DIGITAL INSIGHT

DEVELOPER PORTAL PROGRAM AGREEMENT

**(Signature Page)**

This Digital Insight Developer Portal Program Agreement (the “**Program Agreement**”) consists of the Developer Portal Terms and Conditions of Use (“**Terms of Use**”) and the Developer API License Agreement (the “**License Agreement**”). This Program Agreement is incorporated in and a part of the Service Documentation for the Authorized Service known as API Application Service. If there are conflicts, the order of precedence will be as provided in the Master Services Agreement. Capitalized terms not defined herein shall have the meaning set forth in the Master Services Agreement.

The parties have executed this Program Agreement by the duly authorized signatures below as of the date of the later signature below.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **CUSTOMER:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | **DIGITAL INSIGHT:**  Digital Insight Corporation | | |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | [Authorized Signature] |  |  | [Authorized Signature] |  |
| Name: |  |  | Name: |  |  |
| Title: |  |  | Title: |  |  |
| Date: |  |  | Date: |  |  |
|  |  |  |  |  |  |

DIGITAL INSIGHT

DEVELOPER PORTAL PROGRAM AGREEMENT

Terms and Conditions of Use

These Terms of Use govern your use of the Digital Insight Developer Portal (“**Developer Portal**”) and any information, materials, or services you access through it (“**Contents**”). By using the Developer Portal, you agree, on behalf of the Customer identified on the signature page of the Program Agreement and any individual who accesses the Developer Portal on your behalf, (collectively, “**you**”), to be bound by these Terms of Use. Please note that these Terms of Use require you to provide certain license rights in your intellectual property to Digital Insight. (*See the Licenses and Rights section for more detail*.)

Additional terms, such supplemental license agreements, may apply to your use of some Contents. If there is a conflict, those terms will control for that use. As used in this document, “Terms of Use” includes any such additional terms.

Digital Insight may modify these Terms of Use, the Developer Portal, or the Contents at any time at its sole discretion. Notice of modifications may be posted on the Developer Portal or otherwise made available to you. Modifications may change the functionality of an application programming interface or the data it makes accessible, and your continued use of the Developer Portal or the Contents constitutes your acceptance of any modification. Digital Insight may discontinue your access to prior versions of the Developer Portal or the Contents at any time, and you will use only the most current version Digital Insight makes available.

Digital Insight also limits, in its sole discretion, your use of APIs (as defined in the License Agreement). For example, the number of Developer Portal users or API requests may not exceed a certain number. You will comply with such limitations, which are documented within each API. You must obtain Digital Insight’s express written consent to any changes in these limits. Digital Insight may decline consent or condition consent on your agreement to additional terms or charges for that use. To obtain consent, contact Digital Insight as directed on the Developer Portal.

**If you do not agree to these Terms of Use, YOU MAY not use the Developer Portal OR THE CONTENTS**.

1. **Registration and Use.**

1.1 You must be at least 18 years old and a registered user to use the Developer Portal. Registration requires that you create a user account (“**User Account**”) by providing the information that Digital Insight requests on the registration web page (“**Account Information**”). By creating a User Account, you affirm that you are at least 18 years old and that your Account Information is current, accurate, and complete. You will promptly update your Account Information if it changes. Digital Insight may deny, restrict, suspend, or terminate your User Account at any time, with or without notice, at its sole discretion.

1.2 Digital Insight may provide announcements and other communications relating to the Developer Portal (including the Contents) to you by posting them on Admin Platform, or by sending them at the e-mail or mailing addresses in your Account Information. You agree that Digital Insight may communicate with you regarding your use of the Developer Portal or Contents, and that any communications we send to you electronically will be considered to be in writing. You may opt out of certain of these communications as instructed in such communications.

1.3 Digital Insight will treat and use your personal information in accordance with the  [Developer Portal Privacy Policy](http://www.ncr.com/home/privacy-policy) posted on the Developer Portal, and by your use of the Developer Portal you consent to that use. Digital Insight does not ask you to provide any other personal information with respect to the Developer Portal or the Contents, and does not undertake any obligation to you or any third party if you upload, post, or otherwise provide such information.

