



Master Service Agreement

Digistorm – Version 2.3 (US) – 6th June 2024

1 Background

1.1 This Agreement incorporates the Order Document.

1.2 This Agreement is entered into by and between:

Digistorm, LLC, located at 2301 Blake Street, Suite 100, Denver, Colorado 80205
 (“**we/us/our**”);

and

the Organization noted in the Order Document (“**you/your**”).

1.3 This Agreement governs your use of the Services.

1.4 You accept this Agreement by executing or in any way accepting an Order Document.

2 Definitions and Interpretation

2.1 Definitions

In this document:

“**Additional Requirements**” means the additional requirements set out in the Order Document relevant to the noted Services, that you have requested of us in delivering the Services, including our Costs for those additional requirements.

“**Administrator**” means any user labelled as administrator of the Services.

“**Agreement**” means this master agreement.

“**Application Store**” means the software distribution platforms provided by third parties, such as Apple, Inc and Google, LLC, allowing consumers to purchase and download and install to their internet connected device the mobile application through which the Services are to be delivered.

“**Branding**” means your name, design, symbol, color, or color combinations, marks, image, logo, fonts, get-up or any other feature that identifies or makes you distinctive.

“**Business Day**” means any day other than a Saturday, Sunday, public or bank holiday in the United States.

“Confidential Information” means any documentation or information marked as confidential and all other information received or developed by either party in the course of its association with the other party, which is not publicly available and relates in any way to each party’s respective business or financial information and all Processes, equipment and techniques used by each party in the course of each party’s business including but not limited to Intellectual Property Rights, trade secrets, ideas, concepts, know-how and marketing information such as customer lists, financial information and business plans.

“Costs” means:

- (a) those fees and charges outlined on the Order Document; and
- (b) any variance to the fees and charges as a result of selecting a Plan Option.

“Delivery Date” means the date, if any, noted on the Order Document that we will deliver the Services to you.

“Deliverables” means any product, service and/or item to be delivered by us to you, that is not a Service, as specified in an Order Document.

“Further Term(s)” means the further period of time this Agreement is to continue for following the expiration of the Order Term (or Further Term as the case may be), being that period as noted on the Order Document in the column ‘Further Term (months)’ from the Services table.

“GDPR” means the General Data Protection Regulation, Regulation (EU) 2016/679 of the European Union.

“Hosting Space” means 100 gigabytes of storage space.

“Insolvency Event” includes bankruptcy, administration compromise, arrangement, amalgamation, reconstruction, winding up, dissolution and assignment for or compromise with creditors, and ‘insolvent’ will be construed accordingly.

“Intellectual Property Rights” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trademarks, trade secrets, moral rights, know-how, software, and any other intellectual property rights recognized in any country or jurisdiction in the world.

“Materials” means the documentation of all or any of our instructions, manuals, training materials, guides, commentary, listing and other materials for use in conjunction with the Services, if any.

“Merchant Terms of Service” means the terms and conditions applying to the Payment Service chosen and used by you to process payments on the Software.

“Notified Email Address” means your primary email address noted on the Order Document and as updated by notice to us in accordance with this Agreement.

“Order Document” means either the Order Form or Work Order (as applicable and relevant).

“Order Form” means an ordering document or online order specifying the Services to be provided in accordance with this Agreement that is entered into between you and us.

“Order Start Date” means the date next to the Services on the Order Document that this Agreement commences on.

“Order Term” means the period, represented in calendar months noted on the Order Document, relevant to the Services.

“Payment Service” means the third-party merchant used to process payments on the Services.

“Personal Information” means any information relating to an identified or identifiable natural person (**“Data Subject”**) or a household (as applicable), which information is subject to applicable privacy laws in the Territory; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier such as an IP or MAC Address or Mobile ID, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“Plan Option” means an optional upgrade or downgrade to the features and capabilities of the Services.

“Processes” includes technologies, products, devices, processes or techniques.

“Rights” means the non-exclusive and non-transferable right for the Order Term in the Territory given to you to:

- (a) access and use the Services; and
- (b) use the Materials relevant to the Services; and
- (c) in accordance with any Special Conditions prescribed on the Order Document.

“Services” means those Services noted on the Order Document and includes a Plan Option (if applicable).

