

magicJack™ INDEPENDENT RESELLER TERMS AND CONDITIONS

Please note that the terms “magicJack™”, or “Product” should be considered one and the same and all Terms and Conditions of this Purchase Order will apply to each. The terms magicJack™ or “Product” apply to all versions of the magicJack™ device.

1. **Definitions.** For purposes of the purchase order attached hereto (the "Purchase Order") and these terms and conditions (these "Terms and Conditions" or this "Agreement"), (i) "Seller" or "We" shall mean Proactive Event Marketing, Inc., together with its parents, shareholders, subsidiaries, affiliates and entities under common control with any of the foregoing; and (ii) "Buyer" or "you" shall be defined on the Purchase Order and shall include its parents, shareholders, subsidiaries, affiliates and entities under common control with any of the foregoing.

2. **Purchase and Sale.** Subject to the terms and conditions set forth herein, Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the Product (as defined on the Purchase Order) in the quantity set forth in the Purchase Order. Buyer, on a non-exclusive basis, shall pay Seller the prices for the Product set forth in the Purchase Order and shall resell the Product to customers through only the approved channels (the "Channels") and only in the approved territory (the "Territory") set forth in the Purchase Order. Price is subject to change without notice. Buyer shall use its best commercial efforts to promote the sale and use of the Product within the Territory and will cooperate with users of the Product within the Territory, using its best efforts to preserve the good will of customers at all times.

3. **Payments.** Buyer shall pay Seller for the Product as set forth in the Purchase Order. If paying by credit card, Buyer hereby authorizes Seller to charge the credit card set forth in the Purchase Order for subsequent orders placed by Buyer, whether such orders are made orally or in writing by Buyer.

4. **Taxes.** Buyer shall be responsible for all taxes, duties, tariffs, and import/export fees, if any, arising out of the purchase of the Product by Buyer from Seller and the purchase of the Product by customers or Subagents from Buyer.

5. **Restrictions.**

a. Buyer shall not be permitted to sell or resell the Product: (i) through on-line auction sites including but not limited to eBay; (ii) through direct mail; (iii) through or for telemarketing; (iv) through multi-level marketing; (v) through marketing as a business opportunity; (vi) through email blasts; (vii) to retailers with more than 5 stores, unless specifically authorized in writing by Seller or (viii) through any other form of media advertising.

b. Buyer may not sell, advertise or list the Product online, or through an online retailer. This includes but is not limited to: amazon.com, buy.com, newegg.com or any e-commerce website.

c. Buyer is strictly prohibited from advertising magicJack™ or magicJack™ PLUS via Google online advertising tools, including but not limited to Google AdWords, Google AdSense, Google AdLinks or any sponsored ads. Buyer is strictly prohibited from using or purchasing, the trademarked term, magicJack™ or magicJack™ PLUS for any online Search Engine Optimization, online key word search or online sponsored link marketing and advertising.

d. The use of online search tools provided by Google, Yahoo, MSN, AOL, Bing, ASK or any other search engine companies are also strictly prohibited.

e. All advertising or marketing of the Product by Buyer must be approved, in advance, in writing by Seller, and, upon approval, magicJack LP will own copyrights on any/all advertising related to the Product.

f. Any printed materials, point-of sale, or media advertisements must receive prior, written approval from Seller. In the case of media advertisements, the publication or media outlet must also receive prior written approval from Seller.

g. The prohibitions set forth herein will also apply to any use of variations or mis-spellings of the words magic or jack or Plus intended to produce the same results. For example, magicalJack, magikJack, majicJack, etc. would all be prohibited.

h. magicJack™ and any variation as noted above, may not be used in any URL for the purpose of selling the Product.

i. Buyer shall resell the packaged versions of the Product provided by Seller in the form supplied by Seller.

j. Buyer agrees not to decompile, disassemble, reverse engineer or otherwise seek to reduce the object code of the software or firmware embedded in the Product to its source code form.

k. This Agreement does not convey to Buyer any property or license interest in magicJack's™ trade name, trademarks, copyrights, patents or any other intellectual property rights.

