

## Terms and Conditions for Magnitude Gold

1. GoMobile subscribers may not resell, commercialize or represent the product or solution both directly or indirectly to other parties without written consent from GoMobile, in which case a separate agreement shall be entered into between the two parties.
2. It is agreed that the base of the solutions provided already utilize the IP and software owned by GoMobile and as such all IP produced and related to the GoMobile products shall remain the property of GoMobile.
3. In the event that payment is not made in accordance with clause 9 below GoMobile has the right to terminate the agreement and disable the solution after providing 2 weeks' notice.
4. Pricing is subject to change and price changes if effected shall only be considered after 12 months from the date of signature. In the event of price changes, subscribers shall be given 30 days' notice.
5. Either party may terminate this agreement by providing 30 days' written notice as the business philosophy is based on mutual value to both parties.
6. **Interpretation**
  - 6.1. In this agreement, unless the context clearly indicates a contrary intention, the words defined below shall have the following meanings assigned to them, and similar expressions shall bear corresponding meanings
  - 6.2. 'the\this agreement' means the agreement set out herein together with the application form, and or any other document attached thereto;
  - 6.3. 'Charges' means the monthly fee, which covers unlimited use of the current technology, software alterations, user and configuration management and a month end report on system utilization within scope of the existing solutions and general strategy as accepted by GOMOBILE and the Subscriber, as advised from time to time;
  - 6.4. 'GSM' means Global System for Mobile Communications as defined in the European Technical Standards Institute structure of specifications from time to time;
  - 6.5. 'Initial Period' means the period of 1 (one) month commencing from the date of signature of this agreement, which date shall be set out in the first bill sent to the Subscriber;
  - 6.6. "Intellectual property" means patents, registered designs, know-how, trademarks, copyright, (including rights in computer software): and all rights having equivalent or similar effect which may exist anywhere in the world.
    - 6.6.1. "Know-how" means all confidential information relating to the Intellectual Property and its exploitation including:
      - Trade secrets
      - Technical information
      - Manufacturing techniques
      - Designs
      - Specifications
      - Formulae
      - Systems
      - Processes
      - Information concerning materials
      - Marketing and business information generally
    - 6.6.2. "Trade marks" means the registered or unregistered trademarks associated to GoMobile, Magnitude and Whatsup.
  - 6.7. 'a Month' shall mean a period which commences at 0h00 on a particular date (determined by GOMOBILE from time to time) of a calendar month and shall endure until 23h59.59 on the day before that particular date in the following calendar month;
  - 6.8. 'Username and Password' shall mean the provided Username and Password that relates to a specific Keyword or pushed URL form as determined by the subscriber.
  - 6.9. "Keyword" Shall mean the establishment specific code that customers SMS in order to provide feedback.
  - 6.10. "Short code" Shall mean the number that customers SMS in order to provide feedback.
  - 6.11. "GOMOBILE" shall mean Gomobile PTY Ltd
  - 6.12. "Magnitude Application" shall mean the GOMOBILE Mobile Magnitude Application and all its functionalities.
  - 6.13. "the Subscriber" shall mean the Subscriber identified in the Subscriber Application Form
  - 6.14. The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation
  - 6.15. This agreement shall be governed by and construed and interpreted in accordance with the laws of South Africa.
7. **Commencement and Termination**
  - 7.1. This agreement shall commence on the date of signature and shall continue on a month to month basis, and thereafter continue automatically for an indefinite period unless terminated according to the following provisions
    - 7.1.1. by the Subscriber, on expiration of the Initial Period, as the case may be, by giving GOMOBILE 30 days' written notice of termination.
    - 7.1.2. by GOMOBILE, on expiration of the Initial Period, as the case may be, by giving the subscriber\_30 days' written notice of termination.
  - 7.2. Should the contract be terminated for whatsoever reason, the allocated usernames and passwords given to the clients that are used to access the data in the mobile application will be deactivated and the particular data related to the client will no longer be accessible. However, the data will be exported to the subscriber in an acceptable format as agreed by both parties if requested.
8. **GoMobile (Pty) Ltd REG No.2012/133150/07**
  - 8.1. Whilst GOMOBILE will make every reasonable effort to meet the administrative allocation of the Username and Password, configuration of the required solutions and customization of the technology, it is recorded and agreed that such date is a provisional date only.
  - 8.2. The Subscriber shall allow GOMOBILE or its approved representative to allocate different Keywords in the event that the requested Keyword is already taken by another establishment.
  - 8.3. A setup fee plus VAT will be paid to GOMOBILE on signature of this agreement.
  - 8.4. The Subscriber shall pay to GOMOBILE the monthly fee as referred to in the GOMOBILE Proposal 30 days after the first application is being utilized within the subscriber's business environment.
9. **Payment**
  - 9.1. All subscription fees are payable via standing bank order to GOMOBILE without deduction or set off for any reason whatsoever.
  - 9.2. Under no circumstances shall the subscriber be entitled to withhold or defer payment of any amounts due to GOMOBILE in terms of this agreement.
10. **SMS Fair Use Policy Charges**

