**SAAS TERMS AND CONDITIONS**

Welcome!

Magnetize brings together all of your systems and paperwork into one integrated platform so that you can have your entire business at your fingertips.

* 1. Acceptance
		1. Magnetize Ltd NZBN 9429046714077 (we, us or our), provide the Services which are accessible at www.magnetize.co.nz, and may be available through other addresses and channels, including our mobile application (Site).
		2. These terms and conditions (Terms):
			1. are between us and you, together the **Parties** and each a **Party**;
			2. set out the terms and conditions upon which we agree to grant you a right to use the Services; and
			3. are binding on you on and from the date on which you accept these Terms (**Effective Date**) until the date on which your Account and these Terms are terminated in accordance with the terms (**Term**).
		3. You accept these Terms by clicking a box indicating your acceptance.
		4. If you create an Account and are agreeing to these Terms on behalf of a company, your employer, an organisation, government or other legal entity (Entity), then “you” means the Entity and you are binding that Entity to these Terms. If you are accepting these Terms on behalf of an Entity, you as an individual represent and warrant that you are authorised by the Entity to do so.
	2. Services
		1. In consideration of payment of the Fees (as set out in the Plan), we will provide the Services in accordance with these Terms, whether ourselves or through our Personnel.
		2. Free or Trial Account: We may offer you a free or trial Account with limited features designed to allow you to evaluate the Services and make sure it is right for you before signing up for a paid Plan. Any trial period can change at any time without notice. We have the right to terminate any trial Account if you are found to be misusing the Services. At the end of any free or trial Account you will be provided the option to choose and sign up for a Plan.
		3. You agree that we may amend the Services (including any features) or the Fees at any time, by providing written notice to you. Any changes to the Fees will apply to your next billing period. If you do not agree to any amendment made to the Services or the Fees, you may terminate these Terms by cancelling your Plan within your Account, in which case clause 19.4 will apply.
	3. Accounts
		1. You may create an Account on our Site, which will allow you to set up Authorised User accounts, (in accordance with the permitted Authorised User numbers) in order for you and your Authorised Users to access and use the Services.
		2. You must ensure that any information you provide to us, or we request from you, for your Account, is complete and accurate and you are authorised to provide this information to us.
		3. You are the Account owner and regardless of any change in any contact details, you will remain responsible for your Account, as set out in these Terms. If you wish to change the Account owner, you must provide us with a written request to transfer the ownership of the Account to the incoming party, which must also include the incoming party’s written consent to take over full responsibility for the Account, in a form acceptable to us.
		4. It is your responsibility to keep your Account details confidential. You are responsible for all activity on your Account, including activity by Authorised Users and for ensuring that any activities on your Account comply with these Terms.
		5. We are not responsible for the management or administration of your Account or your Authorised Users.
	4. Licence and restrictions on use
		1. Subject to the payment of any applicable Fees and your and your Authorised Users’compliance with these Terms, we grant you a non-exclusive, non-transferable, non-sublicensable (except as otherwise permitted under these Terms), personal and revocable licence to access and use the Services for the Term in accordance with any Authorised User limits, for your use and enjoyment of the Services, as contemplated by these Terms (Licence).
		2. You must not (and must ensure your Authorised Users do not) access or use the Services except as permitted by the Licence and you must not (and must not permit any other person to) use the Services in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property Rights, including to;
			1. use the Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
			2. use the Services in any way that damages, interferes with or interrupts the supply of the Services;
			3. introduce malicious programs into our hardware and software or Systems, including viruses, ransomware, malware, trojan horses and e-mail bombs;
			4. reveal or allow others access to your Account’s password or authentication details or allow others to use your Account or authentication details(other than Authorised Users);
			5. carry out security breaches or disruptions of a network, including accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
			6. use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person’s use of the Services;
			7. if applicable, send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages, or use the Services in breach of any person’s privacy (such as by way of identity theft or “phishing”); or
			8. circumvent user authentication or security of any of our Services, networks, accounts or hosts or those of our other users.
	5. Authorised Users
		1. You agree that the Licence permits you to access and use the Services in accordance with the number of Authorised Users, as set out in your Plan.
		2. You may, at any time, increase or decrease the number of Authorised Users in your Plan through your Account settings.
		3. If you adjust the number of Authorised Users in your Plan, you agree that the Fee will be adjusted as set out on the Site based on how many Authoriserd Users you have added or removed (Adjusted Fee). The Adjusted Fee will be considered the new Fee for the purpose of these Terms.
		4. If you increase the number of Authorised Users in your Plan, you agree to pay the Adjusted Fee on a pro-rata basis for the then current billing period.
		5. If you decrease the number of Authorised Users in your Plan and have paid the Fee for the then current billing period in advance, we will decrease the Fee for the subsequent billing period on a pro rata basis based on the Adjusted Fee for the immediately preceeding billing period.
	6. Third Party Inputs
		1. You agree that:
			1. the provision of the Services may be contingent on, or impacted by, Third Party Inputs; and
			2. the Services may include Third Party Inputs that may interface, or interoperate with, the Services, including third party software or services (for example, Xero and MYOB).
		2. To the extent that you choose to use such Third Party Inputs, you are responsible for:
			1. applicable purchases in relation to;
			2. the requirements of; and
			3. the licensing obligations of,

