

PROFESSIONAL SERVICES AGREEMENT

Part 2 – Standard Terms and Conditions

This Part 2 (Standard Terms and Conditions) is made pursuant to the Professional Services Agreement (“**Agreement**”) between Digital MGA Marketplace Ltd. (“**Digital MGA**”) and the business entity identified as the “**Customer**” on the Cover Page to the Agreement.

1. **COMPONENTS OF AGREEMENT AND PRIORITY**

- (a) The documents forming part of the Agreement are Part 1 (Cover Page), this Part 2 (Standard Terms and Conditions) and all signed Statements of Work between the parties.
- (b) If the Customer has entered into a Software Subscription and Services Agreement (“**Subscription Agreement**”) with Digital MGA, in no event will either party be entitled to recovery of any damages or other amount under both the Agreement and the Subscription Agreement for the same or a substantially similar claim.

2. **DEFINITIONS**

In addition to the capitalized terms defined elsewhere in the Agreement, the following terms have the following meanings:

- (a) “**Confidential Information**” means the terms of the Agreement and any type of information, data or material relating to one party, as Disclosing Party, that is disclosed to or otherwise acquired by the other party, as Receiving Party, whether before, on or after the Effective Date, including all data, information and materials, whether disclosed orally, in writing or in electronic form (including by way of a software demonstration), relating to (i) the business, operations, services, processes, methodologies, technologies, research and development and intellectual property of the disclosing party, including computer software, know-how, trade secrets, inventions, technical data, data models, concepts, designs, financial data and pricing, business plans and models, business strategies, network design and traffic, and information entrusted to the Disclosing Party or its directors, officers or employees by third parties; (ii) past, current and potential customers, suppliers and partners of the disclosing party; and (iii) past, current and potential directors, officers, employees and subcontractors of the Disclosing Party, and, without limiting the foregoing, for Digital MGA, includes Contractor Information and related documentation and all current and future pricing information, business practices, services and support, methods, strategies, plans and information identified or reasonably identifiable as confidential and proprietary to Digital MGA;
- (b) “**Contractor Information**” means all pre-existing ideas, concepts, know-how or techniques of Digital MGA that are used in connection with the Services, whether or not incorporated into or used in connection with any Deliverable;
- (c) “**Deliverable**” means the results of the specific Services performed by Digital MGA under a Statement of Work, but excludes all Contractor Information; and
- (d) “**Statement of Work**” means a written statement of work between the parties with respect to the Services.

3. **SERVICES**

- (a) Engagement. The Customer hereby engages Digital MGA to provide the Services in the manner and at the times as the Customer may request from time to time, and Digital MGA hereby accepts that engagement, upon and subject to the terms of the Agreement.
- (b) Statement of Work. The parties will enter into a written Statement of Work before Digital MGA provides any Services to the Customer. Each Statement of Work will set out the Services to be performed by Digital MGA, the Deliverables to be provided by Digital MGA, the price to be paid by the Customer for those Services and such other terms and conditions as the parties may agree. Each Statement of Work must be signed by both parties to be effective, and must state that it is made pursuant to the Agreement and that it is attached to and forms part of the Agreement. Each Statement of Work will constitute a separate agreement that incorporates the terms and provisions of the Cover Page and this Part 2 – Standard Terms and Conditions. The provisions of this Part 2 – Standard Terms and Conditions will control over any conflicting provisions in a Statement of Work, except to the extent that a provision of this Part 2 specifically states that a Statement of Work may provide different terms.
- (c) Change Order Procedure. The Customer may request changes to a Statement of Work at any time. Within 4 business days after the Customer’s request, Digital MGA will submit to the Customer (email being sufficient) a proposed amendment (each an “**Amendment**”) to that Statement of Work describing the impact of the change, if any, on the compensation, schedule and other terms of the applicable Statement of Work and this Part 2. An Amendment must be approved by both parties in order to be effective.
- (d) Customer Responsibilities. The Customer acknowledges that its failure to perform any responsibility assigned to it in a Statement of Work may impede Digital MGA’s ability to perform some or all of its Services under that Statement of Work within the time(s) specified in that Statement of Work. In that event, the timeline(s) for the performance of Digital MGA’s obligations under the affected Statement of Work will be extended by an amount equal to the delay caused by the Customer’s non-performance.

