

# TANGGO™

## Terms of Service

Effective: March 2025

These Terms of Service constitute a legally binding agreement between you and DIGI Smart Disc, Inc. (together with its affiliates, “**we**,” “**our**” or “**us**”) governing your use of the Tanggo Platform (as defined below) and our website (the “**Site**”). The related services provided by DIGI Smart Disc, Inc. to you and the Tanggo.net site, are collectively referred to as the “**Platform**.”

YOU ACKNOWLEDGE AND AGREE THAT, BY CLICKING ON THE “I AGREE” OR SIMILAR BUTTON, REGISTERING FOR AN ACCOUNT, OR ACCESSING OR USING THE PLATFORM, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THESE TERMS OF SERVICE, WHETHER OR NOT YOU HAVE REGISTERED WITH THE SITE. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE PLATFORM. These Terms are effective as of the date you first click “I agree” (or similar button or checkbox) or use or access the Platform, whichever is earlier. If you accept or agree to these Terms of Service on behalf of your employer or another legal entity, you represent and warrant that (i) you have full legal authority to bind your employer or such entity to these Terms of Service; (ii) you have read and understand these Terms of Service; and (iii) you agree to these Terms of Service on behalf of the party that you represent. In such an event, “you” and “your” will refer and apply to your employer or such other legal entity.

Any personal data you submit to the Platform or which we collect about you is governed by our Privacy Policy (“**Privacy Policy**”), available at <https://digismartdisc.com/privacy-policy/>. You acknowledge that by using the Platform you have reviewed the Privacy Policy. The Privacy Policy is incorporated by reference into these Terms of Service and together form and are hereinafter referred to as this “**Agreement**.”

PLEASE NOTE: THIS AGREEMENT GOVERNS HOW DISPUTES BETWEEN YOU AND DIGI CAN BE RESOLVED. IT CONTAINS A BINDING AND FINAL ARBITRATION PROVISION AND CLASS ACTION WAIVER (SECTION 12). PLEASE READ CAREFULLY AS IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING, IF APPLICABLE, YOUR RIGHT TO OPT OUT OF ARBITRATION.

### **1. The Tanggo Platform**

The Platform is a web-based service which enables clients to create and purchase customized digital media collectibles incorporating customized music, artwork and video (the “**Services**”). Clients are hereinafter referred to as “**Users**.”

### **2. Account, Password, and Security**

You must register with DIGI Smart Disc, Inc. and create an account to use the Tanggo.net Platform (an “**Account**”) and as part of that process you will be requested to provide certain information, including without limitation your name, full address, phone number and email address. By using the Platform, you agree to provide true, accurate, current and complete information as prompted by the registration process and to maintain and promptly update the Account information to keep it accurate, current and complete. This information is also used for shipping and billing purposes. You are the sole authorized user of your Account. You are responsible for maintaining the confidentiality of any log-in, password, and Account number provided by you or given to you by DIGI for accessing the Platform. You are solely and

fully responsible for all activities that occur under your password or Account, even if not authorized by you. DIGI Smart Disc, Inc. has no control over the use of any User's Account and expressly disclaims any liability derived therefrom. Should you suspect that any unauthorized party may be using your password or Account or you suspect any other breach of security, you agree to contact DIGI immediately.

The person signing up for the Platform will be the contracting party ("**Account Owner**") for the purposes of these Terms of Service and will be the person who is authorized to use any corresponding Account we provide to the Account Owner in connection with the Platform. The Account Owner is solely responsible for complying with these Terms of Service and only you are entitled to all benefits accruing thereto. Your Account is not transferable to any other person or account. You must immediately notify us of any unauthorized use of your password or identification or any other breach or threatened breach of our security or the security of your Account.

