

POSH TERMS OF SERVICE

Last Updated: *February 18, 2019*

This is a legal agreement between the person or organization (“Customer” or “you”) agreeing to these Terms of Service (“ToS”) and Posh Technologies Inc. (“Posh”, “us”, “our” or “we”). By accepting these ToS, signing an Order, or using the Services, you represent that you are of legal age and have the authority to bind the Customer to the Order, this ToS, and the applicable Service Descriptions (collectively the “Agreement”).

ACCESS AND USE OF POSH’S SERVICES

1.1. **Right to Use Services.** You agree to use the Services in accordance with the use levels by which we measure, price, and offer our Services as posted your Order or the Service Descriptions (“**Use Levels**”). You may use our Services only as permitted in these ToS and you consent to our [Privacy Policy](#), which is incorporated into this Agreement by reference. We grant you a right to use these Services expressly for business and professional purposes. If your affiliates use our Services, you warrant that you have the authority to bind those affiliates and you will be liable if your affiliates do not comply with the Agreement. “**Services**” means our software as a service (“SaaS”) offerings. The Services, software and websites are provided using resources located in the USA and in various locations around the world and you consent to having personal data processed by us in the United States and other locations.

1.2. **Limitations on Use.** By using Posh’s Services, you agree on behalf of yourself, your users and your attendees, not to (i) duplicate, alter, modify, create or plagiarize work from, prepare derivative works of, reverse engineer, reverse assemble, or otherwise attempt to locate or discern any source code of our Services; (ii) knowingly or negligently use our Services in a way that abuses or disrupts our networks, user accounts, or the Services; (iii) transmit through the Services any harassing, tortious, defamatory, libelous, indecent, vulgar, obscene, fraudulent, invasive, or unlawful material; (iv) market, sell or resell, assign, or sublicense the Services to any third party; (v) use the Services in violation of applicable laws or regulations; (vi) use the Services to send unauthorized advertising, or spam; (vii) harvest, collect, or gather any data without consent; or (viii) transmit through the use of Services any material that may infringe the intellectual property (“IP”), privacy, or other rights of third parties.

1.3. **Changes to Services.** We reserve the right to modify, enhance, alter, upgrade, improve, or discontinue, features of our Services from time to time as we deem appropriate and at our discretion. We will not materially reduce the core functionality or discontinue any Services unless we provide you with prior written notice. We may offer additional functionality to our standard Services or premium feature improvements for an additional cost.

1.4. **Proprietary Rights.** You acknowledge that we or our licensors retain, without limitation, all proprietary rights, title and interest in the Services, our name, trademarks, service marks, or any other type of mark (together, the “**Posh Marks**”), and any and all related IP rights, including,

without limitation, all modifications, enhancements, derivative works, and upgrades. You agree that you will not use, register, or attempt to register any trademark, service mark, business name, domain name, or social media account name or handle which incorporates in whole or in part Posh Marks or is substantially similar to any of these in the USA or any other jurisdiction.

1.5. **Service Descriptions.** “**Service Descriptions,**” is the package of services provided by Posh which may include, but is not limited to the following:

The Service Descriptions are hereby incorporated into these ToS.

ORDERS, FEES AND PAYMENT.

2.1. **Orders.** You may order Services using our then current ordering processes (“**Order**”). All Orders are effective on the earlier of (i) the date you submit your Order, or (ii) the date on the signature block of the Order (the “**Effective Date**”). Acceptance of your Order may be subject to our verification and credit approval. A purchase order is required for non-credit card transactions over \$10,000 USD, or its equivalent, unless the Customer does not require a purchase order as part of its purchasing process. Each Order shall be treated as a separate and independent Order.

2.2. **Fees and Payment.** You agree to pay all applicable, undisputed fees for the Services on the terms set forth on the invoice. Except as set forth in Section 3.3 below, any and all payments you make to us for access to the Services are final and non-refundable. You are responsible for any and all fees, including overages and charges imposed by your voice and/or data transmission providers related to your access and use of the Services. You are responsible for providing accurate and current billing, contact and payment information to Posh. You agree that Posh is authorized take steps to confirm and verify whether your payment method is valid, charge your payment card, or bill you for all amounts due for your use of our Services, and automatically update your payment information in the event your payment card on file is not valid. You agree that your credit card information and related personal data may be provided to third parties for the purposes of payment processing and fraud prevention. We reserve the right to suspend or terminate your Services if at any time we determine that your payment information is inaccurate, not current. You are responsible for all fees and overdraft charges that we may incur when charging your card for payment. We reserve the right to, from time to time, update our pricing of the Services after your Initial Term and price changes will be effective as of your next billing cycle. We will promptly notify you of any pricing changes via publication on our website, emailing, quoting, or invoicing you.