1.4 You are responsible for your conduct, inaction, or negligence with respect to the User Account. If you become aware of any suspicious or unauthorized conduct, immediately contact Digital Insight at https://developer.digitalinsight.com/content/contact-us.

1. **Licenses and Rights.**

2.1 Subject to these Terms of Use, Digital Insight hereby grants you a personal, non-exclusive, non-transferable, non-sublicenseable, revocable, limited license to use (including access) the Developer Portal solely as permitted by these Terms of Use.

2.2 Digital Insight reserves all rights not expressly granted in these Terms of Use. Other than the license expressly granted to you in Section 2.1, no license or right of any kind is granted to you or any third party, including by implication, estoppel, and/or otherwise. For clarity, Digital Insight reserves all right, title and interest in and to the Developer Portal.

2.3 You may not copy, modify, distribute, perform, or display, or decompile, reverse assemble, derive a source code equivalent of, or otherwise reverse engineer, any part of the Developer Portal (including, without limitation, any Contents).

2.4 You hereby grant to Digital Insight a non-exclusive, transferable, sublicenseable (including to other users of the Developer Portal), royalty-free, perpetual, worldwide license under any and all intellectual property (including any patents, copyrights, trade secrets, or trademarks) you own or have the right to license to (a) use, host, store, copy, modify, distribute, perform, and display any of information or materials (including software) posted on the Developer Portal by or for you (“**User Content**”), and (b) make, have made, use, offer to sell, sell, lease, import, export, provide, and otherwise dispose of any products, systems, or solutions, and practice any methods or processes, described in, performed by, or related to any User Content.

2.5 You may not use the Developer Portal in violation of any applicable local, state, national, or international laws, rules, or regulations, or interfere with or disrupt the Developer Portal, including any servers or networks supporting or accessible via it.

1. **Trademarks and Trade Names.**

These Terms of Use do not grant you any right to use any trademark or trade name of Digital Insight or its Affiliates (including the name “Digital Insight”).

1. **Ownership.**

Digital Insight or its licensors own the Development Portal and the Contents, and nothing in these Terms of Use transfer or grant to you any rights in or to any Digital Insight technology or intellectual property rights, other than as provided by any licenses which Digital Insight may expressly grant to you.

1. **Feedback.**

You may choose, or Digital Insight may invite you, to provide comments, suggestions, corrections, or improvements related to the Licensed Materials (“**Feedback**”). Digital Insight will presume that you provide Feedback voluntarily and that Digital Insight is free to and shall have the right to use it without restriction, without providing attribution or compensation to you or any third party.

1. **Infringement.**

Digital Insight respects copyright and other intellectual property rights. Material that infringes the intellectual property rights of any person will not be permitted on this site. If you become aware of any such material, please provide notice consistent with the requirements of the Digital Millennium Copyright Act ([17 U.S.C. §512(c)(3)](http://www.copyright.gov/title17/92chap5.html)) to Digital Insight at https://developer.digitalinsight.com/content/contact-us so that Digital Insight may take appropriate action. If you knowingly misrepresent that any material is infringing, you may be liable for damages, including costs and attorneys’ fees, that Digital Insight or an alleged infringer incurs in relying on or responding to the misrepresentation.

1. **Links.**

The Developer Portal may include links to external sites. Digital Insight does not endorse or take any responsibility for such sites or their content. Your access to any linked site is at your own discretion and risk. You may not include a link to the Developer Portal in any other site without Digital Insight’s prior written permission.

1. **Term and Termination.**

8.1 These Terms of Use will continue so long as you remain an active user of the Developer Portal, unless they are earlier terminated pursuant to this Section. Digital Insight may terminate these Terms of Use in whole or in part, including any licenses or rights they provide, at any time at its sole discretion. Further, these Terms of Use will automatically terminate if you materially breach any of them.

