

## ANNEX I – TERMS AND CONDITIONS

Version: 06 March 2025

**1. DEFINITIONS.** The following terms are defined for purposes of the Agreement signed between Customer and CHILI publish.

1.1 *Additional Professional Services* means that following the Customer's request or following CHILI publish' observation that a particular service is not covered by the Agreement, CHILI publish may provide the Customer with other, additional services which relate to the Services.

1.2 *Affiliate* means, with respect to either Party, any present or future parent or subsidiary of such Party, any entity in which such Party owns an equity interest of greater than fifty percent (50%), or any entity in which any present or future parent or subsidiary of such Party owns an equity interest of greater than fifty percent (50%).

1.3 *Agreement* means the Agreement and its Annexes.

1.4 *Business Days* means Monday through Friday and do not include Saturday, Sunday or national holidays.

1.5 *Customer End-User* means the physical person using the Software and who was given access to the Software by the Customer.

1.6 *Fair use* means the anticipated levels of use of certain functionalities within each tier, as determined by CHILI publish based on the reasonable use to be expected in relation to the purpose and use cases of each tier.

1.7 *Fees* means the amounts to be paid by Customer to CHILI publish for the Software, Services and/or Additional Professional Services as provided in the Agreement.

1.8 *GDPR* means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons regarding the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

1.9 *Managed Private Cloud* means a dedicated, single-tenant cloud environment where the Software and supporting infrastructure are exclusively allocated to a single customer. This provides Customer with an independent instance of the software and a separate database to ensure maximum data isolation and security.

1.10 *Normal Support Hours* means from 09:00 until 18:00 CE(s)T on Business Days.

1.11 *Offer* means the 'CHILI GraFX' order form as accepted by the Customer.

1.12 *Personal Data* means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

While providing the Services, CHILI publish may process the following types of Personal Data:

- the personal information placed by the Customer on Customer's environment. Access to an environment is only granted by the Customer.
- Possible Personal Data provided by the Customer in a support ticket placed on CHILI publish support platform.

1.13 *Platform Data* means user account and subscription data (incl. contract details, credentials, permissions, ...). Platform data is stored at rest in West-Europe.

1.14 *Render* means what happens every time you output a certain type of file. A Render is only counted on production environments. The limit of Renders is the total of Renders across all Customer's production environments and regions. The following table specifies which output types result in renders.

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OUTPUT TYPE	Yes	No
<b>PDF Output</b>		
Pdf output	x	
Pdf output with text watermark		x
Pdf output with asset as a watermark	x	
<b>Image output</b>		
Previews generated using default profiles (highest-high-medium-thumbnail)		x
Previews generated using a custom profile	x	
<b>Animation/ Video (coming soon)</b>		
Per second of output	x	
Animation with watermark		x
<b>HTML output</b>	x	
<b>Batch output</b>		
When executing a batch output (such as variable data print PDF or image export), the first 50 records are counted as 50 individual renders. For any records beyond the first 50, every 10 records are counted as 1 additional render.	x	
<b>Barcodes</b>		
Barcodes used in a template/document		x
Barcodes rendered via API (coming soon)	x	
<b>General</b>		
Font previews		x
Snippets		x
Template package		x
Plugins import (Illustrator/InDesign/Switch)		x
Client-side document canvas operations (like f.e. taking a snapshot)		x

1.15 *Resolution time* means the targeted maximum time between the point at which a Support request was received by CHILI publish during normal CHILI publish Support Hours and CHILI publish' permanent solution to the problem.

1.16 *Response time* means the maximum time between the point a Support request was received by CHILI publish during normal CHILI publish Support Hours and CHILI publish' response.

1.17 *Service(s)* means the provision of access to and the use of the Software over the internet and the hosting of Customer's data.

1.18 *Service Data* means any information, including Personal Data, which is stored in CHILI publish' services, by, or on behalf of, our customers and their end-users. Service data at rest is stored in data centers chosen by Customer from the list offered by CHILI publish.

1.19 *Service Level* means the agreed level of quality for a particular Service, as further described in Annex II – Service Level Agreement.

1.20 *Smart Template* means a dynamic and intelligent design asset that allows users to easily adapt content for multiple channels while maintaining brand consistency. It automates repetitive tasks, integrates with data sources, and enables flexible customization without requiring advanced design skills.

1.21 *Software* means the CHILI GraFx software program for smart artwork and marketing material creation.

