

Imagicle ApplicationSuite as a Service agreement.

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Contents

1 Introduction	4
2 Definition	4
3 Service Description	4
4 Use of the service	5
5 Support and Updates.....	5
6 Property ownership.....	6
7 Datacenter and Service availability.....	6
8 Personal Data Processing.....	6
9 Term and Terminations	8
10 Indemnifications	8
11 Warranties and limitations of liability.....	8
12 Assignment	8
13 Acceptable use policy	9
14 Governing law, compulsory arbitration, jurisdiction	9
15 Contacts	10

1 Introduction

PLEASE READ THESE TERMS OF USE BEFORE USING THE IMAGICLE APPLICATIONSUITE AS A SERVICE DEFINED HERE UNDER (“THE SERVICE”)

THIS AGREEMENT IS BETWEEN THE CUSTOMER (“CUSTOMER”) AND IMAGICLE SPA (“Imagicle”).

If you are accepting on behalf of CUSTOMER, you represent and warrant that:

- you have full legal authority to bind CUSTOMER to this Agreement;
- you have read and understand this Agreement;
- and you agree, on behalf of CUSTOMER, to this Agreement.

BY ACCESSING OR USING THE SERVICE, OR BY ACCEPTING THE TERMS OF THIS AGREEMENT THROUGH AN ORDER FORM THAT INCORPORATES THIS AGREEMENT, CUSTOMER ACCEPTS AND AGREES TO THESE TERMS.

IF YOU DO NOT WISH TO AGREE TO THESE TERMS OF USE, YOU MAY NOT USE.

2 Definition

The following words, terms and/or phrases shall have the meanings set forth thereafter.

- “Documentation” means THE SERVICE description, manuals and other related sales and technical documentation, provided to CUSTOMER by Imagicle.
- “Reseller” means any entity that submits a Sales Order and purchases a License for the purpose of resale to another user.
- “Service Provider” shall mean any entity that offers hosted software and services to CUSTOMER’s, such as web hosting, hosted applications, messaging, collaboration and platform infrastructure.
- “Sales Order” means a completed version of Imagicle’s standard form of sales order for THE SERVICE, or other form of order acceptable to Imagicle, that has been submitted to Imagicle by the CUSTOMER directly or by means of a Reseller, or a Service Provider;
- “Services” means the hosting service provided by the Service Provider to its SP End Users, using the Software (run on servers owned or maintained by the Service Provider);
- “SP End Customers” means a third party CUSTOMER of Service Provider using “THE SERVICE” included in the Services provided by the Service Provider;
- “Customer Data” means content provided to Imagicle by CUSTOMER via THE SERVICE.

3 Service Description

The Imagicle ApplicationSuite as a Service (“THE SERVICE”) delivers enterprise-grade unified communications applications as a service from the Imagicle cloud.

THE SERVICE includes the features of the Imagicle ApplicationSuite hosted and operated by Imagicle in a dedicated private instance per CUSTOMER in the Imagicle cloud.

With a dedicated instance per CUSTOMER, THE SERVICE grants security, scalability, flexibility. As part of the receiving services, CUSTOMER will have access to the User or Admin web Console, through which use and administer the Services.

THE SERVICE is provided through a private cloud and primarily delivered over a private connection to the CUSTOMER premises.

A private connection provides security and reliability, consistent network performance with faster speeds and lower latencies, delivering a more consistent and enhanced experience.

OTT (Over the top) internet access can be enabled on demand to serve mobile and remote workers.

The private peering connection can be established through:

- VPN, standard site-to-site IP-SEC virtual private network to THE SERVICE instance in the Imagicle Cloud.
- Equinix, connect dedicated links from CUSTOMER premises to THE SERVICE instance via Equinix Cloud Exchange.

In either peering modes the CUSTOMER is responsible for the corresponding premises equipment and Equinix agreement.

CUSTOMERs can also leverage their networking partners to get the private peering connection to their instance of THE SERVICE (Partner Connect model).