4. **FEES AND PAYMENT TERMS**

- (a) Fees. The Customer will pay Digital MGA the fees (the “**Fees**”) for the Services in the amounts and at the times set out in the applicable Statement of Work.
- (b) Contractor Costs. Except to the extent set out in a Statement of Work, all costs incurred by Digital

MGA in its performance of the Services will be borne by Digital MGA.

- (c) Taxes. All Fees and any other amounts payable under the Agreement are exclusive of, and the Customer will pay, all taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes, assessable by any jurisdiction, excluding only taxes based on Digital MGA's net income (collectively, "**Taxes**"). If Digital MGA has the legal obligation to pay or collect Taxes for which the Customer is responsible, then Digital MGA will include such Taxes as a separate line item on the applicable invoice and the Customer will pay such Taxes unless the Customer provides Digital MGA with a valid tax exemption certificate authorized by the appropriate taxing authority. If the Customer believes it is obligated to withhold for Taxes in its jurisdiction, then it will comply and remit such Taxes within the prescribed time limit, will provide Digital MGA with evidence of withholding and will gross up payment(s) so that Digital MGA receives the full amount invoiced to the Customer.
- (d) Interest on Late Payments. If the Customer fails to pay any invoiced amount by its due date, then without limiting Digital MGA's rights or remedies, the unpaid amount will bear interest at the rate of 18% per annum, calculated and compounded monthly, until paid in full.

5. OWNERSHIP

- (a) Ownership of Deliverables. As between the parties, the Customer will own all Deliverables. Upon payment in full for a Deliverable, Digital MGA hereby assigns to the Customer, absolutely, all of Digital MGA's right, title and interest in that Deliverable.
- (b) Disclosure of Deliverables. Digital MGA will disclose and deliver all Deliverables to the Customer promptly upon the creation thereof.
- (c) Moral Rights. Digital MGA will obtain from all individuals creating any Deliverable on its behalf an irrevocable waiver of all moral and other similar rights relating to that Deliverable and hereby confirms that the Customer may use and modify the Deliverable for any purpose as it sees fit.
- (d) Contractor Information. Nothing in the Agreement will operate to transfer any right, title or interest in any Contractor Information to the Customer, except that, to the extent any Contractor Information is required in order for the Customer to use or commercialize any Deliverable, Digital MGA hereby grants to the Customer a non-exclusive, world-wide, fully-paid license (with full right to sublicense) to use and commercialize that Contractor Information solely in connection with those Deliverables.

6. CONTRACTOR WARRANTIES

- (a) Warranties. Digital MGA warrants to the Customer that Digital MGA will (i) perform all Services in a competent and workmanlike manner, and (ii) utilize sufficient personnel having the necessary skills and experience to perform the Services, all in accordance with any additional requirements as may be set out in a Statement of Work.

- (b) Exclusions. EXCEPT TO THE EXTENT EXPRESSLY STATED OTHERWISE IN THIS AGREEMENT OR IN A STATEMENT OF WORK, THE SERVICES ARE PROVIDED "AS IS" AND DIGITAL MGA MAKES, AND THE CUSTOMER RECEIVES, NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE SERVICES. DIGITAL MGA SPECIFICALLY DISCLAIMS, AND THE CUSTOMER WAIVES, ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF DIGITAL MGA HAS BEEN INFORMED OF THAT PURPOSE) AND ANY OTHER WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE SERVICES. EXCEPT TO THE EXTENT EXPRESSLY STATED OTHERWISE IN A STATEMENT OF WORK, THE CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR: (i) DETERMINING THAT THE SERVICES MEET ITS BUSINESS REQUIREMENTS, AND (B) THE RESULTS OBTAINED FROM THE SERVICES.