### **3. The Platform and Content**

The Platform is a web-based service which enables you to upload content in the form of audio and video files and images (the "**Content**") to produce and purchase Tanggo digital media collectibles. You are solely responsible for the Content you upload to the Platform, and you represent and warrant to DIGI Smart Disc, Inc. that one or more of the following is true regarding your Content:

- You are the sole and exclusive owner of the Content you upload to the Platform.
- You have the necessary rights, licenses, and permissions to the Content for the use by DIGI Smart Disc, Inc. to provide the services to you.
- You have acquired the necessary rights to use, modify, reproduce, and distribute the Content for the use by DIGI Smart Disc, Inc. to provide the services to you to the extent you do not own the Content.
- The content will be stored and distributed based on the conditions of the service agreement
- You acknowledge and agree that DIGI Smart Disc, Inc.:
  - Is not involved in the creation or development of Content.
  - Disclaims any responsibility for Content.
  - Cannot be liable for claims arising out of or relating to Content.
  - Is not obligated to monitor, review, or remove Content, but reserves the right to limit or remove Content on the Platform at its sole discretion.

You hereby represent and warrant to DIGI Smart Disc, Inc. that your Content (i) will not infringe on any third party's copyright, patent, trademark, trade secret or other proprietary right or rights of publicity, personality or privacy; (ii) will not violate any law, statute, ordinance, or regulation (including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising, anti-spam or privacy); (iv) will not be defamatory, libelous, unlawfully threatening, or unlawfully harassing; (v) will not be obscene or contain pornography (including but not limited to child

pornography) or be harmful to minors; (vi) will not contain any viruses, Trojan Horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (vii) will not represent you being employed or directly engaged by or affiliated with DIGI Smart Disc, Inc. or purport you to act as a representative or agent of DIGI; and (viii) will not create liability for DIGI Smart Disc, Inc. or cause DIGI Smart Disc, Inc. to lose (in whole or in part) the services of its ISPs or other suppliers.

By uploading any Content through the Platform, you hereby grant to DIGI Smart Disc, Inc. a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, access, view, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast and otherwise exploit such Content to perform the services, through or by means of the Platform. We do not claim any ownership rights in any such Content and nothing in this Agreement will be deemed to restrict any rights that you may have to use and exploit any such Content. If you have any doubts or concerns about your ownership or licensed rights or the legal implications of your use of the Content, you should consult with an attorney. DIGI Smart Disc, Inc. will store your Content for two years and you understand and agree that after such a period, your Content and any Proofs will not be available to you through the Platform. DIGI Smart Disc, Inc. has the right to cancel any order that DIGI Smart Disc, Inc. believes violates the rights of a third party without notice or explanation.

### Terms of Sale

You acknowledge and agree that a legally binding contract is formed when you approve a Proof based on your Content (the "Proof"). You may reject a Proof one time, upon which DIGI Smart Disc, Inc. will reproduce a second Proof without charges. For any additional iterations of Proofs created, you will be charged \$39.95 to be prepaid prior to receiving the additional Proofs. Once you have approved the Proof, DIGI Smart Disc, Inc. has the right to rely on your approval and reproduce the Content as directed into the final product and once you have approved the Proof on the Platform, your order becomes non-returnable and non-refundable, and DIGI Smart Disc, Inc. has no obligation to make any changes after such approval.

DIGI Smart Disc, Inc. Tanggo pricing is as follows:

\$5.99 1 – 4,999

\$4.99 5,000 +

Payment and any other expenses must be paid through the Payment Service Provider ("**PSP**") as indicated on the Platform. You may be required to register with the PSP, agree to the terms of service of the PSP, provide your payment details to the PSP and go through a vetting process at the request of the PSP to set up an account with the PSP (the "**PSP Services Agreement**"). By accepting these Terms of Service, each User agrees that they have downloaded or printed, and reviewed and agreed to, the PSP Services Agreement. Please note that DIGI Smart Disc, Inc. is not a party to the PSP Services Agreement and that you, the PSP and any other parties listed in the PSP Services Agreement are the parties to the PSP Services Agreement and that DIGI Smart Disc, Inc. has no obligations, responsibility or liability to any User or any other party under the PSP Services Agreement.

All prices and fees displayed on the Platform are exclusive of applicable federal, provincial, state, local or other governmental sales, goods and services or other taxes, fees or charges now in force or enacted in the future ("**Taxes**"). Any applicable Taxes are based on the rates applicable to the billing address you provide to us and will be calculated at the time of a transaction is charged to your Account. Unless

otherwise indicated, all prices, fees and other charges are in U.S. dollars, and all payments shall be in U.S. currency.