any such Third Party Input, including third party software and services.

* + 1. We are not a party to any agreement or licence entered into between you and any Third Party Input and we have no control over the conduct of Third Party Inputs, including how they handle your data or the cancellation of their services.
		2. You agree that the benefit of the Third Party Input’s interface, or interoperation with, the Services, is subject to your compliance with clause 6.3.
		3. Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability, caused or contributed to by, arising from or connected with any Third Party Inputs.
	1. Payment
		1. You agree to pay us the Fees as set out in your Plan, and any other amounts payable to us under these Terms, without set-off or delay, via credit card or any other payment method set out on the Site.
		2. If your Plan requires you to pay the Fees via direct debit, you expressly consent to, authorise and instruct us to deduct the Fees from your nominated account as an automatic payment in accordance with the relevant Payment Date. If required, you agree to complete a direct debit request form and/or direct debit request service agreement, which may be provided by us or by a third-party provider on our behalf. If you are paying the Fees via direct debit, you are liable for any fees charged by our third party payment processor as a result of a late payment, except to the extent these are as a result of our error or our system failure and where this is the case you should provide us with a copy of the relevant records so that any issue can be resolved.
		3. The Fee is payable in advance of the next billing cycle for your Plan and any additional charges will be billed in arrears at the end of the relevant Plan billing cycle (unless otherwise agreed between the Parties).
		4. You are responsible for reviewing the pricing schedule, features and limits associated with your Plan, which are available on the Site.
		5. You must ensure your chosen payment method has sufficient funds to pay the Fees.
		6. If any payment has not been made or is not successful in accordance with these Terms, we may (at our absolute discretion):
			1. immediately cease or suspend the provision of the Services, and recover as a debt due and immediately payable from you, our additional costs of doing so;
			2. charge interest at a rate equal to the Reserve Bank of New Zealand’s cash rate from time to time plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with these Terms; and
			3. engage debt collection services and/or commence legal proceedings in relation to any such amounts.
		7. If you rectify such non-payment within a reasonable time after the Services have been suspended, then we may, at our discretion, recommence the provision of the Services as soon as reasonably practicable.
		8. The Fees are non-refundable. To the maximum extent permitted by law, there will be no refunds or credits for any unused Licence (or part thereof).
	2. Privacy and Communication
		1. You are responsible for the collection, use, storage and otherwise dealing with Personal Information related to your business and all matters relating to the Customer Data.
		2. You must, and must ensure that your Personnel and Authorised Users, comply with the legal requirements of the New Zealand Privacy Act 2020 and any privacy or anti-spam Laws applicable to you in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with these Terms.
		3. We agree to handle any Personal Information you provide to us, solely for the purpose of performing our obligations under these Terms and in accordance with any applicable Laws.
		4. We may contact you via the Site for the Services, using in-Account notifications or via-off platform communication channels, such as text messages or email with functional notifications.
		5. We may also send marketing and promotional material which may be of interest to you, using your contact details. You may opt out of receiving direct marketing messages at any time. Where you opt-out we will continue to send you functional communications relevant to your use of the Services.
	3. Confidential Information
		1. Each Receiving Party agrees:
1. not to disclose the Confidential Information of the Disclosing Party to any third party;
2. to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
3. to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.
	* 1. The obligations in clause 9.1 do not apply to Confidential Information that:
4. is required to be disclosed in order for the Parties to comply with their obligations under these Terms;
5. is authorised to be disclosed by the Disclosing Party;
6. is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms; or
7. must be disclosed by Law or by a regulatory authority, including under subpoena.
	* 1. Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 9. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 9.
		2. This clause 9 will survive the termination of these Terms.
	1. Intellectual Property Rights
		1. You agree that all Intellectual Property Rights:
			1. in the Services;
			2. in the Intellectual Property developed, adapted, modified or created by us, or our Personnel (including in connection with these Terms, the Services, and any machine learning algorithms output from the Services); and
			3. Feedback,

