

Otenro designed and developed by Onbit Labs (Pvt) Ltd

Terms & Conditions

Version 1.0 – last revisited: 11 November 2016

These Terms & Conditions (as defined below) will apply to any use of the Service (as defined below). If you click the button “Finish” upon your registration for the Service and/or if you make any use of the Service, you agree to be bound by these Terms & Conditions and to qualify as a “User” (as defined below). By accepting these Terms & Conditions, you agree upon a valid and binding agreement with Onbit Labs (Pvt) Ltd. Please read these Terms & Conditions carefully so that you know what your rights and obligations are when using the Service. These Terms & Conditions are available for download and print at <https://www.otenro.com/terms.pdf>

## 1. Definitions

In this Agreement, the following words and expressions shall have the following meanings:

Account	the account, which is, made available to the User by Otenro upon registration for the Service. The Account (a) can be used by the User to manage and configure (i) its settings for use of the Service, (ii) its Personal Data, and (b) is necessary to have access to make use of the Service;
App	The application for the Provider Platform which is developed for the User
Provider Platform	The provider platform shall be app stores such as “Play Store”, “App Store” etc

Website	a location connected to the Internet that maintains one or more web pages.
Web App	the application that runs on a web browser and is developed for the User
Service	The service of building websites, mobile applications, webapps etc
Content	any content provided by the User by means of the Service, such as the content for inclusion in the App and/or Web App and/or Website;
User	you, as (a) a consumer or (b) a professional party being (i) a natural person or (ii) a legal entity – that concluded the Agreement with OTENRO

## 2. Scope of Agreement

**OTENRO** hereby grants the **User** a non-exclusive, non-transferable, limited right to access and use the App, Website and/or Web App, under the Terms & Conditions set out, for the duration of the Agreement.

2.1. User may not publish the App and/or Web Site by other means than through **OTENRO**.

2.2. The use of the Service is at the **User's** own expense and risk. The **User** is responsible for meeting the technical and functional requirements and using the electronic communication facilities that are necessary to be able to access and use the Service. The risk of loss, theft or damage will at all times be borne by the **User**.

- 2.3. Any use of the App, Website and/or Web App, including the transmission, distribution and making available thereof, and any other (legal) act relating to the App, Website and/or Web App, by or on behalf of the **User**, Platform Providers and/or end-users is for the **User's** own risk and responsibility. **OTENRO** is not liable and/or responsible for the Content, the App, the Web Site and/or any use made of the Service by the **User**, notwithstanding article 8.
- 2.4. **OTENRO** explicitly rejects the applicability of any general (purchase) conditions used by **User**, unless confirmed in writing by **OTENRO** to the **User**
- 2.5. Notwithstanding any other provisions of these Terms & Conditions, and any of the **User's** legal obligations, the use of the Service, the App, the Web Site and the Content may not:
- 2.5.1. include software such as viruses or Trojans that can damage or erase, make unavailable or make inaccessible any computers or data of **OTENRO**, (other) Users or third parties;
  - 2.5.2. bypass technical security measures of the computer systems of **OTENRO**, (other) Users or third parties;
  - 2.5.3. involve unreasonable or disproportionate use of the infrastructure of **OTENRO's** or third parties' computer systems.
  - 2.5.4. impede the functionality or functionalities of the Service;
  - 2.5.5. involve manual or automated software, devices, or other processes to "crawl", "spider" or scrape any content of the Service;
  - 2.5.6. constitute unauthorized or unsolicited advertising, junk, spam, bulk e-mail, scam and/or phishing;
  - 2.5.7. infringe any of **OTENRO's** or third party's Intellectual Property Rights, privacy rights or any other rights;
  - 2.5.8. involve (virtual) child pornography, bestiality or other unlawful erotic content or acts relating thereto;
  - 2.5.9. promote or provide instructions or information about how to engage in illegal conduct, commit illegal activities or promote physical harm or injury;
  - 2.5.10. involve any illegal activities or activities that are contrary to morality or public order;
  - 2.5.11. involve false or misleading information;
  - 2.5.12. involve otherwise inappropriate use;

2.5.13. breach these Terms & Conditions or the Agreement; and/or be unlawful in any way whatsoever.

