



# EVENT CLOUD Master Subscription Agreement

**This event cloud master subscription agreement (“AGREEMENT”) governs your acquisition and use of our event cloud services.**

**By accepting this agreement, either by clicking a box indicating your acceptance or by executing an order form that references this agreement, you agree to the terms of this agreement. 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 and its affiliates to these terms and conditions, in which case the terms “YOU” or “YOUR” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this agreement and may not use the event cloud services.**

If You have entered into or enter into an agreement with Us for any non-EVENT CLOUD Services, that agreement shall not apply to the EVENT CLOUD Services, and EVENT CLOUD Services shall not be considered a service or product or part of any service or product under such master subscription agreement, unless otherwise expressly agreed in writing by Us.

You may not access the EVENT CLOUD Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the EVENT CLOUD Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

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## 1. Definitions

**“Affiliate”** means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“Indexed Content”** means information, including but not limited to links, posts, and excerpts, that has been made publicly available and obtained by Us or on Our behalf from the Internet, and data derived therefrom, including but not limited to reports, summaries, graphs and charts. An individual link, post or excerpt of Indexed Content may be referred to as a “Mention”.

**“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**“EVENT CLOUD Services”** means the products and services offered by Us under the name(s), “Swoogo” or successor branding, that You order under an Order Form and We make available online via password-protected customer login, including programmatic access via the Application Programming Interface (API). “EVENT CLOUD Services” exclude Third-Party Social Platforms, Indexed Content, and other Applications.

**“Other Applications”** means online applications and offline software products that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the EVENT CLOUD Services.

**“Order Form”** means the documents for placing orders for EVENT CLOUD Services hereunder that are entered into between You and Us or any of Our Affiliates from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms shall be deemed incorporated herein by reference.



**“Purchased EVENT CLOUD Services”** means EVENT CLOUD Services that You or Your Affiliates purchase under Our Order Form.

**“Third-Party Social Platform”** means a third-party social-media website from which We receive Indexed Content for the EVENT CLOUD Services, such as Facebook, Twitter, LinkedIn, or YouTube.

**“User Documentation”** means Our training, help, how-to and explanatory materials that assist Users in using the EVENT CLOUD Services, as such materials may be updated from time to time.

**“Users”** means individuals who are authorized by You to use the EVENT CLOUD Services, for whom subscriptions to an EVENT CLOUD Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

**“We,” “Us” or “Our”** means the EVENT CLOUD company described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

**“You” or “Your”** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity. If You are an agency purchasing EVENT CLOUD Services on behalf of Your clients, the terms “You” or “Your” shall include such clients, provided that You shall be responsible for such clients’ compliance with Your obligations under this Agreement, for any breach of those obligations by such clients, and for payment for EVENT CLOUD Service purchases on behalf of such clients.

**“Your Data”** means any electronic data, content or information that has not been made publicly available and is submitted by or on behalf of You to the Purchased EVENT CLOUD Services.

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## 2. Purchased Event Cloud Services

**2.1. Provision of Purchased EVENT CLOUD Services.** We shall make the Purchased EVENT CLOUD Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

**2.2. Subscriptions.** Unless otherwise specified in the applicable Order Form, EVENT CLOUD Services are purchased as subscriptions and may be accessed only in accordance with the applicable Order Forms.



## 3. Use of the Event Cloud Services

**3.1. Our Responsibilities.** We shall: (i) provide Our basic support for the Purchased EVENT CLOUD Services to You at no additional charge, and/or upgraded support if purchased separately; and (ii) use commercially reasonable efforts to make the Purchased EVENT CLOUD Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice online or via email), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), failures, downtime or delays by an Internet Service Provider or Third-party Social Platform, or denial of service attacks.