1.22 *Support* means technical support for the use of the Software, provided by CHILI publish to Customer in accordance with Annex II.

1.23 *Support Availability* means the numbers of hours that are covered in your time zone. Nine to five entails 8 hours during Business Days.

1.24 *Support Data* means the data Customer provides to CHILI publish on the support platform. Support data is stored at rest in West-Europe.

1.25 *Support Request* means a support request which needs to be logged via the CHILI publish support platform.

1.26 *Template Designer* means a role in CHILI GraFx. This role gives the user the permission to use the InDesign and Illustrator plugin and use the template builder workspace and tools to build templates.

1.27 *Third-Party Product* means any part of the Software which is provided by a third party.

## 2. SERVICES.

Subject to the terms and conditions of the Agreement, CHILI publish will provide the Services to Customer. The Customer selects the preferred Service type in the Agreement.

2.1 By virtue of the Agreement, CHILI publish grants Customer and Customer's End-Users the right to access and use the Services under the terms and conditions of the Agreement. The Customer shall use the Services in a manner consistent with any and all applicable laws and in a manner which does not harm the name, reputation or rights of CHILI publish. The Customer is prohibited from performing any action which could circumvent or endanger the operation or security of the Services (e.g., by performing a stress test). CHILI publish has the right (but not an obligation) to remove at any moment and without prior warning any Customer data which, in CHILI publish' reasonable opinion, is illegal or infringes (or is likely to infringe) upon the rights of third parties. To access the Services Customer must have an account associated with a valid email address. The Customer is responsible for all activities that occur under its account, including any actions by the End-Users. CHILI publish will, to the best of its ability, manage the Services in a professional manner and with due care. CHILI publish is entitled at any time to introduce, modify or replace output types of the Services for which renders will be charged

2.2 Use of artificial intelligence. The Customer is aware, acknowledges and accepts that the Services are partly provided using artificial intelligence ('AI') and that AI components are embedded in 'CHILI GraFx'. Examples of such components include, but are not limited to Smart Template creation, (design assistant, code generation), analysis and image annotation. CHILI publish ensures compliance with any and all applicable law pertaining to AI and undertakes to implement adequate security measures which correspond with the risk levels of the Services. At Customer's or Customer End-user's first request, CHILI publish shall provide additional and more detailed information on its AI use and the AI functionalities embedded in the Services. In any event, CHILI publish warrants that no Customer data will be used to train, enrich or otherwise improve AI

models for any other purpose than the provision of the Services and only subject to measures regarding anonymization.

2.3 Location of data storage. The Customer can select a data center from the list offered by CHILI publish.

2.4 Protection of Customer's or Customer End-User's data stored by CHILI publish (which may include Personal Data). CHILI publish undertakes reasonable industry efforts to maintain appropriate administrative, physical and technical safeguards to protect the Customer's/Customer End-User's data against accidental or unlawful destruction, accidental loss, alteration, unauthorized disclosure, and unauthorized access.

To the extent that any Personal Data is processed by CHILI publish, said processing shall take place in accordance with the data processing agreement concluded between CHILI publish and the Customer (Annex III). CHILI publish shall take all appropriate and adequate technical and organizational measures to ensure an adequate degree of protection of any collected Personal Data in line with the then current state of the art as described in Annex II – Service Level Agreement.

2.5 Proprietary Rights. Neither the Customer nor any Customer End-User acquires any rights, title, or interest in the Software, including, without limitation, all rights, title and interest (whether legal, equitable or otherwise) to the databases, technology, and source code used in connection with it. This also applies to Third-Party Products embedded in the Software. The Customer or Customer's End-User also do not obtain any right, title or interest to modifications, enhancements and future releases of the Software, whether registered or not, compilations, inventions, know-how, Confidential Information, trade secrets, trade names, business names, domain names as may exist from time to time anywhere in the world, which shall remain the sole and exclusive property of CHILI publish. All Customer data remains the sole property of the Customer and is processed as needed by CHILI publish to deliver the Services. CHILI publish undertakes to implement adequate measures to protect the integrity and confidentiality of Customer data.

### 3. SUPPORT.

3.1 Subject to the terms and conditions of the Agreement, CHILI publish agrees to provide to Customer Support of the Software for the term of the Agreement according to the Service Levels as set out in Annex II.

3.2 Customer Payment Obligations. Customer acknowledges and agrees that Customer must pay all Fees which are due and payable as defined in the Offer and the Agreement.