- (c) This Section will survive any termination of the Agreement.

7. CUSTOMER DATA

If Digital MGA receives or is granted access to any Customer data ("**Customer Data**") in connection with the Services, then Digital MGA will use that Customer Data only for the purpose of providing the Services and will be treated as Confidential Information of the Customer under the Agreement. In addition, Digital MGA will (a) handle that Customer Data in accordance with all applicable laws, (b) maintain adequate administrative, technical, organizational and physical safeguards to ensure the security and confidentiality of that Customer Data, (c) promptly notify the Customer if Digital MGA becomes aware of any accidental or unauthorized disclosure, access or use of any of that Customer Data, and reasonably cooperate with the Customer with respect to any accidental or unauthorized disclosure, use or loss of that Customer Data, and (d) return that Customer Data to the Customer upon termination of the Agreement or the Statement of Work to which that Customer Data relates.

8. CONFIDENTIALITY

- (a) Application. The provisions of this Section apply if and to the extent Digital MGA and the Customer have not entered into a separate confidentiality or non-disclosure agreement with respect to the Services.
- (b) Confidentiality Obligation. Each party (the "**Receiving Party**") who receives Confidential Information disclosed to it by the other party (the "**Disclosing Party**") will (i) take all reasonable steps to protect that Confidential Information from any use, reproduction, publication, disclosure or distribution except as authorized by the Agreement, and (ii) restrict disclosure of that Confidential Information to its directors, officers and employees (as applicable) and on a need-to-know basis for the purpose of discharging its obligations to the Disclosing Party under the Agreement. Each party, as Receiving Party, will

be responsible and liable for any breach of this Section by those persons.

- (c) Exceptions. The obligations of confidentiality in this Section do not apply to the extent that information is:
- (i) or becomes publicly available through no breach of the Agreement by the Receiving Party;
 - (ii) rightfully in the Receiving Party's possession without obligation of confidence prior to receipt of that information from the Disclosing Party;
 - (iii) rightfully obtained from a third party having the right to disclose that information without restriction as to use or disclosure;
 - (iv) information that the Receiving Party can document was independently developed by it without reference to or use of the Disclosing Party's Confidential Information; or
 - (v) required to be disclosed by law, a court of competent jurisdiction or regulatory body, provided that immediately upon receiving any such request, and to the extent that it may legally do so, the Receiving Party promptly notifies the Disclosing Party in writing of that requirement so that the Disclosing Party has the opportunity to seek a protective order to such action as it deems appropriate to protect that Confidential Information.
- (d) Reporting Obligation. Upon becoming aware of any unauthorized use or disclosure of any of the Disclosing Party's Confidential Information, the Receiving Party must promptly notify the Disclosing Party and, at the cost of the Disclosing Party, (i) will assist in remedying that unauthorized use or disclosure, and (ii) will cooperate with the Disclosing Party in any claim brought by the Disclosing Party against third parties to protect its rights in its Confidential Information. The provision of any assistance by the Receiving Party under this Subsection does not alleviate any obligation to the Disclosing Party under this Section, nor does acceptance of that assistance by the Disclosing Party constitute a waiver of any breach of this Section by the Receiving Party.
- (e) Equitable Remedies. The Receiving Party acknowledges and agrees that the use or disclosure of the Disclosing Party's Confidential Information in a manner inconsistent with the terms of the Agreement is a Default (defined below) and would cause irreparable and continuing damage to the Disclosing Party that could not adequately be compensated for in damages alone. Accordingly, the Disclosing Party will have the right to seek equitable and injunctive relief to prevent any actual or anticipated unauthorized use or disclosure of its Confidential Information or any further use or disclosure of that information, as well as all other remedies available at law or in equity, and the Receiving Party hereby consents to an injunction being issued against it in this regard (as applicable).