“Software” means the information technology infrastructure used by us or on our behalf in performing the Services, including all computers, online platforms, mobile applications, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by us or through the use of third-party services. In some instances, Software may take the form of the content management system, accessible by us, that acts as an intermediary gateway between the Services (where applicable) and the Third-Party Software and systems, including a record management system.

“Special Conditions” means those conditions, if any, specified on the Order Document. The Special Conditions:

- (a) modify and vary the other provisions of this Agreement; and
- (b) prevail to the extent of any discrepancy or inconsistency with any other part of this Agreement.

“Territory” means the United States and/or Canada (as applicable).

“Third Party Software” means the software that you have obtained for use in your business and which you require to interoperate with the Services, as identified in the Order Document.

“UK GDPR” shall have the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

“Update” refers to a software product release to our Software containing error corrections and minor enhancements and includes any corrections and updates to the associated Materials.

“Upgrade” refers to a software product release to our Software containing significant functional enhancements and feature additions that is made commercially available by us and includes any corrections and updates to the associated Materials.

“Work Order” means any document, proposal, email or online order, other than an Order Form, specifying the Deliverables to be provided by us to you, in accordance with any Work Order Conditions and this Agreement and which has been approved by you.

“Work Order Conditions” means the terms, including Costs, that the Deliverables will be delivered in accordance with as outlined on a Work Order.

2.2 Interpretation

In this Agreement, except to the extent the context otherwise requires:

- (a) the singular includes the plural and vice versa and a gender includes other genders;
- (b) a reference to a party is to be construed as a reference to a party to this Agreement;
- (c) a reference to a party to this Agreement or any other document or agreement includes its successors and permitted assigns;
- (d) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (e) a reference to a document or agreement including this Agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (f) in the interpretation of this Agreement, headings are to be disregarded;
- (g) a reference to a statute, ordinance, code or other law or section or schedule of a statute, ordinance, code or other law includes all statutory instruments or regulations issued under any of them and any statutory modification or re-enactment, or substitution, of any of them;
- (h) where a party comprises of two (2) or more persons, an agreement or obligation to be performed or observed by that party binds those persons jointly and severally and a reference to that party includes a reference to any one or more of those persons;
- (i) references to ‘dollar’, ‘\$’ and to any amount not otherwise designated is to be construed as a reference to the currency of the Jurisdiction.
- (j) a reference to ‘writing’ includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words in a permanent and visible form; and
- (k) if any day appointed or specified by this Agreement for the payment of any money or the doing of any act, matter or thing falls on a day which is not a Business Day in the

Jurisdiction, then the day so appointed or specified is deemed to be the next day which is a Business Day.

3 Purpose

3.1 The purpose of this Agreement (**Purpose**) is:

- (a) to grant to you a right only to access and use certain Services and Materials as noted on the Order Document for the Order Term; and
- (b) to specify the terms and conditions that must be complied with by you in its use of and limited right to access and use the Services or Deliverables, including your payment obligations for each Services or Deliverables.

3.2 In order to achieve the Purpose, you must strictly comply with the terms of this Agreement, and act in a way that is consistent with us being the owner of all of the Services or Deliverables, provided notice is given to us of any change.

3.3 To assist achieving the Purpose, you acknowledge that this Agreement provides flexibility for and gives the power to us to exercise a discretion or vary some contractual obligations where it is reasonably necessary to protect or enhance the Services or Deliverables or otherwise meet legal requirements in other jurisdictions where the Services or Deliverables may be offered or used by you.

4 Grant of Rights

4.1 We hereby grant to you a right to access and use the Services and Materials in the Territory on and subject to the terms and conditions of this Agreement.

4.2 Where the Services require access to the Software, we shall also provide you a login to the Software.

4.3 Where required for the Services, we provide the Hosting Space per user. We will charge you for an amount of storage in excess of the Hosting Space at the amount reasonably determined by us.

Services

Unless otherwise provided on the Order Document:

- (a) the Services and access to Material are purchased as subscriptions by way of Rights;
- (b) additional rights for the Services may be added during an Order Term at the same pricing as the underlying Services pricing ('Additional Services'), prorated for the portion of Order Term applicable to the Services remaining at the time the Additional Services rights are added; and
- (c) any Additional Services rights will terminate on the same date as the underlying Services.