#### **4. Representations and Warranties**

You represent and warrant that: (i) you are 18 years of age or older or are at least of the legally required age in the jurisdiction in which you reside, and are otherwise capable of entering into binding contracts, (ii) you have the right, authority and capacity to enter into this Agreement and to abide by the terms and conditions of this Agreement, and that you will so abide, (iii) the Content does not contain any material that is defamatory, obscene, illegal or otherwise harmful. Where you enter into this Agreement on behalf of a company or other organization, you represent and warrant that you have authority to act on behalf of that entity and to bind that entity to this Agreement.

You further represent and warrant that (i) you have read, understand, and agree to be bound by these Terms of Service and the Privacy Policy in order to access and use the Platform, and (ii) you will act professionally and responsibly when using or accessing the Platform, you will act in accordance with any applicable local, state, or federal law or custom and in good faith.

You agree not to engage in any of the following prohibited activities, among others: (i) copying, distributing, or disclosing any part of the Platform in any medium other than as allowed by the Platform and these Terms of Service; (ii) using any automated system (other than any functionalities of the Platform), including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Platform; (iii) transmitting spam, chain letters, or other unsolicited email or attempting to phish, pharm, pretext, spider, crawl, or scrape; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Platform; (v) violating any international, federal, provincial or state regulations, rules, laws, or local ordinances; (vi) conducting any unlawful purposes or soliciting others to perform or participate in any unlawful acts; (vii) uploading invalid data, viruses, worms, or other software agents through the Platform; (viii) infringing upon or violate our intellectual property rights or the intellectual property rights of others; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) harassing, insulting, harming, abusing, defaming, abusing, harassing, stalking, threatening, intimidating or otherwise violating the legal rights (such as of privacy and publicity) of any other users or visitors of the Platform or staff member of DIGI; (xi) interfering with or any activity that threatens the performance, security or proper functioning of the Platform; (xii) uploading or transmitting viruses or any other type of malicious code; (xiii) attempting to decipher, decompile, disassemble or reverse engineer any of the software or algorithms used to provide the Platform; (xiv) bypassing the security features or measures we may use to prevent or restrict access to the Platform, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Platform or the content therein; (xv) attempting to access unauthorized Accounts or to collect or track the personal information of others; (xvi) using the Platform for any purpose or in any manner that infringes the rights of any third party; or (xvii) encouraging or enabling any other individual to do any of the foregoing.

#### **5. Termination and Suspension**

Unless otherwise agreed to in writing between you and DIGI Smart Disc, Inc., either party may terminate these Terms of Service for any reason or no cause, at any time. You may cancel and delete your Account at any time by either using the features on the Platform to do so (if applicable and available) or by written

notice to admin@digismartdisc.com After cancellation, you will no longer have access to your Account, your Content, your Proofs, your profile or any other information through the Platform. The provisions of these Terms of Service which by their intent or meaning intended to survive such termination, including without limitation the provisions relating to disclaimer of warranties, limitations of liability, and indemnification, shall survive the termination of these Terms of Service and any termination of your use of or subscription to the Platform and shall continue to apply indefinitely.

We reserve the right to refuse the Platform to anyone for any reason at any time. DIGI Smart Disc, Inc. may terminate or limit your right to use the Platform in the event that we are investigating or believe that you have breached any provision of this Agreement and will use reasonable efforts to provide written or email notice. Such termination or limitation will be effective immediately upon delivery of such notice. If DIGI Smart Disc, Inc. terminates or limits your right to use the Platform pursuant to this section, you are prohibited from registering and creating a new Account under your name, a fake or borrowed name, or the name of any third party, even if you may be acting on behalf of the third party.

Even after your right to use the Platform is terminated or limited, this Agreement will remain enforceable against you. DIGI Smart Disc, Inc. reserves the right to take appropriate legal action, including but not limited to pursuing arbitration in accordance with Section 12 of these Terms of Service.

