

Between
TruePoint Solutions, LCT Software LLC
and
Town of Los Gatos, CA

Master Services Agreement

www.digeplan.com

Parties

1. This Master Service Agreement (this “**Agreement**”) is entered into as of the date of last signature (the “**Effective Date**”) by and between TruePoint Solutions (DigEplan reseller and service provider) located at 3262 Penryn RD suite 100-B, Loomis CA and LCT Software LLC a Florida corporation principally located at 4500, 140th Avenue North Suite, 101 Clearwater, FL 33762 (“LCT Software”), and the Town of Los Gatos, CA, 110 E. Main St., Los Gatos, CA 95030 (the **Customer**.)

Background

- a) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet for the purpose of subscribers
- b) The customer wishes to use the Supplier's service in its business operations.
- c) The Supplier has agreed to provide, and the customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

Agreed terms

- 1.1. **Definitions** - Unless otherwise defined in this Agreement, terms used herein have the same meanings as set out in the Exhibits to this Agreement (including any supplements or attachments thereto).
- 1.2. “**Optional Services**” refers to certain optional add-ons to the Subscription Service as may be offered by LCT Software from time to time.
- 1.3. “**Professional Services**” refers to LCT Software’s delivery, training, performance optimization and related services as set out in the Professional Services Terms. The Professional Services described in this Agreement are applicable to Customer if and as ordered.
- 1.4. “**Professional Services Terms**” refers to those additional Professional Services Terms and Conditions attached hereto at Exhibit D.
- 1.5. “**Services**” refers to the Subscription Service together with any Professional Services and/or Optional Services, as applicable.
- 1.6. “**Subscription Service**” refers to DigEplan’s cloud-based service designed to provide government entities with Integrated Electronic Plan Review.
- 1.7. “**Subscription T’s & C’s**” refers to the Subscription Terms and Conditions attached hereto at Exhibit C

Customer agrees that its purchase of the Services hereunder is neither contingent on the delivery of nor any oral or written comments about any future functionality or features of the Subscription Service.

2. Procurement of Services

Customer may purchase the Services by submitting orders in a form designated or approved by LCT Software (each, an “**Order**”) or, in the case of certain Professional Services, by executing Statements of Work designated or approved by LCT Software (each an “**SOW**”). Upon Order (or SOW) acceptance and subject to Customer’s payment of the corresponding Services Fees, LCT Software will make the Services available to Customer.

2.1. Governing Terms. The Subscription Service will be subject to this Agreement and the Subscription T's & C's for the Subscription Period and number of End Users as specified in each Order. Professional Services will be subject to this Agreement and the Professional Services Terms for the designated performance period as specific in the applicable Order or SOW. Any Optional Services will be subject to the Subscription Terms or such other documentation as designated by LCT Software.

2.2. Order Acceptance. No Order for Services will be deemed accepted by LCT Software unless and until LCT Software accepts such Order (or SOW) in writing. Any terms and conditions contained in any quote, invoice, purchase order or Order that are inconsistent with the terms and conditions of this Agreement will be deemed stricken, unless expressly agreed to in writing by LCT Software with explicit reference to the accepted terms and conditions. All Orders and SOWs will reference this Agreement. Upon acceptance of an Order as provided above, it will become part of this Agreement.

2.3. Adding End Users. If Customer desires to increase the number of End Users that are permitted to use the Subscription Service, a new Order must be issued for the additional End Users. LCT Software may, in its discretion, allow or require the initial Subscription Period of newly-purchased subscriptions to be adjusted to expire or renew simultaneously with Customer's pre-existing subscription(s).

2.4. Optional Services. Purchase of Optional Services from LCT Software will be subject to any price quote LCT Software provides to Customer and the Order procedure described above. As designated by LCT Software at the time of Customer's purchase, use of the Optional Services may be subject to Exhibit D or additional terms and conditions beyond or in lieu of those in Exhibit C.

3. Fees and Payment for Services

3.1. Fees. Customer will pay all fees for the Services per the prices quoted to Customer by LCT Software and finalized via an Order or SOW. Unless expressly set out in an Order or SOW, price increases will not apply to any Order or SOW that has already been accepted by LCT Software. Except as otherwise agreed by the parties in writing, Services Fees are quoted and payable in United States dollars, and Customer's payment obligations are non-cancelable, and Fees paid are non-refundable.

3.2. Invoicing and Payment. TruePoint Solutions will invoice Customer in advance for the Services unless otherwise expressly agreed by the parties.