2.3. **Sales, Promotional Offers, Coupons and Pricing.** Sales, promotions and other discounted pricing offers are temporary and, upon the renewal of your subscription, any such discounted pricing offers may expire. We reserve the right to discontinue and/or modify any coupons, credits, sales and special promotional offers at our sole discretion.

2.4. **Disputes; Delinquent Accounts.** You must notify us of any fee dispute within 15 days of the invoice date or else relinquish the right to dispute such amount. Once resolved, you agree

to pay those fees within 15 days. We may temporarily suspend or terminate your Services if you do not pay undisputed fees. Additionally, you agree to reimburse us for any and all reasonable costs and/or expenses incurred in collecting delinquent amounts.

2.5. **Taxes and Withholding.** You are responsible for all applicable sales, services, value-added, goods and services, withholding, tariffs, and similar taxes (collectively, “Taxes”) imposed by any government entity or collecting agency based on the Services, except those Taxes based on our net income or Taxes for which you have provided an exemption certificate. Additionally, if you do not satisfy your Tax obligations, you agree that you will be required to reimburse Posh for any Taxes paid on your behalf, and we may take steps to collect Taxes we have paid on your behalf. In all cases, you will pay the amounts due under this Agreement to us in full without any right of set-off, deduction, or modification.

TERM AND TERMINATION.

3.1. **Term.** The initial term commitment for your purchase of Services will be as specified on an Order (“**Initial Term**”) and begins on the Effective Date. After the Initial Term, the Services will automatically renew for additional twelve (12) month periods (“**Renewal Terms**”), unless either party provides notice of non-renewal at least 30 days before the current term expires. We may provide invoicing under multiple different Orders, however, this will not impact or alter the term of any Order. Terminating specific Services does not affect the term of any other Services still in effect. If we permit you to reinstate Services at any time after termination, you agree that you will be bound by the then-current ToS and the renewal date that was in effect as of the effective termination date.

3.2. **Termination for Cause.** Either party may terminate the Agreement (i) if the other party materially breaches obligations or fails to cure within 30 days of receipt of written notice, or (ii) if the other party becomes insolvent, bankrupt, liquidated, dissolved, or ceases substantially all of its business, and we may temporarily suspend access or terminate any and/or all Services provided by Posh immediately and without prior notice if you breach Section 1.2, 4 or 5.

3.3. **Effect of Termination.** If the Agreement or any Services are terminated, your account may be converted to an alternative free or basic version of the Service at our sole discretion. Otherwise, you will immediately discontinue all use of terminated Services, except that upon request and at our sole discretion, we will provide you with limited access to the Services for a period not to exceed 30 days, solely to enable you to retrieve your Content from the Services. We have no obligation to maintain any of your Content after that period. Neither party will be liable for any damages resulting from termination of the Agreement, and termination will not affect any claim arising prior to the effective termination date. If we discontinue Services or materially reduce the core functionality in accordance with Section 1.5 above, the related Order will be terminated and we will provide you with a pro rata refund of any prepaid and unused fees. You hereby agree to pay for any use of the Services past the date of expiration or termination which have not been converted to a free version of the Service.

3.4. **Survival.** The provisions of Sections 2 (Orders, Fees and Payment), 3.3 (Effect of Termination), 4 (Your Content and Accounts), 7 (Indemnification), 8 (Limitation on Liability), 9.6 (No Class Actions), 9.11 (Notices), and 9.14 (Contracting Party, Choice of Law and Location for Resolving Disputes) survive any termination of the Agreement.

YOUR CONTENT AND ACCOUNTS.