will at all times vest, or remain vested, in us (or, if applicable, our third party service providers). To the extent that ownership of the Intellectual Property Rights do not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights.

* + 1. You agree that we may use Feedback in any manner which we see fit (including to develop new features) and no benefit will be due to you as a result of any use by us of any Feedback.
		2. You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Your Materials, solely for the purposes for which they were developed and for the performance of our obligations under these Terms, as contemplated by these Terms.
		3. You must not whether directly or indirectly, without our prior written consent:
			1. copy or use, in whole or in part, any of our Intellectual Property;
			2. reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our Intellectual Property to any third party;
			3. reverse assemble, reverse engineer, reverse compile or enhance the Services;
			4. attempt to discover the source code or object code or underlying structures, ideas, know how or algorithms in relation to the Services, the data or documentation;
			5. breach any Intellectual Property Rights connected with the Services, including altering or modifying any of our Intellectual Property;
			6. cause any of our Intellectual Property to be framed or embedded in another website; or create derivative works from any of our Intellectual Property;
			7. resell, assign, lease, hire, sub-license, transfer, distribute or make available the Services to third parties;
			8. “frame”, “mirror” or serve any of the Services on any web server or other computer server over the Internet or any other network; and
			9. alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the Services.
		4. This clause 10 will survive the termination or expiry of these Terms.
	1. Analytics
		1. Despite anything to the contrary, we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymised format (Analytics). You agree that we may make such Analytics publicly available, provided that it:
			1. does not contain identifying information; and
			2. is not compiled using a sample size small enough to make the underlying Customer Data identifiable.
		2. We, and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content used or provided in connection with the Analytics, including all Intellectual Property Rights in the foregoing.
	2. Customer Data
		1. You grant us a limited licence to copy, transmit, store and back-up or otherwise access the Customer Data during the Term and for a reasonable period after the Term to:
			1. supply the Services (including for back-ups) to you (including to enable you, yourAuthorised Users and your Personnel to benefit from the Services);
			2. diagnose problems with the Services;
			3. develop other services, provided we de-identify the Customer Data;
			4. enhance and otherwise modify the Services; and
			5. as reasonably required to perform our obligations under these Terms.
		2. You must, at all times, ensure the integrity of the Customer Data and that your provision of, and use of the Customer Data is compliant with all Laws.
		3. You represent and warrant that:
			+ 1. you have obtained all necessary rights, releases and permissions to provide all your Customer Data to us and to grant the rights granted to us in these Terms;
				2. the Customer Data is accurate and complete;
				3. the Customer Data (and its transfer to and use by us as authorised by you) under these Terms does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity; and
				4. any use, collection and disclosure authorised in these Terms is not inconsistent with the terms of any applicable privacy policies.
		4. We assume no responsibility or Liability for the Customer Data. You are solely responsible for the Customer Data and the consequences of using, disclosing, storing or transmitting it. It is your responsibility to back up the Customer Data.
		5. You acknowledge and agree that the operation of the Services is reliant on the accuracy of the Customer Data, and the provision of inaccurate or incomplete Customer Data by you may affect the use, output and operation of the Services.
	3. Warranties
		1. You warrant and agree that:
			1. there are no legal restrictions preventing you from entering into these Terms;
			2. you are not and have not been the subject of an insolvency event;
			3. you will cooperate with us and provide us with all assistance, resources, data, people, information, facilities, access and documentation that is reasonably necessary to enable us to perform the Services and as otherwise requested by us, from time to time, and in a timely manner;
			4. all information and documentation that you provide to us in connection with these Terms is true, correct and complete and that we will rely on such information and documentation in order to provide the Services;
			5. you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms
			6. you will inform us if you have reasonable concerns relating to our provision of the Services under these Terms, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
