

**TERMS AND CONDITIONS APPLICABLE TO THE DIGINU PLATFORMS**

**1 GENERAL**

1.1 In this document the following words shall have the meaning ascribed to them:

- 1.1.1 **"Agreement"** means the agreement concluded between Diginu and the Merchant in accordance with these Terms upon acceptance of these Terms by the Merchant;
- 1.1.2 **"Application"** means the Diginu mobile application;
- 1.1.3 **"Business Day"** means any day other than a Saturday, Sunday or recognised public holiday in the Republic of South Africa;
- 1.1.4 **"Diginu"** means DigiLiv Group (Pty) Ltd (Registration Number 2019/385836/07), e-mail address: [info@diginu.com](mailto:info@diginu.com);
- 1.1.5 **"diginuPay"** means the diginuPay App electronic private e-wallet;
- 1.1.6 **"Estimated Preparation Time"** means the estimated time the Merchant takes to prepare and package its Products;
- 1.1.7 **"Gateway Fee"** means the third-party payment gateway service fee payable on each Order;
- 1.1.8 **"Immediate Order"** means an Order made by the User for collection or delivery as soon as possible, but not before expiry of the Estimated Preparation Time;
- 1.1.9 **"Menu Price"** means the total price to be charged by the Merchant to Users and displayed on the Merchant's Menu, being the Product Price plus the Service Fee;
- 1.1.10 **"Merchant"** means the person or entity concluding these Terms with Diginu;
- 1.1.11 **"Merchant's Menu"** means the menu to be displayed by the Merchant via the Merchant's Profile;
- 1.1.12 **"Merchant's Profile"** means the virtual profile to be created by Diginu for the Merchant which may be accessed by the Merchant using its user name and password;
- 1.1.13 **"Merchant Data"** means all information and documents uploaded by the Merchant onto the Platforms;
- 1.1.14 **"Merchant Delivery Service"** means the delivery service rendered by the Merchant to the User in accordance with clause 13.3, where applicable;
- 1.1.15 **"Order"** means the final order placed by the User for the Products from the Merchant;
- 1.1.16 **"Order Price"** means the total price charged to the User for the Order;
- 1.1.17 **"Parties"** means Diginu and the Merchant and **"Party"** means either one of them;
- 1.1.18 **"Platforms"** means the Website and the Application;
- 1.1.19 **"Personal Information"** has the meaning assigned to that term in the POPI Act;
- 1.1.20 **"POPI Act"** means the Protection of Personal Information Act No 4 of 2013 and includes the regulations published under that Act, and any amendments to that Act and/or the regulations from time to time (if any);
- 1.1.21 **"Products"** means those products listed on the Menus to be made available by the Merchant for purchase by the Users, including food, beverages and other listed items;
- 1.1.22 **"Product Price"** means the price charged by the

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**2 INTRODUCTION**

- 2.1 Diginu owns and operates the System and has contracted with various Third Party Delivery Service Providers.
- 2.2 The Merchant wishes to register for the Services and Diginu intends to make the Services available to the Merchant for the term referred to in clause 4.
- 2.3 The Merchant acknowledges that Diginu does not provide transportation or logistics services, nor does it function as a transportation carrier and that all such transportation or

Merchant to Users for its Products, including VAT but excluding the Service Fee;

**"Registered Cell Phones"** means those cell phone numbers provided by the Merchant during the Registration Process or any replacements to those numbers accepted by Diginu from time to time;

**"Registration Process"** means the registration process to be completed by the Merchant via the System, as more fully set out in clause 5;

**"Responsible Party"** has the meaning ascribed to that term in the POPI Act;

**"Scheduled Order"** means an Order made by the User for the collection of the Products at a Scheduled Time;

**"Scheduled Time"** means the time selected by the User for collection of the Scheduled Order;

**"Services"** means those services provided by Diginu through the System;

**"Service Fee"** means the service fee charged by Diginu to the Merchant in accordance with clause 9, which is inclusive of VAT and the Gateway Fee;

**"System"** means the intellectual property, software, hardware, materials and all other third party software, electronic, computer, telecommunication devices and other equipment used by Diginu and/or its sub-contractor(s) for the provision of the Platforms and the Services including any and all interfaces to the equipment for the purpose of interacting with the Merchant, the Third Party Delivery Service Providers and the Users;

**"Terms"** means the terms and conditions set out in this document, as may be amended, varied or added to from time to time by Diginu;

**"Third Party Delivery Fee"** means the delivery fee for the Third Party Delivery Services as specified by Diginu via the Platforms from time to time;

**"Third Party Delivery Service"** means the third party delivery service rendered by the Third Party Delivery Service Providers;

**"Third Party Delivery Service Providers"** means those independent third party transportation providers and independent third party logistics providers under agreement with Diginu who perform Third Party Delivery Services for or on behalf of Users;

**"Trademarks"** means trademarks, service marks, trade names, copyrights, logos, slogans, content, media, materials, identifying symbols and indicia of the applicable Party;

**"User"** means a user of the Diginu Platforms who places the Order with the Merchant;

**"VAT Act"** means the Value-Added Tax Act No. 89 of 1991; and

**"Website"** means <https://www.diginu.com>.

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logistics services are provided by the Merchant or Third Party Delivery Service Providers who are not employed by Diginu nor any of its affiliates.