l. Whatever use Buyer makes of the trade name and/or trademarks of magicJack LP shall be for the exclusive benefit of magicJack LP.

m. Buyer may not market or sell the Product other than through the Channels approved in the Purchase Order and within the Territory in the Purchase Order, unless it receives the prior written consent of Seller.

n. Buyer shall maintain and uphold magicJack LP's good name and reputation for quality and not disparage magicJack or its products or otherwise create an unfavorable impression of magicJack in the public mind.

o. Resellers may not pre-register magicJack™ or magicJack™ PLUS using their credit card and/or email address or that of any third party. A magicJack unit may only be registered directly by the end-user. magicJack LP reserves the right to deactivate units based on any excessive number of registrations under the same information. There are no residuals or commissions on annual service charges, international minute purchases, or any other fees incurred by the end user.

6. **Minimum Advertised Price Policy ("MAP Policy")**

a. Minimum advertised pricing is established by Seller and may be adjusted by Seller at its sole discretion..

b. MAP Policy applies to the advertised price only. Buyer is able to determine actual prices charged to the consumer. Seller will not seek or accept any agreement or understanding with Buyer as to the actual sales prices offered to the consumer.

c. "Advertised price" means the price of the Product offered in any advertising placements in any medium, whether in print (eg, newspaper, catalogs, direct mail, flyers, etc); broadcast (TV, radio, telemarketing, etc), outdoor media (billboards, posters, etc), or electronic formats (websites, banners, emails, text messaging, etc).

d. The advertising of "free" accessories, financing incentives or other such consumer promotions does not violate this MAP Policy, as long as the value of the promotion is not deducted from the Product minimum advertised price.

e. Advertising the Product in combination with any other product in such a manner as to imply that the cost of the Product is less than the minimum advertised price is prohibited.

f. Seller will reserve the right to suspend or revoke authorization of Buyer to purchase or resell the Product in the event that Buyer breaches this MAP Policy.

7. **Appointment of Subagents.** Buyer may not appoint subagents (each a "Subagent") to act on Buyer's behalf and may not sell the Product directly to Subagents for resale without the express written approval of Seller. If Seller consents to the use of a Subagent by Buyer, Buyer shall cause each Subagent to execute such agreements as may be requested by Seller, for the benefit of Seller, directly with Seller to insure that such Subagent is bound by the terms and conditions of this Agreement. Buyer shall take all reasonable actions necessary to verify that such Subagent (i) is not working for another buyer; (ii) has not been terminated by another buyer for breaching its agreement with such buyer; (iii) has not marketed or sold the Product in a manner that violates Sections 5, 6, or 7; or (iv) has not violated other material provisions of its agreement with its buyer, including the provisions in Sections 22, 24 or 25. Subagent shall be required to obtain the consent of Seller before selling the Product to any party other than end users of the Product. In its reasonable discretion, Seller may reject any purchase order submitted to Buyer by Subagent for any reason including, without limitation, violations by Buyer or Subagent of any of the restrictions set forth in Section 5. Buyer shall indemnify Seller for any costs and expenses incurred by Seller in connection with Buyer's use of Subagents.

8. **Non-Competition.** Buyer agrees on behalf of itself and its Subagents that during the Term, including any renewals thereof, and for a two-year period thereafter, Buyer and its Subagents shall not, directly or indirectly, sell the Product, unless purchased from Seller pursuant to this Agreement.

9. **Delivery: Title and Risk of Loss.** The Product shall be shipped by Seller FOB Seller's facility by the delivery method reasonably designated by Buyer. Title to the Product shall pass to Buyer upon the shipment of the Product in accordance with this Section 9. For purposes of this Agreement, "FOB" shall have the meaning set forth in Incoterms (2000) published by the International Chamber of Commerce.

10. **Inspection and Claims.** Buyer shall have five (5) days from receipt of the Product at Buyer's facility in which to inspect the Product received from Seller. Any and all claims for shortages shall be made in writing by Buyer to Seller, within such period. Except as provided in Sections 11 and 12, Buyer shall not be entitled to return any Product.