3.3. Subscription Service fees are due upon invoice and payable within forty-five (45) days of the invoice date. Subscription Service fees will be due no later than the first day of each Subscription Period to which the payment relates. If Customer orders additional End User quantities part-way through an existing Subscription Period, and the initial Subscription Period for the additional quantity is adjusted as described in Section 2.3, then the Subscription fee for such additional quantity will be pro-rated accordingly. Optional Services will be due at the same time as payment for the corresponding Subscription Service, or (if applicable) as otherwise specified in the applicable Order or governing terms. Subscription Service fees will be subject to an automatic annual increase by the percentage of the prior year's Subscription Service fees (the "Uplift") listed in the Order.

3.4. Professional Services fees and expenses are due upon invoice and payable within thirty (30) days of the invoice date. Professional Services fees and expenses may be subject to additional payment terms if and as designated in the applicable Order or SOW. Generally, Professional Services expenses will be billed as accrued and invoiced to Customer monthly in accordance with LCT Software's expenses travel policy.

3.5. **Billing Info & Overdue Charges.** Customer is responsible for keeping LCT Software accurately and fully informed of Customer's billing and contact information, including providing any purchase order numbers in advance of invoice issuance. If any Fees are not received from Customer by the due date, they will accrue interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

3.6. **Overdue Payments.** If any amount owing by Customer under this Agreement for any of the Services is thirty (30) or more days overdue, LCT Software may, without limiting LCT Software's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement (including any Order or SOW) so that all such obligations become immediately due and payable, suspend the Subscription Service and/or stop performance of the Professional Services until such amounts are paid in full.

3.7. **Taxes.** LCT Software's Services fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If LCT Software has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides LCT Software with a valid tax exemption certificate authorized by the appropriate taxing authority prior to invoice issuance. For clarity, LCT Software is solely responsible for taxes assessable against it based on LCT Software income, property and employees.

4. Term and Termination

4.1. **Term of Agreement.** Unless terminated earlier in accordance with Section 4.2, this Agreement commences on the Effective Date and will continue with respect to the Services as enumerated below:

4.1.1. **Subscription Service.** The Subscription T's & C's at **Exhibit C** will commence on the date listed in the first Order and continue for a period of one (1) year (the "Initial Subscription Period"). Thereafter, the Subscription Term will automatically renew for additional one-year periods (each a "Renewal Subscription Period") unless and until either party gives written notice of non-renewal at least thirty (30) days in advance. Customer must send written notice of non-renewal to **Accounts@lctsoftware.com**. Should Customer not provide written notice of non-renewal at least thirty (30) days in advance, then Customer is obligated to pay for the subsequent renewal in full.

4.1.2. **Professional Services.** If and as applicable to Customer, the Professional Services Terms at Exhibit D will commence on the date listed in the first Order or SOW and continue for the period designated in such Order or SOW. The effectiveness of the Professional Services Terms will be automatically extended to the last date specified in all SOWs and Professional Services Orders issued by LCT Software. Upon Customer request, LCT Software may, in its sole discretion, reinstate expired Professional Services Terms after a lapse in effectiveness under previously issued SOWs or Professional Services Orders.

4.2. **Termination.** Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach. The Services will be subject to additional termination provisions if and as designated in the respective Exhibits to this Agreement.

4.3. Effect of Termination. Termination or expiration of this Agreement will not terminate any then-current Customer Subscriptions to the Subscription Service (which will continue to be governed by the terms of **Exhibit C**, including the termination provisions set forth therein); provided, however, that in the case of termination of this Agreement by LCT Software for Customer's uncured breach of this Agreement, LCT Software may simultaneously terminate any such Subscriptions. Subject to the Professional Services Terms, termination of this Agreement will terminate all on-going and planned Professional Services.

5. Additional customer terms.

Any terms and conditions required by Customer under applicable statute, judicial order or agency policy will be as stated in this Section 5 (the "Additional Customer Terms"). Alternatively, the Parties may set forth Additional Customer Terms at Exhibit C to this Agreement as warranted under the circumstances. Notwithstanding anything to the contrary in Section 6, the Additional Customer Terms will govern over the body of this Agreement in the event of a direct conflict of terms. In the absence of any inclusion of Additional Customer Terms in this Section 5 or at Exhibit C, the parties agree that no additional contractual obligations are intended in respect of the Services provided hereunder.

6. General

6.1 The parties acknowledge that the terms of each of the Exhibits to this Agreement (inclusive of any supplements or attachments thereto), including, but not limited to, the disclaimers, limitations of liability, and other general provisions thereof, are incorporated into and form a part of this Agreement.

6.2 In the event of a direct conflict between the body of this Agreement and the terms of the Exhibits hereto, the terms in the body of this Agreement will govern. Each party specifies its address set forth above for receipt of notices under this Agreement. This Agreement may be signed in one or more identical counterparts, each of which will be an original, but all of which together will constitute one instrument.