DIGI Smart Disc, Inc. reserves the right to modify or discontinue, temporarily or permanently, all or any portion of the Platform at its sole discretion. DIGI Smart Disc, Inc. is not liable to you for any modification or discontinuance of all or any portion of the Platform. DIGI Smart Disc, Inc. has the right to restrict anyone from completing registration as a User if DIGI Smart Disc, Inc. believes such person may threaten the safety and integrity of the Platform, or if, in DIGI Smart Disc, Inc.'s discretion, such restriction is necessary to address any other reasonable business concern.

Following the termination or cancellation of your Account, we reserve the right to delete all your data, including any Content, in the normal course of operation. Your data, Content or Proofs cannot be recovered once your Account is terminated or cancelled.

## **6. Links to Third-Party Websites**

The Platform may contain links (such as hyperlinks) to third-party websites. Such links do not constitute endorsement by DIGI Smart Disc, Inc. or association with those websites, their content or their operators. Such links (including without limitation external websites that are framed by the Platform as well as any advertisements displayed in connection therewith) are provided as an information service, for reference and convenience only. DIGI Smart Disc, Inc. does not control any such websites and is not responsible for their (i) availability or accuracy, or (ii) content, advertising, products, or services. It is your responsibility to evaluate the content and usefulness of the information obtained from other websites. You acknowledge and agree that DIGI Smart Disc, Inc. is not involved in the creation or development of third-party websites and disclaims any responsibility for third-party websites and cannot be liable for claims arising out of or relating to third-party websites. Further, you acknowledge and agree that DIGI has no obligation to monitor, review, or remove links to third-party websites, but reserves the right to limit or remove links to third-party websites on the Platform at its sole discretion.

The use of any website controlled, owned or operated by third parties is governed by the terms and conditions of use and privacy policies for those websites. You access such third-party websites at your own risk. DIGI Smart Disc, Inc. expressly disclaims any liability arising in connection with your use and/or viewing of any websites or other material associated with links that may appear on the Platform. You

hereby agree to hold DIGI Smart Disc, Inc. harmless from any liability that may result from the use of links that may appear on the Platform.

## **7. Intellectual Property Rights**

All text, graphics, editorial content, data, formatting, graphs, designs, HTML, look and feel, photographs, music, sounds, images, software, videos, designs, trademarks, logos, typefaces and other content (collectively “**Proprietary Material**”) that you see or read through the Platform is owned by DIGI Smart Disc, Inc., excluding the Content. Proprietary Material is protected in all forms, media and technologies now known or hereinafter developed. DIGI Smart Disc, Inc. owns all Proprietary Material, as well as the coordination, selection, arrangement and enhancement of such Proprietary Materials as a Collective Work under the United States Copyright Act, as amended. The Proprietary Material is protected by the domestic and international laws governing copyright, patents, and other proprietary rights. Users may not copy, download, use, redesign, reconfigure, or retransmit anything from the Platform without DIGI Smart Disc, Inc.’s express prior written consent.

Any use of such Proprietary Material, other than as permitted therein, is expressly prohibited without the prior permission of DIGI Smart Disc, Inc..

The service marks and trademarks of DIGI Smart Disc, Inc., including without limitation DIGI Smart Disc, Inc. and DIGI Smart Disc, Inc. logos, are service marks owned by DIGI Smart Disc, Inc.. Any other trademarks, service marks, logos and/or trade names appearing via the Platform are the property of their respective owners. You may not copy or use any of these marks, logos or trade names without the express prior written consent of the owner.

Additionally, you may choose to or we may invite you to submit comments, ideas, or feedback about the Platform, including without limitation about how to improve our services or our products (“**Feedback**”). By submitting any Feedback, you agree that your disclosure is gratuitous, unsolicited, and without restriction and will not place DIGI Smart Disc, Inc. under any fiduciary or other obligation, and that we are free to use the Feedback without any additional compensation to you, and/or to disclose the Feedback on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, DIGI Smart Disc, Inc. does not waive any rights to use similar or related Feedback previously known to DIGI Smart Disc, Inc., developed by its employees, or obtained from sources other than you. You acknowledge that all email and other correspondence that you submit to us shall become our sole and exclusive property.