Upon termination, all rights and licenses granted by Digital Insight to you under these Terms of Use will cease, and you will return to Digital Insight all copies of the Contents and any other Confidential Information that Digital Insight has provided you.

1. **Operation and Access.**

Digital Insight will have no liability for any access interruptions to, or problems you may face in using, the Developer Portal or the Contents.

1. **Confidentiality.**

10.1 “**Confidential Information**” means information and materials that Digital Insight discloses to you which is reasonably related to the Developer Portal or the Contents, and which is either clearly identified as confidential when disclosed, or is of a nature such that you know or should know it to be confidential. The nature and existence of any relationship between you and Digital Insight is Confidential Information.

10.2 Confidential Information does not include information that: (a) was possessed or known by you without any confidentiality obligations prior to its receipt under these Terms of Use; (b) becomes publicly available or known through no act or omission of you; (c) is furnished to you by a third party where such third party was not subject to disclosure restrictions; or (d) is independently developed by or for you without breach of these Terms of Use.

10.3 Notwithstanding termination of your rights under these Terms of Use, you will: (a) not use Confidential Information other than for the Purpose (as defined in the License Agreement); (b) exercise the same degree of care in protecting Confidential Information as you use to protect your own confidential information of a similar nature, but in no event less than reasonable care; (c) not disclose Confidential Information to any person or entity, except to those of your Affiliates, and your and their employees and contractors, who have a legitimate need to know it for the Purpose, and who are obligated to protect any disclosed Confidential Information under terms no less protective than those contained in this Section; and (d) promptly notify Digital Insight upon discovery of any unauthorized use or disclosure of Confidential Information and cooperate with Digital Insight to mitigate any adverse consequences. You will be liable for any failure of your Affiliates, and your and their employees and contractors, to comply with the obligations in this Section as if the failure was your own act or omission.

10.4 Your disclosure of Confidential Information pursuant to subpoena or other legal compulsion will not constitute a breach of this Agreement if, to the extent permitted under the circumstances, you have first given Digital Insight notice and opportunity to protect such Confidential Information by protective order or other means, you reasonably cooperate with Digital Insight’s requests toward that end, and you disclose only that portion which you are legally required to disclose.

1. **Indemnification.**

You will indemnify and hold harmless Digital Insight and its officers, directors, shareholders, employees, contractors, agents, and subsidiaries from and against any actual or threatened claims, suits, actions, proceedings, damages, liabilities, litigation and other costs, attorney’s fees, and expenses arising from or related to your use of the Developer Portal or the Contents, or your violation of these Terms of Use.

1. **No Warranties.**

Digital Insight does not warrant that the Developer Portal or the Contents will operate without interruption or be problem free. There are no warranties of merchantability or fitness for a particular purpose. There are no other warranties, oral or written, express or implied. The Developer Portal and its contents are provided as-is and as-available with no warranty of any kind.

1. **Liability Limitations.**

13.1 Neither party will be liable to the other, whether in an action in contract, tort, product liability, strict liability, statute, law, equity, or otherwise, arising under or related to the Developer Portal or the Contents for: (A) any indirect, incidental, consequential, special, or punitive damages; (B) loss of profits or revenue; or (C) loss of time, opportunity, or data, in all instances without regard to whether such party was or was not made aware of the possibility of such damages. Digital Insight will not be liable to You for any amount greater than the cumulative fees paid by You to Digital Insight for the Authorized Service during the preceding 12 months. As used in this Section, a “party” includes a party to these Terms of Use and its Affiliates, employees, agents, contractors, and suppliers when acting in that capacity with respect to these Terms of Use, and any persons or entities claiming by or through a party to these Terms of Use.

13.2 Section 13.1 will not limit: (a) your liability for indemnification obligations under these Terms of Use; (b) a party’s liability for direct damages for bodily injury (including, without limitation, death) to the extent caused by its negligence or willful misconduct; or (c) a party’s liability for damages resulting from violating the other’s intellectual property rights, or breach of Sections 2 and 10.

13.3 Each clause and phrase of this Section is separate from each other clause and phrase, and will apply notwithstanding the termination of your rights under these Terms of Use, or severability of any clause in them.

