



## **Master's Service Agreement**

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## **Master's Service Agreement**



This Agreement is made, entered into and executed at Kolkata, West bengal, India on **current date** (hereinafter referred to as the "Effective Date")

BETWEEN:-

Diadem Technologies Pvt. Ltd. (hereinafter referred to as "**Diadem**") AND you (hereinafter referred to as "Customer"). If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the term "Customer" shall refer to such entity.

WHEREAS the **Diadem** provides various Hosting and other related products and services;

AND WHEREAS the Customer wishes to purchase **Diadem's** Products and Services;

NOW, THEREFORE, for and in consideration of the mutual promises, benefits and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, **Diadem** and the Customer, intending to be legally bound, hereby agree as follows:

## **A. Terms**

### **1. Definitions**

(a) "Agreement" shall mean all this Master Services Agreement and the SLA, AUP and the Privacy collectively.

(b) "AUP" shall mean the Acceptable Use Policy attached to this Agreement as Annexure-2 here;

(c) "Content" means all information, data, text, sound, pictures, graphics, video, messages, advertisements, or other materials hosted on **Diadem** servers;

(d) "Current Date" means the date on which any services are hired or availed at Diadem.in by the Customer including the date which in some cases may have been recorded in our database as the date of registration for services.

(e) "Customer Control Panel" refers to the set of Web-based interfaces provided by **Diadem** and its Service Providers to the Customer which allows him to manage services.

(f) "Diadem", "we", "us" and "our" refer to the website [www.diadem.in](http://www.diadem.in) .

(g) "Due Date" shall mean expiry of a period of fifteen (15) days from the date of an invoice raised by Diadem;

(h) "Information" includes data, message, text, images, sound, voice, codes, computer programs, software and databases or microfilm or computer generated micro fiche;

(i) "Initial Term" shall mean a period of 12 months from the Service Commencement Date.



- (j) "Order" refers to a **Diadem** Product ordered/purchased by the Customer having a unique Order ID assigned to it.
- (k) "Packages" means customized hosting packages made available either under Shared, Cloud or Dedicated server.
- (l) "Products/Services" refer to the Web-based products/services made available by **Diadem**, including but not limited to, Domain Names, Website Hosting, Website Services, Multimedia Services, Internet Marketing, etc.
- (m) "Proprietary or Confidential Information" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer retained information, notes, or financial information;
- (n) "Registration data" refers to the information provided in the Customer registration form and any other information provided later;
- (o) "Renewal Term" shall mean rolling periods of the same length as the Initial Term which shall automatically commence after the expiry of the Initial Term (or as the case may be a Renewal Term) unless notice is given by either Party in the manner described in this Agreement to stop the Services, at least thirty (30) days prior to expiry of Initial Term (or as the case may be a Renewal Term).
- (p) "Sensitive Information" or personal data of a person means such personal information which consists of information relating to password, financial information, etc as defined under Information Technology Act and Rules thereunder;
- (q) "Service Commencement Date" shall mean the date of acceptance by Diadem of the first purchase order issued by Customer under this Agreement.
- (r) "Service Credits" shall mean the credits which the Customer would be entitled to receive, on account of failure of the Diadem to provide Services as per the standards mentioned in the SLA.
- (s) "Service Level Agreement ("SLA")" shall mean the Service Level Agreement annexed as Annexure-1 hereto.
- (t) "Services" shall mean (i) services such as the hosting services, provision of servers and other devices and other services, and (ii) Supplemental Services, in all situations as set out in the written purchase order(s) raised by the Customer on Diadem and accepted by Diadem.
- (u) "Supplemental Services" shall mean services which are requested for in writing by the Customer other than those already agreed to be provided by Diadem, as set out in the written purchase order(s) raised by the Customer on Diadem and accepted by Diadem.
- (v) "Site" and "website" refers to the [www.diadem.in](http://www.diadem.in).
- (w) "Term" means the Initial Term and any Renewal Term may be referred to collectively in this



Agreement.

(x) "Terms" and "User Agreement" refers to the Master's Service Agreement contained herein below;

(y) "Territory" means the territory of India.

(z) "User", "You" and "Customer" refer to the individual or entity who avail of any Website product or services from **Diadem Technologies Pvt. Ltd.**

Other terms would have meaning as defined under Information Technology Act, 2000 and rules made thereunder.

## **2. Agreement**

You agree that, by completing the purchase / registration process online or by availing of any products or services at **Diadem** and thereby accepting terms and conditions, you will be bound by the following Agreement. Further, that this agreement will be read together with the purchase order(s) for the service issued by the Customer and accepted by **Diadem**. We intend this to be the legal equivalent of your signature on a written contract, and equally binding.

