ANNEX III: DATA PROCESSING AGREEMENT ("DPA")

In accordance with the Agreement, the Parties wish to determine their respective rights and obligations as to the Processing of Personal Data by CHILI, in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereafter: 'GDPR')

PARTIES HAVE AGREED AS FOLLOWS:

Article 1   Definitions
The words and expressions used in this DPA are to be interpreted to have the following meaning:
1.1   Controller: the Customer;
1.2   Processor: CHILI;
1.3   Personal Data: Data that only includes information relating to natural persons who can be identified or who are identifiable, directly from the information in question; or who can be indirectly identified from that information in combination with other information.
1.4   Service Data: is any information, including Personal Data, which is stored in or transmitted via the CHILI GraFx services, by, or on behalf of, our customers and their end-users.
1.5   Data Subject: the identifiable natural person to whom the Personal Data relates and who can be identified, directly or indirectly, by that Personal Data;
1.6   Process/Processing: Any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Personal Data.

Article 2   Scope of application
2.1   Unless Parties agree otherwise in writing, the provisions of this DPA are applicable to every type of Processing of Personal Data performed by the Processor on the basis of the Agreement.
In case of any contradiction or inconsistency between this DPA and the Agreement, the provisions of this DPA prevail.

Article 3   Basic information relating to the Processing
3.1   Parties agree that Processor, in the context of the implementation of the Agreement, Processes Personal Data on behalf of the Controller, with the aim of providing the Services (including hosting services, helpdesk services e.g. via the support portal, etc.) as described in the Agreement. CHILI will only process the Personal Data that the Controller makes available via the Services, and only in accordance with the instructions of the Controller.
The Processing concerns specifically the provision, storage, deletion and exchange of the type of Personal Data as included under Article 3.3.
3.2   The Processor may Process the Personal Data that are passed on by the Controller, as long as this is necessary for the implementation of the assignment as determined in the Agreement.
After the execution of the assignment, the Processor immediately puts an end to every other use of the Personal Data than what is necessary to enable the Controller to recuperate the data that were entrusted to the Processor. The same goes for the use of data that are the result of the Processing with which the Processor was tasked.

3.3   The type of Personal Data that normally will be Processed per category of Data Subject can be described in the following manner. Depending on the specific instructions and use case of the Controller, this may also include other types of Personal Data.

Categories of Data Subjects	Type of Personal Data
Customers of the Customer	Identification data (particularly: surname, first name, telephone, email, IP-address)
Employee of Customer (or contact person)	Identification data (particularly: surname, first name, telephone, email, IP-address)

3.4   The rights and obligations of the Processor are determined in this DPA.

Article 4   Processing by the Processor

4.1   Processor Processes the Personal Data only on the basis of written instructions of the Controller, save for divergent legal requirements and divergent requests from the Parties concerned; In that case, the Processor informs the Controller of that legal requirement prior to the Processing, unless such legislation prohibits such notification for important reasons of general interest.

4.2   Processor Processes Personal Data on behalf of the Controller, in accordance with his instructions and under his responsibility and in the manner as provided in this DPA and the Agreement.

4.3   Processor does not have power of control over the purpose and the means for the Processing of Personal Data. If the Processor, contrary to this DPA and the GDPR, determines the purpose and the means for a Process, the Processor will be considered to be a Controller with regard to that particular Process.

4.4   Processor must ensure compliance with the conditions that are imposed, on the basis of the GDPR and other legislation, on the Processing of Personal Data.

4.5   Processor only grants access to Personal Data to its employees who are subject to a confidentiality obligation and only in so far as necessary for the provision of Services on the basis of the Agreement.

4.6   Processor will inform the Controller of requests with regard to the exercise of rights relating to Personal Data that were directly obtained from a Data Subject.

In addition Processor will, in fulfilling his duty to respond to requests from Data Subjects regarding the exercise of their rights, provide Controller with every reasonably necessary assistance, taking into account the nature of the Processing and the information that is available to him.

4.7   Controller gives written general consent to the Processor to engage a sub-processor in the execution of the Agreement, as well as to continue to appeal to the current sub-processors, under the condition that the protection of the Personal data remains guaranteed.