9. LIMITATION OF LIABILITY

- (a) Limitation on Damages. EXCEPT FOR (i) A BREACH BY THE CUSTOMER OF ITS

OBLIGATIONS UNDER SECTION 4, (ii) A BREACH BY EITHER PARTY OF ITS OBLIGATIONS UNDER SECTION 8 AND (iii) ANY DAMAGES RESULTING FROM OR RELATING TO PERSONAL INJURY, INCLUDING DEATH, AND DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OF A PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL LOSSES OR DAMAGES OR FOR ANY LOSSES OR DAMAGES RESULTING FROM LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE, LOSS OF OR DAMAGE TO DATA, OR DAMAGES FOR PURE ECONOMIC LOSS, HOWEVER CAUSED, WHETHER FORESEEABLE OR NOT, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

- (b) Limitation on Liability. IN NO EVENT WILL THE TOTAL LIABILITY OF DIGITAL MGA FOR ANY LOSS OR DAMAGES RELATING TO THE SERVICES SET OUT IN A STATEMENT OF WORK EXCEED THE TOTAL FEES ACTUALLY PAID TO DIGITAL MGA FOR THOSE SERVICES, LESS THE AMOUNT OF ANY REFUND PAID TO THE CUSTOMER.
- (c) Application of Limitations. THE LIMITATIONS IN THIS SECTION APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE CUSTOMER ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE MATERIAL PARTS OF THE BARGAIN BETWEEN THE PARTIES AND THAT PRICES FOR THE SERVICES WOULD BE HIGHER WITHOUT THEM.
- (d) The provisions of this Section will survive any termination of the Agreement.

10. TERM AND TERMINATION

- (a) Term. The term of the Agreement will commence on the Effective Date and will continue in effect until terminated as provided below (the "Term"). The term of each Statement of Work will commence on the date specified in that document and, unless sooner terminated as provided below or in that document, will remain in effect until completion and payment for the Services set out in that document.
- (b) Automatic Termination. The Agreement will terminate automatically if there is no active Statement of Work in effect under the Agreement for 12 consecutive months.
- (c) Termination For Convenience. Either party has the right to terminate the Agreement or any Statement of Work, in whole or in part, without cause or penalty, by providing not less than 90 days' prior written notice to the other party. Termination of the Agreement for convenience will result in the immediate termination for convenience of all active Statements of Work under the Agreement.

(d) Termination for Cause. In addition to the other rights of termination in the Agreement, the Agreement or any Statement of Work may be terminated for cause upon the occurrence of any of the foregoing (each a “Default”):

- (i) by Digital MGA, if the Customer fails to pay any undisputed amount owing under the Agreement when due and that failure continues for 15 days after receipt of written notice from Digital MGA demanding that the overdue payment be made;
- (ii) by Digital MGA, if the Customer fails to perform any of its other obligations under the Agreement, or any of its obligations under the applicable Statement of Work, and that failure is not corrected to the satisfaction of Digital MGA, acting reasonably, within 30 days after receipt of written notice from the Customer;
- (iii) by the Customer, if Digital MGA fails to perform any of its obligations under the Agreement, or any of its obligations under the applicable Statement of Work, and that failure is not corrected to the satisfaction of the Customer, acting reasonably, within 30 days after receipt of written notice from the Customer;
- (iv) by either party, if the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due, or makes a proposal for or enters into any compromise or arrangement with its creditors with the result that it is no longer able to meet its obligations under the Agreement or any Statement of Work; and
- (v) by either party, if the other party is the subject of an application, notice or court order for the appointment of an administrator, liquidator or receiver; or ceases, or threatens to cease, to carry on all or substantially all of its business or any similar circumstances arise, with the result that it is no longer able to meet its obligations under the Agreement or any Statement of Work.

Termination of the Agreement for cause will result in the immediate termination for cause of all active Statements of Work.