## **8. Confidential Information**

You acknowledge that Confidential Information (as defined below) is a valuable, special and unique asset of DIGI Smart Disc, Inc. and agree that you will not disclose, transfer, use (or seek to induce others to disclose, transfer or use) any Confidential Information for any purpose other than using the Platform in accordance with these Terms of Service. If relevant, you may disclose the Confidential Information to your authorized employees and agents provided that they are also bound to maintain the confidentiality of Confidential Information. You shall promptly notify DIGI Smart Disc, Inc. in writing of any circumstances that may constitute unauthorized disclosure, transfer, or use of Confidential Information. You shall use best efforts to protect Confidential Information from unauthorized disclosure, transfer or use. You shall return all originals and any copies of any and all materials containing Confidential Information to DIGI Smart Disc, Inc. upon termination of this Agreement for any reason whatsoever.

The term “**Confidential Information**” shall mean any and all of DIGI Smart Disc, Inc.’s trade secrets, confidential and proprietary information, and all other information and data of DIGI Smart Disc, Inc. that is not generally known to the public or other third parties who could derive value, economic or otherwise, from its use or disclosure. Confidential Information shall be deemed to include technical data, know-how, research, product plans, products, services, customers, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, strategic and other proprietary and confidential information relating to DIGI Smart Disc, Inc. or DIGI Smart Disc, Inc.’s business, operations or properties, including information about DIGI Smart Disc, Inc.’s staff, other users or partners, or other business information disclosed directly or indirectly in writing, orally or by drawings or observation.

## **9. Disclaimer of Warranties**

THE PLATFORM IS PROVIDED ON AN “AS IS” BASIS WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DIGI SMART DISC, INC. MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE CONTENT PROVIDED THROUGH THE PLATFORM OR THE CONTENT OF ANY SITES LINKED TO THE PLATFORM AND ASSUMES NO LIABILITY OR RESPONSIBILITY IN CONTRACT, WARRANTY OR IN TORT FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE PLATFORM, (III) ANY ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; AND (IV) EVENTS BEYOND OUR REASONABLE CONTROL.

DIGI SMART DISC, INC. DOES NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED ON THE PLATFORM.

UNDER NO CIRCUMSTANCES WILL DIGI SMART DISC, INC. AND AFFILIATES OR THEIR CORPORATE PARTNERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, ACTUAL, CONSEQUENTIAL, ECONOMIC, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF DATA, LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE, SYSTEM FAILURE, FAILURE TO STORE ANY INFORMATION OR OTHER CONTENT MAINTAINED OR TRANSMITTED BY DIGI SMART DISC, INC., OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES) ARISING IN CONNECTION WITH YOUR USE OF OR INABILITY TO USE THE PLATFORM, EVEN IF ADVISED OF THE POSSIBILITY OF THE SAME. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU IN THEIR ENTIRETY.

IF, NOTWITHSTANDING THE FOREGOING EXCLUSIONS, IT IS DETERMINED THAT DIGI SMART DISC, INC. AND AFFILIATES OR THEIR CORPORATE PARTNERS ARE LIABLE FOR DAMAGES, IN NO EVENT WILL THE AGGREGATE LIABILITY, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE LOWER OF (I) THE TOTAL FEES PAID BY YOU TO DIGI SMART DISC, INC. DURING THE SIX MONTHS PRIOR TO THE TIME SUCH CLAIM AROSE OR (II) ONE HUNDRED DOLLARS (\$100), TO THE EXTENT PERMITTED BY APPLICABLE LAW.

## **Indemnification**

You hereby agree to indemnify, defend, and hold harmless DIGI Smart Disc, Inc. and its officers, directors, employees, agents, attorneys, insurers, successors and assigns (the “**Indemnified Parties**”) from and

against any and all liabilities incurred in connection with (i) your use or inability to use the Platform, or (ii) your breach or violation of this Agreement; (iii) your violation of any law, or the rights of a third party, and (iv) any Content submitted by you or using your Account to the Platform, including, but not limited to the extent such Content may infringe on the intellectual rights of a third party or otherwise be illegal or unlawful. You also agree to indemnify the Indemnified Parties for any liabilities resulting from your use of software robots, spiders, crawlers, or similar data gathering and extraction tools, or any other action you take that imposes an unreasonable burden or loan on our infrastructure. DIGI Smart Disc, Inc. reserves the right, in its own sole discretion, to assume the exclusive defense and control at its own expense of any matter otherwise subject to your indemnification. You will not, in any event, settle any claim or matter without the prior written consent of DIGI Smart Disc, Inc..