Subscription Fees and Term

1. Subscription Fees (updated for 4 additional licenses)

The new yearly Subscription base fee shall amount to a total of **\$16,859** (first 16) + **\$3,312** (additional 4) = **\$20,171**. The Town of Los Gatos is now licensed for 20 users.

2. Additional User Subscription Fees

Additional User Subscriptions may be purchased by the Agency in accordance with clause 2.3 at \$69.00 per User Subscription per month.

New Subscription Term:

- 1-year, form July 1st, 2021 to June 30th, 2022 - \$16,859
Additional invoice for \$828 (prorated 4 users * \$69 = \$276 mo * 3 for April, May and June).
- 2-year, form July 1st, 2022 to June 30th, 2023 - \$20,776
- 3-year, form July 1st, 2023 to June 30th, 2024 - \$21,399
- 4-year, form July 1st, 2024 to June 30th, 2025 - \$22,041
- 5-year, form July 1st, 2025 to June 30th, 2026 - \$22,702

Exhibits List:

- Exhibit A - Standard Support Policy
- Exhibit B – Service Level Commitment
- Exhibit C – Subscription Terms and Conditions

Signed on behalf of
Town of Los Gatos

Laurel Prevetti, Town Manager

Approved as to Form

Robert W. Schultz, Town Attorney

Signed on behalf of
TruePoint Solutions

Keith Hobday, Partner

Signed on Behalf of
LCT Software, LLC

Jason Matthews, CEO

Exhibit – A

Standard Support Policy

This LCT Software LLC’s SaaS Support Policy (“Support Policy”) is a policy governing the use of DigEplan’s software-as- service products (the “Service(s)”) under the terms of the services agreement (the “Agreement”) between LCT Software, LLC and its affiliates (“LCT Software”, “us” or “we”) and the purchaser of DigEplan’s Service (“Customer”). This Support Policy may be updated from time to time by LCT Software at its sole discretion.

General Requirements and Hours of Operation

Ticketing Support: LCT Software will provide access to a ticketing system, which will be available twenty-four (24) hours per day, seven (7) days per week. A qualified support specialist shall use commercially reasonable efforts to answer questions and resolve problems regarding the Subscription Service during normal business hours of Monday-Friday, 8:00 A.M. until 5:00 P.M PST.

Telephone and E-mail Support: DigEplan’s Customer Support will be available to Customer from 8:00 A.M. until 5:00 P.M. Pacific Standard Time Monday through Friday, excluding LCT Software LLC’s observed holidays.

Online Support Material: Available twenty-four (24) hours, seven (7) days a week, LCT Software will make available to Customer certain technical information in DigEplan’s online support database.

Updates

Updates may address security fixes, critical patches, general maintenance functionality, and documentation and shall be made available at LCT Software’s discretion. LCT Software is under no obligation to develop any future functionality or enhancements unless otherwise specified in the Agreement. If an update for the Service is made available to Customer pursuant to this Support Policy, it will automatically replace the previous version of the applicable Service.

Where practical, LCT Software will schedule Updates during non-business hours and will provide Customers with advance notice of all Updates.

Upgrade/Downgrade of Severity Level

If, during the Support Request process, the issue either warrants assignment of a higher severity level than currently assigned or no longer warrants the severity level currently assigned based on its current impact on the production operation of the SaaS offering, then the severity level will be upgraded or downgraded accordingly to the severity level that most appropriately reflects its current impact.

Third Party Product Support

If any third-party software is not supplied by LCT Software, LCT Software disclaims all support obligations for such third-party software, unless expressly specified by LCT Software in Customer’s Agreement.

Exclusions

The following Support Exclusions are not covered by this Support Policy: (a) Support required due to Customer's or any End User's or third party's misuse of the Services; (b) Support during times outside of LCT Software regular business hours stated above; (c) Support necessitated by external factors outside of LCT Software's reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (d) Support of or caused by customizations (if outside of LCT Software's best practice recommendations), configuration changes, scripting, or data loss caused by or on behalf of Customer or any End User; (e) Support of or caused by Customer's or any End User's or third party's equipment, software or other technology (other than third party equipment within LCT Software's direct control); (f) Support to resolve or work-around conditions which cannot be reproduced in LCT Software's support environment and (g) Support of any software add-ons supplied together with the Service (except where specified in the Agreement). Any support services falling within these Support Exclusions may be provided by LCT Software at its discretion and, if so provided, may be subject to additional pricing and support terms as specified by LCT Software