Deliverables

- (a) The Deliverables are provided and delivered to you in accordance with and on the terms noted in the Order Document and Work Order Conditions.

- (b) The Work Order Conditions and this Agreement apply to all Deliverables.
- (c) The consideration for the Deliverables is the Costs as noted in the Work Order Conditions.
- (d) The term applicable to the Deliverables is that as noted in the Work Order Conditions.
- (e) We will not maintain or monitor the Deliverables unless stated on a Work Order.

5 Costs

- 5.1 In consideration for the right to access and use the Services, Deliverables, and Materials to be provided by us to you under or in conjunction with the Order Document and this Agreement, you shall pay to us the Costs on the dates and/or at the intervals specified in the Order Document. In addition to the Costs, you will reimburse us for reasonable, documented "out-of-pocket" expenses, without markup, that are approved in advance in writing by you before they are incurred by us and are necessary for our performance of the Services. Costs may increase by a maximum of 5% in each year.
- 5.2 We will invoice you for all Costs, pre-approved expenses and applicable taxes, including any related interest and/or penalties. Each invoice is due and payable thirty (30) days following the invoice date. If we have not received payment within five (5) days after the due date, Interest shall accrue on past due amounts at the rate of one- and one-half percent (1.5%) per month, calculated from the date such amount was due until the date that payment is received by us. You shall reimburse us for the reasonable costs of collection, including reasonable fees and expenses of attorneys.
- 5.3 Unless otherwise stated on the Order Document, the payment term for any payment is that period as noted on the invoice issued by us for the relevant payment. To the extent that there is a change in Costs during the Term prior to a payment date as provided under Section 7.1 due to the selection of a Plan Option, the Costs will be prorated from the date the Plan Option is accepted until the following payment date.

6 Duration

- 6.1 The Agreement takes effect for the Services from the Order Start Date for the Order Term.
- 6.2 Subject to the terms and conditions of this Agreement, the right to access and use the Services shall continue for the Order Term.
- 6.3 This Agreement shall automatically renew and continue for the Further Term following the expiration of the Order Term (or Further Term, as the case may be) unless either party gives to the other, written notice at least 90 days before the expiration of the Order Term (or Further Term, as the case may be) that they do not intend to renew this Agreement.
- 6.4 We may provide to you from time to time with copies of any amendments to the Materials which may be issued by us during the Order Term.
- 6.5 You must not copy the Materials except where necessary to enable proper use of the Services in the manner reasonably contemplated by the right to access and use granted under this Agreement.

7 Delivery

- 7.1 On the Delivery Date for the Services, we will provide the Services as the case may be depending on the Services and as outlined on the Order Document.
- 7.2 Where you require remote access and use of the Services via the Internet, you understand and accept any inherent risks associated with a connection over the Internet and the manner specified by you and you indemnify us from and against any harm caused as a result of you requiring delivery in accordance with this Section.
- 7.3 You must conduct all of your own acceptance testing procedures.
- 7.4 The parties have agreed to the Additional Requirements and the Costs associated with the Additional Requirements, to be delivered (where specified on the Order Document) in accordance with the timeframe specified alongside each Additional Requirement.
- 7.5 The Services will at all times be hosted by us or an affiliate of ours, on a server (or servers) connected to the Internet.

8 Plan Options

- 8.1 A Plan Option may be offered by us to you during the Services Term and will be governed by this Agreement.
- 8.2 A Plan Option will be deemed to be accepted and form part of this Agreement when you or an Administrator confirms and electronically signs the Plan Option through the software.
- 8.3 You acknowledge and agree that an Administrator has the authority to accept a Plan Option pursuant to Section 8.2 and the acceptance of a Plan Option will be binding upon you.

9 Maintenance of Services

- 9.1 We may from time to time provide Updates or Upgrades to the Software. You must implement such Updates or Upgrades in respect of all current and future users.