### 3 ACCEPTANCE OF THESE TERMS

- 3.1 The Merchant unconditionally and irrevocably agrees, for as long as it accesses and/or makes use of the Services, to be bound by and comply with these Terms.
- 3.2 Any changes to these Terms will be communicated to the Merchant via e-mail, sms or updated on the Platforms and such changes will be effective 14 (fourteen) days thereafter. By continuing to use the System and/or the Services after such changes come into effect, the Merchant unconditionally and irrevocably agrees to be bound by the Terms.
- 3.3 As Diginu is required by law to communicate changes and updates to the Terms to the Merchant, any communication in this regard will not be subject to any opt out clause the Merchant may have communicated to Diginu or any third party.
- 3.4 The Merchant shall ensure that its personal details (including contact details) are kept up to date.

### 4 TERM

- 4.1 An agreement, as amended from time to time in accordance with these Terms, ("**Agreement**") shall come into effect between the Merchant and Diginu in accordance with these Terms on the date of acceptance of these Terms by the Merchant and such agreement shall continue indefinitely, subject to termination in accordance with these Terms.
- 4.2 Diginu may terminate the Agreement at any time for convenience and without cause upon giving the Merchant no less than 10 days' prior written notice thereof.
- 4.3 The Merchant may terminate the Agreement at any time for convenience and without cause upon giving Diginu no less than 1 Business Day's prior written notice thereof.
- 4.4 Diginu will disable the Merchant's Profile upon the expiry of the notice period referred to in clause 4.2 or 4.3, as applicable.
- 4.5 Any termination in accordance with this clause shall not affect the rights and obligations of either Party which accrued prior to such termination.
- 4.6 The Merchant unconditionally and irrevocably agrees, for as long as it accesses and/or makes use of the Services, to be bound by and comply with the Agreement.

### 5 REGISTRATION

- 5.1 In order to use the Services the Merchant will be required to complete the Registration Process referred to below.
- 5.2 To complete the Registration Process, the Merchant must –
  - 5.2.1 use the accredited merchant marketer's m-link provided by the accredited merchant marketer to prospective merchants to register;
  - 5.2.2 visit the Website;
  - 5.2.3 select "Register" in the "Merchant" menu tab;
  - 5.2.4 complete the registration form by inserting the Merchant Data; and
  - 5.2.5 accept these Terms
- 5.3 Diginu will create a Merchant's Profile once the Merchant has selected a user name and password and has

successfully completed the Registration Process.

### 6 THE MENU & MERCHANT PROFILE

- 6.1 Following registration the Merchant shall with the assistance of the accredited merchant marketer –
  - 6.1.1 log onto the System using the Username and Password; and
  - 6.1.2 upload the Menu and other information required by Diginu onto the Platforms by following the procedure therefore set out in the Platforms.
- 6.2 The Merchant must prominently display on the:
  - 6.2.1 Menu –
    - 6.2.1.1 the Products offered and a short description, if applicable;
    - 6.2.1.2 the Menu Prices;
  - 6.2.2 Profile -
    - 6.2.2.1 operating hours of the Merchant; and
    - 6.2.3 any other information required by Diginu from time to time.

### 7 ORDERS

- 7.1 Ordering of Products shall take place as follows:
  - 7.1.1 the Users shall be entitled to select Products for purchase from the Merchant's Menu using the Platforms by "adding to basket" and shall be entitled to place an order for the final selection of Products;
  - 7.1.2 if an Order is placed by the User the Order will be manually accepted by the Merchant within one minute via the Platform and the User will be billed for the Menu Price, the Delivery Fee, an Admin Fee, as well as any driver gratuity as per the User's discretion, as applicable.
  - 7.1.3 Diginu will notify the Merchant of the Order by way of the Platform of the Merchant, or by any other technology in use from time to time by Diginu.
  - 7.1.4 If, after confirmation of the Order, the Merchant is unable to proceed with the Order for any reason, it shall be entitled to cancel the Order, provided that such cancellation is done within ten minutes of the Order being placed.
  - 7.1.5 In the event of a cancellation of an Order by the Merchant the Merchant must immediately indicate it on the Platform and the User will be refunded in full for all amounts paid by them in respect of that Order. Notwithstanding clause 7.1.5, in the event of a cancellation of an Order by the Merchant the Merchant shall remain liable to Diginu for the full Service Fee and the Third Party Delivery Fee (if applicable).
  - 7.1.7 The User shall not be entitled to cancel an Order via the Platform once an Order is placed.
- 7.2 The Merchant acknowledges and agrees that the acceptance by Diginu on behalf of the Merchant of the Order in accordance with this clause shall result in a binding contract of sale between the User and the Merchant in respect of the Order, subject to the right of cancellation by the Merchant in accordance with this clause.
- 7.3 The Merchant will be responsible for
  - 7.3.1 ensuring that its operating times are correctly recorded on the Platform to enable Diginu to switch the status of the Merchant's Profile to "off-line" outside of these operating times; and