11. **Return of Noncomplying Product.** Buyer shall have the right to return for credit (including any sales tax paid) or exchange any individual Product that is defective or damaged at the time of shipment by Seller (a "Noncomplying Product"), provided that Buyer shall not be permitted to return any earlier generation or obsolete Product unless such Product is otherwise defective or

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damaged at the time of shipment. In order to receive a credit or exchange, Buyer must request and receive a RMA number by e-mail, which RMA number will not be unreasonably withheld, and the Product must be returned with its original packaging. Seller will pay for return shipping.

12. Return of Product.

a. Seller will comply with the 30 Day Guarantee policy described in the Product package. Seller will grant Buyer a credit or a refund of Buyer's purchase price, plus any sales taxes paid, to Seller for any individual Product that has been returned to Buyer due to retail customer dissatisfaction. In order to receive the credit or refund, Buyer must request and receive a Seller RMA number by e-mail and the fully intact and unmarked Product must be returned to Seller with: its original packaging, the provided USB extension cord, the Ethernet cable, the pug, a copy of the e-mail from Seller acknowledging the RMA and a copy of the customer's or end user's receipt with their name, e-mail address, reason for return and the date of purchase of the Product noted. Buyer shall not be entitled to a credit or refund for any return that is not received by Seller within 30 days from the purchase date on the receipt.

b. Seller shall have the right to charge-back Buyer the retail mark-up amount associated with the return of any individual Product supplied by or through Buyer and purchased at a retail store and for which a customer has requested a refund, for any reason, directly from magicJack LP or Seller. The charge-back amount will equal the difference between Buyer's purchase price, per device, and the Product's retail purchase price, per device.

c. Buyer shall determine its own return policies for sales to customers or Subagents; provided, however, that such policies shall not violate, and do not supersede or otherwise modify, Sections 12(a) or (b).

13. **No Stock Balancing.** Seller shall have no obligation to exchange units in Buyer's possession for any new versions of the Product.

14. **Indemnification by Buyer.** Buyer shall indemnify, defend and hold harmless Seller and magicJack from and against any liability, damage, claim, or any litigation cost or expense (including but not limited to reasonable attorneys' fees) to the extent that such claim arises out of (i) Buyer's or Buyer's Subagents use, marketing, promotion or support, if applicable, of the Product; or (ii) any services or software (other than the Product) provided by Buyer or Buyer's Subagents.

15. **Indemnification by Seller.** Seller shall indemnify, defend and hold harmless Buyer from and against any liability, damage, claim, or any litigation cost or expense (including but not limited to reasonable attorneys' fees) to the extent that such claim arises out of Seller's use, marketing, promotion and support of the Product.

16. **Indemnification Procedures.** If either party (the "Indemnitee") makes an indemnification request to the other party (the "Indemnitor"), the Indemnitee shall permit the Indemnitor to control the defense, disposition or settlement of the matter at its own expense; provided that the Indemnitor shall not, without the consent of the Indemnitee, enter into any settlement or agree to any disposition that imposes an obligation on the Indemnitee that is not wholly discharged or dischargeable by the Indemnitor, or imposes any conditions or obligations on the Indemnitee other than the payment of monies that are readily measurable for purposes of determining the monetary indemnification or reimbursement obligations of the Indemnitor. The Indemnitee shall notify the Indemnitor promptly in writing of any claim for which the Indemnitor is responsible and shall reasonably cooperate with the Indemnitor to facilitate defense of any such claim. The Indemnitee shall at all times have the option to participate in any matter or litigation, including but not limited to participation through counsel of its own selection, if desired, the hiring of such separate counsel being at the Indemnitee's own expense.

17. **Term.** The initial term of this Agreement shall commence on the date set forth on the first Purchase Order executed by Buyer and shall continue for a two (2) year period thereafter (the "Initial Term"). The Initial Term shall automatically be extended for additional and successive one (1) year period(s) (each, an "Extension Term" and together with the Initial Term, the "Term") unless either party gives the other party written notice to terminate the Agreement no less than sixty (60) days prior to the expiration of the Initial Term or any Extension Term. Notwithstanding the foregoing, this Agreement may be terminated immediately by Seller or Buyer if:

a. the other party fails to cure a material breach of the provisions, terms and conditions of this Agreement within thirty (30) days after receiving written notice of the breach from the non-breaching party;

b. the other party makes a general assignment for the benefit of its creditors or files or has filed against it a petition in bankruptcy, insolvency or receivership (or similar proceeding); or

c. magicJack LP is no longer providing the Product to Seller for resale.