Support Classifications

Error Classification	Criteria
Critical Severity Issue (Priority 1)	The Service is down or there is a major malfunction (deeming Service non-functional or severely affected), resulting in a business revenue loss and impacting the Service functionality for a majority of users. No reasonable workaround exists.
High Severity Issue (Priority 2)	High loss of Service functionality or performance, impacting the Service functionality for a high number of users (e.g. Service response is very slow, day to day operations continue, but are impacted by the issue). No reasonable workaround available or the workaround is impractical.
Medium Severity Issue (Priority 3)	Moderate loss of Service functionality or performance, impacting multiple users. A convenient workaround exists (e.g. non-critical feature is unavailable or requires additional user intervention).
Low Severity Issue (Priority 4)	Minor loss of Service functionality or feature in question.

Functional Definitions: For the purposes of error classification, essential or major functions include: data capture features, SLA and alarming features, performance management features and application performance problem resolution features.

Response Time: LCT Software shall use commercially reasonable efforts to respond to error reports in accordance with the table set forth below. LCT Software will use reasonable means to repair the error and keep Customer informed of progress. LCT Software makes no representations as to when a full resolution of the error may be made.

Error Classification	Initial Response and Acknowledgement	Updates	Resolution Goal
Critical	1 Business Hour	Daily	LCT Software will put forth our best effort to provide a workaround, fix, or estimated completion date within seventy-two (72) hours after the problem has been diagnosed and/or replicated.
High	4 Business Hours	Weekly	LCT Software will put forth our best effort to provide a workaround or fix or estimated completion date within four (4) business days after the problem has been diagnosed and/or replicated.
Medium	8 Business Hours	As available	LCT Software will put forth our best effort to provide a workaround or fix or estimated completion date within seven (7) business days after the problem has been diagnosed and/or replicated.
Low	24 Business Hours	None	Resolution for the Issue may be released as a patch set or be incorporated into a future schedule release of the product.

Exhibit B

SERVICE LEVEL COMMITMENT

This SaaS Service Level Commitment (“SLC”) is a policy governing the use of LCT software-as-service products (individually or collectively, the “Service” or “DigEplan”) under the terms of the LCT Software Master Services Agreement (the “Agreement”) between LCT Software LLC and its affiliates (“LCT Software”, “us” or “we”) and the purchaser of LCT Software’s Subscription Service (“Customer”).

Unless otherwise provided herein, this SLC is subject to the terms of the Agreement and capitalized terms will have the meaning specified in the Agreement. LCT Software reserves the right to change the terms of this SLC in accordance with the Agreement.

Definitions

“Monthly Uptime Percentage” is calculated by subtracting from 100% the percentage of minutes during the month in which the Service was Unavailable. Measurement of the Monthly Uptime Percentage excludes downtime resulting directly or indirectly from any SLC Exclusion.

“Service Credit” is a dollar credit, calculated as set forth below, that LCT Software may credit back to an eligible Customer account.

“Unavailable” means, as applicable: (i) Customer is repeatedly unable to log into the Service; (ii) Customer experiences repeated connection request failures; (iii) Customer experiences lack of connectivity of external, public instances or sites lasting for more than ten (10) minutes;

The foregoing events must be verifiable or replicable by LCT Software or its designee. Availability of Accela APIs which are used by DigEplan to connect, is expressly excluded from this SLC.

Service Commitment

LCT Software will use commercially reasonable efforts to make the Service available with a Monthly Uptime Percentage of at least 99.9%, in each calendar month of the Subscription Period (the “Commitment”). In the event the Service does not meet this Commitment, Customer will be eligible to receive a Service Credit as described below.

Scheduled & Emergency Maintenance

LCT Software will maintain certain scheduled maintenance windows during which regular, planned maintenance of the Service may be performed. LCT Software will use commercially reasonable efforts to provide Customer with no less than twenty-four (24) hours’ notice prior to Services unavailability due to planned maintenance. LCT Software’s standard maintenance window will generally fall between the hours of 12:00 AM (00:00) and 5:00 AM [05:00] on a day of our choosing, local time.

In exceptional circumstances where updates may take more time than the weekly time slot, it may be necessary to run updates over w-ends.

LCT Software will endeavour to provide as much notice as is practicable under the circumstances for patches, updates, fixes and other emergency maintenance activities which may be applied on an urgent basis.

LCT Software will provide three (3) business days’ notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature.

Service Credits Monthly Uptime Percentage	Service Credit Percentage
Less than 99.9% but equal to or greater than 99.0%	2%
Less than 99.0%	5%

LCT Software will apply any Service Credits only against future Service payments otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from LCT Software.

Service Credits may not be transferred or applied to any other account.

