



DIGIOP® SUBSCRIPTION AGREEMENT

This DIGIOP® Subscription Agreement (this “Agreement”) is entered into as of _____ (the “Effective Date”) by and between SNK Technologies, LLC d/b/a DIGIOP, an Indiana Limited Liability Company (“DIGIOP”), with an address of 6330 E. 75th Street, Suite 140, Indianapolis, IN, 46250 and _____, a State of _____ (“Customer type”) with an address of _____.

DIGIOP provides web-based business intelligence and video management solutions. The purpose of this Agreement is to create a single mechanism under which Customer may subscribe to use DIGIOP Services under a SaaS subscription licensing model.

DIGIOP and Customer agree as follows:

1. Price and Orders. Subject to the terms and conditions of this Agreement, Customer shall pay to DIGIOP the subscription price (the “Subscription Price”) for the DIGIOP subscription services (the “Services”) identified in Exhibit A and in each order subsequently placed by Customer, whether by a signed Order Form or via the Services platform (the initial order terms in Exhibit A, each subsequent Order Form, and each order placed in the Services platform, each an “Order” and, collectively “Orders”). Fees for the Services purchased through an authorized reseller or distributor shall be agreed between Customer and the applicable reseller or distributor and paid directly to such authorized reseller or distributor. The Subscription Price may change: (i) during the Initial Term upon notice to Customer (which notice may be by email to Customer’s email of record with DIGIOP) by an amount not to exceed 5% in any calendar year; and (ii) after the expiration of the Initial Term (as defined below) of an Order, *provided, however*, that DIGIOP shall first provide Customer with forty-five (45) days advance notice of any price increase. Customer acknowledges and agrees that Customer may place additional Orders through the Services platform and Customer acknowledges that: (a) each Order is for a separate Initial Term of 36 months, and a separate Order Term (independent of other Orders under this Agreement) commencing upon the Order being placed; and (b) Customer is liable for all Orders placed by Customer’s users through the Services. DIGIOP, in its sole discretion, may reject, or condition, any Order.

2. Payment. Payment of the Subscription Price is due upon commencement of the applicable Order, and every subsequent 30 days throughout the Order Term (as defined below), in the amount(s) specified in the applicable Order. For Services purchased through an authorized reseller or distributor, payment terms shall be agreed between Customer and the applicable reseller or distributor. Except as otherwise provided in an applicable Order: (a) quantities may not be decreased during the applicable Initial Term or any Renewal Term of the applicable Order; and (b) all payment obligations for the applicable Order Term are non-cancelable and non-contingent and all amounts paid are nonrefundable except as expressly set forth in this Agreement. Customer is liable for payment of, and agrees to pay, all taxes that are levied upon and related to the performance of _____ of _____ obligations _____ or exercise of rights under this Agreement. DIGIOP may be required to collect and remit taxes from Customer. In no event will either party be responsible for any taxes levied against the other party’s net income. Customer authorizes automatic recurring monthly electronic withdrawals to their bank account or automatic recurring monthly charges to their credit card in accordance with the payment information that has been provided. Customer’s recurring payment authorization will remain in effect unless five (5) business days’ written notice has been provided. Customer acknowledges and agrees that it is Customer’s responsibility to keep Customer’s payment information current with DIGIOP and to provide an alternative payment method if an authorization is terminated during a subscription. Payments not received within ten (10) days of the due date will result in temporary suspension of the account and suspension of use of the technology and will remain suspended until payment is current. Accounts that are delinquent by forty-five (45) days constitute a material breach of this Agreement and will result in immediate termination of the account and use privileges. DIGIOP shall be entitled to reimbursement from Customer of any and all outstanding fees and collection costs, including attorney’s fees, in the event of late payment or nonpayment by Customer.

3. Term; Renewal.

a. This Agreement shall commence upon the Effective Date and remain in effect until completion of all Orders between DIGIOP and Customer (the “Term”). Each Order shall be for an initial period of three (3) years (the “Initial Term”). At the end of the Initial Term, each Order shall automatically renew for successive one (1) year terms (each, a “Renewal Term”) unless one party provides written notice to the other party at least thirty (30) days in advance of the end of

the then-current Initial Term or Renewal Term that it does not wish to renew the term of the Order. The Initial Term and all Renewal Term(s), if any, of an Order, are collectively referred to in this Agreement as the “Order Term”).