Furthermore,

a) Diadem services owned and operated by **Diadem Technologies Pvt Ltd, Kolkata** is provided to you under the terms and conditions of this Agreement, annexed SLA & AUP and any other operating rules or policies that may be published by us on the website from time to time.

b) All the terms set here are presented in English language and it is the sole responsibility of Customer to understand these terms accurately in the language he understands. You must read, understand and agree with and accept all of the terms and conditions contained in these Terms, which include those terms and conditions expressly set out below and those incorporated by reference, before you use services or register at this website.

c) You warrant that you as a Customer has independently evaluated the desirability of the service and is not relying on any representation agreement, guarantee or statement other than as set forth in this agreement.

d) Customer is required to take a printout of this agreement at the date of entering into agreement with us and preserve the copy for future references... as the Terms may change from time to time and the future Terms may or may not be applicable to you completely. But in case, no such copy of terms are preserved, in that case the Terms existing upon the website as on date would become applicable to you and you would have no right to dispute the same.

e) The term of this Agreement for renewable services shall be 1 (ONE) YEAR from the Effective Date and will automatically renew for successive **Renewal Term**. The Term shall continue until the earlier to occur of the following:



(1) the Agreement is terminated as provided under Termination clause; and

(2) The Customer elects not to renew at the end of the Initial Term or any Renewal Term.

f) We strongly recommend that, as you read this Agreement, you also access and read the information contained in Annexures and other pages/websites referred to in this document, as they may contain further terms and conditions that apply to you as a user/customer at this site.

### **3. Modifications**

a) We reserve the right to modify this Agreement at anytime by posting a new agreement on our site, you should always review them prior to using the Site.

b) In case, any modification to the agreement is unacceptable to you, your only recourse will be to terminate this agreement. In case you continue to access any of our services after that time you will be deemed to have accepted any change.

c) Further, we reserve the right to change or discontinue sale of specific products or services or its prices, from time to time, which will be posted on the website.

### **B. Services**

a) Customer shall raise purchase order online on **Diadem** for provision of Services. Subject to clause c) below. **Diadem** agrees to provide Services, as set out in the purchase orders issued by Customer, from the Service Commencement Date till the end of the Initial Term, in accordance with the terms of this Agreement.

b) **Diadem** may also provide Supplemental Services as and when requested for by the Customer and accepted by **Diadem**. Fees for such Supplemental Services may be fixed and mutually agreed between the Parties in advance.

c) **Diadem** shall be entitled to refuse to accept purchase orders (a) that are not in accordance with this Agreement, or (b) that are issued for services / facilities not covered in the Service Catalogue or (c) that contain terms and conditions or prices that are contrary to the understanding of the Parties or (d) at its sole discretion.

### **4. Initial Term**

4.1 The Initial Term for the Services shall commence on the Service Commencement Date. Customer acknowledges and accepts that the provision of Services by **Diadem** shall be subject to a minimum service period of 3 months from the Service Commencement Date ("Minimum Service Period"). The Customer shall not be entitled to terminate this Agreement during the Minimum Service Period for any reasons whatsoever except for the sole reason as specified in this agreement. Notwithstanding anything contained herein, if the Customer terminates this Agreement before the expiry of Minimum Service Period, then the Customer undertakes and agrees to pay Diadem, on or before the effective date of termination of this Agreement, an early termination



compensation of an amount equivalent to the fee payable for the balance period of the Minimum Service Period, calculated from the effective date of termination of this Agreement.

4.2 On expiration of the Initial Term, the Renewal Term shall automatically commence upon the same terms and conditions mentioned in this Agreement, as may be amended as on date.

4.3 In the event a Party does not wish to extend/renew this Agreement after the expiry of the Initial Term or as the case may be a Renewal Term, that Party shall send a written notice of at least thirty (30) days prior to the expiry of the Initial Term or the Renewal Term as the case may be, to the other Party. Upon receipt of such notice by the other Party and expiry of the Initial Term or a Renewal Term (as the case may be), the Agreement shall be deemed to have expired.

## **5. Changes:**

5.1 If Customer makes requests for any change in the Services, and such change results in increased cost of any nature to **Diadem**, or will require additional time for performance of **Diadem's** obligations, or if **Diadem** is otherwise adversely affected by such change, the schedule, warranty, price and other terms and conditions of the purchase order and Agreement may be equitably adjusted by agreement of the Parties. In no event shall **Diadem** be obligated to proceed with any change unless the foregoing adjustments have been agreed upon in writing by the Parties.

5.2 Notwithstanding the above, at any time and with prior consent of Customer in case of material changes, **Diadem** reserves the right to make changes in design, construction, arrangement and provision of Services; provided such changes do not result in any increase in the price or time for performance or alter any performance guarantees or warranty obligations set forth herein. Customer shall not unreasonably withhold its consent in case of material changes.

## **6. Available Services**

The following more applies to specific services, offered by **Diadem**:

### **6.1 Website Hosting**

a) Diadem Technologies aims to achieve 99.5% service availability of its Hosting Services for all customers. The Service Level Agreement, as annexed hereto, further governs as to Service Credits, etc for different hosting types.

b) Customers are advised to maintain their own data backups on their home computers or CDs to ensure that they have ready access to their data, as a precautionary measure in case of any server breakdown. However, such cases are rarely happen, but cannot be avoided sometimes. This is why we recommend all our clients to take regular backups for all their important data.

c) Upgrades and other changes in Diadem's network, including, but not limited to



changes in its software, hardware, and service providers, may affect the display or operation of Customer's hosted content and/or applications. Diadem reserves the right to change its network in its commercially reasonable discretion, and Diadem shall not be liable for any resulting harm to Customer.

d). The Customer, or its contractors, employees, directors, officers, representatives, agents and affiliates, either directly or indirectly, shall not use or permit use of the Hosting Order, in violation of this Agreement, and for any of the activities described below -

(1) As a backup/storage device.