10 Your obligations

10.1 Third Party Software

- (a) You warrant to us that you have obtained all necessary consents for us to interface or otherwise interoperate the Software and Services, including any associated Deliverables with the Third-Party Software and your internal systems. Upon our request, you must immediately provide a copy of such authorization from the owner of the Third-Party Software.
- (b) You shall ensure that all information and data is correctly and accurately entered into any record management system and/or Third-Party Software used by you that interfaces with the Software and Services, including any associated Deliverables. You are responsible for the accuracy and currency of all your information and data accessible from the Third-Party Software and/or internal systems. You acknowledge that the Software and Services, including any associated Deliverables do not perform any verification procedure in relation to information from Third-Party Software and/or other software used by you.

- (c) You shall not permit any Upgrade or Update to the Third-Party Software and/or your internal systems (and shall disable any such automatic update function), which interface or otherwise interoperate with the Software and/or Services, without our prior written authorization. If you permit any Upgrade or Update in breach of this Section, you acknowledge that the Software, the Services, and/or any associated Deliverables may cease to function and release and indemnify us against any loss or claim arising therefrom.
- (d) Should any Software, Services, and/or Deliverables cease working with the Third-Party Software and/or your internal systems for any reason other than as a result of an act or omission by us, then we shall charge our usual hourly rate to assist you in making the Software, Services, and/or Deliverables operational with the Third-Party Software and/or your internal systems.
- (e) As the Internet is a collection of differing and competing technologies, formed by interconnected computers, there is no single standard for the manner in which information is exchanged between these computers. Additionally, the Internet was not built to be anonymous. Accordingly, any information exchanged over the Internet, even where encrypted, is inherently subject to risk. As no two (2) single computer applications or software are built the same, when interoperating with Third Party Software, we do not guarantee the security of any data sent between the Software, the Services and/or any Deliverables and any of the Third-Party Software and/or your internal systems.
- (f) You must not reverse assemble or reverse compile or reverse engineer the Software, the Services, and/or the Deliverables, or any part thereof.

10.2 Application Store Approval

- (a) Where the Services are to be distributed through a mobile application available on an Application Store, this Section 12.2 will apply.
- (b) Before the Services are delivered, you must:
 - (i) have created a developer account with each Application Store you require distribution of the Services through; and
 - (ii) have taken all such necessary steps to activate your developer account to the point that you are able to upload or otherwise provide the Services for approval by the third party and subsequent distribution through the Application Store.
- (c) Once the mobile application through which the Services are to be delivered has been uploaded to the Application Store you are solely responsible for the mobile application approval and continued maintenance of the developer account, including providing any Updates or Upgrades for approval on the Application Store.
- (d) During the Order Term, we will make such modifications to the mobile application through which the Services are to be delivered as required by the Application Store owner.
- (e) As each Application Store is operated and controlled by an independent third party and subject to the policies of those third parties (which change from time to time), we

do not make any warranty or representation to you as to approval success of the mobile application through which the Services are to be delivered, including any Updates or Upgrades, with any Application Store.

- (f) We may, without recourse, suspend yours (or your end-users') access to the mobile application through which the Services are to be provided if you (or any of your end-users') is not using the most current version of the mobile application following any Update or Upgrade.

11 Use of the Services

11.1 You must (and you must ensure users) when using the Services:

- (a) only authorize such additional users as noted in the Order Document to use and access the Services (where applicable);
- (b) only use or attempt to use the Services functionality "as is";
- (c) not attempt to access or control the server on which the Services are hosted, except through the client interface or as the Services otherwise provide;
- (d) comply with the current editions of all Materials provided by us from time to time;
- (e) comply with any operational guidelines or emergency directions issued by us;
- (f) promptly report to us any errors, defects or malfunctions experienced or observed in the Software or Services, in as much detail as possible;
- (g) not do anything calculated to damage or impair the Services or the server on which the Services are hosted;
- (h) not purport to grant any interest in, or further right to access and use the Services except as permitted by this Agreement;
- (i) not do anything that is detrimental to us, our business, our officers, employees, distributors or agents; and
- (j) comply with all laws.