- b. Either party may terminate this Agreement or any Order upon a material breach of this Agreement or the affected Order by the other party, but not prior to providing written notice of the breach to the other party and allowing the other party thirty (30) days to cure such breach. Immediately upon any expiration or termination of this Agreement, the licenses granted under Section 5 shall terminate. Sections 2 (Payment), 5(b), 5(d), 7 (Confidentiality), 8 (Limitations of Liability), 10 (Indemnity), 11 (Attorneys’ Fees) and 12 (Miscellaneous), and any other provision that by its nature survives expiration or termination, shall survive indefinitely any expiration or termination of this Agreement.
- c. Upon termination of an Order, DIGIOP will, within a reasonable period, delete all data in the Services related to such Order, and DIGIOP has no obligation to retain or return any Customer data or information stored in the Services upon any expiration or termination of this Agreement or any Order(s).

4. Services. DIGIOP shall host, provide, and make the Services (as ordered in any Order(s)) available to the Customer on a subscription basis as “software as a service” wherein the Customer’s use and access to the Services shall be via a web portal hosted by DIGIOP or its affiliate or service provider. DIGIOP shall use commercially reasonable efforts to ensure that the Services is available to Customer 24 hours per day, 7 days per week, excluding any scheduled downtime or force majeure events. Customer acknowledges that DIGIOP may modify the Services in its sole discretion, provided the functionality of the Services, as applicable, will not be materially decreased during the applicable Initial Term or Renewal Term. Customer acknowledges that Customer must provide all equipment, data flows, and software necessary for Customer to use and access the Services and that DIGIOP is not responsible for any configuration or detection and remediation of any Client environment or infrastructure issues. Equipment may be purchased under a separate agreement or terms and this Agreement does not apply to any equipment purchase. The Services do not include any professional services, including, without limitation, any customization, consulting and training, which professional services, if any, are subject to a separate written agreement.

5. Licenses, Restrictions and Property Rights.

- a. Provided that the Customer abides by the terms of this Agreement, DIGIOP hereby grants to Customer, and Customer hereby accepts, a non-exclusive, non-transferable, world-wide, limited license to access and use the Services as provided herein, solely for Customer’s internal business purposes, and solely for the number of licensed site-specific Services deployments (“Instances”) set forth in the applicable Order(s) during the applicable Initial Term and each Renewal Term, if any, for the applicable Order for the Services.
- b. DIGIOP retains all right, title, and interest in the Services and in all copies, improvements, enhancements, modifications, and derivative works of such Services including, without limitation, all rights to patents, copyrights, trade secrets, and trademarks. Unless authorized by DIGIOP in writing, the Customer shall not, under any circumstance, make any copy, representation or distribution of any part of the Services. There are no implied rights and all rights not expressly granted by DIGIOP herein are reserved by DIGIOP.
- c. Customer expressly agrees not to use the Services, or permit the Services to be used, for purposes of: (i) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer’s organization without DIGIOP’s prior written consent; (ii) infringement on the intellectual property rights of any third party or any rights of publicity or privacy; (iii) violation of any law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export of software/technology, surveillance, premises monitoring, and/or anti-discrimination; (iv) propagation of any virus, worms, Trojan horses, or other programming routine or malware intended to damage any system or data; and/or (v) filing copyright or patent applications that include the DIGIOP Services and/or documentation or any portion thereof.
- d. Customer warrants and covenants that Customer has the right to provide any Customer data and content (including, without limitation, any video capture), and personal data submitted to DIGIOP in connection with the Services. During the Term of the Agreement, Customer hereby (i) grants to DIGIOP and its service providers a worldwide, limited term license to collect and process certain Customer Confidential Information and Customer data, and (ii) authorizes DIGIOP to collect and process certain personal data, for: (a) abuse, fraud, and transaction analysis, and loss prevention, (b) compliance, (c) security purposes, in accordance with the Agreement, and (d) marketing of DIGIOP products and services. Customer acknowledges and agrees that development of business intelligence from DIGIOP’s Services is critical to the functionality of the Services. Customer hereby authorizes DIGIOP to collect analytics during the Term of the Agreement that may arise from Customer’s use of the Services. Further, Customer hereby authorizes DIGIOP to use analytics worldwide to build, enhance, improve and maintain DIGIOP services and for DIGIOP’s other business purposes, provided that any use of such analytics will not identify Customer or any individual.

6. Subcontractors. DIGIOP may utilize subcontractors for performance of the hosting and other services contemplated by this Agreement. Any and all subcontractors utilized by DIGIOP shall be required to protect the confidentiality of Customer Confidential Information (as defined below) to the same extent required by DIGIOP. DIGIOP will remain responsible for any of its subcontractors' performance of this Agreement to the same extent DIGIOP is liable under this Agreement. Notwithstanding the foregoing, DIGIOP's liability for any downtime of the Services due to DIGIOP's hosting provider (Microsoft Azure as of the Effective Date) will not exceed any liability of such hosting provider to DIGIOP.