(2) For any unacceptable or inappropriate material as determined by Parent in its sole discretion, including but not limited to Topsites, IRC Scripts/Bots, Proxy Scripts/Anonymizers, Pirated Software/Warez, Image Hosting Scripts (similar to Photobucket or Tinypic), AutoSurf/PTC/PTS/PPC sites, IP Scanners, Bruteforce Programs/Scripts/Applications, Mail Bombers/Spam Scripts, Banner-Ad services (commercial banner ad rotation), File Dump/Mirror Scripts (similar to rapidshare), Commercial Audio Streaming (more than one or two streams), Escrow/Bank Debentures, High-Yield Interest Programs (HYIP) or Related Sites, Investment Sites (FOREX, E-Gold Exchange, Second Life/Linden Exchange, Ponzi, MLM/Pyramid Scheme), Sale of any controlled substance without prior proof of appropriate permit(s), Prime Banks Programs, Lottery Sites, MUDs/RPGs/PPBGs, Hateful/Racist/Harassment oriented sites, Hacker focused sites/archives/programs, Sites promoting illegal activities, Forums and/or websites that distribute or link to warez/pirated/illegal content, Bank Debentures/Bank Debenture Trading Programs, Fraudulent Sites (Including, but not limited to sites listed at [aa419.org](http://aa419.org) & [escrow-fraud.com](http://escrow-fraud.com)), Mailer Pro.

(3) Use over 25% of system resources, including but not limited to Memory, CPU, Disk, Network, and Bandwidth capacity, for longer than 90 seconds in any consecutive 6 hour period.

(4) Execute long-running, stand-alone, unattended server-side processes, bots or daemons.

(5) Run any type of web spiders or indexers.

(6) Run any software that interfaces with an IRC (Internet Relay Chat) network.

(7) Run, host, or store any P2P client, tracker, software, server, files, content or application, including bittorrent.

(8) Participate in any P2P or file-sharing networks.

(9) Run any gaming servers.

(10) Run cron entries with intervals of less than 15 minutes.



(11) Store over 100,000 files.

(12) Constantly create and delete large numbers of files on a regular basis, or cause file system damage.

(13) Run any MySQL queries longer than 15 seconds.

(14) Divide Multi-Domain Hosting Orders into smaller packages to resell. Multi-Domain Hosting Orders may be used by only one company/Customer to host multiple domain names/websites.

(16) Store a large number of media files (audio, video, etc.), wherein the limit is at Parent's sole discretion.

(17) Send over 100 messages per hour per user and/or 300 messages per hour for a domain name. Receive a high volume of emails, by a user or domain name, in any given period of time.

(18) Use the email service for sending or receiving unsolicited emails.

(19) Use the email service for sending or receiving emails through automated scripts hosted on your website. For sending out promotional emails, email campaigns, etc., we recommend using Diadem Email Marketing Solution (EmailConnect) rather than using your email account. Upon detection of such mails going through the regular mailing system, such mails will get classified as spam even though the recipient might have opted in for receiving such mails. This would lead to immediate cessation of mail sending capabilities for the user or the domain name. Frequent violation would lead to permanent suspension of the domain name.

(20) Sending mails to invalid recipient email addresses. On receipt of too many bounce back messages due to invalid recipient email addresses, the user sending such mails would get blocked. Frequent violation would lead to permanent suspension of the domain name.

(21) Sending mails from an email address that is not valid and which results in triple bounces would result in suspension of the user sending such mails. Frequent violation would lead to permanent suspension of the domain name.

(22) Send emails with malicious content. Such emails could be emanating from user(s) whose machine(s) are infected with a virus or malware and such activity could be happening without the user(s) knowledge or user(s) could be unknowingly sending out emails whose receivers may deem them as unsolicited.

e) You are allocated a monthly bandwidth allowance. This allowance varies depending on the hosting package you purchase. Should your account pass the allocated amount we reserve the right to suspend the account until the start of the next allocation, suspend the account until more bandwidth is purchased at an additional fee, suspend the account until you upgrade to a higher level of package, terminate the account and/or charge you an additional fee for the overages.



Unused transfer in one month cannot be carried over to the next month. If you exceed your bandwidth limit within the first 30 days of service you are not eligible for the 30 day money back guarantee and you are responsible to pay for any overage.

f) Shared accounts may not be used to resell web hosting to others. If you wish to resell hosting you must use a reseller account.

## **6.2 Domain Names**

**Diadem** is not a domain registrar but a reseller. So all customers who purchase a domain or transfer a domain to us are bound by some additional terms and conditions as provided during Domain Registration process. Domain purchases as well as domain transfers are billed at different prices as may be applicable to respective extensions. You will receive notice from Diadem, once your domain is registered or comes up for renewal. If you do not renew your domain by the expiration date you run the risk of losing your domain.