4.1. **Your Content.** You and your end users retain all rights to their respective Content (as defined below) and we do not own or license your Content. You agree to grant us rights to use, modify, reproduce, and/or distribute your Content for the purpose of providing and operating the Services. You warrant and acknowledge that (i) you have the right to upload or otherwise share Content with us, and (ii) your uploading, sending, processing, or otherwise dissemination of your Content while using our Services does not infringe on any rights of any third party. Each party agrees to apply reasonable technical, organizational, and administrative security measures to keep Content protected in accordance with commercially reasonable industry standards. We will not view, access or process any of your Content, except: (a) as authorized, instructed, or requested by you or your end users in accordance with this Agreement or any other agreement between the parties, or (b) as required by our internal policies, applicable law, or governmental request. You hereby agree to comply with all legal duties applicable to you as a data controller by virtue of the submission of your Content within the context of using Services. If your Content, including any personal data (as defined in the General Data Protection Regulation EU 2016/679 or “GDPR”) residing therein is subject to data protection laws of the European Union, European Economic Area, or Switzerland (the “EEA+”) and is processed by us as a data processor acting on your behalf (in your capacity as data controller), we will use and process your Content in order to provide the Services and fulfill our obligations under this Agreement according to your instructions as represented in this Agreement or other agreement between the parties. Notwithstanding anything to the contrary, this Section 4.1 expresses all obligations of Posh with respect to your Content. “Content” means any profile information, files, comments on files, documents, recordings, chat logs, messages, transcripts, similar data, anything else you enter or upload that we maintain for you or on your users’ behalf in connection with the Services.

4.2. **Your Accounts.** You are solely responsible for (i) all use of the Services by you and your users, (ii) obtaining consent from your users to the collection, use, processing and transfer of Content, and (iii) providing notices or obtaining consent as legally required in connection with the Services. We do not and will never send emails asking for your usernames or passwords. To ensure your accounts are secure, you agree keep all usernames and passwords confidential. We are not liable for any loss that you may incur if a third party uses your password or account. We reserve the right to temporarily suspend Services and/or terminate the Agreement if you, your users, or attendees are using the Services in a manner Posh views as likely to cause harm to us or other users. You agree to notify us immediately and terminate any and all unauthorized access to the Services or other security breach.

5. **COMPLIANCE WITH LAWS.** In connection with the provision, access and use of the Services under the Agreement, each party agrees to comply with all applicable laws, rules and regulations including, but not limited to export, privacy, export and import, and data protection

laws and regulations. Each party hereby represents and warrants that it is not named on any U.S. government denied-party list. Further, Customer shall not permit its users to access or use any Service or Content in a U.S. embargoed country or in violation of any U.S. export law or regulation. If necessary and in accordance with applicable law, we will cooperate with any and all local, state, federal and international government authorities with respect to the Services. Notwithstanding any other provision in this ToS, we reserve the right to immediately terminate the Agreement for noncompliance with applicable laws.

6. WARRANTIES. WE WARRANT THAT THE SERVICES WILL CONFORM TO THE SERVICE DESCRIPTIONS UNDER NORMAL USE AND CONDITIONS. POSH AND OUR SUBSIDIARIES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO SUCH WARRANTIES THAT (i) POSH'S SERVICES OR SOFTWARE WILL MEET YOUR REQUIREMENTS; (ii) POSH'S SERVICES OR SOFTWARE SHALL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THAT SUCH RESULTS WHICH MAY BE OBTAINED FROM THE USE OF THE POSH'S SERVICES OR SOFTWARE WILL BE ACCURATE OR RELIABLE; (iv) QUALITY OF ANY PRODUCTS, SERVICES, ANY INFORMATION OR OTHER MATERIAL WHICH MAY BE PURCHASED OR OBTAINED BY YOU THROUGH OUR SERVICES OR SOFTWARE WILL MEET YOUR EXPECTATIONS; AND (v) THAT ANY SUCH ERRORS CONTAINED IN THE SOFTWARE SHALL BE CORRECTED. OUR ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER THIS WARRANTY WILL BE, AT OUR SOLE OPTION AND SUBJECT TO APPLICABLE LAW, TO PROVIDE CONFORMING SERVICES, OR TO TERMINATE THE NON-CONFORMING SERVICES OR THE APPLICABLE ORDER, AND PROVIDE A PRO-RATED REFUND OF ANY PREPAID FEES FROM THE DATE YOU NOTIFY US OF THE NON-CONFORMANCE THROUGH THE END OF THE REMAINING TERM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES AND CONDITIONS, THEREFORE SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMERS LOCATED IN THOSE JURISDICTIONS. NO ADVICE AND/OR INFORMATION, DESPITE WHETHER WRITTEN OR ORAL, THAT MAY BE OBTAINED BY YOU FROM POSH OR BY WAY OF OR FROM OUR SERVICES OR SOFTWARE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS TOS. A SMALL PERCENTAGE OF SOME USERS MAY EXPERIENCE SOME DEGREE OF EPILEPTIC SEIZURE WHEN EXPOSED TO CERTAIN LIGHT PATTERNS OR BACKGROUNDS THAT MAY BE CONTAINED ON A COMPUTER SCREEN OR WHILE USING OUR SERVICES. CERTAIN CONDITIONS MAY INDUCE A PREVIOUSLY UNKNOWN CONDITION OR UNDETECTED EPILEPTIC SYMPTOM IN USERS WHO HAVE SHOWN NO HISTORY OF ANY PRIOR SEIZURE OR EPILEPSY. POSH SHALL NOT BE LIABLE AND SHALL BE HELD HARMLESS FROM ANY DAMAGES RESULTING FROM THESE CONDITIONS UNDER TORT OR ANY OTHER LEGAL THEORY.