2.6. The Service may contain information that is derived from and/or may refer to third parties' websites, products or services (for instance through hyperlinks, banners or buttons). **OTENRO** is not responsible, nor liable for the content of such information.

2.7. The User acknowledges and agrees that **OTENRO** does not pre-screen the Content, the App, Web App, the Website or use of the Service and that **OTENRO** had no influence over the Content, the (content of the) App, the (content of the) Web Site.

2.8. **OTENRO** will have the right (but not the obligation), at its sole discretion, to review, edit, limit, refuse or remove Content, Apps and/or Web Sites and/or to limit and/or refuse a **User** access to and/or use of the Service, more specifically in the event the Content, the (content of the) App, the (content of the) Web Site and/or use of and/or relating to the Service, according to **OTENRO**, violates these Terms & Conditions, and/or that it deems to be otherwise objectionable, and/or in the event **OTENRO** deems the technical functionality of the App and/or Web App malfunctioning.

2.9. **OTENRO** may disclose the **User's** Personal Data and/or Content, or other data relating to the use of the Service, to third parties where it believes, in good faith, that it is necessary to comply with a court order, ongoing judicial proceeding, criminal or civil subpoena, or other legal process or request by law enforcement authorities, or to exercise its legal rights of defense against legal claims.

### 3. Prices and payment

3.1. User is obliged to pay for the Service upon completing the development and/or updating the App and/or Web Site – of which these Terms & Conditions will form an integral part.

3.2. Prices and payment details (including subscription terms and payment terms)

are specified in Annex 1. Prices that are shown do not VAT, NBT, import duties and other government imposed taxes, duties and levies.

- 3.3. The User has the obligation to inform **OTENRO** immediately about any inaccuracies in the offer provided or the payment details described, including the price. The **User** cannot hold **OTENRO** to any offer for the Service if the **User** should in all reasonableness have known that this offer and/or the price are/is an obvious mistake or obvious error in writing.
- 3.4. During the period of validity, the prices of Service will not be increased, except for price changes in government taxes such as VAT and/or NTB etc. After such period, **OTENRO** is entitled to adjust its price for the Service, including but not limited to monthly subscription fees to (parts of) the Service, at all times. **OTENRO** shall provide notice the **User** fourteen (14) days in advance in writing.
- 3.5. All payments, including (paid update-) subscription fees, done to **OTENRO** are not refundable when the App is denied and/or refused by the Provider Platform, or when the App has been removed from a Provider Platform.
- 3.6. Any payment required by third parties, including Provider Platforms or third party software or service providers, licenses, equipment and other services will fall outside the scope of the Agreement and will be charged to **User** separately by the concerning party or by **OTENRO**.
- 3.7. **User** will pay the amounts in accordance with the payment conditions stated by **OTENRO**.
- 3.8. If the **User**, fails to meet its payment obligations, **OTENRO** will be entitled to charge the user a nominal interest of 10% per annum.
- 3.9. If User fails to meet its payment obligations or terminates its subscription to the Service, **OTENRO** is (also) entitled to remove and/or suspend the App from the Publisher Platform without notice and without any liability to the User.

## 4. Publishing

- 4.1. **OTENRO** will not be regarded as the publisher of the App with any Provider Platform.
- 4.2. Notwithstanding the foregoing, the **User** agrees to provide **OTENRO** with full access to the publishing account by providing **OTENRO** all necessary credentials (e.g. email address/password). The **User** warrants that it is allowed to do so. **OTENRO** will use all technically reasonable efforts to have the App approved by the applicable Provider Platforms but **OTENRO** does not and cannot guarantee, and is not responsible for, the acceptance and/or approval of the App by the Provider Platforms. Thus, the **User** shall be solely responsible for the acceptance of the App by the Provider Platforms. The acceptance is subject to the relevant rules, regulations and guidelines of Provider Platforms.
- 4.3. The **User** shall be solely responsible for securing and paying for all digital music licenses, any public performance licenses, synchronization licenses and any other licenses from musical composition copyright owners (or their agents) required in connection all content selected by the User for use in connection with the App.