Unless otherwise provided in the Agreement, Customer’s sole and exclusive remedy for any unavailability, non-performance, or other failure by LCT Software to provide the Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLC.

Service Credit Requests

To receive a Service Credit, Customer must submit a claim in writing to accounts@lctsoftware.com

To be eligible for a Service Credit, the claim must be received by LCT Software in the calendar quarter in which the incident occurred and must include:

- the words “SLC Credit Request” in the subject line;
- the dates and times of each Unavailability incident that Customer is claiming; and
- the quantity or scope of affected Users (as indicated by User ID, number of departments or similar metric);
- Supporting evidence from the support service desk

If the Monthly Uptime Percentage of such Service Credit request is confirmed by us and is less than the Service Commitment, LCT Software will issue the Service Credit to Customer within one billing cycle following the month in which Customer’s request is confirmed by LCT Software. Customer’s failure to provide the request and other information as required above will disqualify Customer from receiving a Service Credit.

SLC Exclusions

The Service Commitment does not apply to any unavailability, suspension or termination of the Service or any Service performance issues: (i) caused by factors outside of LCT Software’s reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (ii) that result from customizations (if outside of LCT Software’s best practice recommendations), configuration changes by or on behalf of Customer or any End User; (iii) that result from Customer’s or any End User’s or third party’s equipment, software or other technology or integrations (other than third party equipment within LCT Software’s direct control); (iv) that result from any maintenance as provided for pursuant to the above terms; or (vii) arising from our suspension or termination of Customer’s right to use the Service in accordance with the Agreement (collectively, the “SLC Exclusions”). If availability is impacted by factors other than those used in the Monthly Uptime Percentage calculation, LCT Software may issue a Service Credit with consideration to pertinent factors as assessed by LCT Software in its sole discretion.

EXHIBIT C

Subscription Terms & Conditions

Purchase or use of the Service (defined below) is subject to these Subscription Terms and Conditions (these “Terms”).

1. DEFINITIONS

“**Agreement**” means these Terms and, if applicable, the written master service agreement or other written agreement between Customer and LCT Software LLC that incorporates these Terms by reference.

“**Communication Data**” means any and all information transmitted, shared, or exchanged between Customer and any End User, or between End User and any third party (including any third-party network or website), using the Service, with respect to any transaction or other communication enabled by the Service, but excluding Security Data.

“**Customer**” means the entity that purchases a subscription to the Service, directly from LCT Software or through an authorized reseller, distributor, or other channel partner of LCT Software.

“**End Users**” means individuals who are authorized by Customer to use the Service and for whom Customer has purchased a subscription to the Service. End Users may include but are not limited to Customer’s employees, contractors and agents. Each End User will be associated with a single, unique email address for purposes of accessing (and being identified within) the Service.

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

“**Optional Services**” mean the optional add-ons to the Service that may be available for purchase either directly from LCT Software or through an authorized reseller or partner of LCT Software, as more particularly described or identified in the applicable Order.

“**Order**” means written orders to purchase subscriptions to use the Service (or, where applicable, to purchase Optional Services).

“**Security Data**” means any and all information provided by Customer or any End User to establish secure transmissions through use of the Service, including but not limited to personal information, information used to identify account names or numbers, routing information, usernames, passwords, access codes and prompts.

“**Service**” or “**Subscription Service**” means the cloud-based network security service(s) for which Customer has obtained a subscription either directly from LCT Software or through an authorized reseller or other partner of LCT Software, as more particularly described in the applicable agreement or order under which such subscription was obtained. If and as designated in the Specifications, the Service may be inclusive of application programming interfaces (APIs) developed by LCT Software to enable interaction and integration with the Service. Unless otherwise specified herein or other applicable contractual terms, all references to “Service” will be deemed to include any and all Optional Services.

“**Software**” means any software (including client software for End Users’ devices) that LCT Software makes available for download or otherwise provides for use with the Service.

“**Subscription Period(s)**” means the duration of Customers and End Users active, paid access to the Service, as designated in the Order(s).

“**Supported Modification**” means a configuration of or modification to the Service requested by Customer that can be consistently supported by LCT Software via APIs, does not require direct database changes and is capable of being tested and maintained by LCT Software.

2. AUTHORIZED USERS. Only End Users may access or use the Service under Customer's account. Each End User may use any reasonable number of compatible devices for purposes of accessing the Service; provided that, LCT Software reserves the right to determine whether a number of devices is reasonable and, in its sole discretion, to place a corresponding cap on the number of devices. Unless expressly authorized by LCT Software, End User subscriptions cannot be shared or used by more than one individual but may be permanently reassigned to new End Users. The number of End User subscriptions purchased may be increased (under a new Order) but cannot be decreased during any Subscription Period.