18. **Sales after Termination.** Should Seller terminate the Agreement, Seller at its sole discretion may allow Buyer to continue to sell the Product purchased and in possession of Buyer; or may prohibit Buyer from further selling the Product Buyer has purchased. In the event Seller prohibits Buyer from selling the Product that Buyer has already purchased and is paid-for-Product in inventory, then Buyer may request that Seller repurchase unsold Product at Buyer's purchase price, provided that Buyer shall have made such request within thirty (30) days of prohibition. Upon such request, Seller will repurchase the unsold Product within thirty (30) days of request and refund any pro-rated freight.

19. **Seller and magicJack LP Warranties; Disclaimer.** EXCEPT AS OTHERWISE SET FORTH HEREIN OR UNDER THE STANDARD PRODUCT GUARANTEE, MAGICJACK LP AND SELLER MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND SPECIFICALLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT WITH RESPECT TO THE PRODUCT AND ANY OTHER MATERIALS PROVIDED TO BUYER HEREUNDER.

20. **Buyer Warranty.** Buyer agrees to perform its obligations hereunder in a professional and workmanlike manner and in accordance with all applicable state, local and federal laws.

21. **Limited Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER OR MAGICJACK LP BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ORDER OR THE PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL SELLER OR MAGICJACK LP BE LIABLE FOR ANY OTHER DAMAGES IN EXCESS OF AMOUNTS ACTUALLY PAID TO SELLER BY BUYER HEREUNDER FOR THE SALE GIVING RISE TO THE DAMAGES.

22. **Damages.** Buyer recognizes that compliance with Sections 5, 6, and 7 are of the essence of this Agreement and that Seller will suffer financial loss, which will be uncertain, impossible to ascertain and irreparable, if Buyer or its Subagent breaches any of these provisions. Accordingly, if Buyer or its Subagent breaches any of the provisions set forth in Sections 5, 6, or 7, Seller and Buyer agree that in addition to termination of this Agreement, as liquidated damages for such breach, Buyer shall pay Seller an amount equal to \$20.00 for each Product purchased by Buyer from the commencement of the Agreement, which Buyer and Seller acknowledge and agree is a reasonable approximation of the damages Seller would suffer upon such a breach by Buyer.

23. Confidential Information.

a. The term "Confidential Information" means any material or information disclosed by either party to the other party either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation material or information relating to such party's or magicJack's research, development, know-how, products, product plans, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, marketing, finances, or other business information or trade secrets), which is designated as "Confidential," "Proprietary" or some similar designation, or other information, the confidential or proprietary nature of which is reasonably apparent under the circumstances. Notwithstanding anything to the contrary contained in this Agreement, information collected by Seller or magicJack LP, including without limitation, information regarding customers or use of the Product collected through the registration process or otherwise shall be deemed the Confidential Information of Seller or magicJack LP, as applicable, and in no event shall Buyer claim any of the same as its Confidential Information.

b. Each party shall treat as confidential all Confidential Information of the other party or of magicJack, as applicable, shall not use such Confidential Information except to exercise its rights and perform its obligations under this Agreement herein, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use at least the same degree of care it uses to prevent the disclosure of its own confidential information of like importance, which care shall be no less than reasonable care, to prevent the disclosure of Confidential Information of the other party or of magicJack. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's or magicJack LP's Confidential Information.

c. Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed and is in the public domain through no fault of the receiving party; (ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by documentation in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the

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receiving party without any use of the Confidential Information of the disclosing party; (v) becomes known to the receiving party, without restriction, from a third party not bound by an obligation of confidentiality; or (vi) is disclosed generally to third parties by the disclosing party without restrictions similar to those contained in this Agreement. The receiving party may disclose the other party's or magicJack's Confidential Information to the extent such disclosure is required by law or by order or requirement of a court, administrative agency, or other governmental body, but only if the receiving party provides prompt notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

d. The terms and conditions of this Agreement shall be treated as Confidential Information of Seller.

24. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to its conflict of laws provisions or your actual state or country of residence. Any claims, legal proceeding or litigation arising in connection with this Agreement will be resolved by binding arbitration. The arbitration shall be administered in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. Any matter to be settled by arbitration shall be submitted to the American Arbitration Association in Pennsylvania and you consent to binding arbitration in Pennsylvania.

25. Local Laws. Buyer will comply with all laws and regulations applicable in the Territory, including those dealing with the sale and distribution of the Product purchased hereunder. Without limiting the generality of the foregoing, Buyer shall, at its sole expense, obtain and maintain all licenses and governmental approvals which may be necessary to permit the sale of the Product purchased hereunder. Buyer shall further keep Seller informed of any laws, regulations, governmental orders or requirements which affect the ordering, shipment, sale, marketing or distribution of the Product within the Territory and shall, in all cases, refrain from engaging in any activities or conduct which would cause Seller or magicJack LP to be in violation of the laws of any jurisdiction.

26. Export Regulations. Buyer acknowledges that the Product is subject to United States export controls, pursuant to the U.S. Export Administration Regulations and other applicable laws. Buyer shall comply with all applicable provisions of the Export Administration Regulations and other applicable laws, and shall not export, reexport, transfer, divert or disclose, directly or indirectly, including via remote access, the Product, any confidential information contained or embodied in the Product, or any direct product thereof, except as authorized under the Export Administration Regulations and other applicable laws. This includes but is not limited to the prohibition of the export of products to the countries of: North Korea, Iran, Sudan, Syria, and Cuba.

27. Severability. If any provision in this Agreement is found invalid or unenforceable, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible

interpretation would save such provision, it shall be severed from the remainder of this Agreement, which shall remain in full force and effect, and the parties shall negotiate, in good faith, a substitute, valid and enforceable provision that most nearly effects the parties' intent in entering into this Agreement.

28. Independent Contractors. The relationship between the parties to this Agreement is and shall be that of independent contractors. It is expressly agreed that nothing in this Agreement shall be construed to create or imply a partnership, joint venture, agency relationship or contract of employment. Neither party shall have the authority to make any statement, representation or commitment of any kind, or to take any action, that shall be binding on the other party, except as authorized in writing by the party to be bound. Buyer shall make no representations or warranties on behalf of magicJack LP or Seller with respect to the Product.

29. Modification. This Agreement shall not be amended unless the same is mutually agreed to in writing by both parties; provided, however, this Agreement and the Purchase Order, shall be deemed to be amended upon written notice to Buyer of any amendment required by magicJack with respect to sellers and resellers of the Product during the Term.

30. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither party shall assign any of its rights, obligations, or privileges (by operation of law or otherwise) hereunder without the prior written consent of the other party. Notwithstanding the foregoing, however, (i) either party may assign this Agreement to a successor in interest (or its equivalent) of all or substantially all of its relevant assets, whether by sale, merger, or otherwise; and (ii) Seller (and any assignee of Seller) may assign this Agreement to any of its affiliates. Any attempted assignment in violation of this section shall be void.

31. Notices. Any notice required or permitted to be given by either party under this Agreement shall be in writing and personally delivered or sent by commercial courier service, or by first class airmail (certified or registered if available), to the other party at its address set forth below its signature, or such new address as may from time to time be supplied hereunder by the parties hereto. If mailed, notices shall be deemed effective 5 working days after deposit, postage prepaid, in the mail.

32. Survival. The provisions set forth in Sections 4, 5, 6, 13, and 17-22 (and the provisions that specifically relate thereto) shall survive the expiration or termination of this Agreement for a period of five years whether termination is voluntary or involuntary on the part of either party. The provisions set forth in Section 7 (and the provisions that specifically relate thereto) shall survive the expiration or termination of this Agreement for a period of two years whether termination is voluntary or involuntary on the part of either party.