If you have registered a Domain name at Diadem with a hosting package and later choose to cancel your hosting plan with Diadem or fail to pay your renewal we will not be renewing your domain past the cancellation date of your hosting plan. We are not responsible for domains that expire if you no longer have an active hosting plan. Furthermore,

a) Customer is required to provide correct and maintain up-to-date registrant information for the registered Domain Names, which is also made available as WHO-IS information under ICANN policy. Providing any false WHOIS information can lead to suspension and later cancellation of Domain Registration, as per the ICANN rules.

b) Customers have the option though to choose Privacy Protect option and hide the WHOIS information, with some specific details made available by privacy services. Note, this feature is available for specific TLDs only like .Com, .Net, .Org and more but no to .IN Domain Names.

c) Once a Domain Name is ordered for registration online at **Diadem** and the time taken for the payment to be credited at our end, the Domain remains available to public for registration globally. Therefore, we suggest you to select an online payment method through a secured payment gateway, for the purchase order to be completed in an instance.

d) Once a Domain Name goes into the Deletion process, after its expiration, **Diadem** makes no guarantee about the number of days, after deletion of an Order, after which the same Order will once again become available for purchase. This is governed by respective Domain Deletion Cycle policies, as may be applicable to different Domain Name extensions.

## **6.3 Other Services**

Other services which could be offered by us, include Website Development, Internet Marketing, Multimedia and Graphic Design services, which would be subject to the following additional terms:



- a) The charges for these services would depend upon the nature of the work and effort required. An estimate is made available to the Customer on knowing of exact requirements, which can be a specific fixed amount or we can also provide you with services on per hour basis.
- b) The charges are to be paid as per the schedule made available to you, as the time of entering into the agreement for the required service, which may include some advance payment for the work to begin. And 100% payment before the complete work is made available at your end.
- c) Also note, advance payments are non refundable once the project has started or is in progress.

## **7. Pricing, Refunds and Renewals**

The various products and services rendered through **Diadem**, are subject to prices as indicated against them on respective product/service pages. Furthermore, the following applies to you, as a customer:

- a) Customer shall pay all applicable fees/advances as per the Payment Terms and Conditions set out along with respective products and services. Please note, the payments are to be paid in advance for renewable services such as Domain Names, Website Hosting, etc.
- b) Diadem offers a thirty (30) day money-back guarantee for Diadem's Shared Hosting Cloud Hosting and Dedicated Servers as well. If you are not completely satisfied with these hosting services and you terminate your account within thirty (30) days of signing up for the Services, you will be given a full refund of the unused and prorated amount paid for hosting. This money-back guarantee only applies to fees paid for hosting services and does not apply to administrative fees, install fees for custom software or other setup fees, or to any fees for any other additional services. Also the accounts cancelled/terminated by Diadem do not qualify for the 30 day money back guarantee. This also includes accounts suspended for TOS violations, in which the customer decides not to fix the violation. Kindly note, only first- time accounts are eligible for a refund. For example, if you've had an account with us before, cancelled and signed up again, you will not be eligible for a refund or if you have opened a second account with us.
- c) **Diadem** will, subject to the above, charge a non-refundable fee for an Order unless stated otherwise in any Specific Product Agreement. The applicable fees will be displayed in the Customer Control Panel or on the **Diadem** Website and during the Ordering Process. Diadem has the right to revise this pricing at anytime. Any such revision or change will be binding and effective immediately on posting of the revision in the Customer Control Panel or on the Diadem Website or on notification to the Customer via email to the Customer.
- d) Customer acknowledges that it is the Customer's responsibility to keep records and maintain reminders regarding the expiry of any Order. Though as per policy, we do issue reminders to the Customer of any expiring Orders in advance, via an email message



sent to the contact information associated with the Customer in our database. You agree that until and unless you notify Diadem of your desire to cancel any or all services received, those services will be billed on a recurring basis. Diadem reserves the right to change the monthly payment amount and any other charges at anytime.

e) Customer acknowledges that after expiration of the term of an Order, Customer has no rights on such Order, or any information associated with such Order, and that ownership of such Order now passes on to **Diadem**. **Diadem** and Service Providers may make any modifications to said Order or any information associated with said Order and may choose to monetize such requests in any fashion at their sole discretion. And also may choose to delete or transfer said Order at anytime after expiry upon their sole discretion. Customer acknowledges that **Diadem** and/or Service Providers shall not liable to Customer or any third party for any action performed under this clause.

f) Diadem at its sole discretion may allow the renewal of the Order after Order expiry, and such renewal term will start as on the date of expiry of the Order, unless otherwise specified. Such process may be charged separately. Such renewal after the expiry of the Order may not result in exact reinstatement of the Order in the same form as it was prior to expiry.

g) All invoices must be paid within fifteen (15) days of the invoice creation date. Any invoice that is overdue for more than seven (07) days may result in the suspension or termination of Services. Access to the account will not be restored until payment has been received. If you fail to pay the fees as specified herein, Diadem may suspend or terminate your account and pursue the interest thereon, collection costs (minimum of Rs 1500) incurred by **Diadem**, including without limitation, any arbitration and legal fees, and reasonable attorneys' fees. Diadem will not activate new orders or activate new packages for customers who have an outstanding balance on their account.

h) Dedicated servers are subject to being reclaimed and all content deleted if you fail to make a timely payment. If you make a late payment we do not automatically reactivate the dedicated servers. Contact **Diadem** directly after you make a late payment to reactivate the dedicated server.

i) You have thirty (30) days to dispute any charge or payment processed by Diadem. If you have any questions concerning a charge on your account, please reach out to our billing department for assistance.