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- 7.3.2 switching the status of the Merchant's Profile to off-line in circumstances where it is unable for any reason (including, but not limited to, a strike, lock-out or other force majeure event) to fulfil orders; and
- 7.3.3 listing Products as "out-of-stock" where that Product is unavailable for any reason.
- 7.4 Diginu shall under no circumstances be liable for any damages or losses incurred by the Merchant as a result of its failure to comply with its obligations under clause 7.3, including Service Fees and/or Third Party Delivery Fees charged to the Merchant in accordance with this clause.
- 8 USER QUERIES AND/OR COMPLAINTS**
- 8.1 Diginu shall not be responsible for dealing with Users in respect of any Product related queries and/or complaints. Diginu shall be entitled to refer the User directly to the Merchant in respect of any such queries and/or complaints.
- 8.2 Diginu shall take responsibility for the transit and delivery of the product, as received from the Merchant, to the User and undertake to train and best prepare the independent delivery driver on how to best handle the goods to protect the integrity of the product.
- 8.3 Diginu shall however be the direct point of contact with the User in respect of queries and/or complaints regarding the Platform and Delivery of goods.
- 9 SERVICE FEE**
- 9.1 In respect of Orders placed by the User for collection and/or delivery of Products in accordance with clause 13 the Merchant shall receive full menu price from Diginu as set up by the Merchant Marketer and approved by the Merchant, with a 15% (fifteen percent) Service Fee added to the Menu Price which will be received by Diginu in full.
- 9.2 It is the Merchant's responsibility to confirm that the Menu Prices are correct with the 15% (fifteen percent) Service Fee added.
- 9.3 Except as may be expressly agreed in these Terms, each Party will be responsible for its own expenses and costs during its performance under these Terms.
- 10 PAYMENT TERMS**
- 10.1 The Merchant authorises Diginu to accept payment from the User for and on behalf of the Merchant.
- 10.2 Diginu will remit to the Merchant the total Order Price (less the Service Fee, Admin Fee, Delivery Fee and any driver gratuity) collected by Diginu on behalf of the Merchant via the Platforms (including any VAT collected on its behalf) less any refunds or rebates given to Users and chargebacks and/or amounts disputed by cardholders (such final remitted amount being the "Product Revenue"). All Product Revenue that is duly owed to the Merchant will be remitted weekly on a Friday via electronic funds transfer, or instantly should the Merchant have opted in for DiginuPay, provided the successful approval of KYC documents.
- 10.3 Should the Merchant opt for bank EFT rather than DiginuPay, the bank charges for every EFT will be R20,00 (twenty rand).
- 10.4 Diginu will be responsible for paying the Third Party Delivery Fee received by it from the Users to the Third Party Delivery Service Provider.
- 10.5 If reasonable, Diginu may adjust the remittance of Product Revenue collected on the Merchant's behalf for reasons including fees and charges payable by the Merchant in the event of any Orders being cancelled by the Merchant, failure to fully or partially fulfil an Order or making a correction on a Product. The Merchant may identify any disagreements in connection with such adjustments through the Platform. Diginu reserves the right to collect any amounts in connection with such adjustments via a deduction from the remittance of Product Revenue collected on the Merchant's behalf, or otherwise seeking reimbursement from the Merchant by any lawful collection methods available. In more serious situations, such as fraud (including any charges for Items that Users did not place) or User complaints, Diginu reserves the right to cancel a payment entirely.
- 10.6 It is expressly recorded that the Merchant shall remain responsible to Diginu for payment of the Service Fee notwithstanding any refunds or rebates provided by the Merchant or Diginu on behalf of the Merchant to Users in accordance with this clause.
- 10.7 Diginu uses a third-party payment processor (the "Payment Processor") to process payments made through the Platforms. The processing of these payments will be subject to the terms, conditions and privacy policies of the payment processor. Diginu is not responsible for and gives no warranties nor makes any representations in respect of the privacy policies or practices of linked or any third party or advertised web sites, including but not limited to its payment processor.
- 11 THE MERCHANT'S OBLIGATIONS**
- 11.1 The Merchant shall, in addition to all other obligations set out in these Terms, at all relevant times –
- 11.1.1 ensure that the Merchant Data provided by the Merchant to Diginu and/or uploaded by it onto the Platforms is up-to-date, accurate, reliable and valid in accordance with applicable laws;
- 11.1.2 be responsible for checking that the Merchant Data has been successfully uploaded and is stored in the relevant location;
- 11.1.3 continuously update the Merchant Data to make sure that it is correct and up to date;
- 11.1.4 not disclose its Merchant Credentials and/or password to any third party;
- 11.1.5 not use the System or the Services in any manner which violates these Terms or any applicable laws;
- 11.1.6 comply with all reasonable requests of Diginu in relation to its use of the Platforms; and
- 11.1.7 maintain all necessary back-ups of the Merchant Data.
- 11.2 Diginu may, from time to time, require the Merchant to provide certain additional information and/or samples ("Additional Materials") pertaining to particular Products, their preparation or their pricing for Diginu's audit or inspection purposes or to comply with other applicable laws or regulations. If the Merchant fails to timely provide Additional Information in response to notification and request by Diginu, Diginu expressly reserves the right to temporarily remove affected Products from the Merchant's Menu on the Platforms until such Additional Information is received.