## 5. Intellectual Property Rights

- 5.1. **OTENRO** and/or its licensors reserve all rights not expressly granted to the **User** in these Terms & Conditions. The **User** acknowledges and agrees that – except as specifically set forth in these Terms & Conditions – **OTENRO** and its licensors retain all rights, title and interest, including the Intellectual Property Rights, in and to the Service, the App, the Web App and the Website as well as to any modifications, adaptations or translations thereof. The **User** acknowledges and agrees that it does not acquire any rights therein, express or implied, except for the rights expressly granted under these Terms & Conditions. The Service is licensed, not sold.
- 5.2. The **User** is not permitted to sell, rent out, transfer or grant restrictive rights to the Service, or make it available to third parties in any way or for any purpose

not explicitly mentioned in these Terms & Conditions. The **User** will also refrain from granting third parties access – remotely or otherwise – to the Service or to provide the Service to a third party, not explicitly provided for in these Terms & Conditions.

- 5.3. The **User** is explicitly not allowed to download, copy, amend, make available, or provide otherwise (parts of) the Service, App, Web App, Website or other materials made available to the **User** by means of the Service, for direct or indirect commercial purposes or for any other purposes than the purposes mentioned in these Terms & Conditions, unless **OTENRO** has provided its prior written consent thereto, or if a mandatory or peremptory rule of law states otherwise.
- 5.4. The **User** is prohibited to reverse engineer (parts of) the Service, App, Web App, Website or other materials made available to the **User** by means of the Service, to the extent legally permissible. In the event of reverse engineering permitted by a mandatory or peremptory rule of law, such as for achieving compatibility with self-written software or enabling to get the ideas, concepts and principles behind the Service, App, Web App, Website or other materials made available to the **User** by means of the Service, the User is only allowed to execute this legal right, after first requesting **OTENRO** to provide the necessary information to achieve such interoperability and **OTENRO** fails to provide such information within reasonable time.
- 5.5. **OTENRO** will be permitted to install technical provisions for the purpose of protecting the Service and Website in relation to an agreed restriction on the content or the term of the right to use thereof. **User** is not allowed to remove or circumvent such technical provisions.
- 5.6. **OTENRO's** obligation to provide the Service, if any, and the **User's** right of use thereof will only extend to the object code of the Service. Under no circumstance will **User** obtain any right, and under no circumstance will **OTENRO** be obliged to provide (a data carrier with) the source code or any preliminary materials of the provided Service.

- 5.7. In the event **OTENRO** provides third party software or services, the (license) terms and conditions of that third party may be applicable to any use of such software or services, which may be the case in the event of the **User** providing its own code to the App, or in the event the **User** wishes to publish the App through Platform Providers; **User** guarantees that it will accept and will comply with these third party's terms and conditions. **OTENRO** is no party to such an agreement.
- 5.8. The **User** will retain all the rights, title and interest, if any, including the Intellectual Property Rights, to the Content. However, all the rights to the programming code, content management system and Service will remain to **OTENRO**.
- 5.9. The **User** agrees and acknowledges that by providing any Content by means of the Service it automatically grants **OTENRO** a royalty-free, unencumbered, world-wide, non-exclusive right to use, reproduce, circulate and make public the Content in connection with the Service and to use the Content on the Website, App and/or Web App for enabling **OTENRO** to provide the Service to User and for **OTENRO's** own marketing and/or promotional purposes in connection with the Service. **OTENRO** will not invoke the right without the prior written consent of User.