## **8. Suspension of Services**

### 8.1 Temporary Suspension of Services Without Prior Notice:

Customer agrees and accepts that Diadem shall be entitled to suspend Services without prior notice in circumstances such as:

- (a) The Diadem data centre being affected by viruses/malware;
- (b) "Network flooding" or "DDOS" attacks at Diadem premises;
- (c) Faulty hardware at Diadem's data centre;



- (d) The Services being used by the Customer in violation of the terms and conditions mentioned in the AUP or this Agreement;
- (e) To protect the servers maintained by Diadem in the event of a threat of breakdown or where there is a valid reason to believe that not suspending the Services would cause loss to the other customers of Diadem;
- (f) In cases where suspension is required by law; and
- (g) In such other circumstances as Diadem may reasonably determine.

Diadem shall inform Customer as soon as possible of such suspension.

8.2 Subject to Clause 8.1 above, Customer agrees that the Services may be suspended by giving at least Seven (7) days prior notice, with an opportunity of being heard, for Customer to remedy a situation under circumstances such as the following:

- (a) Diadem has reason to believe that Services are being used by the Customer in violation of the terms and conditions mentioned in the Agreement including the AUP;
- (b) Diadem believes that the Services provided by Diadem to Customer are being used by non-authorized persons without the consent of Diadem;
- (c) In situations where there is no cooperation from Customer during investigation of suspected violation of the Agreement; and
- (d) In such other circumstances as Diadem may reasonably determine.

8.3 Without prejudice to Diadem's rights of termination clause, if the Customer fails to fulfill its payment obligations, Diadem may at its discretion (i) suspend performance of Services, or (ii) continue performance of Services if Diadem deems such continuance to be appropriate.

Notwithstanding the foregoing, in the event of default in payment obligations by the Customer, the Customer shall not be entitled to claim Service Level Credits as set out in the SLA during such period of default. In the event of suspension of the Service for the reasons as specified in this clause, the Services shall be reactivated upon payment of Rs. 5,000 by the Customer to Diadem.

8.4 In the event, suspension of Services is required:

- (a) other than as provided in clauses above, and
- (b) as a result of Diadem being unable to provide Services due to reasons not attributable to Customer, Customer shall be entitled to Service Level Credits as set out in the SLA. However, in the event of suspension of Services for the reasons as provided herein-above, Customer shall not be entitled to Service Level Credits as set out in the SLA.

8.5 Customer agrees and acknowledges that in the event of suspension of Services for the reasons as specified in Clauses above, Customer shall be responsible for all fees and charges for the Services incurred through the date of suspension. Customer understands that Diadem's aforesaid right to suspend is in addition to its right to terminate under this Agreement.

8.6 In the event suspension of Services is for the reasons specified in Clause 8.3, Diadem will not guarantee and will not be responsible/liable for availability of the data and files of the Customer after such suspension. Diadem shall not be held liable for any loss of data, content or



files of the Customer upon such suspension.

### **9. Retention & Backup Policy**

The system logs of the servers hosting the client data and applications—would be retained as a backup in our server for at least 3 (three) months from the date of its creation. And otherwise also, we may retain such information in our systems but for a limited period, which may help not only in complying with the laws of the land but also to make sure that we maintain enough backup of user accounts, which may either be required to be restored to the server in unforeseen circumstances or to make available the information to the enforcement agencies, in case of any specific requests received in accordance with the law of the land.

In case of any disaster recovery situations within our network, we will have backup available with us to restore the Data to the main Server. But, kindly note, we may have maximum of 2 weeks of backed up data, previous to the date of the incident.

But in case of exceptional circumstances, it cannot be assured that we will always have at all times backup available with us. Further, you as a Diadem user agree that in no case, Diadem can be held responsible for loss of data in any circumstances.

## **C. Customers**

### **10. Eligibility**

- a) To be able to buy any products or avail any of the services offered by us, you need to be competent to contract as per the Indian Contract Act, 1872, which excludes minors, i.e. persons below the age of 18 years, persons of unsound mind and undischarged insolvents.
- b) Further you confirm that any court, tribunal or any adept authority does not prohibit or impose any kind of restriction/conditions/order to enter this agreement or online services of nature and function similar to ours.
- c) You also confirm that your are not violating any applicable law by entering this agreement. We reserve the right to terminate your services and refuse to provide access to the Site in case of any such violation.

### **11. Obligations**

As a registered Customer you are responsible for maintaining the confidentiality of your Registered Account and Password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur due to your use or under your account or Password.

Services as a registered user are available to you only if you provide personal information to **Diadem**. Consequently, if you choose not to provide us with any required personal information, **Diadem** will not be able to offer you the services, which is governed by separate Privacy Policy



(Annexure 3).

