

**STORYSTREAM PLATFORM - TERMS AND CONDITIONS (“TERMS”)**

v.May 2023

**1. Interpretation**

1.1 The following definitions apply in the Agreement:

- (a) Affiliate: any company that controls, is controlled by, or is under common control with a party.
- (b) Agreement: the Order, these Terms, the Data Processing Agreement, and any other agreed Annexes.
- (c) Authorised Users: the maximum number of Customer or Customer Affiliate employees or independent contractors who may access and use the Platform on Customer’s behalf, as agreed in the Order, or otherwise in writing between the parties.
- (d) Content: Customer Content and Third-Party Content.
- (e) Customer: the party contracting for the Services, as named in the Order.
- (f) Customer Content: any materials provided to StoryStream by or on behalf of Customer.
- (g) DPA: the StoryStream DPA attached to or incorporated into these Terms.
- (h) Effective Date: as specified in the Order or otherwise the earliest of: (i) the date of signature of the Order by both parties; (ii) the date upon which Customer is granted access to the Platform; or (iii) if StoryStream receives a purchase order from Customer in respect of the Services, then the date upon which StoryStream has acknowledged that PO by issuing an order acknowledgement or pro-forma invoice.
- (i) Fees: the fees payable by Customer for the Services, as set out in the Order.
- (j) Intellectual Property Rights: all copyright and related rights, patents, rights to inventions, trademarks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how, methodologies and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and all similar or equivalent rights or forms of protection.
- (k) Order: StoryStream’s order form for the Services to which these Terms are attached or incorporated, or Customer’s order form for the Services which has been agreed in writing by StoryStream and which is subject to these Terms.
- (l) Platform: the proprietary online software as a service application known as StoryStream as described in more detail in the Order (excluding Content).
- (m) Services: the services to be provided by StoryStream, as set out in the Order or otherwise agreed in writing, as further described in Section 2 of these Terms.
- (n) StoryStream: Qubeeo Limited t/a StoryStream.
- (o) StoryStream Code: any “widget” or code provided by StoryStream for the purpose of displaying selected Content or links on a Customer website, a third-party website, or a physical screen.
- (p) Term: the Initial Term and Renewal Term(s) (if any) set out in the Order.
- (q) Third Party Content: any content of a third party, including user-generated content provided over a social network, which is published, communicated or reproduced through the Platform or using the StoryStream Code.

1.2 If there is a conflict between provisions in different parts of the Agreement, the following order of precedence shall apply: (i) the Order; (ii) the Data Processing Agreement; (iii) these Terms; and (iv) any other agreed Annexes.

## **2. Services**

- 2.1 Subject to the terms of the Agreement and to any agreed territory, domain, quantities or other limitations set out in the Order, StoryStream will provide the Services to Customer which may comprise all or some of the following:
- (a) access to and use of the Platform, and associated documentation made available by StoryStream for this purpose, by Authorised Users;
  - (b) a licence to use the StoryStream Code for the purpose of publishing, communicating or reproducing Content and/or links on websites or physical screens;
  - (c) any support or development services as expressly set out in the Order; and
  - (d) any additional services, which shall be set out in writing in a separate statement of work or Order, and which shall be subject to these Terms and any other terms agreed expressly in relation to them.
- 2.2 Customer shall not sublicense or transfer any of its rights under the Agreement or use any of the Services to: (a) provide services to third parties (except where Customer is an agency in which case the Services may be used to support Customer's own services to its clients); or (b) build a product or service which competes with StoryStream's business.
- 2.3 Customer Affiliates may also use the Services to the extent expressly identified, and subject to any restrictions set out, in an Order.
- 2.4 Where the Services involve the processing of any personal data by StoryStream on Customer's behalf, such processing shall be governed in addition by the provisions of the DPA.

## **3. Authorised Users**

- 3.1 Customer's access to the Platform shall be limited to Authorised Users, as nominated or replaced by Customer from time to time, who will be allocated a username and password by StoryStream.
- 3.2 Customer shall, and shall ensure that each Authorised User shall: (a) keep usernames and passwords confidential; (b) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platform; and (c) notify StoryStream promptly of any such unauthorised access or use. StoryStream shall not be liable for any loss or damage suffered by Customer or any third party due to any failure to comply with the provisions of this Section.