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### 12 **SUSPENSION AND RESTRICTION OF THE SERVICES**

- 12.1 Diginu reserves the right at any time to suspend or restrict the Services (or any part thereof) with or without notice if:
- 12.1.1 the Merchant has breached any of these Terms;
  - 12.1.2 Diginu, in its sole discretion, believes that the Merchant has misused the Services or has violated any applicable laws in connection with the use of the Services;
  - 12.1.3 an event involving Merchant that, in Diginu's reasonable judgment, causes it to have significant concern for the reputation of any of its respective Trademarks or brand, including matters related to the alleged violation of any applicable retail food or other health or safety regulations; and/or
  - 12.1.4 Diginu believes it is necessary to prevent loss or damage to it, Users or the Merchant and/or to prevent corruption or loss of Merchant Data.
- 12.2 In addition, Diginu reserves the right to temporarily suspend the Services for any modification, maintenance or repair work or for any other reason that requires the temporary suspension of the functionalities of the System.
- 12.3 The Merchant agrees that Diginu shall not be liable to the Merchant or to any third party for any modification, suspension or termination of the Services in terms of this clause 11.

### 13 **DELIVERY or CLICK AND COLLECT**

- 13.1 Diginu will facilitate one or more of the following delivery or click and collect options, at its choice, through the Platforms, in which event the following will apply -
- 13.2 Click and Collect:
- 13.2.1 The Merchant will be responsible for ensuring that the Products are ready for collection by the User upon expiry of the Estimated Preparation Time on any orders.
  - 13.2.2 If the User fails to collect the Products by close of business on the date of the Order the Merchant has the right in its sole discretion to dispose of the Products and the User shall remain liable for the payment thereof.
- 13.3 The Merchant Delivery Service:
- 13.3.1 The Merchant shall be entitled to use its own delivery service to deliver the Products at the designated delivery location ("**Delivery Location**") according to the terms and conditions of the Independent Driver Contractor.
- 13.4 Third Party Delivery Service -
- 13.4.1 The Merchant will be responsible for ensuring that the Products are ready for collection by the Third Party Delivery Service Provider prior to or upon expiry of the Estimated Preparation Time for Orders.
  - 13.4.2 The Third Party Delivery Service will be responsible for collecting the Order from the Merchant and delivering same to the User.
  - 13.4.3 The Merchant shall notify diginu via diginuMerchant or the merchant back office when an order is ready for collection.
  - 13.4.4 The Merchant is responsible for –
  - 13.4.4.1 ensuring that the driver receives the correct Products. Neither Diginu, the driver nor the Third Party Delivery Service Provider will be responsible

for ensuring that the Order made and the Products received are correct;

- 13.4.4.2 ensuring that it is handing over the Products to the correct driver. The Merchant must, in this regard, only hand over Products to a driver after the driver gives the Merchant the correct order number.
- 13.4.5 The Third Party Delivery Service shall only be available at select locations determined by Diginu and is subject to the availability of such Third Party Delivery Service Providers.

### 14 **THE PRODUCTS**

- 14.1 The Merchant must prepare, handle, store, label and package all Products in accordance with applicable laws and regulations, including all health and safety rules and regulations and shall ensure that the final Product delivered by it to the Third Party Delivery Service or Merchant Delivery Service (in the case of deliveries) or the User (in the case of Click and Collect) correspond with the description of the Products in the Order and the Merchant's Menu.
- 14.2 The Merchant will ensure that the contents of its Menu includes any notifications about ingredients, nutritional information, allergen information, alcoholic content (if applicable), etc., are accurate and comply with all applicable laws and regulations.
- 14.3 If the Merchant fails to prepare or supply Items in accordance with food or alcohol standards or if any Product fails to meet the criteria referred to in clause 14.2, Diginu may, in its sole discretion, remove such Product from the Platforms and/or the Merchant's Menu.
- 14.4 The Merchant acknowledges and agrees that neither Diginu nor the Third Party Delivery Service Provider takes title to any Product at any time.
- 14.5 However, if the Merchant reimburses a User for substandard items the Order Price for purposes of calculating the Service Fee shall not be reduced.
- 14.6 The following restricted items may not be featured or sold via the Platforms: Products containing endangered species, alcohol (unless duly licenced by law), tobacco or any Products that Merchant does not have permission to offer. Diginu may further remove from or otherwise limit Merchant's ability to include in the Menu to be uploaded any Products Diginu deems prohibited or inappropriate.
- 14.7 Diginu may restrict the sale of Products via the Platforms based on physical attributes of such Products (e.g., weight (per Item or in aggregate), height, shape, or appropriateness for delivery).

### 15 **MARKETING**

- 15.1 Diginu and its affiliates may showcase the availability of Merchant's Items via the Platforms through various promotional activities (e.g., through social media channels, websites, advertisements, or blogs). Diginu (or a party designated by Diginu acting on Diginu's behalf) may take videos and photographs for marketing and other purposes related to the Platforms ("*Diginu Photographs*").
- 15.2 The Merchant agrees that the Diginu Photographs (including all intellectual property rights therein) are and will remain the sole and exclusive property of Diginu or its affiliates.
- 15.3 In addition, the Merchant may provide videos, photographs or other materials to Diginu or its affiliates