7. Confidentiality. Each party acknowledges that in the course of performing its duties and exercising its rights under this Agreement, it may be exposed to information that is private to the other party, including (without limitation) information relating to the other party's past, present, or future business, processes, techniques, designs, codes, or other technical material and data, information concerning customers, and administrative, management, financial, marketing, and publishing information that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in an Order) (collectively, "Confidential Information"). Without limiting the generality of the foregoing, Customer acknowledges that the Services, any Services documentation, and the terms of this Agreement are the Confidential Information of DIGIOP. Neither party (as the "receiving party") shall communicate or disclose the other party's (as the "disclosing party") Confidential Information to third parties at any time without the disclosing party's written consent, except as expressly permitted in this Agreement. Notwithstanding any other confidentiality obligations between the parties, Customer authorizes DIGIOP to disclose information related to the Services to a reseller or distributor of the Services to Customer, subject to, and without limiting any confidentiality provisions of the Agreement. A receiving party may disclose the disclosing party's Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, to the extent permitted by law, the receiving party shall give prompt written notice to the disclosing party reasonably in advance of any such compelled disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure and, if disclosed, the scope of such disclosure is limited by receiving party to the extent possible. A receiving party's duty of confidentiality does not extend to (i) any information available to the public without fault of the receiving party, or (ii) any information received from a third party who possesses the information lawfully and who has the right to disclose such information without an obligation of confidentiality. The receiving party will return all copies of the disclosing party's Confidential Information upon the earlier of (a) the disclosing party's request, or (b) the termination or expiration of this Agreement. Instead of returning such Confidential Information, the receiving party may destroy all copies of such Confidential Information in its possession; provided, however, the receiving party may retain a copy of any Confidential Information disclosed to it solely for archival purposes, provided that such copy is retained in secure storage and held in the strictest confidence for so long as the Confidential Information remains in the possession of the receiving party. The parties acknowledge and agree that the confidentiality obligations set forth in this Agreement are reasonable and necessary for the protection of the parties' business interests, that irreparable injury may result if such obligations are breached, and that, in the event of any actual or potential breach of this Section 7, the non-breaching party may have no adequate remedy at law and shall be entitled to seek injunctive and/or other equitable relief as may be deemed proper by a court of competent jurisdiction.

8. Limitations of Liability.

- a. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL DIGIOP (OR DIGIOP'S THIRD PARTY LICENSORS' AND SERVICE PROVIDERS') AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND ALL ORDERS, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE SUBSCRIPTION PRICE ACTUALLY PAID BY CUSTOMER IN CONSIDERATION FOR DIGIOP'S SERVICES DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD FOR THE SERVICES FROM WHICH THE CLAIM AROSE.
- b. IN NO EVENT SHALL DIGIOP (OR DIGIOP'S THIRD PARTY LICENSORS' AND SERVICE PROVIDERS') HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, COST OF DATA RECONSTRUCTION, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, THIS AGREEMENT AND ANY ORDERS, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF DIGIOP (OR DIGIOP'S THIRD PARTY LICENSORS AND/OR SERVICE PROVIDERS) WAS PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.
- c. THE LIMITATIONS OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED IN THIS AGREEMENT WILL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 8 ARE REFLECTED IN THE PRICING.

9. WARRANTY; DISCLAIMER OF WARRANTIES. DIGIOP warrants that during the applicable Order Term the Services will substantially conform to any electronic documentation for the Services made available to Customer by DIGIOP. Customer will provide prompt written notice of any non-conformity. DIGIOP may modify the documentation in its sole discretion, provided the functionality of the Services will not be materially decreased during the Order Term. The foregoing warranty does not apply to: (a) Services that have been modified by any party other than DIGIOP; or (b) Services that have been used in a manner other than as authorized under the Agreement and in the applicable documentation. As Customer's sole and exclusive remedy and DIGIOP's entire liability for any breach of the foregoing warranty in this Section 9, DIGIOP will (i) use reasonable efforts to fix, provide a work around, or otherwise repair or replace the Services, as applicable, or if DIGIOP is unable to do so, (ii) terminate the license to use such component of the Services and return any prepaid and unused Subscription Price paid to DIGIOP for such allegedly defective Services, as applicable, for the period commencing from Customer's notice of nonconformity through the remainder of the Initial Term or Renewal Term, as applicable. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN THIS SECTION 9 ABOVE, DIGIOP MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, DIGIOP DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL MEET ANY PARTICULAR CUSTOMER REQUIREMENTS, THAT THE SERVICES WILL REMAIN COMPATIBLE WITH ANY EQUIPMENT, THAT THE OPERATION OF THE DIGIOP SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; THAT ALL ERRORS WILL BE CORRECTED; OR THAT THE SERVICES WILL IDENTIFY ALL QUESTIONABLE, IRREGULAR OR UNAUTHORIZED INCIDENTS, TRANSACTIONS OR OTHER CIRCUMSTANCES. NO DEALER, DISTRIBUTOR, RESELLER, AGENT, OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THE WARRANTIES IN THIS AGREEMENT.