11.2 You undertake that:

- (a) you will not allow or suffer any user account for the Services to be used by more than one individual user unless it has been reassigned in its entirety to another individual user, in which case the prior user shall no longer have any right to access or use the Services;
- (b) each user shall keep a secure password for their use of the Services that such password shall be changed no less frequently than once per year and that each user shall keep its password confidential;
- (c) if you become aware that account access details for the Services are in unauthorised hands, you must:

- (i) change any compromised access password immediately;
- (ii) take any other step reasonably necessary to ensure that no-one suffers harm as a result;
- (d) you will keep its computer system, network and internet connectivity secure and confidential in accordance with good computer security practice; and
- (e) you will make regular backups of all data which you enter into or use with the Services.

11.3 You acknowledge and agree that:

- (a) the Services are provided “as is” as it appears on the server hosted by us;
- (b) as the Services are provided over the Internet and that the internet poses significant security and virus threats;
- (c) any data transmitted to and from your computer systems to the server on which the Services are hosted may not be secure or free from interruption;
- (d) you must ensure for each user that their device is regularly updated with anti-virus software;
- (e) we may be required from time to time to access the Services and database associated with the Services to ensure ongoing maintenance and continued service and you consent to such access by us without notice;
- (f) you cannot resell or grant sub-rights of access and use of the Services;
- (g) we do not provide service levels or uptime for the Services and that scheduled maintenance, emergencies or unscheduled outages may occur from time to time which may leave the Services unavailable or with limited functionality;
- (h) access to and use of the Services may be impaired or prevented by a variety of factors that are beyond our control, for instance defects in computer systems and problems with internet connectivity between you and the server hosting the Services and we are not responsible for any such things or their effects; and
- (i) we may from time to time, but are not obliged to, back up data that is entered into the Services by you (“Customer Data”), as part of undertaking a whole system back up of the Services. You acknowledge and agree in respect of the Customer Data:
 - (i) that you consent to us holding and accessing the Customer Data for this purpose; and
 - (ii) that you must otherwise ensure that you regularly back up to another location, not being the Services, the Customer Data. You release us from any liability in respect of the Customer Data and the loss thereof from your actions in not undertaking a backup of the Customer Data.

11.4 You are prohibited from posting or transmitting to or from the Services any material:

- (a) that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience; or
- (b) for which you have not obtained all necessary licenses, consents and/or approvals; or
- (c) which constitutes or encourages conduct that would be considered a criminal offense, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in any country in the world; or
- (d) which is technically harmful (including, without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data).

11.5 You must not (and must cause that each user must not) use the Services:

- (a) in any way that breaches any applicable local, national or international law or regulation;
- (b) in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
- (c) for the purpose of harming or attempting to harm minors in any way; or
- (d) to transmit, or procure the sending of, any unsolicited or unauthorized advertising or promotional material or any other form of similar solicitation (spam).

11.6 We shall fully co-operate with any law enforcement authorities or court order requesting or directing us to disclose the identity or locate anyone posting any material in breach of the above rules on acceptable conduct.

11.7 You will not (and must cause that each user will not):

- (a) use or launch any automated system, including, "robots," "spiders," or "offline readers," that sends more request messages to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser;
- (b) use the Services in any manner that damages, disables, overburdens, or impairs any of our websites or interferes with any other party's use of the Services;
- (c) attempt to gain unauthorised access to the Services;
- (d) access the Services other than through the Services interface; or
- (e) use the Services for any purpose or in any manner that is unlawful or prohibited by this Agreement.

12 Payment Service

12.1 Where the Services incorporate or otherwise utilize a Payment Service, this Section applies.

- 12.2 You agree to comply with the Merchant Terms of Service published by the Payment Service.
- 12.3 You agree that the fees from each transaction processed through use of the Services may be paid directly to us by the Payment Service. Where this occurs, we will remit those fees immediately to you on receipt of cleared funds in our bank account.
- 12.4 You acknowledge and agree that we may be paid a commission from the Payment Service.
- 12.5 You acknowledge that the Payment Service, as a third party, may from time to time renew and revise its terms and conditions of service. You must continually inform yourself of the Merchant Terms of Service and your acceptance of those terms.