(e) Suspension of Services. In lieu of exercising its termination rights under Subsection 10(d) upon a Default by the Customer, Digital MGA will have the right to suspend performance of its obligations under the Agreement and all Statements of Work, until that Default has been remedied to the satisfaction of Digital MGA, acting reasonably. No exercise of Digital MGA’s rights under this Subsection will prevent Digital MGA from later terminating the Agreement or any Statement of Work under Subsection 10(d), whether or not that termination is on account of that same Default.

(f) Obligations on Termination. In addition to any other obligations of the parties upon termination set out in the Agreement or a Statement of Work, the following provisions apply upon any termination of the Agreement or that Statement of Work:

- (i) if the Customer terminates a Statement of Work under Subsection 10(c), but not the

Agreement as a whole, or if Digital MGA terminates a Statement of Work under Subsection 10(d), but not the Agreement as a whole, then (A) the Agreement and any other active Statements of Work will remain in effect, and (B) the Customer will immediately pay to Digital MGA all unpaid amounts owing under the terminated Statement of Work for the period up to and including the effective date of termination, and (C) the Customer will not be entitled to a refund or credit for any prepaid amounts under the terminated Statement of Work with respect to the period after the effective date of termination, which amounts will be retained by Digital MGA as liquidated damages and not as a penalty, representing a genuine pre-estimate of Digital MGA’s damages resulting from the termination of that Statement of Work;

- (ii) if the Customer terminates the Agreement as a whole under Subsection 10(c) or if Digital MGA terminates a Statement of Work under Subsection 10(d), then (A) the Customer will immediately pay to Digital MGA all unpaid amounts owing under the Agreement for the period up to and including the effective date of termination, and (B) the Customer will not be entitled to a refund or credit for any prepaid amounts under the Agreement with respect to the period after the effective date of termination, which amounts will be retained by Digital MGA as liquidated damages and not as a penalty, representing a genuine pre-estimate of Digital MGA’s damages resulting from the termination of the Agreement;
- (iii) if Digital MGA terminates a Statement of Work under Subsection 10(c), but not the Agreement as a whole, or if the Customer terminates a Statement of Work under Subsection 10(d), but not the Agreement as a whole, then Digital MGA will refund to the Customer all pre-paid amounts relating to the Services;
- (iv) if Digital MGA terminates the Agreement under Subsection 10(c), or if the Customer terminates the Agreement under Subsection 10(d), then Digital MGA will refund to the Customer all pre-paid amounts relating to the Services; and
- (v) if applicable, each party will promptly return or destroy all Confidential Information of the other party in its possession or under its control.

(g) Survival. In addition to those provisions of the Agreement that are expressly stated to survive termination, the following provisions of this Part 2 will survive any termination of the Agreement: Sections 5, 7, 8 and 9 and Subsections 11(a), 11(f), 11(g), 11(j) and 11(l). In addition, the provisions of Section 2 of this Part 2 will survive as necessary to interpret the other surviving Sections and Subsections.

11. GENERAL TERMS

- (a) Non-Solicitation. During the Term and a period of 6 months after any termination of the Agreement, neither party will employ or engage, or solicit for employment or engagement, any employee or