			7. you are responsible for obtaining, and providing to us in a timely manner, any consents, licences, authorities and permissions from third parties necessary for the Services to be provided in accordance with these Terms, at your cost;
			8. the Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties without prior written consent;
			9. you will be responsible for the use of any part of the Services, and you must ensure that no person uses any part of the Services to break any Law or infringe any person’s rights (including Intellectual Property Rights) or in any way that damages, interferes with or interrupts the supply of the Services;
			10. you have reviewed these Terms, including our Privacy Policy, and you understand them and will use the Services in accordance with them;
			11. you have the authority to act on behalf of any person or entity for whom you are using the Services and you are deemed to have agreed to these Terms on behalf of any entity for whom you use the Services; and
			12. you have all the hardware, software and services which are necessary to access and use the Services, including any required operating systems as set out on the Site.
	4. New Zealand Consumer Laws
		1. We warrant that the Services will, at the time they are provided, materially conform to any requirement set out on the Site or in your Plan.
		2. If the Services do not meet a warranty, at your request and at our cost, we must reperform the Services so that they meet or satisfy that warranty. Our obligation under this clause 14.1 is your sole remedy against us for breach of warranty.
		3. To the maximum extent permitted by law, our warranties are limited to those stated in clause 14.1. Any implied condition or warranty (including any warranty under Part 3 of the New Zealand Contract and Commercial Law Act 2017) is excluded.
		4. You agree and represent that you are acquiring the Services for the purposes of trade. The Parties agree that:
			1. to the maximum extent permissible by law, the New Zealand Consumer Guarantees Act 1993 does not apply to the supply of the Services or these Terms; and
			2. it is fair and reasonable that the Parties are bound by these Terms, including this clause 14.4.
		5. This clause 14 will survive the termination or expiry of these Terms.
	5. Indemnities
		1. Except to the extent that the Liability arose from our negligent acts or omissions or any of our Personnel, you indemnify us and our Personnel against all Liability that we or any of our Personnel may sustain or incur as a result, whether directly or indirectly, of:
			1. your or your Personnel’s breach of clauses 4, 6, 8, 9, 10, 12 and 13; and
			2. your or your Personnel’s negligent, unlawful or wilful acts or omissions in connection with these Terms.
	6. Limitations on Liability
		1. Despite anything to the contrary (except for clause 15) and to the maximum extent permitted by law:
			1. we will not be liable for any Consequential Loss;
			2. a Party’s liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel); and
			3. our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us resupplying the Services to you or, in our sole discretion, to us repaying you the amount of the Fees paid by you to us in the immediately preceding 12 months for the supply of the relevant Services to which the Liability relates.
		2. This clause 16 will survive termination or expiry of these Terms.
	7. Exclusions to Liability
		1. You acknowledge and agree that:
			1. you are responsible for all users using the Services, including your Personneland any Authorised Users;
			2. you use the Services and any associated programs and files at your own risk;
			3. the technical processing and transmission of the Services, including Customer Data, may be transferred unencrypted and involves:
				1. transmissions over various networks; and
				2. changes to conform and adapt to technical requirements of connecting networks or devices;
			4. we may use third party service providers to integrate with the Services or to host the Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features without Liability or entitling you to any refund, credit, or other compensation;
			5. the Services may use third party products, facilities or services. We do not make any warranty or representation in respect of the third party products, facilities or services;
			6. we do not guarantee that any file or program available for download and/or execution from or via the Services is free from viruses or other conditions which could damage or interfere with data, hardware or software with which it might be used;
			7. we are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by you, yourAuthorised Users or your Personnel; and
			8. we may pursue any available equitable or other remedy against you if you breach any provision of these Terms.
		2. This clause 17 will survive termination or expiry of these Terms.
	8. Termination