13 Personal information

- 13.1 You acknowledge that we will collect Personal Information in providing the Services or Deliverables and all Personal Information will be handled in accordance with our Data Processing Agreement executed separately from this Agreement.
- 13.2 Each party agrees to notify the other if it becomes aware of a breach or possible breach of any obligations required by either party in accordance with the laws of the Jurisdiction ("**Privacy Laws**"), and to co-operate with the other to assist in meeting any notification obligations under the Privacy Laws in the Jurisdiction.
- 13.3 Where you collect Personal Information from a resident of the European Union and that resident is subject the GDPR and/or the UK GDPR ("GDPR Data"), then you must in all respects comply with the GDPR and/or UK GDPR (as applicable), including but not limited to:
- (a) our data protection addendum, by signing and return same to us;
 - (b) acknowledging that you are the 'controller' of the GDPR Data for the purposes of the GDPR and/or the UK GDPR;
 - (c) acknowledging that we is the 'processor' of the GDPR Data for the purposes of the GDPR and/or UK GDPR;
 - (d) if you collect GDPR Data of a person under the age of 16 years ("Minor"), you must ensure you obtain the express consent of the parent or guardian to the Minor to the collection, storage and process of the GDPR Data of the Minor;
 - (e) you obtaining the express consent for the GDPR Data to be transferred outside of the European Economic Union to the United States and Australia;
 - (f) you obtaining express consent for the GDPR Data to be lawfully used, processed and transferred in accordance with this Agreement; and
 - (g) where 'special categories of data' are collected by you, implementing sufficient security controls and technological measures to handle and deal with that data in accordance with the GDPR and/or UK GDPR.
- 13.4 If a third party alleges infringement of its Personal Information under the Privacy Laws and/or the GDPR and/or UK GDPR, we may take measures necessary to prevent the infringement of a third party's rights from continuing.

13.5 We may unilaterally change this Agreement to meet any applicable laws and requirements in respect of Personal Information, as a result of your use of any Services or Deliverables and/or data associated with or uploaded to the Services or Deliverables, either directly or indirectly in a jurisdiction.

14 Confidentiality

14.1 The parties shall:

- (a) keep confidential all Confidential Information, the terms of this Agreement and any Order Document, information and technical data disclosed by the other provided that each party shall have the right to disclose such information to its employees insofar as it is necessary for them to know the information for the use of the rights granted herein; and
- (b) not use any of the Confidential Information, disclosures or other information or technical data, except for the purposes of the rights granted herein and on the terms of this Agreement.

14.2 Notwithstanding the provisions of Section 16.1 a party may disclose information if and to the extent that:

- (a) such disclosure is forced by laws, regulations or orders;
- (b) the information is generally available in the public domain except where that is a result of a disclosure in breach of this Agreement or any Order Document; and
- (c) the party can prove that it knew the information before it was disclosed to it by the other party.

15 Warranties

15.1 Save for those express warranties provided in this Agreement to the maximum extent permitted by law, we do not give an express warranty of any kind in relation to the Software, the Services, the Deliverables, the Material and/or any professional services supplied under this Agreement.

15.2 We do not warrant that the Software, the Services, the Deliverables, the Material and/or any Additional Requirements will be free of bugs, errors or viruses.

15.3 Each party, at the Order Date, warrants to the other that:

- (a) they have the full corporate power to execute, deliver and perform their obligations under this Agreement;
- (b) the Agreement constitutes a legal, valid and binding obligation on each party, enforceable in accordance with its terms by appropriate legal remedy; and
- (c) each party has all licenses, authorizations, consents, approvals and permits required by applicable laws to perform its obligations under the Agreement.