10. Indemnity. Customer shall defend, indemnify and hold DIGIOP harmless from any claims, demands, suits, or proceedings ("**Claims**") made or brought by a third party alleging that Customer, or Customer's use of the Services, infringes the rights of, or has caused harm to, a third party or violates any law, rule, regulation or ordinance. DIGIOP agrees to (a) promptly give written notice of the Claim to Customer (provided that any delay in notice will relieve Customer of its defense and indemnity obligations solely to the extent the defense of the Claim is permanently prejudiced by such delay); (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless it unconditionally releases DIGIOP of all liability); and (c) provide to Customer, at Customer's cost, all reasonable assistance requested by Customer.

11. Attorneys' Fees. The prevailing party in any action arising from or related to this Agreement shall be entitled to recover from the losing party its reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled hereunder or at law or in equity.

12. Miscellaneous.

a. Counterparts. This Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A manual signature on this Agreement, the image of which is transmitted electronically, shall constitute an original signature. No amendment of any provision of this Agreement shall be effective unless in writing and signed by the parties. Notwithstanding any language to the contrary therein, any Purchase Order issued by Customer shall be deemed a convenient order and payment device only and no terms (other than product name, license quantity, price, Subscription Term, and billing contact) stated in any Purchase Order shall be incorporated into this Agreement, and all such other terms shall be void and of no effect. In the event of any conflict between this Agreement, and the applicable Order, the order of precedence will be the following: this Agreement, and then the applicable Order(s).

b. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter.

c. Governing Law and Forum. This Agreement shall be construed and interpreted according to the laws of the State of Indiana. Any disputes arising under this Agreement will be brought exclusively in the State and Federal courts of competent jurisdiction located within Marion County, Indiana.

d. Severability. In the event that any part of this Agreement is deemed unenforceable, the remainder shall continue to be in full force so long as the primary purpose of this Agreement is unaffected.

e. Waivers. No waiver of any provision of this Agreement shall be effective unless in writing and executed by the party waiving the right. Failure to properly demand compliance or performance shall not constitute a waiver of a party's rights hereunder. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall 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 shall remain in effect.

f. Government End User Notices. This Section 12(f) shall apply only if Customer is a US federal government entity. The Services are provided with restricted rights. The Services are deemed commercially available hosted services and commercial computer software as defined in United States FAR 12.212 (Software) and/or commercially available technical data as defined in FAR 12.211 (Technical Data), and are subject to DIGIOP's commercial licensing/use terms, as required by and FAR 52.227-19 (Commercial Computer Licensed Software — Restricted Rights) and, for U.S. Department of Defense transactions, DFARS 252.227-7015 (Technical Data — Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum to this Agreement specifically conveying such rights must be executed by Customer and DIGIOP.

g. Independent Contractors; Relationship with Third Parties. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third-party beneficiaries to this Agreement.

h. Notices. All notices shall be in writing to the CEO of each party, at the party's respective address set forth in the preamble of this Agreement (as may be updated by a party in writing to the other) and effective upon receipt.

i. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, pandemic, earthquake, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, and denial of service attacks.

j. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (such consent not to be unreasonably withheld or conditioned). Notwithstanding the foregoing, either party may assign this Agreement in its entirety upon written notice to the other party and without consent of the other party, to the assigning party's successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party.

**Exhibit A
Initial Order Details**

Order Details:

DIGIOP Service	Initial Term [±]	Monthly Subscription Price (Per Instance)	Number of Instances Ordered	Monthly Total Ordered
DIGIOP Elements Subscription Package:	36 Months from Effective Date			
DIGIOP CARBON Subscription Package:	36 Months from Effective Date			

**DIGIOP Customer Account:	
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***New Instances added to an existing DIGIOP Customer Account by additional Orders will not require a new contract and will automatically be added to the existing agreement upon being ordered within the Services portal.
[±] DIGIOP is not responsible for delays in commissioning or commencement of the Services caused by Customer or any third party (including, without limitation, any data flow to the Services). Customer acknowledges that Customer's payment obligation is not excused by any such delays.*