## **4. Charges and Payment**

- 4.1 StoryStream shall invoice Customer for the Fees on or about the Effective Date and on or about the first day of any Renewal Term, or otherwise in accordance with any payment dates set out in the Order.
- 4.2 Pricing does not include VAT or any similar taxes which where applicable shall be added to StoryStream's invoices at the required rates.
- 4.3 Invoices are due and payable in full 30 days after the invoice date, without deduction, withholding or set-off.
- 4.4 In addition to StoryStream's other rights or remedies, if Customer fails to make any payments in accordance with the Agreement:
- (a) StoryStream may suspend Customer's access to the Platform and/or the provision of any Services until all overdue payments are made in full;
  - (b) interest shall accrue on the unpaid amounts at a monthly rate of 1%, from the due date until fully paid, whether before or after judgment; and

- (c) StoryStream shall be entitled to StoryStream's actual costs of collection.

## **5. Term and Termination**

- 5.1 Provision of the Services shall commence on the Effective Date and shall continue in effect for the Term.
- 5.2 Subject to any provisions agreed in the Order, either party may terminate the Agreement on not less than 60 days written notice to the other party, such termination to only take effect on the expiry of the Initial Term or the Renewal Term then in effect.
- 5.3 The Agreement can be terminated early by written notice by a party if the other party:
- (a) is in material breach of the Agreement, and if such breach is remediable, fails to remedy such breach within 30 days of a written request to do so; or
  - (b) ceases trading (or threatens to cease trading), has an administrator or liquidator or any similar figure appointed, is the subject of a winding up or bankruptcy petition or order, makes any arrangement with its creditors for the payment of its debts, is incapable of paying its debts as they fall due, or in general becomes insolvent under applicable law.
- 5.4 In addition to any other rights StoryStream may have, StoryStream may remove any Customer Content from the Services and/or suspend (in whole or in part) provision of the Services if StoryStream has reasonable grounds to suspect that such Customer Content:
- (a) is unlawful, illegal or relates to unlawful or illegal activities;
  - (b) infringes any person's rights, including rights of privacy, confidentiality or any Intellectual Property Rights; or
  - (c) is defamatory, libellous or malicious.
- 5.5 On termination of the Agreement for any reason:
- (a) Customer shall immediately cease use of the Platform and Services;
  - (b) all licences to use the StoryStream Code shall terminate;
  - (c) all outstanding Fees shall immediately become due and payable; and
  - (d) each party shall return, or at the option of the Disclosing Party destroy, all Confidential Information of the other party in its possession or control.
- 5.6 The accrued rights and remedies of the parties, and any provisions of the Agreement that from their context are intended to survive, shall survive termination of the Agreement for any reason.

## **6. Intellectual Property Rights**

- 6.1 StoryStream and/or its licensors own all Intellectual Property Rights in the Platform, its documentation, the StoryStream Code, and all associated technology and software.
- 6.2 StoryStream does not grant Customer any Intellectual Property Rights in respect of the Platform, documentation, technology or software, the StoryStream Code, or any related content or materials, except as expressly provided in the Agreement.
- 6.3 Where Customer is authorised to use StoryStream Code, StoryStream grants to Customer a non-exclusive, non-transferable, royalty-free licence to use the StoryStream Code for the authorised purpose, subject to the territories, number of implementations, and other limitations set out in the Order.
- 6.4 StoryStream warrants that the Platform and StoryStream Code, where used by Customer in accordance with the Agreement and documentation: (a) so far as StoryStream is aware, will not

infringe the patent rights of any third party; and (b) will not infringe any other Intellectual Property Rights of any third party.