		1. You may terminate these Terms and delete your Account at any time through your Account settings, and you will continue to have access to our Services through to the end of your then current billing period.
		2. We may terminate this Terms at any time with 30 days’ written notice.
		3. These Terms will terminate immediately upon written notice by:
1. us:
2. if you (or any of your Personnel) breach any provision of these Terms and that breach has not been remedied within 10 Business Days of being notified by us;
3. if you fail to provide us with clear or timely instructions or information to enable us to provide the Services;
4. for any other reason outside our control which has the effect of compromising our ability to provide the Services; or
5. if you are unable to pay your debts as they fall due; and
6. you, if we:
7. are in breach of a material term of these Terms, and that breach has not been remedied within 10 Business Days of being notified by you; or
8. are unable to pay our debts as they fall due.
	* 1. Upon expiry or termination of these Terms:
			1. we will immediately cease providing the Services;
			2. we will be entitled to permanently delete all Customer Data within 1 year from expiry or termination of these Terms;
			3. we will provide any further disengagement services at our then current rates, and such further disengagement support services must be agreed in writing by the Parties;
			4. you agree that any payments made are not refundable;
			5. you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms;
			6. pursuant to clauses 18.3(a)(1), (2) or (4), you also agree to pay us additional costs arising from, or in connection with, such termination; and
			7. immediately return (where possible) or delete or destroy (where not possible to return), any of our property (including any of our Confidential Information and Intellectual Property).
		2. Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.
		3. This clause 18 will survive the termination or expiry of these Terms.
	1. General
		1. Access: The Services may be accessed in New Zelaand and overseas. We make no representation that the Services comply with the Laws (including Intellectual Property Laws) of any country outside of New Zealand. If you access the Services from outside New Zealand, you do so at your own risk and you are responsible for complying with the Laws in the place you access the Services.
		2. Amendment: We may update these Terms at any time. Where we update these Terms we will notify you via an in-Account notification or via email and the amended Terms will apply from your next billing date. If you do not agree with any amendment you may terminate these Terms in accordance with clause 18.1.
		3. Assignment: Subject to clause 19.4, a Party must not assign or deal with the whole or any of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
		4. Assignment of debt: You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.
		5. Dispute: A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (Dispute) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the President of the New Zealand Law Society to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
		6. Email: You agree that we are able to send electronic mail to you and receive electronic mail from you. You release us from any Liability you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
		7. Entire agreement: These Terms contain the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter. Without limiting the previous sentence, the Parties agree to contract out of sections 9, 12A and 13 of the New Zealand Fair Trading Act 1986, and that it is fair and reasonable that the Parties are bound by this clause 19.6.
		8. Exclusivity: The Services will be provided to you on a non-exclusive basis.
		9. Force Majeure: We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control (including but not limited to epidemics, pandemics, and Government sanctioned restrictions and orders, whether known or unknown at the time of entering into these Terms) (Force Majeure Event).
		10. Further assurance: Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to these Terms and their/your obligations under it.
		11. Governing law: These Terms are governed by the laws of New Zealand. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New Zealand and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
		12. GST: If and when applicable, GST payable on the Fees will be set out in our tax invoice. You agree to pay the GST amount at the same time as you pay the Fees.
		13. Notices: Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 3 Business Days in the case of post, or at the time of transmission in the case of transmission by email.
		14. Publicity: You agree that we may advertise or publicise the broad nature of our provision of the Services to you, including on our website or in our promotional material, with your prior written consent.
		15. Relationship of Parties: These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
		16. Severance: If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions.
	2. Definitions