3. USE OF THE SERVICE

3.1. LCT Software's Responsibilities. LCT Software will: (i) provide to Customer support related to the Service in accordance with the LCT Software Support Terms.

3.2. Customer's Responsibilities. Customer will (i) be responsible for meeting LCT Software's applicable minimum system requirements for use of the Service; (ii) be responsible for End Users' compliance with these Terms and for any other activity (whether or not authorized by Customer) occurring under Customer's account, (iii) be solely responsible for the accuracy, quality, integrity and legality of Communication Data, (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Service under its account, and notify LCT Software promptly of any such unauthorized access or use, and (v) use the Service only in accordance with the applicable documentation, laws and government regulations, and any written instructions provided by LCT Software to Customer.

3.3. Prohibitions. Customer will not, and will ensure that its End Users do not, (i) make the Service available to anyone other than End Users; (ii) sell, resell, rent, lease or transfer the Service in whole or in part to any third party (including Customer affiliates) without the express permission of LCT Software and execution of designated transfer documentation; (iii) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights; (iv) use the Service to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein; (vi) attempt to gain unauthorized access to the Service or any related systems or networks; or (vii) obtain intellectual property rights to the use of any component of the Services (inclusive of APIs).

3.4. Software. End Users may need to download and install client Software (as made available by LCT Software or other third party authorized by LCT Software) on each device through which they intend to use the Service. All use of such Software will be governed by terms of the applicable license agreement or terms of use that accompanies or is made available in connection with the Software. Customer acknowledges that each End User (or authorized Customer representative) must accept such license agreement, and have Service-compatible device(s), to download, install, and/or use the Software. Nothing in these Terms will be deemed to grant to Customer rights of any kind in the Software.

3.5. Security Data and Privacy. Customer understands that failure to protect Security Data may allow an unauthorized person or entity to access the Service. In addition, Customer acknowledges that LCT Software generally does not have access to and cannot retrieve lost Security Data. If Customer loses Security Data, Customer may no longer have access to the Service. Customer agrees that: (i) Customer (or its End User) is solely responsible for collecting, inputting and updating all Security Data; (ii) LCT Software assumes no responsibility for supervision, management or control of Customer's and End Users' Security Data; and (iii) LCT Software assumes no responsibility for any fraudulent or unauthorized use of the Software or any portion of the Service. To the extent that LCT Software has access to any personally identifiable information gathered from Customer or from End Users in connection with the Service, such information will be governed by the provisions of the LCT's Privacy Policy, a copy of which is available on the LCT Software's website at <https://www.digeplan.com/privacy-policy/> (which URL location and content may be updated from time to time by LCT Software).

4. PROPRIETARY RIGHTS

4.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, LCT Software reserves all rights, title and interest in and to the Service and any associated Software and documentation, including all

related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

4.2. Restrictions. In addition to the other prohibitions set forth in these Terms, Customer will not and will ensure that its agents do not (i) create derivative works based on the Service, (ii) copy, frame or mirror any part or content of the Service, other than copying or framing on Customer's own intranets or otherwise for Customer's internal business purposes in accordance with LCT Software's applicable documentation, (iii) reverse engineer the Service, or (iv) access the Service (inclusive of any APIs) in order to build or patent a competitive product or service or to copy any features, functions or graphics of the Service.

4.3. Communication Data Ownership. Customer reserves all its rights, title and interest in and to the Communication Data. No rights are granted to LCT Software hereunder with respect to the Communication Data, except that LCT Software may (i) store, copy, process, and transmit such Communication Data for purposes of providing the Service to Customer and (ii) otherwise utilize Communication Data if and as permitted by the LCT Software's Privacy Policy.

4.4. Customer Suggestions. Customer grants LCT Software a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Service (or LCT's other software or services) any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or End Users relating to the operation or features of the Service.

5. CONFIDENTIALITY

5.1. Definition. As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

5.2. **Protection.** Except as otherwise permitted in writing by the Disclosing Party and subject to the other terms of this Agreement (including LCT Software's Privacy Policy), (i) the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, and

(ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who are legally bound to protect such Confidential Information consistent with these Terms.

5.3. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest, limit, or protect the disclosure.

6. WARRANTIES AND DISCLAIMERS

6.1. Specifications. Subject to the limitations set forth below, LCT Software warrants that the Service will operate in all material respects in accordance with the Specifications. As Customer's sole and exclusive remedy and LCT Software's entire liability for any breach of the foregoing warranty, LCT Software will use commercially reasonable efforts to modify the Service so that it conforms to foregoing warranty.