## **10. Dispute Resolution – Arbitration & Class Action Waiver**

PLEASE READ THIS SECTION CAREFULLY — IT AFFECTS YOUR LEGAL RIGHTS AND GOVERNS HOW YOU AND DIGI SMART DISC, INC. CAN BRING CLAIMS AGAINST EACH OTHER. THIS SECTION WILL, WITH LIMITED EXCEPTION, REQUIRE YOU AND DIGI SMART DISC, INC. TO SUBMIT CLAIMS AGAINST EACH OTHER TO BINDING AND FINAL ARBITRATION ON AN INDIVIDUAL BASIS.

You agree that, in the event any dispute or claim arises out of or relating to your use of the Platform, you will contact us at [admin@digismartdisc.com](mailto:admin@digismartdisc.com) and you and DIGI Smart Disc, Inc. will attempt in good faith to negotiate a written resolution of the matter directly. You agree that if the matter remains unresolved for 30 days after notification (via certified mail or personal delivery), such matter will be deemed a “Dispute” as defined below. Except for the right to seek injunctive or other equitable relief described under the “Binding Arbitration” section below, should you file any arbitration claims, or any administrative or legal actions without first having attempted to resolve the matter by mediation, then you agree that you will not be entitled to recover attorneys’ fees, even if you may have been entitled to them otherwise.

**Binding Arbitration.** You and DIGI Smart Disc, Inc. agree that any dispute, claim or controversy arising out of or relating to this Agreement or to your use of the Platform (collectively “**Disputes**”) will be settled by binding arbitration, except that each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation, or violation of a party’s copyrights, trademarks, trade secrets, patents, or other intellectual property rights. **This means that you and DIGI Smart Disc, Inc. both agree to waive the right to a trial by jury.** Notwithstanding the foregoing, you may bring a claim against DIGI Smart Disc, Inc. in “small claims” court, instead of by arbitration, but only if the claim is eligible under the rules of the small claims court and is brought in an individual, non-class, and non-representative basis, and only for so long as it remains in the small claims court and in an individual, non-class, and non-representative basis.

**Class Action Waiver.** You and DIGI Smart Disc, Inc. agree that any proceedings to resolve Disputes will be conducted on an individual basis and not in a class, consolidated, or representative action. **This means that you and DIGI Smart Disc, Inc. both agree to waive the right to participate as a plaintiff as a class member in any class action proceeding. Further, unless you and DIGI Smart Disc, Inc. agree otherwise in writing, the arbitrator in any Dispute may not consolidate more than one person’s claims and may not preside over any form of class action proceeding.**

**Arbitration Administration and Rules.** The arbitration will be administered by the American Arbitration Association (“**AAA**”) in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the “**AAA Rules**”) then in effect, except as modified by this



“Dispute Resolution” section. (The AAA Rules are available at <http://www.adr.org> or by calling the AAA at 1-800-778-7879).

**Arbitration Process.** A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of California and will be selected by the parties from the AAA’s roster of arbitrators with relevant experience. If the parties are unable to agree upon an arbitrator within seven days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with AAA Rules.

**Arbitration Location and Procedure.** Unless you and DIGI Smart Disc, Inc. agree otherwise, the seat of the arbitration shall be in San Francisco, California. If your claim does not exceed USD\$10,000, then the arbitration will be conducted solely on the basis of documents you and DIGI Smart Disc, Inc. submit to the arbitrator, unless you request a hearing and the arbitrator then determines that a hearing is necessary. If your claim exceeds USD\$10,000, your right to a hearing will be determined by AAA Rules. Subject to AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration. Hearings may be conducted by telephone or video conference, if requested and agreed to by the parties.