1. **Governing Law, Disputes.**

14.1 New York law governs these Terms of Use, and the relationships created by them and the transactions occurring under them, except for its laws regarding conflicts of law and arbitrability; the Federal Arbitration Act will govern all issues of arbitrability. Neither party may bring a claim more than two years after the underlying cause of action first accrues.

14.2 Each party agrees to give the other prompt written notice of any claim, controversy, or dispute arising under or related to these Terms of Use, and both parties will engage in good faith discussions to resolve the matter. If that fails to resolve the matter promptly, either party may request the other to participate in mediation before a mutually-agreed mediator. Any matter which is not resolved through the procedures set forth above within 60 days (or such longer period as the parties may agree) will be resolved by arbitration before a sole arbitrator who is an attorney, under the then-current Commercial Arbitration Rules of the American Arbitration Association. The duty and right to arbitrate will extend to any employee, officer, director, shareholder, agent, or Affiliate, of a party to the extent that right or duty arises through a party or is related to this Agreement. The decision and award of the arbitrator will be final and binding, and the award rendered may be entered in any court having jurisdiction. The arbitrator is directed to hear and decide potentially-dispositive motions in advance of a hearing on the merits by applying the applicable law to uncontested facts and documents. The arbitration will be held in Atlanta, Georgia. This Section, and the obligation to mediate and arbitrate, will not apply to claims for misuse, misappropriation, or infringement of Confidential Information or a party’s intellectual property (including, without limitation, intellectual property rights). A party may at any time seek an injunction or other equitable relief from a court of competent jurisdiction in aid of arbitration. The arbitrator will not have authority to award punitive damages, non-compensatory damages, or any damages other than direct damages, or have authority to award direct damages inconsistent with the limitations and exclusions set forth in these Terms of Use.

1. **Relationship of Parties.**

15.1 The parties are independent contractors to one another. Employees or contractors of one will not be deemed to be or act as employees or representatives of the other. A party will not be responsible for compensating the other’s employees or contractors, or for: providing them insurance or benefits; making unemployment, Social Security, or Medicare contributions on their behalf; setting their work hours or work schedules; supervising their work performance; disciplining them; or withholding taxes or other withholdings against their earnings. Except as expressly stated otherwise, no third party will be a beneficiary of this Agreement.

15.2 An “**Affiliate**” is any entity which a party owns and/or controls, is owned and/or controlled by, or is under common ownership and/or control with. An entity is an Affiliate only for so long as such ownership and/or control exists. However, a change in ownership and/or control will not affect a person’s or entity’s obligations with respect to Confidential Information disclosed while it was an Affiliate. Unless the context requires otherwise, reference to “Digital Insight” include Digital Insight’s Affiliates.

1. **Non-Solicitation.**

You agree not to, directly or indirectly, recruit, solicit, hire, employ, or engage Digital Insight personnel who have had any involvement with your activities under these Terms of Use to work for you as an employee, contractor, consultant, or in any other capacity during the term and for 12 months thereafter, without Digital Insight’s prior written consent.

1. **Miscellaneous.**

If any provision of these Terms of Use is held to be illegal, invalid, or unenforceable in whole or in part, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions will remain in full force and effect. Failure to enforce any provision of these Terms of Use will not constitute a waiver of future enforcement of that or any other provision. All notices required to be given under these Terms of Use will be given in writing delivered by any means which provides written evidence of receipt, addressed as provided for in these Term of Use. All notices will be deemed given as of the date sent. Both parties acknowledge that this is an arms-length transaction and/or relationship. There are no implied or otherwise unstated covenants, rights, or obligations by, of or against either party. These Terms of Use are the complete and exclusive statement of the agreement between the parties, superseding all discussions, proposals, or prior agreements, oral or written, and all other communications between the parties relating to the Developer Portal and the Contents. You may not assign any of your rights or obligations under these Terms of Use without the prior written consent of Digital Insight. Digital Insight may assign its rights and/or obligations under these Terms of Use, in whole in part, to any third party.