The additional charges imposed by GoMobile on Signed Subscribers in respect of the extent to which SMS volumes exceed the SMS Fair Use Policy Threshold.

  - 10.1. "SMS Fair Use Policy Threshold" means the number of SMS's per Signed Subscriber Outlet which GoMobile has agreed to be liable for prior to imposing SMS Fair Use Charges on the Signed Subscriber. The threshold being set at a monthly cost by GOMOBILE for the duration of this agreement. This total monthly SMS threshold will be covered by the monthly license fee agreed above.
  - 10.2. The subscriber shall then cover the cost of SMS use in order for the stakeholder engagement to occur effectively (sending of keyword SMS to the short code and receiving a return SMS) in the form of a URL address in order to complete the feedback form based on the following:
    - i. GOMOBILE will manage the SMS services on behalf of the subscriber and undertakes not to profit from SMS revenues.
    - ii. GOMOBILE shall invoice the subscriber for all SMS costs on a monthly basis and such invoice shall be paid within 7 days accordingly.
    - iii. The subscriber shall pay a refundable deposit for potential SMS use which shall be repaid within 30 days of the agreement being canceled provided that all invoices have been paid by the subscriber to GoMobile.
    - iv. It is recorded that any current or future SMS use based on the exclusive keywords provided to the subscriber shall be invoiced to the subscriber and such payment shall be made within 30 days of invoice irrespective of the termination of this agreement by either party.
    - v. Subscribers located outside of the borders of South Africa will be required to complete an SMS requirements audit before the SMS Fair Use Policy can be applied.
11. **Connectivity**
  - 11.1. The onus of connecting to the Cellular Network Service Provider or internet provider as required rests with the Subscriber and the Subscriber shall bear all costs associated therewith.
  - 11.2. It is the Subscriber's responsibility to ensure that it possesses, or will possess, the hardware and Magnitude Application necessary to run the Magnitude Application.

## Terms and Conditions

### 12. Service Availability

- 12.1. Whilst GOMOBILE shall endeavor to facilitate the ongoing availability of the Solution GOMOBILE does not, and cannot, guarantee 100% availability on a 24-hour basis, 7 days a week.
- 12.2. GOMOBILE shall, where possible afford the Subscriber prior notice of scheduled maintenance or upgrades and shall schedule such maintenance for the most convenient time so as to minimize the inconvenience to Subscribers in general.

### 13. Security

GOMOBILE shall have the right to take whatever action and to implement whatever measures it may deem necessary to protect the confidentiality, security and integrity of the Magnitude Application and the data of its Subscribers.

### 14. Username and Password

It is the Subscriber's responsibility to ensure that only authorized representatives have access to its username and password.

### 15. Use

The Subscriber acknowledges and agrees that: -

- 15.1. The onus of capturing data and generating the appropriate information rests with the Subscriber.
- 15.2. It uses Magnitude Application entirely at its own risk.