## 6. Content on (Web) Apps

- 6.1. **OTENRO** is not able to determine the actual owner of the content created and/or uploaded. For any and all content created and/or uploaded, **User** shall be deemed to be the owner of such content and/or have in its possession a license and/or permission to use the content. The **User** is explicitly not allowed to create and/or upload content which the **User** is not the owner, and/or has no license and/or permission to use the content.
- 6.2. **OTENRO** enables the **User** to implement content hosted on third party websites. The use of such third party content shall be governed by the terms of use of these third party websites and/or the end user license agreement of the third party providing the content. **User** is required to comply with the terms of any third party. **OTENRO** is not responsible or liable for the availability and accessibility of such third party content.



- 6.3. Except as specifically provided and allowed by **OTENRO** and/or the third party owner, **User** is explicitly not allowed to reverse engineer, decompile or disassemble any third party content, and in addition, User shall not modify, duplicate, distribute, reproduce, sublicense, display, transfer, create derivative works from, assign, or otherwise use the third party content.
- 6.4. **OTENRO** is not responsible or liable with regard to any third party services used by User or provided through the Service. Use of these third party services shall be at User's own responsibility and liability.

## 7. Privacy

- 7.1. **OTENRO** will not process Personal Data, other than for the provision of the Service.
- 7.2. **OTENRO** will not share personal information from User with third parties unless **OTENRO** has obtained permission thereto or is required to do so by law.
- 7.3. The responsibility for processing Personal Data by using the Service, App and/or Web App lies solely with **User**. **User** warrants that the content, use and / or processing of the Personal Data is not unlawful and that it does not infringe any rights of third parties.
- 7.4. As far as **OTENRO** would be obliged to provide a form of security, then this protection will meet the written specifications expressly agreed between the Parties. **OTENRO** does not guarantee that the security is effective under all circumstances. If the Agreement contains no specifications regarding the security, or if the contract contains no express definition of security, it will meet a level that is not unreasonable, given the state of the art, the sensitivity of the data, and to security related costs. The responsibility for maintaining safeguards such as firewalls, antivirus and backup lies with the **User**.

## 8. Warranties

8.1. **OTENRO** warrants that the Service fulfills the Agreement, the specifications stated in the offer, the reasonable requirements of reliability and/or serviceability and the statutory stipulations and/or governmental regulations that existed on the date that the Agreement was concluded. However, **OTENRO** does not warrant that the Service is suited for other than normal designation, as described in these Terms & Conditions. Moreover, **OTENRO** does not warrant that the Service will be error free, complete or up-to-date at all times.

8.2. The **User** agrees that the Service fulfills the Agreement, the specifications stated in the offer, the reasonable requirements of reliability and/or serviceability and the statutory stipulations and/or governmental regulations that existed on the date that the Agreement was concluded, when it provides the functionality and other features as found in the Service at the time of use ("as is"). **OTENRO** does not guarantee that the Service or any part thereof will be accessible at all times and without any interruptions or failures. Failures in the Service can occur as a result of failures in the Internet or phone connection or as a result of viruses and/or faults/defects. **OTENRO** is not liable towards the **User** for any damage, loss or costs resulting or arising from the Service being (temporarily) unavailable, including but not limited to the loss of data or inability to access or use the Service, notwithstanding article 8.

8.3. **OTENRO** is entitled to put the Service (temporarily) out of service and/or to reduce the use of it without any prior notification and without being obliged to pay any compensation whatsoever to the **User**, if in the opinion of **OTENRO** this is necessary, for instance in connection with the reasonably required maintenance of the Service or due to force majeure. Force majeure includes – but is not limited to – site or building blockades, strikes, riots, civil disruption, war, terrorist acts, inclement weather, epidemic, specific work interruptions, delay in transportation, earthquake, fire, storm, flood, or water damage, delay in or cancellation of the delivery to **OTENRO** of parts, goods or services ordered from third parties, or governmental, legal or regulatory restrictions.