7. INDEMNIFICATION. You will indemnify and defend us against any third party claim resulting from a breach of Section 1.2 or 4, or alleging that any of your Content infringes upon any patent or copyright, or violates a trade secret of any party, and you agree to pay reasonable attorney's fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. We will promptly notify you of any claim and cooperate with you in defending the claim. You will reimburse us for reasonable expenses incurred in providing any cooperation or assistance. You will have full control and authority over the defense and settlement of any claim, except that: (i) any settlement requiring us to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (ii) we may join in the defense with our own counsel at our own expense.

LIMITATION ON LIABILITY.

8.1. LIMITATION ON INDIRECT LIABILITY. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY OR OTHER SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, (iv) LOST PROFITS, OR (v) COSTS OF RECOVERY, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY.

8.2. LIMITATION ON AMOUNT OF LIABILITY. EXCEPT FOR YOUR BREACH OF SECTIONS 1.2 OR 4 AND YOUR INDEMNIFICATION OBLIGATIONS, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE LICENSORS AND SUPPLIERS ARISING OUT OF THIS AGREEMENT IS LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE APPLICABLE SERVICE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY IN QUESTION. THE FOREGOING DOES NOT LIMIT YOUR OBLIGATIONS TO PAY ANY UNDISPUTED FEES AND OTHER AMOUNTS DUE UNDER ANY ORDER.

ADDITIONAL TERMS.

9.1. European Union Customer Data. Additional information about Posh's privacy, security, and sub-processors disclosures and other GDPR related materials please visit our page at <https://www.posh.tech/posh-gdpr-compliance.pdf>.

9.2. Free Services and Trials. Your right to access and use any free Services is not guaranteed for any period of time and we reserve the right, in our sole discretion, to limit or terminate use of

any free versions of any of our Services by any individual or entity. If you are using the Services on a trial or promotional basis (“**Trial Period**”), your Trial Period and access to the Services will terminate (i) at the end of the Trial Period stated in your Order, or (ii) if no date is specified, 30 days after your initial access to the Services, (iii) or upon your conversion to a subscription. During the Trial Period, to the extent permitted by applicable law, we provide the Services “as is”, with no warranty or indemnity, and all other terms otherwise apply. We may modify or discontinue any trials or promotions at any time without notice.

9.3. **Third Party Features.** The Services may be linked to third party sites or applications (“**Third Party Services**”). We are not responsible for and do not endorse any Third Party Services. You have sole discretion whether to purchase or connect to any Third Party Services and your use is governed solely by the terms for those Third Party Services. We disclaim any and all liability, warranties, indemnities or conditions, to the extent permitted by applicable law, for any damages caused by the use of Third Party Services whether express, implied, statutory, or based upon any other legal theory.