In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in these Terms, and:

**Account** means an account accessible toyouand/or your Authorised Usersto use the Services;

**Authorised User**, if applicable,means a user permitted to access and use the Services under your Account, as further particularised in your Plan;

**Business Day** means a day on which banks are open for general bank business in Auckland, New Zealand, excluding Saturdays, Sundays and public holidays;

**Computing Environment** means your computing environment including all hardware, software, information technology and telecommunications services and Systems;

**Confidential Information** includes information which:

1. is disclosed to the Receiving Party in connection with these Terms at any time;
2. is prepared or produced under or in connection with these Terms at any time;
3. relates to the Disclosing Party’s business, assets or affairs; or
4. relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and howsoever the Receiving Party receives that information;

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise;

**Customer** **Data** means the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you, your Personnel or Authorised Users into the Services or stored by the Services or generated by the Services as a result of your use of the Services;

**Disclosing Party** means the party disclosing Confidential Information to the Receiving Party;

**Fee** or **Fees** means those fees due and payable by you for the Services, as set out in your relevant Plan;

**Feedback** means any idea, suggestion, recommendation or request by you or any of your Personnel or Authorised Users, your customers, whether made verbally, in writing, directly or indirectly, in connection with the Services;

**GST** means the goods and services tax within the meaning of the New Zealand Goods and Services Tax Act 1985.

**Intellectual Property** means any copyright, registered and unregistered trade marks, designs (whether or not registered or registrable), domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing;

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property;

**Laws** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with these Terms or the provision of the Services, and includes the Privacy Act 2020and the Unsolicited Electronic Messages Act 2007;

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise;

**Licence** is defined in 4.1;

**Personal Information** is defined in the Privacy Act 2020 and also includes any similar term as defined in any other privacy law applicable to you;

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents;

**Plan** means the plan you choose, including the Fees, billing cycle, features and number of Authorised Users, as set out on the Site and post purchase, as set out within your Account;

**Privacy Policy** means any privacy policy set out on our Site;

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party;

**SaaS Services** means our Software as a service as described in your Plan and on the Site;

**Services** means the Software, the SaaS Services and any any technical support services as further particularised in the Plan;

**Software** means our cloud-based software, including all instructions in hard copy or electronic form and any update, modification or release of any part of that software as described in your Plan and on the Site;

**System** means all hardware, software, networks and other IT systems used by a Party from time to time, including a network;

**Third Party Inputs** means third parties or any goods and services provided by third parties, including customers, end users, third party service providers or other subcontractors which the provision of the Services may be contingent on, or impacted by; and

**Your Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned, licensed or developed by or on behalf of you or your Personnel before the Effective Date and/or developed by or on behalf of you or your Personnel independently of these Terms.

* 1. Interpretation

In these Terms, unless the context otherwise requires:

### a reference to these Terms or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;

### a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;

### a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;

### no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;

### a reference to a party (including a Party) to a document includes that party’s executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;

### a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;

### a reference to time is to local time in Auckland, New Zealand; and

### a reference to $ or dollars refers to the currency of New Zelaand from time to time.

1. **For any questions and notices, please contact us at**:
2. Magnetize Ltd NZBN 9429046714077
3. Email: [insert]
4. **Last update:** 19 November 2021