DIGITAL INSIGHT

DEVELOPER PORTAL PROGRAM AGREEMENT

DEVELOPER API LICENSE AGREEMENT

This License Agreement supplements the Terms of Use you have agreed to with respect to the Developer Portal and Contents, and governs your use of one or more APIs and Licensed Materials that Digital Insight may provide you. By accessing or using those APIs or Licensed Materials, you agree, on behalf of the Customer identified on the signature page of Program Agreement and any individual who accesses the Developer Portal on your behalf, (collectively, “**you**”), to be bound by this License Agreement as well as the Terms of Use. If there is a conflict between this License Agreement and the Terms of Use, this License Agreement controls.

**If you do not agree to the Terms and conditions of this LICENSE agreement, YOU MAY not use THE APIs**.

**1. Definitions.**

The following terms have the following meanings:

1.1 “**API**” means a Digital Insight application program interface and any derivatives of or modifications to it.

1.2“**Application**”means a software application you develop that makes use of any Licensed Materials or accesses data made available through an API.

1.3 “**Developer Portal”** means the Digital Insight website located at https://developer.digitalinsight.com.

1.4 “**Licensed** **Materials**” means collectively one or more APIs, Service Keys, sets of Test Data; and any related materials that Digital Insight makes available to you via the Developer Portal or otherwise, such as documentation, source code, or examples.

1.5 “**Purpose**” means to study the API(s) and to develop them in Applications for your non-commercial use in the U.S., but does not include distribution of Applications to third parties. The Purpose also includes accessing Test Data to test and demonstrate Applications.

1.6 “**Service Key**” means a proprietary data string that Digital Insight provides you for inclusion in an API call in order, among other things, to authenticate your credentials and enable Digital Insight to track your access and use of the Test Data.

1.7 “**Test Data**” means data and other information Digital Insight makes available to you through use of an API from a Digital Insight-specified internet URL.

**2.** **License to Use the Licensed Materials.**

2.1 Subject to the terms and conditions of this License Agreement, Digital Insight hereby grants you, during the Term, a personal, non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Licensed Materials solely for the Purpose. The Licensed Materials are licensed and not sold, and are Digital Insight’s confidential and proprietary information and property, or that of Digital Insight’s licensors. You may not transmit or use the Licensed Materials, or access the Test Data, outside the U.S. without the prior written consent of Digital Insight.

2.2 Other than the limited license expressly granted to you in Section 2.1, no express or implied license or right of any kind is granted to you or any third party. Except to the extent of the limited license granted in Section 2.1, you may not: (a) use, copy, modify, publish, or display the Licensed Materials; (b) distribute, disclose, rent, loan, or transfer them to any other party; or (c) combine them with any other materials. You may not use the Licensed Materials or the Test Data for any commercial purpose, nor may you decompile, reverse assemble, derive a source code equivalent of, or otherwise reverse engineer them.

2.3 Digital Insight may use Service Keys to track your access to and use of the Licensed Materials. If your Service Keys expire or are otherwise revoked, you will no longer be permitted to use the associated Licensed Materials. You are liable for your unauthorized use or disclosure of Service Keys, as well as for such use or disclosure by third parties who have obtained them through you. Digital Insight may revoke or otherwise disable Service Keys at any time at its sole discretion.

**3. Support.**

Other than as specifically stated in the Service Documentation, Digital Insight is not obligated to provide any support or other professional services, or otherwise assist you, with your use of the Licensed Materials or the Test Data.

**4. Ownership.**

Except as expressly provided in this License Agreement, neither party assigns any ownership of, or grants any licenses or rights to, its technology or intellectual property rights to the other. Digital Insight will own any modifications, enhancements, extensions, or derivatives you may make to the Licensed Materials, and all technology and associated intellectual property rights, based on the Licensed Materials (“Digital Insight Foreground IP”). You will own any Applications which you create, except to the extent they incorporate, use, or are based on the Licensed Materials or Digital Insight Foreground IP.