limitation of Liability:*** NEITHER MAGNALOGIX, ITS AFFILIATES OR ASSIGNS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA OR COSTS OF COVER ARISING FROM OR RELATED TO THE SERVICE OR THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LIABILITY, LOSS OR DAMAGE. MAGNALOGIX'S TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT, IN ANY CASE, EXCEED THE TOTAL CHARGES PAID BY CUSTOMER TO MAGNALOGIX FOR 12 MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. IN THE EVENT OF FORCE MAJEURE, MAGNALOGIX SHALL HAVE NO LIABILITY TO CUSTOMER. SOME JURISDICTIONS PROHIBIT LIMITING LIABILITIES, SO IN CERTAIN JURISDICTIONS THIS LIMITATION MAY NOT APPLY TO YOU.
- 18. *Indemnification: 15a.*** Customer agrees to defend, indemnify and hold Magnalogix harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits or proceedings ("Claims") made or brought against Magnalogix by a third party relating to or arising out of this Agreement and the Service provided to Customer hereunder; provided, that Magnalogix **(i)** promptly gives written notice of the claim to Customer; **(ii)** gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Magnalogix of all liability); and **(iii)** provides to Customer at Customer's cost all reasonable assistance. **15b.** Magnalogix agrees to indemnify, defend and hold harmless Customer, its officers, directors, employees, agents and representatives from and against **(i)** any claims for bodily injury or tangible and/or real property damages to the extent such injury or such damage arises from or is related to the acts or omissions of Magnalogix **(ii)** any claim, demand, suit or allegation, that the Service, Service, business method or delivery channel of Magnalogix violates or infringes the intellectual property right of a third party, including, but not limited to, infringing a copyright, trademark, or patent; violating a right of privacy, attribution or withdrawal; or constituting the misappropriation of a trade secret, or **(iii)** breach of this Agreement or any of the representations or warranties contained herein.
- 19. *Public Disclosure:*** Customer agrees not to issue any statements, confirm, or otherwise disclose to any third party the terms or existence of this Agreement or any business relationship with Magnalogix without Magnalogix's prior written consent or as may be required by law. Customer shall not use the name, Service marks or trademarks of Magnalogix or its affiliates without Magnalogix's prior written consent

- 20. Governing Law and Jurisdiction:** This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of Nevada, without regard to its internal conflicts of laws rules. Jurisdiction and venue for any dispute hereunder shall be in the State and federal courts located in Clark County, Nevada, and each party hereby irrevocably submits to the exclusive jurisdiction of such courts.
- 21. Notices:** All notices under this Agreement shall be in writing and shall be delivered to the addresses first set forth above by registered mail-return receipt requested, personal delivery, facsimile or by email. Notice shall be deemed to have been given upon: **(i)** personal delivery; **(ii)** the fifth (5th) business day after mailing; **(iii)** upon sending by confirmed facsimile or by email provided a confirming copy of such notice is mailed as provided herein on the day of dispatch.
- 22. Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provisions shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 23. Amendments.** We may modify these Magnalogix Master Service Agreement Terms and Conditions at any time by posting the revised Magnalogix Master Service Agreement Terms and Conditions on this site. Your continued use of the services shall constitute your acceptance of such revised Magnalogix Master Service Agreement Terms and Conditions.