**3.2. Our Protection of Your Data.** We shall maintain administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not: (a) modify Your Data; (b) disclose Your Data except as compelled by law in accordance with Section 8.3 (Compelled Disclosure) or as expressly permitted in writing by You; or (c) access Your Data except to provide the EVENT CLOUD Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

**3.3. Your Responsibilities.** You shall: (i) be responsible for Users' compliance with this Agreement; (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the EVENT CLOUD Services, and notify Us promptly of any such unauthorized access or use; and (iv) use the EVENT CLOUD Services only in accordance with the User Documentation and applicable laws and government regulations. You shall not: (a) make the EVENT CLOUD Services available to anyone other than Users; (b) sell, resell, rent, or lease the EVENT CLOUD Services; (c) use the EVENT CLOUD Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the EVENT CLOUD Services to store or transmit Malicious Code; (e) interfere with or disrupt the integrity or performance of the EVENT CLOUD Services or third-party data contained therein; or (f) attempt to gain unauthorized access to the EVENT CLOUD Services or their related systems or networks. Additionally, You shall not: (i) use the EVENT CLOUD Services for the purpose of serving as a factor in establishing an individual's eligibility for credit, employment or insurance, or for any other consumer-initiated transaction as defined in the U.S. Fair Credit Reporting Act; (ii) submit to the EVENT CLOUD Services or use the EVENT CLOUD Services to collect, store or process any of the following types of sensitive individually identifiable information, including, without limitation: (a) social security numbers, passport numbers, driver's license numbers, taxpayer numbers, or other government-issued identification numbers, (b) Protected Health Information (as defined in the U.S. Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended, "HIPAA") or similar information under other comparable laws or regulations, or (c) financial account numbers (including without limitation credit or debit card numbers, or any related security codes or passwords, bank account information, or Non-Public Information (as defined in the Gramm-Leach-Bliley Act of 1999, as amended, "GLBA") or similar information under other comparable laws or regulations.



3.4. Usage Limitations. EVENT CLOUD Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls You are permitted to make against Our application programming interface, or other usage limits. Any such limitations are specified in the User Documentation or an Order Form. The EVENT CLOUD Services may provide real-time information to enable You to monitor Your compliance with such limitations. If You purchase EVENT CLOUD Services subject to usage limits and You routinely exceed those limits, We may work with You to seek to reduce Your usage so that it conforms with such limits. If You are unable or unwilling to abide by applicable usage limits, We may require You to execute an Order Form for additional EVENT CLOUD Services and/or invoice You for Your excess usage, in which case You agree to execute such additional Order Forms and/or pay additional invoices, as applicable.

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## 4. Indexed Content and Third Party Social Platforms

**4.1. Indexed Content.** We do not own or control Indexed Content. Indexed Content shall not be considered Your Data or "Customer Data" under any circumstances, including pursuant to the terms of any other agreement we may enter into with You for non- EVENT CLOUD services. Indexed Content may be indecent, offensive, inaccurate, unlawful, or otherwise objectionable. We shall have no obligation to preview, verify, flag, modify, filter, or remove any Indexed Content, even if requested to do so, although We may do so in Our sole discretion. INDEXED CONTENT IS PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. Your use of Indexed Content is at Your sole risk, and We shall not be liable to You or any third party based on Indexed Content.

**4.2. Third-Party Social Platform Access and Interactions.** You shall enable the EVENT CLOUD Services to access Your Third-Party Social Platform accounts and any websites operated by You or on Your behalf with respect to which You use the EVENT CLOUD Services. Subject to the terms of this Agreement, You acknowledge and agree that We may access, collect, process, and/or store information or content, regardless of whether such content is Your Data or Indexed Content, from such Third-Party Social Platform accounts and/or websites in connection with providing the EVENT CLOUD Services. Except for Our obligations with respect to Your Data, We shall not be responsible or liable for: (i) any content provided by You or Your Users to any Third Party Social Platform or other website, and any content accessed by You, Your Users or any third party from any Third-Party Social Media Platform or websites; (ii) any interactions or communications between You and/or Your Users and any third parties through any Third-Party Social Platform or websites; or (iii) any transactions relating to a separate agreement or arrangement between You or Your Users and any Third-Party Social Platform provider or websites.