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- 15.4 (“Merchant Marketing Materials”) for use in connection with the display of Merchant’s Items on the Platforms or the marketing and promotion of Products and the availability of Products via the Platforms.
- 15.4 The Merchant hereby grants Diginu and its affiliates a non-exclusive, perpetual, fully paid-up and royalty free license to use and display such Merchant Marketing Materials in connection with Merchant’s Items and other promotional activities relating to the Platforms.
- 15.5 The Merchant represents and warrants that the Merchant Marketing Materials do not infringe, misappropriate, or otherwise violate any third party’s intellectual property or other proprietary rights. To the extent that the Merchant Marketing Materials contain any third party materials, Merchant is solely responsible for and will secure any and all rights, licenses, consents and permissions necessary for Diginu to be able to use the Merchant Marketing Materials in accordance with this clause Merchant agrees that Diginu or its affiliates may remove Merchant Marketing Materials from the Platforms if Diginu or its affiliates receive notice or otherwise reasonably believe that such Merchant Marketing Materials may infringe, misappropriate, or otherwise violate any intellectual property or other proprietary rights.
- 15.6 Diginu may incentivise the Merchant and other merchants by advertising their Products and the Merchant shall have no claim against Diginu for the same or similar treatment.
- 16 **RATINGS**
- Merchant acknowledges and agrees that, after receiving Products, a User may be prompted by the Platforms to provide a rating of such Platforms and, at such User’s option, to provide comments or feedback related to the User’s experience with Merchant and the relevant Products on the Platform (“User Feedback”). Diginu and its affiliates reserve the right to use, share, and display User Feedback in any manner in connection with the business of Diginu and its affiliates without the approval of Merchant. Neither Diginu nor its affiliates have any obligation to verify User Feedback, provided that Diginu and its affiliates reserve the right in their sole discretion to edit or remove comments in the event that such comments include obscenities or other objectionable content, include an individual’s name or other Personal Information, violate any privacy or other applicable laws, or Diginu’s or its affiliates’ content policies.
- 17 **PROMOTIONS**
- 17.1 Diginu may offer a promotional functionality to the Merchant from time to time to allow the Merchant to promote its Products through the Platforms via promotional offers to the Users.
- 17.2 The Merchant shall be liable for providing the data relating to the promotional offers and shall be responsible for updating and/or removing the promotional offers using the Platform’s promotional functionality.
- 17.3 The Merchant shall at all times be responsible for fulfilling the promotional offers and abiding with the terms thereof and warrants that such promotional offers are in accordance with all applicable laws.
- 17.4 Diginu may, in its sole discretion and without notice to the Merchant, remove such promotional material and/or promotional functionality from the Platforms and may suspend the ability of the Merchant to provide such promotional offers.
- 17.5 Diginu will charge the Merchant the Service Fee based on Order Price of the promotional offer and as such the Merchant will be liable for the Service Fee based on the discounted price (if any) as provided in the promotional offer.
- 18 **PRICING**
- The Merchant is responsible for determining and setting the price for each Product (the “Product Price”), and is ultimately responsible for the collection and remittance of its own VAT.
- 19 **PROTECTION OF PERSONAL INFORMATION**
- 19.1 The Merchant acknowledges that in receiving the Services, it may have access to Personal Information relating to the Users. Accordingly, the Merchant shall -
- 19.1.1 treat the Personal Information as strictly confidential in accordance with the provisions contained in clause 20;
- 19.1.2 only Process Personal Information in accordance with applicable laws and in accordance with these Terms;
- 19.1.3 not disclose or otherwise make available the Personal Information to any third party (including sub-contractors and staff) other than authorised staff who require access to such Personal Information strictly in order for the Merchant to carry out its obligations under this Agreement,
- 19.1.4 ensure that all of Merchant’s staff and any other persons having access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information on substantially the same terms and conditions as set forth in clause 20;
- 19.1.5 take appropriate, reasonable technical and organisational measures to ensure that the integrity of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access by having regard to any requirement set forth in law; stipulated in industry rules or in codes of conduct or by a professional body and/or generally accepted information security practices and procedures which apply to the Merchant and/or Diginu’s business, as may be appropriate to discharge its obligations in terms of this Agreement; and
- 19.1.6 taking appropriate, reasonable, technical and organisational measures to ensure that the Personal Information in its possession or under its control remains available to the User as and when it may be required.
- 19.2 The Merchant shall-
- 19.2.1 notify Diginu in writing immediately in the event of the Merchant becoming aware of or having reasonable grounds to believe that the Personal Information of a User has been accessed or acquired by an unauthorised person and take all appropriate steps to limit the compromise of Personal Information and to restore the integrity of the