16 Indemnity

- 16.1 You shall promptly advise us in writing of any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, charges and expenses which may be brought or claimed against you or us arising out of the use of the Software, the Services, the Deliverables and/or any Third Party Software by you or your agents.
- 16.2 Except to any extent caused by us, you hereby release, indemnify and agree to keep us indemnified against any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs (including attorney and client costs), charges and expenses arising out of the use of the Software, the Services, the Deliverables, the Third-Party Software and/or any Additional Requirements by you, your employees and agents, including for any breach of the Privacy Laws, GDPR and/or UK GDPR.
- 16.3 We are not liable to you or any third party under this Agreement or under general law to the extent that any loss or damage is caused or contributed to by:
- (a) your negligence or the negligence of a third party to you;
 - (b) any breach by you of the terms and conditions of this Agreement or any other applicable laws, regulations or rules in the Jurisdiction;
 - (c) the use of the Software, the Services and/or any Deliverables in conjunction with any other software not approved in writing by us for use with the Software, the Services and/or any of the Deliverables;
 - (d) the use of the Software, the Services and/or the Deliverables in a manner or for a purpose not disclosed by you to us prior to the Order Start Date or a date noted in an Order Document; or
 - (e) any virus or similar occurrence which adversely affects us, or the Software, the Services; and/or any Deliverables which was caused by you or your access facilities.
- 18.4 IN NO EVENT WILL EITHER PARTY OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 18.5 You warrant to us that you acquire the goods or services under this Agreement, not for personal, domestic or household use or consumption. You acknowledge that our liability is limited to, at our option, in the case of goods, repairing or replacing the goods or paying the cost of having the goods repaired or replaced, and in the case of services, re-supplying the services or paying the cost of having the services re-supplied.
- 18.6 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 18.3 ABOVE, ALL SERVICES AND DELIVERABLES ARE PROVIDED "AS IS." WE SPECIFICALLY DISCLAIM ALL IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY OF ANY KIND THAT THE SERVICES OR DELIVERABLES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

- 18.7 IN NO EVENT WILL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID BY YOU TO US UNDER THIS AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 18.8 You fully release us from any claim, cost, expense, liability or damage incurred by you as a result of us suspending access of any user to the Services or Deliverables in accordance with the terms and conditions of this Agreement, or from you not undertaking a backup of the data you or your users input into the Services or Deliverables.
- 18.9 Where the Services incorporate or otherwise use a Payment Service, you indemnify us against any "chargeback" made by the Payment Service under its Merchant Terms of Service and to make good the damage suffered by us by reason of any "chargeback" that is made.

19 Termination

- 19.1 This Agreement may be terminated by either party giving written notice to the other party if the other party commits any breach of any provision of this Agreement and has failed to remedy such breach within thirty (30) days of receipt of written notice requiring it to do so.
- 19.2 We may terminate this Agreement at any time and without reasons, by giving thirty (30) days written notice to you.
- 19.3 Notwithstanding Section 19.1 or Section 19.2, we may by notice in writing to you immediately terminate this Agreement in any of the following circumstances:
- 19.3.1 you or any of your employees, agents, contractors or other persons under your control or direction:
- 19.3.1.1 does or attempts to reverse assemble, compile or engineer any part of the Software, the Services and/or any of the Deliverables; or
 - 19.3.1.2 attempts to data mine the Software, the Services and/or any of the Deliverables;
 - 19.3.1.3 your developer account for any Application Store is suspended or terminated; or
 - 19.3.1.4 you suffer an Insolvency Event.

19.4 Any termination of this Agreement under this Section shall be without prejudice to the rights of the party terminating to seek and obtain damages for any breach of this Agreement by the other party.

20 Effect of termination

20.1 Immediately on termination of this Agreement, we may terminate your access to the Services or Deliverables and will do such further things as may be reasonably required by us to protect our right, title and interest in the Services or Deliverables and Intellectual Property.

20.2 On the termination of this Agreement any and all fees previously paid shall remain our property and you shall not make a claim in respect of them and you shall further pay to us any other fee accrued and due but unpaid as at the date of the termination or expiration.

20.3 On your default of any obligation in this Agreement or upon the termination of this Agreement, including your failure to pay any monies due in the time specified, we shall have the right to:

(a) immediately suspend and/or terminate your access (including access by your end-users) to the Services or Deliverables, including changing any assigned password or both; and

(b) request any Application Store to remove the Application.

20.4 We will delete the data you or your users have inputted into the Services or Deliverables 30 days after this Agreement is terminated or in the timeframe noted in the data protection addendum (if applicable).

21 Intellectual property

21.1 We shall at all times own and retain all right, title, interest and Intellectual Property rights in and to the Software, the Services, the Deliverables, and the Materials.

21.2 You acknowledge and warrant that you will not remove any copyright notices in the Materials or the Services or Deliverables, including the object code and/or source code of the Software, the Services, the Deliverables, and/or other items provided by us to you.

21.3 You must immediately inform us of any breach of the Software, the Services or the Deliverables system or security you become aware of and must provide details of the breach to us sufficient for us to recreate and/or remedy the breach.