Further, you agree:

- a) To provide true, accurate, current and complete information about yourself in the registration form (such information being the "Registration Data") and regularly maintain and promptly update the Registration and also Domain WHOIS Data to keep it true, accurate, current and complete.
- b) To use the services only for the purpose that are permitted by the aforesaid Agreement and any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdiction.
- c) That you will be solely responsible for any breach of your obligations under the terms and for the consequence of any such breach, including any loss or damage, which we may suffer as a result and that we cannot be held responsible to you or to any third party.
- d) That your account and the activity under it are subject to review from time to time by us. On the basis of the internal report, your account or access to any services or products may be blocked or may become subject of deletion if found to be objectionable, obscene or offensive, without any prior notice to you.
- f) That you agree to maintain a backup copy of all content hosted by **Diadem** notwithstanding any agreement by **Diadem** to provide any backup services. Also you need to keep upto date the scripts/code used upon the website for all times and for any exploits in the script, you will be solely responsible to compensate Diadem.
- g) That you agree that you will not solicit passwords or personal identifying information for any purposes from other accounts or try to hack into the server in any manner.
- h) That you agree to grant the rights to us to reveal your identity (or any other related information collected on this service) if required by law or in case of any legal action or complaint arising from any situation caused by your use of this site. Further, in exercising this right, we may ask you to provide any documentary or other form of evidence supporting the Content you post on the Site. If you fail to produce such evidence, we may, in our sole discretion, terminate your services without notice.

## **12. Code of Conduct**

You further agree not to host, display, upload, modify, publish, transmit, update or share any information that —

- i) belongs to another person and to which the user does not have any right to, unless you have written consent from the owner of the copyrighted material;
- ii) is grossly harmful, harassing, blasphemous defamatory, obscene, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable,



disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever;

iii) harm minors in any way;

iv) infringes any patent, trademark, copyright or other proprietary rights;

v) violates any law for the time being in force;

vi) deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature;

vii) impersonate another person;

viii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource;

ix) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation.

### **13. Abuse Policy**

- A. The Services provided to the User by Diadem may only be used for lawful purposes. That is, when you sign up for Diadem, you agree not to use the services to send spam, distribute viruses, or otherwise abuse the service, which is provided herein-above and also comprehensively under Acceptable Use Policy (Annexure 2).
- B. Otherwise also transmission, storage, distribution or presentation of any Content in violation of any and all applicable laws is prohibited. In case any violation of either terms or Law of the land is discovered, we may suspend the service(s) and immediately initiate an investigation either internally or through any Government Agency, depending upon the circumstances of the case.
- C. We may, at any and all times, in our sole and absolute discretion, during such an investigation, restrict your access in order to prevent any further possible unauthorized activity. Depending on the severity of the violation, we may, at its sole discretion, restrict, suspend, or terminate a any service(s) and/or pursue other legal remedies.
- D. You agree to grant the rights to us to reveal your identity (or any other related information collected on this service) if required by law or in case of any legal action or complaint arising from any situation caused by your use of this site. In exercising this right, we may ask you to provide any documentary or other form of evidence supporting the Content you have stored/transmitted through Diadem server/service. If you fail to produce such evidence, we may, in our sole discretion, block/terminate your access without notice.
- E. Diadem may also randomly monitor the user hosting accounts. Any such monitoring is



done for evaluation purposes by supervisors and all the information is kept confidential. This is solely done to guarantee the highest level of service and to ensure accurate information is provided in a professional manner and may also help to detect any violations as stated above.

#### **14. Monitoring and Support**

To ensure users receive the highest possible level of service, Diadem may randomly monitor the client servers, applications and running services. Any such monitoring is done for evaluation purposes by supervisors and all the information is kept confidential. This is solely done to guarantee the highest level of service and to ensure accurate information is provided in a professional manner.

In case of any Grievance with respect of any Diadem services, Customer has the option to report the content, to the Grievance Officer, whose details have been published hereunder and also over Contact Page.

You can obtain assistance with any technical difficulty that may arise in connection with user's utilization of the Diadem Services by requesting assistance via email to [info@diadem.in](mailto:info@diadem.in). We reserve the right to establish limitations on the extent of such support, and the hours at which it is available.

You are responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for its access to and use of the Diadem Services and users shall be responsible for all charges related thereto.

#### **15. Termination**

(A) Either Party may terminate this Agreement and/or any Customer Product Agreement Extension at any time by:

- 1) By giving a 30 (Thirty) days notice of termination delivered or you may simply get your services/product subscription terminated at any point with or without cause by writing to us at [support@diadem.in](mailto:support@diadem.in).
- 2) With immediate effect, if the other Party is adjudged insolvent or bankrupt, or if proceedings are instituted by or against a Party seeking relief, reorganization or arrangement or compromise or settlement under any laws relating to insolvency, or seeking any assignment for the benefit of creditors, or seeking the appointment of a receiver, liquidator or trustee of a Party's property or assets or the liquidation, dissolution or winding up of a Party's Business.

B) Diadem may Terminate this Agreement and/or any Customer Product Agreement Extension by notifying the Customer in writing, as of the date specified in such notice of termination under the following circumstances:

- 1) In case of non-compliance with the Agreement and it's Annexures, rules and regulations or the Law of the Land, Diadem reserves the right to immediately terminate



the access or usage rights of the users to the services and also remove non-compliant information.

2) In our sole discretion, may terminate the account/password or use of any or all of the services, for any reason, including, without limitation, for improper use of any service or if we believe that you are not eligible to avail the services. We may also in our sole discretion and at any time discontinue providing the Service, or any part thereof, with or without notice.

3) If you had provided any information that is untrue, inaccurate, not current or incomplete at the time of registration, or we have a reasonable ground to suspect that such information is untrue, inaccurate, not current or incomplete, or not in accordance with this Agreement, we have the right to indefinitely suspend or terminate your services and refuse to provide you with access to the Website.