### 4. PAYMENT AND TAXES.

4.1 CHILI publish will submit an invoice for all Fees due to Customer. Fees will be invoiced and paid for on a yearly basis unless agreed otherwise between the Parties. When a Party requests a different invoicing mechanism, the price will be increased with five percent (5%) for quarterly invoicing and with eight percent (8%) for monthly invoicing.

4.2 Payments are due net thirty (30) days from date of the invoice. Customer shall pay CHILI publish interest at one (1)% per month, compounded annually on any undisputed payment not made within sixty (60) days of date of invoice and will immediately by way of law, without prior written notice and without prior court intervention pay an indemnification equal to ten percent (10%) of the invoiced sum.

4.3 Customer is responsible for and shall pay all sales and use taxes imposed by any governmental entity such as VAT, including interest and penalties thereon, irrespective of whether included in any invoice sent to Customer at any time by CHILI publish. Customer must provide copies of any and all exemption certificates to CHILI publish if Customer is entitled to any exemption.

CHILI publish is entitled to increase prices at any time given objectively valid reasons, with a maximum of five percent (5%) per annum. A price increase will be communicated to the Customer in writing at least three (3) months upfront.

## **5. WARRANTIES & DISCLAIMER.**

5.1 Customer Warranty. Customer represents and warrants to CHILI publish that: (a) Customer shall pay all Fees in the amounts as set forth in the Agreement; (b) Customer has the full authority and right to enter into and perform the obligations of the Agreement; (c) the undersigned representative of Customer is authorized to execute the Agreement on behalf of Customer, and (d) Customer shall impose on the Customer's End-user any obligation following the use or the provision of the services which must be or is intended to be respected by Customer's End-User.

5.2 CHILI publish Warranties. CHILI publish represent and warrants to Customer that: (a) it has the right to provide Services and Support to Customer; (b) it has full authority and right to enter into and perform the Agreement; and (c) the undersigned representative is authorized to execute the Agreement. Additional warranties are set forth elsewhere in the Agreement.

5.3 Disclaimer. To the extent permitted by applicable law, the Services are provided to Customer "as is". CHILI publish does not warrant, guarantee or make any other representations with respect to the Services whether express, implied, or statutory, including but not limited to, implied warranties or conditions of merchantability, fitness for a particular purpose, accuracy, reliability, completeness, functionality, intended purpose, or otherwise. CHILI publish does not guarantee that the Services will be uninterrupted or error free. The entire risk as to the quality of or arising out of use or performance of the Services, if any, remains with the Customer. CHILI publish makes no warranties regarding Third-Party Products.

## **6. LIMITATION OF LIABILITY.**

6.1 To the maximum extent permitted by applicable law, CHILI publish will not be liable for any indirect, incidental, consequential, exemplary, or special damages, including, but not limited to: loss of or corruption of data, loss of goodwill, loss of business, loss of profit, loss of turnover, loss of customers, etc., arising out of or in any way connected with the Agreement, whether an action based upon contract, tort or otherwise, except in case of liability for intent, grave error or non-execution of essential obligations under the Agreement by CHILI publish or its sub-contractors. CHILI publish cannot be held liable for any damage due to a failure, issue or problem arising from a Third-Party Product. In the event of such an issue, CHILI publish will undertake reasonable efforts to provide a commercial solution to the Customer.

6.2 Notwithstanding the foregoing, and to the maximum extent permitted by applicable law, Customer agrees that, in no event shall damages for any and all claims hereunder by Customer exceed the total fees, paid by Customer to CHILI publish under the Agreement for the twelve (12) month period prior to the date such claim arose.

6.3 CHILI publish' liability exists solely when Customer appropriately and as soon as reasonably possible (being not later than thirty (30) days after the damage came into existence) notifies CHILI publish of the issue in writing, proposing therein a reasonable time period for correction of the issue and CHILI publish then fails to meet the aforesaid obligations during said period. The notification of the issue ought to be as detailed as possible so that CHILI publish is able to react immediately and adequately. This notification shall not discharge the Customer from taking all reasonable measures to limit any possible damage to itself or to third parties.