**4.3. Termination for Unavailability of Certain Third-Party Services.** Notwithstanding the above, any unavailability of any Third-Party Social Media Platform or Indexed Content for use

with the EVENT CLOUD Services shall not entitle You to any termination right, credit, refund or other compensation.

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## 5. Non-Event Cloud Providers

**5.1. Acquisition of Non-EVENT CLOUD Products and Services.** We or third parties may from time to time make available to You third-party products or services, including but not limited to non-EVENT CLOUD Applications and implementation, customization, and other consulting services. We do not warrant or support non-EVENT CLOUD products or services, whether or not they are designated by Us as “certified” or otherwise, except as specified in an Order Form. Subject to Section 5.2 (Integration with Non-EVENT CLOUD Applications), no purchase of non-EVENT CLOUD products or services is required to use the EVENT CLOUD Services except a supported computing device, operating system, web browser, and Internet connection.

**5.2. Integration with Non-EVENT CLOUD Applications.** The EVENT CLOUD Services may contain features designed to interoperate with non-EVENT CLOUD Applications. To use such features, You may be required to obtain access to such non-EVENT CLOUD Applications from their providers. If the provider of any such non-EVENT CLOUD Application ceases to make the non-EVENT CLOUD Application available for interoperation with the corresponding EVENT CLOUD Service features on reasonable terms, We may cease providing such EVENT CLOUD Service features without entitling You to any refund, credit, or other compensation, subject to Section 4.3 (Termination for Unavailability of Certain Third-Party Services) above.

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## 6. Fees and Payment for Purchased Event Cloud Services

**6.1. Fees. You shall pay all fees specified in all Order Forms hereunder.** Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term stated on the Order Form. Subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for quantities added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

**6.2. Invoicing and Payment.** You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all EVENT CLOUD Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 12.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency



stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

**6.3. Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).

**6.4. Suspension of EVENT CLOUD Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 7 days' prior notice that Your account is overdue, in accordance with Section 13.2 (Manner of Giving Notice), before suspending services to You.

**6.5. Payment Disputes.** We shall not exercise Our rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of EVENT CLOUD Service and Acceleration) if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**6.6. Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

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## 7. Proprietary Rights

**7.1. Reservation of Rights in the EVENT CLOUD Services.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the EVENT CLOUD Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.



**7.2 Restrictions.** You shall not: (i) in the course of using the EVENT CLOUD Services, access or use Third-Party Social Platforms, Your Data, or any Indexed Content in violation of applicable laws or applicable website terms of service; (ii) display, distribute or make available the Indexed Content to any third party; provided such restriction does not apply to (a) aggregations of Indexed Content which do not reveal individual Mentions, or (b) content retrieved directly from the content provider's website rather than from the EVENT CLOUD Services; (iii) permit any third party to access the EVENT CLOUD Services except as permitted herein or in an Order Form; (iv) create derivative works based on the EVENT CLOUD Services except as permitted herein; (v) copy, modify, or create derivative works based on Indexed Content except to create aggregations of Indexed Content which do not reveal individual Mentions; (vi) copy, frame, or mirror any part or content of the EVENT CLOUD Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes; (vii) reverse engineer the EVENT CLOUD Services; (viii) access the EVENT CLOUD Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the EVENT CLOUD Services; (ix) use the EVENT CLOUD Services to collect, store or process sensitive personal information, including (a) social security numbers, passport numbers, military numbers, voter numbers, driver's license numbers, taxpayer numbers, or other government identification numbers; (b) insurance policy or medical account identification numbers, (c) Protected Health Information (as defined in the U.S. Health Insurance Portability and Accountability Act of 1996 and regulations thereunder) or similar information under other applicable laws or regulations, or (d) credit card numbers or bank account information or other information governed by the Gramm-Leach-Bliley Act of 1999, as amended, or other comparable law; or (x) use the EVENT CLOUD Services for a purpose related to establishing an individual's eligibility for credit, employment or insurance or for any consumer-initiated transaction as defined in the U.S. Fair Credit Reporting Act or any similar law.