4) You further agree that any termination of your access to the Service under any provision of this Agreement may be effected without prior notice, and acknowledge and agree that we may immediately deactivate or delete your account and all related information and email messages and other information relating to you and/or bar any further access to any Service or all of the services, to protect our interest as an Intermediary. Further, you agree that we shall not be liable to you or any third-party for any termination of your access to the Service.

## **D. Legal Statements**

### **16. Governing Law**

Customer agrees to use the service in compliance with applicable law and this Agreement and the annexed documents, in particular Acceptable Use Policy (the "AUP"), which is hereby incorporated by reference in this Agreement. Customer agrees that Diadem may, in its reasonable commercial judgment consistent with industry standards, amend the AUP from time to time to further detail or describe reasonable restrictions and conditions on Customer's use of the Services. Amendments to the AUP are effective on the earlier of Diadem's notice to Customer that an amendment has been made, or the first day of any Renewal Term that begins subsequent to the amendment. Customer agrees to cooperate with Diadem's reasonable investigation of any suspected violation of the AUP. In the event of a dispute between Diadem and Customer regarding the interpretation of the AUP, Diadem's commercially reasonable interpretation of the AUP shall govern.

a) The Terms of Agreement and the relationship between you and us shall be governed by the laws of India. The Courts of law at **Kolkata, India** shall have exclusive jurisdiction over any disputes arising under this agreement or other related issue arising out of the use of this site or related services. Our failure to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision.

b) If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to



the parties' intentions as reflected in the provision, and agree that the other provisions of the Agreement remain in full force and effect.

c) Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose, or be forever barred.

d) Customers/Visitors who choose to visit these websites from other jurisdictions do so on their own initiative. Those visitors are solely responsible for compliance with all laws, rules, and regulations, union, state, and local or foreign, applicable to the use of this website and information, content, material and services contained herein.

e) The section titles in this Agreement and annexed documents are for convenience only and have no legal or contractual effect.

## **17. Intellectual Property:-**

a) Subject to the provisions of this Agreement, each Party will continue to independently own his/her/its intellectual property, including all patents, trademarks, trade names, domain names, service marks, copyrights, trade secrets, proprietary processes and all other forms of intellectual property. Any improvements to existing intellectual property will continue to be owned by the Party already holding such intellectual property.

b) Without limiting the generality of the foregoing, no commercial use rights or any licenses under any patent, patent application, copyright, trademark, know-how, trade secret, or any other intellectual proprietary rights are granted by **Diadem** to the Customer, or by any disclosure of any Confidential Information to the Customer under this Agreement.

c) Customer shall further ensure that by availing of any website services, he is not infringing upon any intellectual property rights or other rights of any person or entity, or does not publish any content that is libelous or illegal while using services under this Agreement. Customer acknowledges that **Diadem** cannot and does not check to see whether any services or the use of the services by the Reseller under this Agreement, infringes legal rights of others.

d) Without limiting the foregoing, copying or reproduction, for redistribution or other purpose, of the web site or any part thereof to any other server or location, including caching of any kind is expressly prohibited.

e) Unless you have been specifically permitted to do so or have a separate agreement with us, you agree that you will not use any trademark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names or logos.

f) In case of any notice received under DMCA or otherwise for Intellectual Property violation. Diadem reserves the right to remove the content with or without issuing any notice to the Customer, depending upon the seriousness of the matter.



## **18. Grievance Officer**

Diadem shall address any grievances of users, whether registered or not, with respect to website content or any other aspects connected therewith, in a time bound manner. For this purpose, Diadem has designated the following person as Grievance Officer in terms of Information Technology Act 2000:

Ms. Bhavana Bhartia  
Relationship Manager,  
Diadem Technologies Pvt. Ltd.  
Email: [bhavana@diadem.in](mailto:bhavana@diadem.in)  
Tel: 033-4001-2332 (Mon-Fri - 10AM-5PM)

The appointed officer shall acknowledge the complainant within 36 hours electronically and resolve the matter within 30 days in terms of the Information Technology Law if it is received through a government agency or based upon court order (*in accordance with ruling by Hon'ble Supreme Court in the matter of Shreya Singhal V Union of India in March 2015*).

In other cases, Diadem would look into the matter and try to resolve as far as possible.

## **19. Linking to the Web Site**

You may provide links only to the homepage of this Web Site, provided:

- a) You do not remove or obscure, by framing or otherwise, any portion of the homepage,
- b) You give Provider notice of such link by sending an e-mail to us and you discontinue providing links to this Web Site if requested by Provider.

## **20. Electronic Communications / Notices**

a) Any notice or other communication required or permitted to be delivered to **Diadem** under this Agreement shall be in writing unless otherwise specified and shall be deemed properly delivered, when sent to our contact address specified in the Customer Control Panel or on the Parent Website by registered mail or courier. Any communication shall be deemed to have been validly and effectively given, on the date of receiving such communication, if such date is a Business Day and such delivery was made prior to 18:00 hours local time, and otherwise on the next Business Day.

b) When you visit the Site or send emails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by email or by posting notices on the Site. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. And, by special permissions, you may opt for electronic communication in communicating with us by writing to [info@diadem.in](mailto:info@diadem.in).