## **7. TERMINATION.**

7.1 Termination for cause. The Agreement may be terminated by written notice in the following circumstances: (a) CHILI publish may terminate immediately upon written notice to Customer upon the occurrence of any Default; and/or (b) either Party may terminate for any other material breach by the other Party of any material term or condition of the Agreement and the defaulting Party does not cure such failure within thirty (30) days after written demand; or (c) CHILI publish or Customer may terminate immediately, by providing the other written notice to that effect, if the other Party makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or for reorganization or arrangement under the bankruptcy laws, or if a petition in bankruptcy is filed against the other Party and is not dismissed within forty-five (45) business days after the filing, or if a receiver or trustee is appointed for all or any part of the property or assets of the other Party.



7.2 Default. The term '**Default**' means the occurrence of one or more of the following events: (a) Customer's failure to pay any Fees when due and payable which failure to pay shall have continued for a period of fifteen (15) days after notice to Customer of such failure to pay; (b) Customer breaches any representation, warranty, or obligation hereunder, and such breach is not cured within fifteen (15) days of receipt of notice specifying such breach.

7.3 Remedies Upon Default. In addition to any other remedies of CHILI publish, upon the occurrence of any Default, CHILI publish may (without waiving any other damages, rights and remedies as it may have under the Agreement, or at law or in equity) at its own discretion: (a) accelerate all amounts to be paid under the Agreement such that all amounts shall become due and payable immediately; (b) retain any deposits in satisfaction of such amounts due and owing; (c) postpone the fulfillment of the obligations under the entered agreement, until Customer has placed a guarantee meeting CHILI publish' satisfaction for the arrears and for the payment of the remaining part of the purchase amount; and/or (d) suspend the Services without involvement of a judge and without liability.

7.4 Rights and Obligations upon Termination. Customer acknowledges and agrees that CHILI publish will remove the Service data after Termination. The removal will be processed through the Software within 90 days after cessation of the Agreement. CHILI publish doesn't provide any archive and restore service. Data which is necessary for the purpose of self-defense in a potential legal procedure will be archived as long as necessary for the purpose of self-defense in the legal procedure.

## 8. CONFIDENTIALITY.

8.1 To the extent that, in connection with the Agreement a Party comes into possession of any proprietary or confidential information of the other Party ('**Confidential Information**'), that Party agrees to use the Confidential Information of the other Party solely for the purposes of performing this Agreement, and will not disclose such Confidential Information to any third party without the other Party's written consent.

8.2 Each Party shall protect Confidential Information received from the other Party with the same degree of care it uses to protect its own Confidential Information.

8.3 These restrictions do not apply to Confidential Information which the recipient: (a) is required by law or regulation to disclose, but only to the extent and for the purposes of such law or regulation; (b) discloses in response to a valid order of a court or other governmental body, but only to the extent of and for the purposes of such order, and only if the recipient first notifies the providing Party of the order (if legally permitted) and permits the providing Party to seek an appropriate protective order or move to quash or limit such order; or (c) discloses with written permission of the providing Party, in compliance with any terms or conditions set by the providing Party regarding such disclosure.

8.4 For the avoidance of doubt, the Parties agree that the Agreement and its terms shall be Confidential Information. None of the Parties may disclose the Agreement or its terms to any third person, except as may reasonably be required to enforce the terms of the Agreement, and/or to its attorneys, accountants, shareholders, directors, member, agent or parent organizations, tax authorities, or as otherwise required by law.

## 9. GENERAL.

9.1 Assignment. CHILI publish may assign, transfer or convey its rights and obligations under the Agreement with notice to Customer, but without Customer's consent. Customer may not assign, transfer, or convey its rights and obligations under the Agreement without prior written consent by CHILI publish which shall not be withheld unreasonably.

9.2 Counterparts. The Agreement may be executed in digital counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The Parties acknowledge and agree that the Agreement may be executed by way of electronic signature, which shall be considered as a legal equivalent of a manual signature.

9.3 Relationship. The relationship between all Parties to the Agreement is and shall be that of independent contractors and nothing in the Agreement shall be construed or used to create or imply any relationship of partners, joint ventures or employer and employee between the Parties.

9.4 Subcontracting. The Customer hereby agrees that CHILI publish may subcontract any part of the Services under the Agreement to a subcontractor. CHILI publish shall only appoint subcontractors who provide sufficient guarantees to implement appropriate technical and organizational measures to ensure that the processing will meet the standards of GDPR. CHILI publish shall inform the Customer of any intended changes concerning the addition or replacement of subcontractors, thereby giving the Customer the opportunity to object to such changes on objective grounds. The Customer's relationship remains solely with CHILI publish as the entity contracting to provide the Services and CHILI publish remains fully responsible to the Customer for all of the Services under the Agreement, including the services performed by its subcontractors.