The Processor informs the Controller of intended changes regarding the addition or replacement of sub-processors, whereby the Controller is given the opportunity to object to these changes in writing, within 7 calendar days.

Before the Processor engages a sub-processor to perform specific processing activities for the account of the Controller, the Processor shall, by means of an agreement, impose at least the same data protection obligations on this sub-processor as those that are included in this DPA.

This includes, in particular, the obligation to provide adequate guarantees with regard to the application of appropriate technical and organizational measures in order for the Processing to comply with the provisions laid down in the GDPR and for the protection of the Data Subject's rights to be guaranteed.

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In the agreement with the sub-processor, the Controller should be designated as a direct beneficiary, in order for him to be able to exercise the contractual rights directly vis-à-vis the sub-processor.

4.8 The Processor must provide the Controller with all information necessary to demonstrate compliance with the obligations included in this DPA.

Within this context, Controller, or an inspector authorized by the Controller, has the right to carry out audits and inspections at Processor.

The Processor must enable and contribute to such audits and inspections.

The Processor will immediately inform the Controller if, in his opinion, an instruction violates the GDPR or other European Union or Member State data protection provisions.

4.9 In the event the Processor Processes Personal Data outside the EEA, it will provide sufficient guarantees to ensure that the Processing will meet an adequate level of protection as determined in the GDPR.

Article 5   Notification obligation data breaches

5.1 Processor shall immediately inform Controller of a security breach relating to the Processing of Personal Data, and shall provide Controller inasmuch as possible with information about the following: (i) the nature of the infringement; (ii) the (potentially) affected Personal Data; (iii) the established and expected consequences of the infringement for the Processing of Personal Data and the persons involved; and (iv) the measures that the Processor has taken and will take to limit/mitigate the negative consequences of the infringement.

5.2 The Processor acknowledges that, under certain circumstances, the Controller is legally obliged to notify the supervisory authority and possibly the Data Subjects of a security breach that relates or may relate to the Personal Data Processed by the Processor.

Prior to a notification, the Controller must consult and inform the Processor about the intended notification.

5.3 Processor will take all measures necessary to limit/mitigate (possible) damage and to support the Controller with regard to the notification to the supervisory authority and the Data Subjects concerned. The Processor will keep the Controller informed and updated of new developments with regard to the infringement and the measures taken by the Processor to limit and terminate the scope of the infringement and to prevent a similar occurrence in the future.

Article 6   Security measures

6.1 Processor shall take all appropriate technical and organizational measures in accordance with Article 32 GDPR in order to protect Personal Data against loss or any form of unlawful Processing.

6.2 The Controller acknowledges that the security measures taken by the Processor are appropriate in view of all relevant aspects of the Process, including the state of the art and the framework of the Agreement.

6.3 When the Processor makes substantial changes to the applicable security measures, he immediately informs the Controller of this adaption.

Article 7   Obligations Controller

7.1 The Controller constitutes the 'controller' with regard to the Processing of Personal Data pursuant to this DPA, given that he alone or together with others, determines the purpose of and the means for the Processing of Personal Data.

7.2 Controller agrees and guarantees that the Processing of the Personal Data in accordance with this DPA is consistent with the GDPR.

7.3 Taking into account the nature of the Processing and the information made available to him, the Processor will provide all the reasonably necessary assistance to the Controller in fulfilling the obligations pursuant to Articles 32 up to and including 36 GDPR.

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Article 8   Termination

8.1   This DPA commences on the signing date of this DPA and has been entered into for an indefinite period of time.
This DPA ends at the time that the Agreement ends, with the understanding that Article 8.2 remains in effect after termination of the Agreement until the Processor has fully complied with the obligation in accordance with Article 8.2.

8.2   At first request of the Controller, the Processor will, in the event of the termination of the Agreement, return all Personal Data made available to him to the Controller and destroy all digital copies of the Personal Data, unless the Processor is legally obliged by EU or national law to store the Personal Data. Any costs that have to be incurred with regard to the return of the Personal Data, are to be borne by the Controller. If the Controller is of the opinion that the destruction may not take place, he will inform the Processor thereof in writing.
In that case, the Processor guarantees the confidentiality of the Personal Data towards the Controller and he will not Process the Personal Data except for the purposes of compliance with his legal obligations or after written instructions from the Controller.

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