Internet access from the CUSTOMER instance of THE SERVICE is disabled by default for security reasons, where only the public Imagicle address <https://api.imagicle.com> is reachable via a secure connection, to get access to the Imagicle Cloud Services.

Internet access to specific services (ex: Microsoft O365, Google, Salesforce, Dropbox, ..) may be enabled on demand.

CUSTOMER will be solely responsible, at its own expense, for acquiring, installing and maintaining all hardware, software and other equipment as may be necessary for them to connect to, access, and use THE SERVICE under this Agreement.

CUSTOMER acknowledges that the operation of THE SERVICE is dependent on the networks, services and facilities of third parties (e.g., telecommunications providers), and that Imagicle has no responsibility or liability for the failure of THE SERVICE due to the failure of any such third-party networks, services or facilities.

4 Use of the service

Subject to the terms and conditions of this Agreement, Imagicle will provide to CUSTOMER a subscription to access and use THE SERVICE solely for CUSTOMER's business operations in accordance with the Documentation.

CUSTOMER may not sublicense or transfer these rights except as permitted under the Assignment section of the Agreement.

As set forth in the applicable Order Form, the Service will be provided for a specified subscription period (subject to the termination provisions in this Agreement). CUSTOMER shall pay the subscription fees for the Service as set forth in the Order Form. CUSTOMER's ability to access and use the Service shall be subject to CUSTOMER's compliance with the terms of this Agreement and CUSTOMER's receipt and use of applicable access credentials provided by Imagicle.

CUSTOMER agrees that CUSTOMER's acquisition of a subscription to the Service was not made in reliance on an expectation that the Service will add additional functionality in the future, or on any statements made by Imagicle regarding possible future functionality.

5 Support and Updates

Imagicle will provide support for THE SERVICE as set forth at www.imagicle.com/support.

Imagicle may provide updates or modifications to THE SERVICE and Documentation from time to time, in which case earlier versions of THE SERVICE and Documentation will no longer be accessible.

6 Property ownership

CUSTOMER acknowledges and agrees that it does not acquire any right, title or interest in or to any of THE SERVICE or the Documentation or any intellectual property rights therein, except the right to use them pursuant to the terms and conditions of this Agreement.

Intellectual Property Rights means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

7 Datacenter and Service availability

THE SERVICE is operated via Amazon Web Services (AWS) instances in US, Europe and Middle East, based on CUSTOMER choice.

Imagicle can also offer to deploy the CUSTOMER instance in any of the AWS available regions throughout the world, to provide THE SERVICE with the minimum network latency and the most secure environment for Customer Data, never leaving the instance region.

All facilities used to store and process applications and Customer Data will adhere to reasonable security standards.

Imagicle has implemented industry standard systems and procedures to:

- (i) ensure the security and confidentiality of an Applications and Customer Data,
- (ii) protect against anticipated threats or hazards to the security or integrity of an Applications and Customer Data
- (iii) protect against unauthorized access to or use of Applications and Customer Data.

Imagicle will make the Service available for Customer's based on 2 availability models:

- Standard Availability,
- High Availability,

Both deployments include 2 virtual machines per customer for call processing, DB and web UI, deployed on 2 different availability zones in the same region.

In Standard Availability, the second virtual machine is shutdown in a cold stand-by mode.

In High Availability, the second virtual machine is running in a cluster hot-stand-by mode.

In case of failure on primary virtual machine in Standard Availability model, Imagicle provides the following Recover Time and Recover Point objectives capabilities:

RTO=max4hh/RPO=max24hh.

In case of High Availability, RTO and RPO are 0, with no service interruption for customers, except for scheduled maintenance slots.

8 Personal Data Processing

With regard to the European Union's General Data Protection Regulation ("GDPR"), CUSTOMER agrees that CUSTOMER acts as a Controller (as defined in GDPR) and Imagicle acts as Processor.