### **Third Party Legal Actions**

It is our policy to respond with reasonable promptness to subpoenas and other legal process served on Diadem that seek information, documents or other business records. Third parties wishing to serve such process may do so in writing to the following address:

**Diadem Technologies Pvt Ltd (Legal)**  
**AD-15, Salt Lake City,**  
**Sector - 1, Kolkata,**  
**West Bengal 700064**

### **21. No Resale of Service**

You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Service, or access to the Service.

### **22. Entire Agreement**

This Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. The Agreement shall be governed by the Laws of India.

## **E. DISCLAIMER**

### **23. Risk Factors**

a) **Diadem** assumes no responsibility or liability from any loss incurred by any information presented upon the website, services or advise thereof rendered through it. Customers using the services herein are solely responsible for their actions. As we do not warrant the accuracy, completeness, or usefulness of any information presented therein. User expressly agrees that use of the service is at user's sole risk.

b) **Diadem** shall be not responsible or liable for the authenticity, accuracy, completeness, errors, omission, typographic errors, disruption, delay in operation or transmission, communications line failure, interruption or malfunction (including but not limited to any kind of technical aspects), deletion, defect of any information, reports, service stops functioning due to technical problems, certain features not functioning at any point in the web site or any part thereof.

Further, you agree that any material and/or data downloaded or otherwise obtained through the use of the service is done at user's own discretion and risk and that user will be solely responsible for any damage to user's computer system or loss of data that results from the download of such material and/or data.

c) **Diadem** is not liable for any result that may arise form your contact, communication in any



form, coordination, relation or transaction; either with advertisers, sponsors, other websites or any resources that may be hyperlinked or any third party, and you are liable for any contract/term that may or shall be established by you, with these third parties, advertisers, sponsors, other websites or resources that may be hyperlinked in the web site or any part thereof.

d) **Diadem** has no control over other website or resources which are provided by companies or persons and is not liable for any loss or damage which may be incurred by you or by your use of service to any third party as a result of the availability of any information contained on site or external sites or resources or any advertisement or hyperlinks, etc. in the web site or any part thereof.

e) We cannot guarantee that the information submitted to, maintained on, or transmitted from our systems will be completely secure and transmission of information over the Internet is susceptible to possible loss, misrouting, interception and misuse.

f) **Diadem** is not responsible for files and data residing on your account. You agree to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on Diadem servers. Diadem will take full backup of your Shared Hosting Account / Cloud Server/ Dedicated Server on a weekly basis and move it to our centralised backup storage repository on a good faith basis but cannot be held liable in case of any corruption of data during backup and transmission.

g) **Diadem** takes multiple precaution to prevent abuses from the weak code/scripts uploaded by the Customer but if the same is still exploited, **Diadem** is not responsible for such abuses and we have the right to disable/terminate such accounts/websites, if the malware is not removed from the clients end.

## **24. Disclaimer of warranties**

The service is provided on an "as is" and "as available" basis. Diadem expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Further,

- we make no warranty on any results obtained by the use of the service.
- we make no warranty on accuracy or reliability of any information obtained by the use of service.
- we make no warranty that the service will meet your requirements.
- we make no warranty on any technical defects in the website will be corrected.
- we make no warranty that the service will be persistent, timely, secure, error free.
- we are neither responsible nor liable for any result that arises due to the use of service by any user or content posted or transmitted through the site by any user.
- we do not assume any responsibility or liability for any illegal communication or Content posted or transmitted on the Site by any Customer, or any third party.

All liability, whether civil or criminal arising out of any Content that is hosted or transmitted



through the servers (including but not limited to messages / communication of electronic or any other means) will be of that Customer / third party who has Hosted such Content or communicated / transmitted such content or information. We reserve the right to claim damages from such Customer / Third party that it may suffer as a result of such Content Posted on the Site or transmission of information through communication of any kind.

If you are in Do Not Disturb (DND) subscriber list with any telecom operator / authority / organization you need to intimate us. Further, you agree that you have no objection in receiving any messages by any means. We are not liable to any third party if it receives any kind of message / information (under any circumstances) by any customer using the service; even if you are in Do Not Disturb (DND) subscriber list, the sender / customer is solely responsible and liable for the delivery of message / information which is generated by him.

## **25. Limitation of Liability**

You expressly understand and agree that **Diadem**, its subsidiaries and affiliates, shall not be liable to you or any third person for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses, resulting from, arising out of or any way related to:

- a) the use or the inability to use the service;
- b) any data, information, or services availed or messages received or transactions entered into through or from the service;
- c) unauthorised access to or alteration of your transmissions or data;
- d) statements or conduct of any third party on the service; or
- e) any other matter relating to the service.
- f) the deletion of, corruption of, or failure to store, any content and other communications data maintained or transmitted by or through your use of the services.

## **26. Indemnity**

You agree to indemnify and hold us and (as applicable) our parent, subsidiaries, affiliates, officers, directors, agents, and employees, harmless from any claim or demand, including reasonable lawyer's fees, made by any third party due to or arising out of your breach of the Agreement or the documents it incorporates by reference, or your violation of any law or the rights of a third party.

Annexure 1: Service Level Agreement (SLA)

Annexure 2: Acceptable Use Policy

Annexure 3: Privacy Policy