### 16. Subscriber Data

- 16.1. The Subscriber shall own all rights, title and interest in and to the Subscriber's data.
- 16.2. GoMobile shall not view, use, exploit, permit the use of or distribute, directly or indirectly, or in any other manner whatsoever, the Subscriber data.

### 17. Breach

Should any party ("the defaulting party") commit a breach of any of the provisions of this agreement, then the other party ("the aggrieved party") shall be obliged to give the defaulting party 14 (fourteen) days written notice or such longer period as may reasonably be required in the circumstances, to remedy the breach. If the defaulting party fails to comply with such notice, the aggrieved party shall be entitled to cancel this agreement against the defaulting party or to claim immediate payment and/or specific performance by the defaulting party of all the defaulting party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the aggrieved party's rights to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have at law; provided always that, notwithstanding anything to the contrary contained in this agreement, the aggrieved party shall not be entitled to cancel this agreement for any breach by the defaulting party unless such breach is a material breach going to the root of this agreement and is incapable of being remedied by payment in money, or if it is capable of being remedied by payment in money, the defaulting party fails to pay the amount concerned within 14 (fourteen) days after such amount has been finally determined.

### 18. Address and Notices

- 18.1. For the purpose of this agreement, including the giving of notices and the serving of legal process, the subscriber chooses domicilium citandi et executandi ("domicilium") at its physical address as referred to in the GOMOBILE subscriber agreement.
- 18.2. Any notice given by GOMOBILE to the Subscriber in connection with this agreement may be delivered by hand, for which a written receipt shall be obtained, or be sent by pre-paid registered post to the domicilium chosen by the Subscriber.
- 18.3. A notice given as set out above shall be construed to have been duly given, if delivered by hand, on the date of delivery, if sent by post, 7 (seven) days after posting.

### 19. Subscriber Acknowledgement

The subscriber acknowledges and agrees that: -

- 19.1. Service quality available to the subscriber shall be limited to that provided by the Magnitude Application and the network services from time to time be adversely
- 19.2. affected by physical features such as buildings and underpass as well as atmospheric conditions and other causes of interferences, and
- 19.3. It shall not hold GOMOBILE, any of its employees, members or agents liable for any non-availability of the network services or for any other reasons whatsoever including damages.
- 19.4. The subscriber is under no circumstances to copy, alter or redistribute the Magnitude Application.
- 19.5. GOMOBILE is not responsible for any misuse of the system.

### 20. Liability and Indemnification

GOMOBILE shall not be liable for any loss, liability, damage or expense of whatsoever nature suffered by the Subscriber as a result of, or which may be attributable to:-

- 20.1. The use by the Subscriber or any other person of the Magnitude application;
- 20.2. Any mistake, error or omission arising from, or occasioned by, the utilization of the Magnitude application;
- 20.3. Any delay or failure arising from, or occasioned by, the non-availability of the Magnitude application.
- 20.4. The Subscriber indemnifies GOMOBILE and its members, agents or representatives against all loss, liability, damage and expense of whatsoever nature which the Subscriber may suffer as a result of, or which may be attributable to:-
- 20.5. Any breach by the Subscriber of any of its acknowledgments, undertakings or warranties as referred to herein;
- 20.6. Any use made by the Subscriber of the Magnitude application.

### 21. General

- 21.1. Non Variation: No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of this agreement, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by all parties to this agreement.
- 21.2. Non Waiver: No latitude, indulgence or extension of time granted by one part to the other shall prejudice in any way the rights of the first-mentioned party, nor shall it create new rights nor be construed as a waiver.
- 21.3. Whole Agreement: This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or
- 21.4. warranties between the parties other than those set out herein are binding on the parties. The Subscriber acknowledges having inspected the Magnitude solutions
- 21.5. and having satisfied itself as to the suitability thereof. GOMOBILE provides no warranties in relation to the Magnitude Application or related software.

### 22. Severability

Each of the provisions of this agreement shall be considered as separate terms and conditions and in the event that this agreement is affected by any legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part hereof.