8.4. The **User** is responsible and liable for all use it makes of the Service, including but not limited to its use of its Account and the results of the Service, such as the App and/or Web App, notwithstanding article 8. The User indemnifies and holds **OTENRO** harmless against any and all claims by third parties in connection with or resulting from the use that the User makes of the Service, a violation by the **User** of these Terms & Conditions, and/or any unlawful activities. This includes, without limitation, any activities that constitute an infringement of Intellectual Property Rights or (other) rights of third parties.

## 9. Limitation of liability

9.1. **OTENRO's** liability for damages resulting from or relating to attributably failing to perform the Agreement, including these Terms & Conditions, for unlawful act or otherwise will be limited as to,

9.1.1. The User's only remedy in the event of an attributable failure, unlawful acts of **OTENRO**, or other cause of damages, is to discontinue the use of the Service.

9.1.2. In the event that **OTENRO** is liable for damages, the damage will be limited to compensating for direct damages for a maximum amount per event not exceeding the amounts paid by **User** prior to the event causing the damages per event (a series of connected events being considered as one event). In no event will **OTENRO's** total, aggregate liabilities, exceed USD 1,000/-.

9.2. **OTENRO's** liability for consequential damages arising out of, or in connection with the Agreement or these Terms & Conditions, such as, but not limited to, loss of profit, loss of business, loss of anticipated savings, or any other similar financial loss or loss of goodwill or reputation, or other incidental, indirect, punitive or exemplary damages of any kind, such as loss of data or errors in the App and/or Web App, Website independent of whether the **User** provides notice to **OTENRO** of such potential injury, damages or loss, is excluded. Moreover, **OTENRO's** liability is excluded for any payments made or other costs or damages relating to or caused by a Provider Platform rejecting the App, for

whatever reason, for publication through such a Provider Platform.

9.3. In any event, the **User's** right to claim under the Agreement, these Terms & Conditions, unlawful act or otherwise shall lapse one (1) year after the occurrence giving rise to the claim or action.

9.4. The limitations mentioned in the preceding paragraphs of this article shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by **OTENRO** or its managers.

## 10. Term and termination

10.1. The **User** is entitled to terminate the Agreement at the end of the subscription period at any time.

10.2. In addition to the other remedies available to **OTENRO**, **OTENRO** is at all times, at its sole discretion, without prior written notice or explanation and without becoming liable to the User, entitled to:

10.2.1. temporarily or permanently terminate the **User's** Account and its use of the Service in the event that **OTENRO**, at its sole discretion, deems such termination necessary;

10.2.2. (temporarily) restrict or suspend the **User's** activities in connection with the Service or to ban a **User** from the Service or to restrict or suspend the availability of the App, Website and/or Web App;

10.3. All provisions which are meant to survive the termination of the Agreement, including the prohibition to publish the App through other means than the Service, shall survive such termination.

10.4. After termination, the **User's** right to access and use the Service, shall cease to exist immediately, without any right to compensation whatsoever. In the event of termination, **OTENRO** is also allowed to delete the **User's** Account and to remove and/or suspend its App from the Publisher Platform without

notice and without any liability to the User. **OTENRO** will not have any obligation to assist the **User** in migrating its data, including its App, off of the Service. **OTENRO** does not keep a back-up of the Account, App and/or Web App.

## **11. Contact**

In case of **OTENRO** unless otherwise informed in writing;

Address: 488, Kotte Road, Pitakotte

Email: support@otenro.com

Contact: +94 112 88 24 88

## **12. Severability**

Each undertaking contained in this Agreement shall be read and construed independently of the other undertakings herein contained so that if one or more should be held to be invalid as an unreasonable restraint of trade or for any other reason whatsoever then the remaining undertakings shall be valid to the extent that they are not held to be so invalid.

## **13. Governing Law**

This Agreement shall be governed by and construed in all respects in accordance with the substantive law of Sri Lanka and the Parties submit to the exclusive jurisdiction of the Sri Lankan courts.