6.2. **Service Level Commitment.** During the Subscription Period, LCT Software further warrants that the Service will meet the performance level specified in the Service Level Commitment, as made available by LCT Software at <https://zdrive.eu/gVe> (which URL location and content may be updated from time to time by LCT Software). The Service Level Commitment sets forth Customer's sole and exclusive remedy for LCT Software's failure to achieve the stated Service performance level.

6.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, LCT SOFTWARE DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND LCT SOFTWARE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. LCT Software will not be responsible to the extent failure of the Service to operate as warranted is caused by or results from: (i) any modification to the Service other than a Supported Modification; (ii) combination, operation or use of the Service with Customer's or a third party's applications, software or systems; (iii) abuse, willful misconduct or negligence by anyone other than LCT Software or LCT Software's designee; (iv) use of the Service other than in accordance with the terms of this Agreement and/or the applicable Specifications and LCT Software documentation or (v) any of the SLC Exclusions (as defined in the Service Level Commitment).

7. MUTUAL INDEMNIFICATION

7.1. Indemnification by Customer. Customer will defend (or settle), indemnify and hold harmless LCT Software, its officers, directors, employees and subcontractors, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim that: (i) a third party has suffered injury, damage or loss resulting from Customer's or any End User's use of the Service (other than any claim for which LCT Software is responsible under Section 7.2); or (ii) Customer or any End User has used the Service in a manner that violates these Terms or applicable law. Customer's obligations under this Section 7.1 are contingent upon: (a) LCT Software providing Customer with prompt written notice of such claim; (b) LCT Software providing reasonable cooperation to Customer, at Customer's expense, in defense and settlement of such claim; and (c) Customer having sole authority to defend or settle such claim.

7.2. Indemnification by LCT Software. Party will defend (or settle) any suit or action brought against Customer to the extent that it is based upon a claim that the Service, as furnished by LCT Software hereunder, infringes or misappropriates the Intellectual Property Rights of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. LCT Software's obligations under this Section 7.2 are contingent upon:

(a) Customer providing LCT Software with prompt written notice of such claim; (b) Customer providing reasonable cooperation to LCT Software, at LCT Software's expense, in the defense and settlement of such claim; and (c) LCT Software having sole authority to defend or settle such claim. THIS SECTION 7.2 STATES THE ENTIRE OBLIGATION OF LCT SOFTWARE AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE. LCT Software will have no liability under this Section 7.2 to the extent that any third-party claims described herein are based on any combination of the Service with products, services, methods, or other elements not furnished by LCT Software, or any use of the Service in a manner that violates this Agreement or the instructions given to Customer by LCT Software.

7.3. Mitigation Measures. In the event that (i) any claim or potential claim covered by Section 7.2 arises or (ii) LCT Software's right to provide the Service is enjoined or in LCT Software's reasonable opinion is likely to be enjoined, LCT Software may, in its discretion, seek to mitigate the impact of such claim or injunction by obtaining the right to continue providing the Service, by replacing or modifying the Service to make it non-infringing, and/or by suspending or terminating Customer's use of the Service with reasonable notice to Customer. In the case of a suspension or termination pursuant to this Section 7.3, LCT Software will refund to Customer a portion of fees prepaid by Customer for the then-current Subscription period, prorated to the portion of that Subscription period that is affected by the suspension or termination).

8. LIMITATIONS OF LIABILITY. EXCEPT THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 7.1 AND 7.2, IN NO EVENT WILL PARTY'S LIABILITY TO OTHER PARTY OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE INCIDENT.

8.1. Exclusion of Damages. NEITHER PARTY NOR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTHING IN THESE TERMS EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.

8.2. Security and Other Risks. Customer acknowledges that, notwithstanding security features of the Service, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi-governmental actors, as well as technologies, that may attempt to breach any electronic security measure.

Subject only to its limited warranty obligations set forth in Section 6, LCT Software will have no liability for any security breach caused by any such persons, entities, or technologies. Customer further acknowledges that the Service is not guaranteed to operate without interruptions, failures, or errors. If Customer or End Users use the Service in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify LCT Software and hold it harmless against those risks.

8.3. Basis of Bargain. THE LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH IN THIS SECTION 8 ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN LCT SOFTWARE AND CUSTOMER AND WILL APPLY TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW.