- 6.5 If any Services become, or in StoryStream's opinion are likely to become, the subject of an infringement action or an action that is likely to prevent Customer from using the Services, and such action is not attributable to Customer Content, third-party services, or to Customer's misuse of the Services, then StoryStream shall, at StoryStream's option and expense, and as Customer's exclusive remedy in relation to such action: (a) procure for Customer the right to continue using the Services; or (b) replace or modify such Services so that they become non-infringing; or (c) terminate the Agreement and refund any sums prepaid by Customer to StoryStream in respect of the unused period of the Term.
- 6.6 Customer shall not and shall not permit others to, modify, adapt, create derivative works from, deconstruct, reverse engineer, decompile or disassemble the Platform or the StoryStream Code or any part of it, except to the extent expressly permitted by applicable law.
- 6.7 Customer hereby grants StoryStream a royalty-free, non-exclusive, non-transferable and sublicensable licence to store and use the Customer Content to the extent necessary to provide the Services.
- 6.8 Customer warrants that Customer and/or its licensors have all necessary Intellectual Property Rights in Customer Content and that StoryStream's storage and use of Customer Content in accordance with the Agreement will not infringe the Intellectual Property Rights of any third party.
- 6.9 StoryStream shall be entitled to collect, extract, analyse and use data resulting from Customer's use of the Services for improvement of the Services, provided such use must be in aggregated and anonymised form and without using any Customer Personal Data, Customer Content or Customer Confidential Information.

## **7. Social Networks**

- 7.1 Where StoryStream and/or a social network authorises Customer to incorporate Content or links using StoryStream Code for public display on a website or screen, additional terms may apply to such incorporation as notified to Customer by StoryStream.
- 7.2 Customer's access or posting of Content to social network services via or in connection with the Platform remain subject to each social network's applicable service terms in force at the material time.

## **8. Content**

- 8.1 Customer acknowledges that Third-Party Content is provided by the relevant third parties and/or social networks and that StoryStream shall not have any responsibility for it or be required to monitor it, save as provided under applicable law, or as expressly agreed in writing between the parties.
- 8.2 Any Intellectual Property Rights in Third-Party Content remain with their owners or licensors.
- 8.3 Customer shall inform StoryStream where Customer has actual knowledge, awareness or suspicion that any Content:
  - (a) is unlawful, illegal or relates to unlawful or illegal activities;
  - (b) infringes any other person's rights, including rights of privacy, confidentiality or any Intellectual Property Rights; or
  - (c) is defamatory, libellous or malicious;

and act expeditiously to unpublish, remove or disable access to that Content.

## **9. Confidentiality / Promotion**

- 9.1 “Confidential Information” means any information that is clearly labelled or identified as confidential or ought reasonably to be understood as being confidential, and for the avoidance of doubt includes all technical, commercial or financial know how, inventions, methodologies, concepts, business plans; in the case of Customer the Customer Content; and in the case of StoryStream the Platform, the StoryStream Code, and associated documentation, technology and software.
- 9.2 Confidential Information excludes any information which:
- (a) is or becomes publicly known other than through a breach of the Agreement or other obligation of confidentiality (except for compilations of otherwise public information in a form not publicly known);
  - (b) was in the receiving party’s lawful possession before receipt from the other party;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party.
- 9.3 Each party shall keep the other’s Confidential Information confidential, applying no less than reasonable security measures, and not make the other’s Confidential Information available to any third party, except to its Affiliates, professional advisors or independent contractors that need to know it in connection with the Agreement and are subject to an equivalent duty of confidentiality. Neither party shall use the other’s Confidential Information for any purpose other than performance of its obligations or exercise of its rights under the Agreement.
- 9.4 Where any Confidential Information of the other party is required to be disclosed by law, or order of a court, regulatory or administrative body, then the receiving party may comply with such requirements, but, unless prevented by applicable law, shall first notify the other party as soon as practicable with a view to allowing the other party to seek a protective order.
- 9.5 On request from the disclosing party at any time during the Term or following the termination of the Agreement, the receiving party shall return or, at the option of the disclosing party, destroy Confidential Information of the disclosing party in accordance with such request. Any information required to be retained by law or stored in back-up systems shall be used for no other purpose and deleted as soon as practicable.
- 9.6 This Section 9 shall survive termination of the Agreement.
- 9.7 Each of the parties may refer to the other party as its customer or supplier (as applicable) on its websites, in its marketing materials and in negotiations with third parties, unless notified otherwise by the other party.