**7.3. Your Data.** As between You and Us, You shall own all Your Data, as uploaded or otherwise input into the EVENT CLOUD Service, and all intellectual property rights therein. We shall own any data provided through the EVENT CLOUD Service to enrich Your Data, and all intellectual property rights therein. You grant to Us a worldwide, perpetual, non-exclusive, royalty-free license during the term of this Agreement to aggregate Your Data and to use, modify, distribute, and create derivative works based on Your Data as so aggregated so long as any such aggregation of Your Data is anonymized and omits any of Your Data that would enable the identification of You, Your clients, or any individual, company, or organization therefrom. During the term of this Agreement, You grant to Us the right to use Your Data to provide feedback to You concerning Your use of the EVENT CLOUD Service.

**7.4. Suggestions.** We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the EVENT CLOUD Services any suggestions, enhancement requests, recommendations, or other feedback provided by You, including Users, relating to the operation of the EVENT CLOUD Services.

**7.5. Federal Government End Use Provisions.** We provide the EVENT CLOUD Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the EVENT CLOUD Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in



Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

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## 8. Confidentiality

**8.1. Definition of Confidential Information.** As used herein, “Confidential Information” means all confidential information disclosed by a party (“Disclosing Party”) 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. Your Confidential Information shall include Your Data; Our Confidential Information shall include the EVENT CLOUD Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, 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) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party.

**8.2. Protection of Confidential Information.** The Receiving Party shall (i) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (iii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party’s prior written consent.

**8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.



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## 9. Warranties and Disclaimers

9.1. Our Warranties. We warrant that: (i) We have validly entered into this Agreement and have the legal power to do so; (ii) the EVENT CLOUD Services shall perform materially in accordance with the User Documentation; (iii) subject to Section 5.2 (Integration with Non-EVENT CLOUD Applications), the functionality of the EVENT CLOUD Services will not be materially decreased during a subscription term; and (iv) We will not transmit Malicious Code to You, provided We are not in breach of this subpart (iv) if You or a User uploads a file containing Malicious Code into the EVENT CLOUD Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination) below.

9.2. Your Warranties. You warrant that You have validly entered into this Agreement and have the legal power to do so.

9.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WE MAKE NO REPRESENTATION OR WARRANTY REGARDING COMPLIANCE WITH HIPAA OR GLBA IN PROVIDING THE EVENT CLOUD SERVICES. THE INDEXED CONTENT IS PROVIDED “AS IS,” “AS AVAILABLE,” WITH NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE.

9.4. Non-GA Services. From time to time We may invite You to try, at no charge, Our products or services that are not generally available to Our customers (“Non-GA Services”). You may accept or decline any such trial in Your sole discretion. Any Non-GA EVENT CLOUD Services will be clearly designated as beta, pilot, limited release, developer preview, nonproduction, or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. NON-GA SERVICES ARE NOT CONSIDERED “EVENT CLOUD SERVICES” HEREUNDER AND ARE PROVIDED “AS IS” WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Non-GA Services at any time in Our sole discretion and may never make them generally available.