9. SUBSCRIPTION PERIOD AND TERMINATION

9.1. Term of End User Subscriptions. End User Subscriptions purchased by Customer commence on the start date specified in the applicable Order and, unless terminated earlier in accordance with these Terms, continue for the term specified therein (the "**Subscription Period**"). A Subscription Period and/or pricing there on may be subject to prorating where LCT Software deems it appropriate to cause newly purchased Subscriptions to expire or renew simultaneously with Customer's pre-existing Subscription(s). Except as otherwise specified in the applicable Order, all Subscriptions will automatically renew for additional Subscription Periods equal to the expiring Subscription Period or one year (whichever is shorter), unless either party gives the other at least thirty (30) days' notice of non-renewal before the end of the relevant Subscription Period. The per-unit pricing during any such renewal Subscription Period may be subject to annual pricing increase as designated by LCT Software and notified to Customer. Pricing increases will be effective upon renewal of the Subscription Period and annually thereafter, unless otherwise agreed to by the parties. If either party provides notice of non-renewal as set forth above, Customer's right to use the Service will terminate at the end of the relevant Subscription Period.

9.2. Termination or Suspension for Cause. A party may terminate any Subscription for cause upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty (30) day period. In addition, LCT Software may, at its sole option, suspend or terminate Customer's or any End User's access to the Service, or any portion thereof, immediately if LCT Software, in its sole discretion: (i) if suspects that any person other than Customer or an End User is using or attempting to use Security Data, (ii) suspects that Customer or an End User is using the Service in a way that violates these Terms and could expose LCT Software or any other entity to harm or legal liability, or (iii) is or reasonably believes it is required to do so by law or court order.

9.3. Effect of Termination. Within thirty (30) calendar days following the end of Customer's final Subscription Period, Customer may request in writing LCT Software to provide a copy of Customer's data and associated documents in a database dump file format. LCT Software will comply in a timely manner with such request;

provided that, Customer (a) pays all costs of and associated with such copying, as calculated at LCT Software then-current time-and-materials rates; and (b) pays any and all unpaid amounts due to LCT Software.

9.4. **Surviving Provisions.** Sections 4 (Proprietary Rights), 5 (Confidentiality), 6.2 (Disclaimer), 7 (Mutual Indemnification), 8 (Limitation of Liability), 9.3 (Effect of Termination), 9.4 (Surviving Provisions) and 10 (General Provisions) will survive any termination or expiration of this Agreement.

10. GENERAL

10.1. **Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) sending by confirmed email if sent during the recipient's normal business hours (or, if not, then on the next business day). Notices will be sent to the address specified by the recipient in writing when entering into this Agreement or establishing Customer's account for the Service (or such other address as the recipient may thereafter specify by notice given in accordance with this Section 10.1).

10.2. **Governing Law and Jurisdiction.** This Agreement and any action related thereto will be governed by the laws of the State of California without regard to its conflict of law's provisions. The exclusive jurisdiction and venue of any action related to the Service or this Agreement will be the state and federal courts located in California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

10.3. **Compliance with Laws.** Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement including, but not limited to, export laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, Customer will not permit End Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction.

10.4. **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties.

10.5. **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

10.6. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

10.7. **Assignment.** Customer may not assign or transfer this Agreement, whether by operation of law or otherwise, without the prior written consent of LCT Software. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.8. **Publicity.** Subject to the provisions of Section 5, each party will have the right to publicly announce the existence of the business relationship between parties. In addition, during the Subscription Period of Customer's Service use, LCT Software may use Customer's name, trademarks, and logos (collectively, "**Customer's Marks**") on LCT Software's websites and marketing materials to identify Customer as LCT Software's customer, and for providing the Service to Customer; provided that, LCT Software will use commercially reasonable efforts to adhere to any usage guidelines furnished by Customer with respect to Customer's Marks.

10.9. **Force Majeure.** The Parties will not be liable for any delay or failure to perform under this Agreement to the extent such delay or failure results from circumstances or causes beyond the reasonable control of the Party.

10.10. **Entire Agreement.** These Terms, including any attachments hereto as mutually agreed upon by the Parties, constitute the entire agreement between the parties concerning its subject matter and supersedes all

prior communications, agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of these Terms will be effective unless in writing and signed by a duly authorized representative of each party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in Customer's order documentation will be incorporated into or form any part of these Terms, and all such terms or conditions will be null.

Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in Customer's Order, any SOW or other order documentation will be incorporated into or form any part of this PSA, and all such terms or conditions will be null. Under no circumstances will the terms, conditions or provisions of any RFP, purchase order, invoice or other administrative document issued by Customer in connection to this PSA be deemed to modify, alter or expand this PSA, regardless of any failure of LCT Software to object to such terms, provisions, or conditions. No other act, document, usage, custom or waiver will be deemed to amend or modify this PSA unless agreed to in writing signed by a duly authorized representative of both parties. In the event of any inconsistency or conflict between the terms of this PSA, and SOW, the terms of the SOW will control with regards to the project described.

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