**Arbitrator’s Decision and Governing Law.** The arbitrator shall apply California law consistent with the Federal Arbitration Act and applicable statutes of limitations and shall honor claims of privilege recognized by law. The arbitrator will render an award within the timeframe specified in the AAA Rules. Judgment on the arbitration may be entered in any court having jurisdiction thereof. Any award of damages by an arbitrator must be consistent with the “Disclaimers and Limitations of Liability” section above. The arbitrator may award declaratory or injunctive relief in favor of the claimant only to the extent necessary to provide relief warranted by the claimant’s individual claim.

**Fees.** Each party’s responsibility to pay the arbitration filing, administrative and arbitrator fees will depend on the circumstances of the arbitration and are set forth in the AAA Rules.

## **11. Governing Law**

Except as provided in Section 11 or expressly provided in writing otherwise, this Agreement and your use of the Platform will be governed by, and will be construed under, the laws of the State of California, without regard to choice of law principles. This choice of law provision is only intended to specify the use of California law to interpret this Agreement.

## **12. No Agency; No Employment**

No agency, partnership, joint venture, employer-employee or franchiser-franchisee relationship is intended or created by this Agreement.

## **13. General Provisions**

Failure by DIGI Smart Disc, Inc. to enforce any provision(s) of this Agreement will not be construed as a waiver of any provision or right. This Agreement constitutes the complete and exclusive agreement between you and DIGI Smart Disc, Inc. with respect to its subject matter and supersedes and governs any and all prior agreements or communications. The provisions of this Agreement are intended to be interpreted in a manner which makes them valid, legal, and enforceable. Except for the “Class Action

Waiver” in Section 12, in the event any provision is found to be partially or wholly invalid, illegal or unenforceable, (i) such provision shall be modified or restructured to the extent and in the manner necessary to render it valid, legal, and enforceable or, (ii) if such provision cannot be so modified or restructured, it shall be excised from the Agreement without affecting the validity, legality or enforceability of any of the remaining provisions. This Agreement may not be assigned or transferred by you without our prior written approval. We may assign or transfer this Agreement without your consent, including but not limited to assignments: (1) to a parent or subsidiary, (2) to an acquirer of assets, or (3) to any other successor or acquirer. Any assignment in violation of this section shall be null and void. This Agreement will inure to the benefit of DIGI Smart Disc, Inc., its successors and assigns.

#### **14. Changes to this Agreement and the Platform**

DIGI Smart Disc, Inc. reserves the right, at its sole and absolute discretion, to change, modify, add to, supplement, suspend, discontinue, or delete any of the terms and conditions of this Agreement (including these Terms of Service and Privacy Policy) and review, improve, modify or discontinue, temporarily or permanently, the Platform or any content or information through the Platform at any time, effective with or without prior notice and without any liability to DIGI Smart Disc, Inc.. DIGI Smart Disc, Inc. will endeavor to notify you of material changes by email but will not be liable for any failure to do so. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in compliance with this Agreement, you must terminate, and immediately stop using, the Platform. Your continued use of the Platform following any revision to this Agreement constitutes your complete and irrevocable acceptance of any and all such changes. DIGI Smart Disc, Inc. may also impose limits on certain features or restrict your access to part or all of the Platform without notice or liability.

#### **15. No Rights of Third Parties**

None of the terms of this Agreement are enforceable by any persons who are not a party to this Agreement.

#### **16. Notices and Consent to Receive Notices Electronically**

You consent to receive any agreements, notices, disclosures and other communications (collectively, “Notices”) to which this Agreement refers electronically including without limitation by e-mail or by posting Notices on this Site. You agree that all Notices that we provide to you electronically satisfy any legal requirement that such communications be in writing. Unless otherwise specified in this Agreement, all notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or email; or the day after it is sent, if sent for next day delivery by a recognized overnight delivery service.

#### **17. Contacting Us**

If you have any questions about these Terms of Service or about the Platform, please contact us by email at [admin@digismartdisc.com](mailto:admin@digismartdisc.com) or by mail to Digi Smart Disc Inc. 1319 Washington Ave, San Leandro, CA 94577 Suite 773.