## **10. Warranties**

- 10.1 StoryStream warrants that it: (a) will provide the Services using reasonable care and skill; (b) has all necessary rights to grant to the Customer the right to use the Platform and StoryStream Code as set out in the Agreement; (c) takes measures in accordance with StoryStream’s ISO certification to avoid viruses and other malicious code within the Platform; and (d) in providing the Services will comply with all applicable laws and regulations (including data protection and anti-bribery and corruption laws).

- 10.2 Except as expressly set out in the Agreement, and to the maximum extent permissible under applicable law, the Services are provided 'as is' and all other terms that might otherwise be implied are hereby excluded, in relation to the Services, their use by or on behalf of Customer, and the results of such use.
- 10.3 Customer warrants that its use of the Services will not infringe any applicable law or regulation (including data protection and anti-bribery and corruption laws), the terms of use of any social network in force from time to time, or any terms applicable to use of Content.

## **11. Limitation Of Liability**

- 11.1 Nothing in the Agreement limits or excludes the liability of a party for:
- (a) death or personal injury caused by such party's negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any other matter to the extent such liability may not be limited or excluded under applicable law.
- 11.2 Subject to Section 11.1, neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), indemnity, or otherwise, for any:
- (a) economic losses (e.g. loss of revenues, profits, contracts, business or anticipated savings);
  - (b) loss of goodwill or reputation;
  - (c) damage to any device or digital content; or
  - (d) indirect losses,
- arising out of or in connection with the Agreement, the Platform, or any Services.
- 11.3 StoryStream will indemnify the Customer and Customer Affiliates for losses arising out of: (i) a third party claim against Customer or any Customer Affiliate that use of the Services (excluding any Content, or services not provided by StoryStream) infringes the intellectual property rights of such third party.
- 11.4 Subject to Sections 11.1 and 11.2, StoryStream's aggregate liability for all claims arising in any way out of or in connection with the Agreement, the Platform and Services, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), indemnity, or otherwise, shall be limited to the annualized Fees paid or payable by Customer under the relevant Order.
- 11.5 A party must take reasonable steps to minimise and, if possible, avoid any loss and damage which it seeks to be indemnified for or otherwise claim from the other party under or in connection with the Agreement.

## **12. Force Majeure**

No party shall be in breach of the Agreement or liable for any failure to perform its obligations under the Agreement if that failure is a result of circumstances beyond its reasonable control, including any act or omission of a social network (a "Force Majeure Event"). If a Force Majeure Event continues for a continuous period of two months, the unaffected party may terminate the Agreement by giving thirty days' written notice to the other party.

**13. General**

- 13.1 No failure or delay by a party in exercising any right under the Agreement will operate as a waiver, and a waiver of any right shall only be effective if it is in writing.
- 13.2 If any provision of the Agreement is found to be invalid, unenforceable or illegal, this shall not affect the validity and enforceability of the rest of the Agreement and it shall be deemed modified to the extent necessary to make it valid, legal and enforceable or, if such modification is not possible, deleted.
- 13.3 The Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, representations and arrangements (either oral or written) with regard to its subject matter. Any terms separately proposed or presented by Customer are hereby excluded, unless expressly agreed to in writing by StoryStream.
- 13.4 The Agreement may only be amended or supplemented in writing executed by an authorised representative of each party.
- 13.5 Either party may assign or novate its rights or obligations or the Agreement to one of its Affiliates (without affecting any agreed domain, territory, or other limitations set out in the Order), or to a purchaser of its business to which the Agreement relates.
- 13.6 Except for Customer Affiliates as expressly provided in the Agreement, no person who is not a party to the Agreement shall derive any rights from or be entitled to enforce any provision of the Agreement.

**14. Governing Law And Jurisdiction**

This Agreement and the provision of the Services shall be governed by, and construed in accordance with, English law and the parties hereby submit to the exclusive jurisdiction of the English Courts in relation to any dispute arising out of or in connection with them. However, either party shall be entitled to bring proceedings in any other jurisdiction in order to protect such party's Confidential Information, Intellectual Property Rights or personal data, or to recover any sums due under the Agreement.