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- 19.2.2 affected information systems as quickly as possible; as soon as reasonably possible thereafter, the Merchant shall be required to engage with the User to discuss the security breach, to report all relevant facts relating to the compromise and to accept directions from Diginu on steps to be taken to mitigate the extent of the compromise and loss occasioned by the compromise; and
- 19.2.3 provide Diginu with details of the Personal Information affected by the compromise, including but not limited to, the identity of Users, the nature and extent of the compromise, and, where possible, details of the identity of the unauthorised person/s who are known to or who may reasonably be suspected of, having accessed or acquired the Personal Information.
- 19.3 Immediately upon notifying the User as set forth in clause 19.2.1 –
- 19.3.1 at its own cost, take all necessary steps as well as steps directed by Diginu to mitigate the continuation of the compromise, the repetition of a similar compromise, and mitigate the extent of the loss occasioned by the compromise of Personal Information;
- 19.3.2 implement all measures reasonably necessary to restore the integrity of its information system as quickly as possible;
- 19.3.3 only upon request by Diginu, or otherwise if required by law, notify the Regulator and/or the affected Users. Any such notification shall be in a form prescribed by Diginu or the Regulator, as the case may be, if applicable and contain such information as is specified by Diginu;
- 19.3.4 under instruction and authority of Diginu, and at no extra cost to Diginu, provide Diginu with all assistance required by Diginu to discharge its duties relating to a requirement by the Regulator (a) for Diginu as Responsible Party to submit an independent auditor's report or other information relating to interference with the Personal Information of Users, (b) for Diginu to submit an independent auditor's report or other information to verify that Diginu is processing Personal Information in accordance with legislation, and/or (c) for Diginu to submit an independent auditor's report or other information to verify that Diginu is otherwise compliant with any other relevant legislation; and
- 19.3.5 at the request and option of Diginu, and to its satisfaction, promptly return or destroy all Personal Information in the possession or control of the Merchant, including in accordance with any specific retention, destruction and purging requirements as may be prescribed by Diginu; and
- 19.3.6 not Process the Personal Information otherwise than in accordance with clause 19.4.
- 19.4 The Merchant –
- 19.4.1 shall only Process the Personal Information of Users for a specific, lawful purpose strictly in accordance with Diginu's express written instructions;
- 19.4.2 shall not carry out any related or further Processing activities for any other reason whatsoever without the express prior written consent of Diginu, save that the Merchant may carry out reasonable further Processing strictly in order to comply with an obligation which is imposed on it by law; and
- 19.4.3 shall only Process Personal Information in a manner that does not infringe the privacy of the Users, in accordance with relevant legislation relating to the Processing of Personal Information.
- 19.5 Without limiting any other provision of this Agreement, including any provision in this clause 8, Merchant will not merge any of the data collected or otherwise obtained in connection with this Agreement, including any Personal Information, with other data collected from any source or otherwise use any of the data collected or otherwise obtained in connection with these Terms, including any Personal Information, for the purpose of re-identification, targeted marketing, or any other similar purpose.
- 19.6 This clause shall survive termination of this Agreement.
- 20 **CONFIDENTIAL INFORMATION**
- 20.1 Each Party who receives information from the other which is marked as confidential or which by its nature may reasonably be expected to be confidential ("**Confidential Information**") agrees and undertakes –
- 20.1.1 to treat and safeguard the Confidential Information as strictly private, secret and confidential;
- 20.1.2 not to use or permit the use of the Confidential Information for any purpose other than as required by it to comply with its obligations under this Agreement;
- 20.1.3 not to disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the other Party; and
- 20.1.4 to keep all Confidential Information safely and securely and to take all such steps as may be reasonably necessary to protect it against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent Confidential Information from falling into the hands of unauthorised third parties.
- 20.2 The recipient of Confidential Information shall, at its own expense, within 10 (ten) days from written demand by the other Party –
- 20.2.1 return or destroy (as stipulated by the other Party), and procure the return or destruction of all Confidential Information and all copies of it (whether in paper, electronic or other format) held by it without keeping any copies or partial copies thereof unless authorised;
- 20.2.2 delete or procure the deletion of all Confidential Information from any computer, word processor or other device in its possession or control; and
- 20.2.3 confirm in writing to us that it has complied with the provisions above.
- 20.3 The recipient of Confidential Information shall not be required to return, destroy or delete Confidential Information to the extent that it is required to retain such Confidential Information by law or to satisfy the rules and regulations of a regulatory body to which it is subject. For the avoidance of doubt, the obligations of confidentiality contained in this clause will continue to apply to such retained Confidential Information.
- 20.4 The undertakings given by the Recipient under this clause 13 shall not apply to any information which –
- 20.4.1 is or becomes generally available to the public other

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- than by the negligence or default of the recipient of these provisions; or
- 20.4.2 the other Party confirms in writing is disclosed on a non-confidential basis;
- 20.5 The recipient of the Confidential Information hereby indemnifies and holds the other Party and its staff and subcontractors ("**Indemnified Parties**") harmless against any and all loss, action, expense, claim, harm or damages of whatsoever nature suffered or sustained by the Indemnified Parties pursuant to a breach or threatened breach by the recipient of the provisions of this clause.
- 20.6 This clause shall survive termination of this Agreement.