Subject to CUSTOMER's compliance with its representations and warranties herein, with regard to European Union (EU) User Data, Imagicle will:

- process EU User Data on CUSTOMER’s instructions and actions initiated within THE SERVICE, set forth in this Agreement;
- have the right to engage the subprocessors listed at www.imagicle.com/subprocessors, which Imagicle may update from time-to-time in its sole discretion.
- maintain EU User Data for as long as needed to provide THE SERVICE;
- ensure that persons authorized to process the EU User Data have committed themselves to confidentiality;
- take the technical and organizational measures to comply with Imagicle’s information technology security policies;
- assist CUSTOMER by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of CUSTOMER’s obligations to data subjects;
- assist CUSTOMER in ensuring compliance with the obligations pursuant to GDPR Articles 32 to 36 taking into account the nature of processing and the information available to Imagicle;
- at CUSTOMER’s choice, delete or return all EU User Data in its possession no later than one hundred eighty (180)days following the end of the provision of THE SERVICE, unless Union or Member State law requires storage of the EU User Data;
- make available to CUSTOMER all information reasonably necessary to demonstrate compliance with Imagicle’s obligations to CUSTOMER under these above provisions.

The table below lists the personal data of CUSTOMER end users processed by Imagicle to provide THE SERVICE.

Personal data Category	Type of data processed	Purpose of processing
User information	<ul style="list-style-type: none"> • Name and Aliases • Email Address • Profile Picture • SIP Identifier <ul style="list-style-type: none"> • IP address of devices • MAC address of devices • Client version • Voicemail Box Number • Credentials - User ID, Password, PINs • Cookies • Company Name • Company Contact Name and Title • Company Time Zone • Company Credentials for external services (ex: email account) • Contact List (Names, numbers, emails, titles, Speed dials) 	<p>We use Registration Information to:</p> <ul style="list-style-type: none"> • Deliver and provide operational and provide operational support for THE SERVICE • Display identity to other users • Authenticate and authorize access
Usage Info	<ul style="list-style-type: none"> • Call detail (e.g.; number called, participants, time of call, duration, ..) • Log files containing communications traffic data • Recorded conversations • Sent / Received virtual Fax 	To provide the Service
Architecture info	<ul style="list-style-type: none"> • CUCM version • number of CUCM users • number of CUCM devices • CUCM IP address 	To provide the Service

9 Term and Terminations

This Agreement shall begin upon the earlier of CUSTOMER's acceptance of this Agreement or CUSTOMER's use of THE SERVICE and shall continue until the subscription granted in accordance with this Agreement has expired or been terminated.

Upon the expiration or termination of CUSTOMER's subscription, CUSTOMER shall cease all use of THE SERVICE. CUSTOMER acknowledges that its ability to access or use THE SERVICE may be automatically disabled upon the expiration or termination of CUSTOMER's subscription. CUSTOMER acknowledges that THE SERVICE may include technological means of determining compliance with this Agreement, and disabling THE SERVICE in the event of the breach or the termination of this Agreement. Imagicle may terminate this Agreement immediately, without judicial intervention or prior notice to CUSTOMER, if CUSTOMER fails to comply with any term of this Agreement. For clarity, the termination of this Agreement will result in the termination of any then-current subscription. Upon the expiration or termination of CUSTOMER's subscription, CUSTOMER shall immediately uninstall and delete all copies of any Installed Technology in the form of software and stop use of all Installed Technology in the form of hardware.

10 Indemnifications

CUSTOMER agrees to indemnify, defend and hold Imagicle and its affiliates, officers, agents, employees, service providers and suppliers harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to or arising out of (a) User Data or Content, (b) CUSTOMER's or Users' use of the Service, or (c) CUSTOMER's breach of this Agreement. Imagicle may participate in the defense of any indemnifiable claim with counsel of Imagicle, at Imagicle's own expense; provided, however, that if CUSTOMER fails to provide a defense pursuant to the terms of this paragraph, such legal fees shall be at CUSTOMER's expense. CUSTOMER will not enter into the settlement of any indemnifiable claim without the prior written consent of Imagicle, not to be unreasonably withheld.

11 Warranties and limitations of liability

Imagicle undertakes to comply with high-quality standards in the Services to the CUSTOMER. Imagicle will not be responsible for interruptions, delays, and malfunctions in the provision of the Products/Services deriving from the CUSTOMER's breaches or from the application of specific laws or regulations.