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## 10. Mutual Indemnification

**10.1. Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party (i) alleging that the use of the EVENT CLOUD Services as permitted hereunder infringes or misappropriates the intellectual property rights of a

third party (a “Claim Against You”), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event We receive information regarding a Claim Against You, or if We reasonably believe the EVENT CLOUD Services may infringe or misappropriate or violate any applicable laws, We may in Our discretion (i) modify the EVENT CLOUD Services so that they no longer infringe or misappropriate third party rights or fail to comply with any applicable law, without breaching Our warranties under “Our Warranties” above, (ii) obtain a license for Your continued use of the EVENT CLOUD Services, at no cost to You, in accordance with this Agreement, (iii) terminate Your User subscriptions for such EVENT CLOUD Services upon 30 days’ written notice and refund to You any prepaid subscription fees covering the remainder of the term of such User subscriptions after the effective date of termination, or (iv) require that You immediately, upon receipt of notice from Us, discontinue all use of any Indexed Content or Your Data that may be related to an actual or potential Claim Against You or violation of law, to the extent not prohibited by law, delete from Your systems any such Indexed Content or delete or permit Us to delete from the EVENT CLOUD Services, any of Your Data, in each case within five days of receipt of notice from Us. You shall, if so requested by Us, certify such deletion and discontinuance of use in writing. We shall be authorized to provide a copy of such certification to the third party claimant. We shall have no obligation to indemnify You to the extent any Claim Against You arises from Indexed Content, a Third Party Social Platform, or Your breach of the terms of this Agreement.

**10.2. Indemnification by You.** You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the EVENT CLOUD Services, a Third-Party Social Platform, or Indexed Content in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a “Claim Against Us”), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense. In the event We receive information regarding an actual or potential Claim Against Us, We may, in Our discretion, require You to immediately, upon receipt of notice from Us, discontinue all use of any Indexed Content or Your Data that may be related to an actual or potential Claim Against Us and, to the extent not prohibited by law, delete from Your systems any such Indexed Content or delete or permit Us to delete from the EVENT CLOUD Services, any of Your Data, in each case within five days of receipt of notice from Us. You shall, if so requested by Us, certify such deletion and discontinuance of use in writing. We shall be authorized to provide a copy of such certification to the third party claimant.

**10.3. Exclusive Remedy.** This Section 10 (Mutual Indemnification) states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this Section.

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## 11. Limitation of Liability

**11.1. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

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## 12. Term and Termination

**12.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all subscriptions granted in accordance with this Agreement have expired or been terminated.

**12.2. Term of Purchased Subscriptions.** Subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 7% of the pricing for the relevant EVENT CLOUD Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.

**12.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**12.4. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.



**12.5. Deletion of Your Data.** Upon request following termination, We will delete Your Data from the EVENT CLOUD Services except for data held for backup or archival purposes.

**12.6. Surviving Provisions.** Section 4.1 (Indexed Content), 4.3 (Termination for Unavailability of Certain Third-Party Services), 6 (Fees and Payment for Purchased EVENT CLOUD Services), 7 (Proprietary Rights), 8 (Confidentiality), 9.3 (Warranties and Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Return of Your Data), 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction), and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

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## 13. Who You are Contracting With, Notices, Governing Law and Jurisdiction

**13.1. General.** You are contracting with Swoogo, a Delaware Limited Liability Company, under this Agreement, which is under the jurisdiction of Delaware and controlling United States federal law which will apply in any lawsuit arising out of or in connection with this Agreement.

**13.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant EVENT CLOUD Services system administrator designated by You.

**13.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**13.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

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## 14. General Provisions

**14.1. Export Compliance.** The EVENT CLOUD Services, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use the EVENT CLOUD Services in a



U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan, or Syria) or in violation of any U.S. export law or regulation.

**14.2. Anti-Corruption.** 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 this Agreement. 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.

**14.3. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

**14.4. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

14.5. Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

**14.6. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision 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.

**14.7. Attorney Fees.** You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 6.2 (Invoicing and Payment).

**14.8. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid subscription fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.9. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment, or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum, or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be



incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

<b>Company:</b>		<b>Company:</b>	Swoogo
<b>By:</b>		<b>By:</b>	
<b>Name:</b>		<b>Name:</b>	Chris Sykes
<b>Title:</b>		<b>Title:</b>	CEO, Swoogo
<b>Date:</b>		<b>Date:</b>	