- independent contractor of the other party who became known to that party as a result of the Agreement, or attempt to do any of the foregoing or assist any other person to do so.
- (b) Subcontractors/Service Providers. Digital MGA may in its discretion engage subcontractors or third party service providers to assist in the performance of its obligations under the Agreement, provided that Digital MGA will remain fully responsible for all acts or omissions of those subcontractors and service providers.
- (c) Force Majeure. Except for payment obligations, neither party will be responsible for any delay or failure in performance of its obligations under the Agreement to the extent that delay or failure is caused by (i) a natural disaster, fire, flood, storm, epidemic or power failure, (ii) a war (declared or undeclared), insurrection or act of terrorism or piracy, (iii) a strike (including illegal work stoppage or slowdown) or lockout, (iv) Internet or telecommunications failure, or (v) any other cause beyond the control and without the fault or negligence of the affected party (each, a "**Force Majeure Event**"). If a Force Majeure Event affecting a party continues for a period of more than 30 days, then the other party will have the right to terminate the Agreement as of the date specified in written notice of termination to the affected party.
- (d) Entire Agreement. The components of the Agreement set out on the Cover Page and each Statement of Work contain the entire agreement between the parties regarding the Services and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, relating to the Services. No modification, amendment, or waiver of any provision of the Agreement or any Statement of Work will be effective unless in writing and signed by both parties.
- (e) Assignment. Neither party has the right to assign any of its rights or obligations under the Agreement, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld, conditioned or delayed), except that either party has the right to assign the Agreement in its entirety without the other party's consent to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favour of, a direct competitor of the other party, then the other party may terminate the Agreement upon written notice. Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- (f) Governing Law. The governing law of the substance of the Agreement will be the laws of the Province of British Columbia, Canada, without reference to its conflicts of laws provisions. The parties expressly exclude the application of the *United Nations Convention on Contracts for the International Sale of Goods* and all implementing legislation.
- (g) Dispute Resolution. If there is any dispute arising out of or relating to the Agreement, then the parties will first use reasonable good faith efforts to resolve such dispute by direct negotiation. If any such dispute is not settled by agreement between the parties within a reasonable time, then each party may exercise any rights that it may have at law or in equity to resolve the dispute. Venue for any judicial proceeding will be in Vancouver, British Columbia and the parties hereby expressly waive any objections or defences based on lack of jurisdiction. Notwithstanding the foregoing in this Subsection or in Subsection 11(f), either party has the right at any time to seek preliminary or temporary injunctive relief from any court of competent jurisdiction and in accordance with any applicable law and rules of procedure if, in that party's sole judgment, such action is necessary to avoid irreparable harm or to preserve the status quo.
- (h) Relationship of the Parties. Digital MGA is an independent contractor in the performance of the Agreement, and nothing in the Agreement will be construed to create or constitute a joint venture, partnership, agency or any other arrangement between the parties other than as expressly set out in the Agreement. Digital MGA must exercise control over its employees, agents, representatives, subcontractors and suppliers. Digital MGA's personnel are not employees of the Customer and are not eligible to participate in any employment benefit plans or other conditions of employment available to employees of the Customer. Digital MGA has no right or authority to incur any obligation or liability in the name of the Customer.
- (i) Headings and Number. The division of the Agreement into various component parts and the division of those parts into Sections and Subsections, and the headings of those Sections and Subsections, are for reference only and will not limit or control the meaning or interpretation of the Agreement. Words importing the singular number only include the plural and vice-versa, and words importing one gender only include all genders.
- (j) Notice. All notices under the Agreement must be in writing and must be: (i) emailed to the receiving party, or (ii) delivered to the receiving party by overnight courier, or (iii) delivered to the receiving party by hand, or (iv) mailed by prepaid registered mail and addressed to the receiving party at its address set out on the Cover Page, or at such other address of which a party may give notice in accordance with this Subsection. Any notice delivered in accordance with this Subsection will be deemed to have been given when received.
- (k) Waiver. No failure or delay by either party in exercising any right under the Agreement will constitute a waiver of that right.
- (l) Severability. If any provision of the Agreement is held to be unenforceable, then the remaining provisions will continue in full force and effect. The parties will in good faith negotiate a mutually acceptable and enforceable substitute for the unenforceable provision, which substitute will be as consistent as possible with the original intent of the parties.

- (m) Counterparts and Electronic Delivery. The Cover Page may be executed in counterpart and such counterparts together will constitute a single instrument. Execution and delivery of an executed counterpart of the Cover Page by any electronic means capable of producing a printed copy will be equally effective as delivery of a manually executed counterpart.