Moreover, Imagicle will not be responsible for, and no liability shall result to Imagicle for any damage, lost profits, losses or costs incurred which result from unforeseeable circumstances or force majeure without prejudice to the terms established by mandatory provisions of the law. In case of Imagicle ascertained responsibility, the CUSTOMER will be entitled to a refund as that cannot exceed the subscription fee paid by the CUSTOMER in the last 12 months. The entity and payment method of any refund to the CUSTOMER will be established on a case-by-case basis.

12 Assignment

The CUSTOMER hereby expressly consents Imagicle to assign this Agreement to any subsidiary and/or in the event of a merger or sale of all or substantially all of the stock assets of Imagicle without further CUSTOMER consent. Imagicle will however notify the CUSTOMER in case of assignment.

Neither this Agreement nor any rights granted hereunder, nor the use of any of THE SERVICE may be assigned, or otherwise transferred, in whole or in part, by the CUSTOMER without

Imagicle's written consent. If CUSTOMER assigns the Agreement in conflict with the provisions above, Imagicle may terminate this Agreement with immediate effect.

Subject to this Agreement, during the Term, CUSTOMER may use THE SERVICE and integrate THE SERVICE into any Application that has material value independent of the Services (ex: Managed Services and Telecommunications providers). In such a case, the CUSTOMER that is providing THE SERVICE as part of its Services may sublicense or transfer these rights to its SP End Customers.

13 Acceptable use policy

Subject to this Agreement, during the Term, CUSTOMER may use THE SERVICE and integrate THE SERVICE into any Application that has material value independent of the Services (ex: Managed Services and Telecommunications providers). In such a case, the CUSTOMER that is providing THE SERVICE as part of its Services may sublicense or transfer these rights to its SP End Customers.

THE SERVICE may not be used in any illegal, abusive, or another manner that interferes with the business or activities of any other party. The following list gives examples of prohibited. This list is provided by way of example and should not be considered exhaustive.

- Attempting to bypass or break any security mechanism on any of the Services or using the Services in any other manner that poses a security or service risk to the Service or any of its users.
- Testing or reverse-engineering the Services in order to find limitations, vulnerabilities or evade filtering capabilities.
- Launching or facilitating, whether intentionally or unintentionally, a denial of service attack on any of the Services or any other conduct that adversely impacts the availability, reliability or stability of the Services.
- Transmitting any material that contains viruses, trojan horses, worms or any other malicious, harmful, or deleterious programs.
- Engaging in any unsolicited advertising, marketing or other activities, including, without limitation, any activities that violate anti-spam laws and regulations.
- Using Services to engage in fraudulent activity with respect to third parties.
- Transmitting any material that infringes the intellectual property rights or other rights of third parties.
- Transmitting any material that is libelous, defamatory, discriminatory or otherwise malicious or harmful to any person or entity.

If CUSTOMER becomes aware that any Application, Project, or CUSTOMER Data violates the Acceptance Use Policy, CUSTOMER will immediately suspend the Application or Project and/or remove the relevant CUSTOMER Data (as applicable). If CUSTOMER fails to suspend or remove as noted in the prior sentence, Imagicle may specifically request that CUSTOMER do so. If CUSTOMER fails to comply with Imagicle's request to do so within twenty-four hours, then Imagicle may disable the Project, Data or Application, and/or disable the Account/Tenant (as may be applicable) until such violation is corrected.

14 Governing law, compulsory arbitration, jurisdiction

Before requesting a court of law, Imagicle intends to resolve any dispute by Arbitration. All contracts are stipulated by Imagicle Spa with registered office in Italy, and Italian law applies to them. For any dispute concerning the interpretation and execution of this Contract, if the arbitration has not been resolved and the court is appealed, the Italian courts will be appointed.

15 Contacts

For any questions or clarifications on Imagicle Terms, Licensing Agreements, Products, and Services, CUSTOMER can contact Imagicle at legal@imagicle.com.