9.4. **Beta Services.** We may offer you access to beta services that are being provided prior to general release, but we do not make any guarantees that these services will be made generally available (“**Beta Services**”). You understand and agree that the Beta Services may contain bugs, errors and/or other defects, and use of the Beta Services is at your sole risk. You acknowledge that your use of Beta Services is on a voluntary and optional basis, and we have no obligation to provide technical support and may discontinue provision of Beta Services at any time in our sole discretion and without prior notice to you. These Beta Services are offered “as is”, and to the extent permitted by applicable law, we disclaim any liability, warranties, indemnities, and conditions, whether express, implied, statutory or otherwise. If you are using Beta Services, you agree to receive related correspondence and updates from us, and acknowledge that opting out may result in cancellation of your access to the Beta Services. If you provide feedback (“**Feedback**”) about the Beta Service, you agree that we own any Feedback that you share with us. For the Beta Services only, these ToS supersede any conflicting terms and conditions in the Agreement, but only to the extent necessary to resolve conflict.

9.5. **Copyright.** If you believe that our Services have been used in a way that constitutes copyright infringement, please contact us at hello@posh.tech.

9.6. **No Class Actions.** You may only resolve disputes with us on an individual basis and you agree not to bring or participate in any class, consolidated, or representative action against us or any of our employees or affiliates.

9.7. **Security Emergencies.** If we reasonably determine that the security of our Services or infrastructure may be compromised due to hacking attempts, denial of service (DoS) attacks, or any other malicious activities, we may temporarily suspend the Services and we will take action to promptly resolve any security issues. We will notify you as soon as practicable of any suspension or other action taken for security reasons.

9.9. **Recording.** Certain Services provide functionality that allows you to record audio and data shared during sessions. You are solely responsible for complying with all applicable laws in the relevant jurisdictions while using recording functionality. We disclaim all liability for your recording of audio or shared data, and you agree to hold us harmless from any and all damages or liabilities related to the recording of any audio or data.

9.10. **Assignment.** Neither party may assign its rights or delegate its duties under the Agreement either in whole or in part without the other party's prior written consent, which shall not be unreasonably withheld, except that either party may assign the Agreement to an affiliated entity, or as part of a corporate reorganization, consolidation, merger, acquisition, or sale of all or substantially all of its business or assets to which this Agreement relates. Any attempted assignment without consent will be void. The Agreement will bind and inure to the benefit of each party's successors or assigns.

9.11. **Notices.** Notices must be sent by personal delivery, overnight courier or registered or certified mail. We may also provide notice to the email last designated on your account, electronically via postings on our website, in-product notices, or our self-service portal or administrative center. Unless specified elsewhere in this Agreement, notices should be sent to us at the address for your applicable contracting entity, with a copy to our Legal Department, 695 Atlantic Ave 9th floor Boston, MA 02111, and we will send notices to the address last designated on your account. Notice is given (a) upon personal delivery; (b) for overnight courier, on the second business day after notice is sent, (c) for registered or certified mail, on the fifth business day after notice is sent, (d) for email, when the email is sent, or (e) if posted electronically, upon posting.

9.12. **Entire Agreement; Order of Precedence.** The Agreement, including your Order and related invoices for Services ordered, these ToS, Service Descriptions, and a DPA if applicable, sets forth the entire agreement between us relating to the Services and supersedes all prior and contemporaneous oral and written agreements, except as otherwise permitted by applicable law. If there is a conflict between an executed Order, these Terms, the DPA if applicable, and the Service Descriptions, the conflict will be resolved in that order, but only for the specific Services described in the applicable Order. Nothing contained in any document submitted by you will add to or otherwise modify the Agreement. We may update these ToS from time to time, which will be identified by the last updated date, and may be reviewed at <https://www.posh.tech/posh-terms-of-use.pdf>. Your continued access to and use of the Service constitutes your acceptance of the then-current ToS.

9.13. **General Terms.** If any term of the Agreement is not enforceable, this will not affect any other terms. Both parties are independent contractors and nothing in this Agreement creates a partnership, agency, fiduciary or employment relationship between the parties. No person or entity not a party to the Agreement will be a third party beneficiary. Our authorized distributors do not have the right to modify the Agreement or to make commitments binding on us. Failure to enforce any right under the Agreement will not constitute a waiver that right. Unless otherwise specified, remedies are cumulative. The Agreement may be agreed to online, or executed by electronic signature and in one or more counterparts and will be considered one in the same

instrument. No party will be responsible for any delay or failure to perform under the Agreement due to force majeure events (e.g. natural disasters; terrorist activities, activities of third party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control, but only for as long those conditions persist. In the event this Agreement is translated into other languages and there is a discrepancy between the two language version, the English language version shall prevail to the extent that such discrepancy is the result of an error in translation.