### **21 DIGINU'S INTELLECTUAL PROPERTY**

- 21.1 Diginu owns or is licensed to use all intellectual property rights in and to the System, the Services and all materials, text, drawings and data entered into or uploaded by it onto the System (collectively the "**Intellectual Property**").
- 21.2 Diginu grants the Merchant a non-exclusive and non-transferable license to use the Intellectual Property for as long as Diginu provides the Merchant with the Services and the Merchant shall be entitled to use such Intellectual Property solely in connection with such Services and for no other purpose.
- 21.3 Any unauthorised reproduction, distribution, derivative creation, sale, broadcast or other circulation or exploitation of the whole or any part of the Intellectual Property by the Merchant shall constitute an infringement of Diginu's rights in and to such Intellectual Property.
- 21.4 Diginu will retain sole and absolute control over the Platforms (and all elements of the user experience and user interface relating to the Platforms), including with respect to: (i) the personalization of the Platforms for Users; (ii) the prioritisation and display of options available to Users; (iii) the search functionality and results provided to Users; (iv) the Third Party Delivery Service Fee; and (v) adding, removing or otherwise modifying any feature or functionality made available through the Platforms.
- 21.5 Diginu owns or is licensed to use the Diginu Trademarks displayed on the Platforms whether registered or unregistered. Save as expressly authorised in accordance with these Terms, the Merchant must obtain Diginu's prior written permission to use any of Diginu's Trademarks. Merchant further agrees that any use or display of Diginu's Trademarks will conform to the current version of Diginu's brand guidelines in place from time to time which will be made available to Merchant upon request.
- 21.6 Merchant represents and warrants that Merchant's Trademarks do not infringe, misappropriate, or otherwise violate any third party's intellectual property or other proprietary rights. Diginu may remove Merchant's Marks from the Platforms if Diginu receive notice or otherwise reasonably believes that such Merchant's Trademarks may infringe, misappropriate, or otherwise violate any intellectual property or other proprietary rights.
- 21.7 Any use or display of Merchant's Trademarks by Diginu or its affiliates in connection with making Products available through the Platforms in the ordinary course of business will not require any prior, express, written consent.
- 21.8 All goodwill related to the use of a Party's Trademarks by the other Party will inure to the benefit of the owner of

the Trademarks. Except as expressly set forth herein, neither Party will be deemed to grant the other Party any license or rights under any intellectual property or other proprietary rights. All rights not granted are expressly reserved.

- 21.9 The Merchant may not –
- 21.9.1 announce any future additions, improvements or added features to the Platforms, prior to Diginu officially announcing it on its selected public domains;
- 21.9.2 post any advertisement of Diginu on any Social Media Platforms, printed media or via electronic mail without Diginu's prior written consent, save as expressly provided for in these Terms;
- 21.9.3 make any alterations, additions or improvements of any sort to the Trademarks, and in particular the Diginu logo;
- 21.9.4 use any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, program, algorithm or methodology for any unlawful purpose, including the unlawful access to, acquisition of, control over, copying or monitoring of the Diginu System and/or Platform; or
- 21.9.5 attempt to decipher, decompile, disassemble or reverse-engineer any of the software comprising the System or the Services.
- 21.10 The Merchant shall cease using the Trademarks upon expiry or termination of these Terms and shall return or destroy or materials containing the Trademarks (including the removal of such Trademarks from its Social Media Platforms), at the instance of Diginu.
- 21.11 This clause shall survive termination of this Agreement.

### **22 WARRANTIES**

- 22.1 The Merchant warrants to Diginu that –
- 22.1.1 the Merchant Data it uploads does not copy the work of any third party or otherwise infringe any third party intellectual property rights and the uploading of such Merchant Data does not and will not violate applicable laws or the rights of any third party;
- 22.1.2 all Merchant Data is up-to-date, accurate and truthful and the Merchant has the right to upload such information to the System and/or the Platforms;
- 22.1.3 the Merchant has, and will continue to have all necessary consents to use the Services; and
- 22.1.4 the Merchant is and will remain in compliance with all applicable laws and shall have in place all necessary permits in relation to its business, the Products and the use of the Services.
- 22.2 Although Diginu will always try to ensure that the functionality of the Services are available, the Services are provided "as is". Subject to the Consumer Protection Act 68 of 2008 as read with any of its Regulations (collectively "the CPA"), Diginu makes no warranties, representations, statements or guarantees (whether express, implied in law or residual) in this regard. Subject to the CPA, Diginu does not warrant that the Services will -
- 22.2.1 meet the Merchant's requirements or expectations;
- 22.2.2 be uninterrupted, timely, secure or error free;
- 22.2.3 meet any particular measure of accuracy, completeness or reliability, performance or quality; or