21.4 In the event you learn of any infringement or threatened infringement of any of the Intellectual Property rights in or to the Services or Deliverables, you must notify us in writing giving particulars of the infringement.

22 License to use Branding

22.1 You grant to us a non-exclusive and non-transferable license to use the Branding for the purpose of delivering the Services or Deliverables and Materials.

22.2 You release us from any claim, action, costs and/or liability in relation to any act or omission done in respect of or in dealing with the Branding.

22.3 The rights and entitlements obtained by us under this Section may be exercised in the United States, in all the states and territories of Australia, and worldwide.

22.4 We may use your Branding for promotion with third parties.

23 Notices

23.1 Any notice under this Agreement must be in writing and:

23.1.1 given to us at: legal@digistorm.com; or

23.1.2 given to you at the Notified Email Address.

23.2 Any notice given under Section 23.1 will be deemed as served on the Business Day after successful transmission from the server of the sender.

23.3 The parties agree that all agreements, notices, disclosures and other communications that are provided electronically, satisfy any legal requirement that such communications be in writing, including for the purposes of Section 23.1.

24 Taxes

24.1 The Costs and any other fees under this Agreement exclude any taxes or duties payable in respect of the Services in the Territory. To the extent that any such taxes or duties are payable by us, then you must pay to us the amount of such taxes or duties in addition to any Costs or other fees owed under this Agreement. Notwithstanding the foregoing, if you have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed, you may provide us with such exemption information, and we will use reasonable efforts to provide you with invoicing documents designed to enable you to obtain a refund or credit from the relevant revenue authority in the Jurisdiction, if such a refund or credit is available.

25 Dispute Resolution

25.1 **(Informal resolution):** in the event that a dispute shall arise between the parties in respect of this Agreement, then the parties agree to use their best efforts to resolve such dispute within a period of sixty (60) days from the time any party gives to the other party notice in writing of the dispute. All negotiations pursuant to this Section will be confidential and treated as a compromise and settlement negotiations for the purposes of all rules and codes of evidence of applicable legislation.

25.2 **(Arbitration):** where a dispute is not resolved in accordance with Section 25.1 (“**Unresolved Dispute**”), then, except for actions to: (i) collect unpaid amounts owed, or (ii) obtain injunctive relief for any matter at any time, each of which may be initiated in a court of competent jurisdiction, any controversy or claim arising out of or relating to this Agreement or the breach thereof must first be submitted to mediation administered by Judicial Arbitration and Mediation Services ("JAMS") located in Boston, Massachusetts. Disputes will be heard by a single mediator who has expertise in software agreements.

26 General

- 26.1 **(Waiver)**: Any waiver or forbearance in regard to the performance of this Agreement shall operate only if in writing and shall apply only to the specified instance, and shall not affect the existence and continued applicability of the terms of it thereafter.
- 26.2 **(Entire Agreement)**: The Order Documentation together with this Agreement and its relevant parts for the Services or Deliverables embodies all the terms binding between the parties and replaces all previous representations or proposals not embodied herein.
- 26.3 **(Assignment)**: You must not assign all or any of your rights hereunder without our prior written consent, which consent we may grant in our absolute discretion. We may in our discretion assign all or any of our rights hereunder.
- 26.4 **(Jurisdiction)**: This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to this Agreement that is initiated in court must be instituted exclusively in the state or federal courts located in Boston, MA, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Each party, to the maximum extent permitted by law, waives any right it may have to a trial by jury in any litigation arising out of, under, or in connection with this Agreement.
- 26.5 **(Vienna Sale Convention)**: The *United Nations Convention on Contracts for the International Sale of Goods* does not apply to this Agreement or to any individual contract, including an Order Document, concluded within the framework of this Agreement.
- 26.6 **(Amendments)**: This Agreement may not be varied except in writing signed by the parties.
- 26.7 **(Severability)**: If any provision of this Agreement is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation the validity and enforceability of the remaining provisions shall not be thereby affected.
- 26.8 **(Further Agreements)**: Each party shall execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as shall be necessary to give effect to this Agreement.
- 26.9 **(Charges)**: All stamp duties and governmental charges arising out of or incidental to this Agreement shall be the responsibility of and payable by you.