9.5 Force Majeure. The Parties agree that no Party shall be liable for delay in performance hereunder due to causes beyond its control including, without limitation, "acts of God", fires, strikes, acts of war, terrorist attack, sonic boom, EMP (electromagnetic pulse), cyber-attack, epidemic, pandemic or intervention, suspension or termination or failure of Third-Party Products, order or action by any government authority (not arising out of any action or omission of such Party), but any such failure shall be remedied as soon as possible.

9.6 Waiver, Amendment or Modification. The waiver, amendment, or modification of any provision of the Agreement or any right, power or remedy hereunder shall not be effective unless in writing and signed by the Party against whom enforcement of such waiver, amendment or modification is sought. The terms of the Agreement may not be amended or changed by the terms of any purchase order, acknowledgment, invoice, or similar document even though a Party may have signed or accepted such document. No failure or delay by either Party in exercising any right, power, or remedy with respect to any of the provisions of the Agreement shall operate as a waiver thereof.

9.7 Severability. In the event any provision of the Agreement is found by an arbitrator or court of competent jurisdiction to be invalid, void or unenforceable, the Parties agree that unless it materially affects the entire intent and purpose of the Agreement, the invalidity, voidness, or unenforceability shall affect neither the validity of the Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

9.8 Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be: (a) delivered by hand, effective when received; (b) delivered by an internationally recognized commercial overnight delivery service with delivery charges prepaid, or mailed postage prepaid by certified or registered mail, return receipt requested, effective on the date indicated on the written signature card indicating acceptance by addressee; or (c) transmitted electronically, with receipt confirmed, effective the first business day following the date on which electronic indication of receipt is received. Notices to each Party shall be sent to the address and individual(s) set forth below for each Party, or to such other place as such Party may designate by written notice to the other Party.

9.9 Attorney's Fees. In the event of a disagreement between the Parties, if any arbitration proceeding or action at law is necessary to enforce the terms of the Agreement, the prevailing Party will be entitled to reasonable fees of attorneys, accountants, and other professionals, and costs and expenses in addition to any other relief to which such prevailing Party may be entitled. A Party may be deemed to be "prevailing" even if such Party is not successful on each claim or legal theory advanced by such Party.

9.10 Headings. Section and subsection headings are included solely for convenience, are not to be considered a part of the Agreement and are not intended to be full and accurate descriptions of the contents thereof.

9.11 Applicable law and Competent Forum. The validity, construction and performance of the Agreement, and the legal relations among the Parties to the Agreement, shall be governed by and construed in accordance with Belgian law. The Parties agree that no action or proceeding may be brought arising from the Agreement more than three (3) years after such claim first arose. Any controversy or claim arising out of or relating to the Agreement or the breach thereof shall be settled by binding arbitration to be held in Belgium in accordance with the CEPANI arbitration rules. The language of arbitration shall be English, and the seat of arbitration shall

be Brussels. The award rendered by the arbitrator or arbitration panel may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, in lieu of arbitration, CHILI publish shall have the right to waive the foregoing arbitration clause and in that case, the courts of Brussels, Belgium or the English speaking courts of Illinois, US (depending on the Agreement) shall be exclusively competent to settle all disputes (including, without limitation, any dispute relating to the interpretation, performance, termination or validity of the Agreement) and any torts closely associated therewith.

9.12 Process. No provision of the Agreement shall affect the right of any Party to serve process in any manner permitted by law or limit the right of any Party to bring suits, actions, or proceedings in any competent forum to enforce in any lawful manner a judgment or arbitral award issued by a competent court or arbitral panel.

9.13 Survival. Rights or obligations arising prior to termination or expiration and the provisions of the Offer and Sections 4, 7, 8 and 9 shall survive any termination or expiration of the Agreement.

9.14 Entire Agreement. The Agreement represents the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous statements, representations, or agreements, whether oral or written, with respect to the subject matter of the Agreement.

## **10. PUBLICITY & TESTIMONIALS**

9.15 The Customer consents to the use of its trading name within any promotional material to be published by CHILI publish in the future. Such promotional material will not contain any Confidential Information.

9.16 If CHILI publish wishes to use the Customer's business cases or a testimonial for promotional purposes, it will ask Customer's permission to do so.