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- 22.2.4 be free of viruses or any other data or code which has the ability to corrupt or adversely affect the operation of the Merchant's computer, data or network.
- 23 **BREACH**
- If any Party ("**the Defaulting Party**") commits a breach of this Agreement and/or fails to comply with any of the provisions hereof, then the other Party shall be entitled to give the Defaulting Party 7 (seven) days' notice in writing to remedy such breach and/or failure and if the Defaulting Party fails to comply with such notice, the other Party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the other Party may have in law or in terms of this Agreement, including the right to claim damages –
- 23.1 to cancel this agreement; or
- 23.2 to claim immediate performance and/or payment of all the Defaulting Party's obligations in terms hereof.
- 24 **ADDRESS FOR SERVICE OF LEGAL NOTICES AND DOCUMENTS**
- 24.1 Each of the Parties chooses the address for the service of legal notices and documents ("**domicilium**") for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement at, in respect of Diginu, its address set out in clause 1 and, in respect of the Merchant, its address set out in the Registration Process.
- 24.2 Each of the Parties shall be entitled from time to time, by written notice to the other to vary its *domicilium* to any other address within the Republic of South Africa which is not a post office box or *poste restante* (a notation written on a letter indicating that the letter should be held at the post office until claimed by the addressee).
- 24.3 Any notice given and any payment made by a Party to the other ("**the addressee**") which:
- 24.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of the delivery; and/or
- 24.3.2 is transmitted by email during normal business hours of the addressee shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee within 1 (one) hour after receipt of transmission.
- 24.4 Notwithstanding the provisions of clause 24.3, in the event that a written notice or any process is actually received by a Party, such receipt shall be valid for all purposes under these Terms notwithstanding that it was not received at a Party's chosen *domicilium*.
- 25 **LIMITATION OF LIABILITY**
- 25.1 Diginu shall under no circumstances whatsoever be liable for any direct or indirect loss or damage resulting from *inter alia*:
- 25.1.1 an Order containing any error, the rejection of an Order or the cancellation of an Order (other than in circumstances referred to in clause 26.2), save in so far as it is obliged to refund the User any amount already paid by it in accordance with these Terms;
- 25.1.2 Diginu's or the User's use of or reliance on the Merchant Data;
- 25.1.3 any liability relating to any harm caused to the Users as a result of their handling or ingestion of the Products (save for circumstances referred to in clause 26.2);
- 25.1.4 the unauthorised use of the Services by any third party;
- 25.1.5 inadvertent damage, corruption or loss of the Merchant Data, provided always that Diginu shall take reasonable steps to mitigate such damage, corruption or loss. It remains the Merchant's responsibility to maintain appropriate alternate backups of the Merchant Data;
- 25.1.6 telecommunication, electricity, internet or server downtime or failure; or
- 25.1.7 the Merchant failing to adhere to any of these Terms.
- 25.2 Notwithstanding anything to the contrary contained herein, Diginu shall not be liable for:
- 25.2.1 any special or indirect damages whether within the contemplation of the parties to these Terms or not; and/or
- 25.2.2 loss of income or profit, howsoever arising.
- 25.3 Should it be found that Diginu is liable to the Merchant for any reason whatsoever (including in respect of indemnities granted by Diginu in favour of the Merchant), the aggregate liability to the Merchant, from whatsoever cause arising shall not exceed the Service Fees paid to Diginu in the 12 (twelve) month period prior to the date on which the cause of action arose.
- 25.4 This clause shall survive termination of this Agreement.
- 26 **INDEMNITY**
- 26.1 The Merchant indemnifies Diginu, its affiliates and subcontractors against any third party claims, damages or costs (including reasonable attorney's fees) in connection with -
- 26.1.1 the User's or any other person's handling or consumption of the Products (other than in circumstances referred to in clause 26.2);
- 26.1.2 acts or omissions of the Merchant or any of its staff, affiliates, subcontractors or agents; and/or
- 26.1.3 the Merchant's breach of this Agreement.
- 26.2 Although Diginu takes no responsibility for the actions or omissions of the Third Party Delivery Service Provider Diginu has nevertheless agreed, in good faith, to indemnify the Merchant, its affiliates and subcontractors against any third party claims (including reasonable attorney's fees) which may be made against any one or more of them in connection with:
- 26.2.1 any negligent or wilful actions of the Third Party Delivery Service Providers, including in connection with late collections or deliveries, damage to or contamination of Products while in possession of the Third Party Delivery Service Provider; and/or
- 26.2.2 any faults in or failure of the System, the negligence or wilful misconduct of Diginu and/or its breach of this Agreement.
- 26.3 This clause shall survive termination of this Agreement.



27 **FORCE MAJEURE**

Diginu shall not be deemed in default or otherwise be liable for any delay in or failure to provide the Services by reason of any act of fire, natural disaster, accident, act of government, shortage of materials, labour, supplies, or Third Party Delivery Service Providers, failure of transportation, internet or communication facilities, epidemics or pandemics or any other cause to the extent it is beyond the reasonable control of Diginu.

28 **GENERAL**

- 28.1 Diginu may assume that all electronic communications and uploads which reasonably appear to originate from a Merchant are in fact from the Merchant and that the Merchant was authorised to upload the same.
- 28.2 Diginu may send alerts, notifications and other communications to the Merchant by way of SMS, email or other electronic delivery mechanisms and the Merchant consents to receive communications from Diginu in any such manner.
- 28.3 Diginu may send electronic alerts to the cellular number or email address which the Merchant has provided to Diginu.
- 28.4 The Merchant's obligations under these Terms may not be assigned. Diginu may however cede and assign its rights under these Terms.
- 28.5 Diginu does not waive its rights by delaying or failing to exercise them at any time.
- 28.6 If any provision of these Terms shall be determined to be invalid or unenforceable under any rule, law, or regulation of any governmental agency the validity or enforceability of any other provision of these Terms shall not be affected. These Terms will be governed by the laws of the Republic of South Africa.
- 28.7 No class action, or other representative action, joinder or consolidation of any claim with a claim of another person or class of claimants will be allowed.
- 28.8 Save as set out in clause 3, no alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to these Terms or their duly authorised representatives.
- 28.9 Termination or expiry of these Terms shall not affect any of those clauses which expressly or by their nature survive termination of this Agreement.
- 28.10 It is not required for these Terms to be valid and enforceable that a Party shall initial the pages of these Terms and/or have its signature of these Terms verified by a witness.
- 28.11 These Terms may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party last signing one of the counterparts.