



Software as a Service Agreement

Version: 01 October 2023

Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Provider provides access to the Services to its customers; and

WHEREAS, Customer desires to access the Services, and Provider desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

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

(b) *Affiliate.* 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%).

(c) *Aggregated Statistics.* Data and information related to Customer's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

(d) *Agreement.* This agreement and its Annexes

(e) *Authorized User.* Customer's employees, Customer's end-users, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

(f) *Business Days.* Monday through Friday and do not include Saturday, Sunday or US national holidays.

(g) *Customer Data.* or Data, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.

(h) *Customer End-User.* Means the physical person using the Software and who was given access to the Software by the Customer.

(i) *Documentation.* Provider's user manuals and/or documentation portal and guides relating to the Services provided by Provider to Customer.

(j) *Environment.* An Environment inside the Software is an isolated area. Data from one Environment is never accessible from another Environment. Typically, an Environment would be created for each Customer, this will ensure that when that Customer End-User logs into the back-office it will only see and have access to its specific information. It should be noted that Provider can never assist with the separation of data combined in one Environment.



(k) *Fees.* The amounts to be paid by Customer to Provider for the Software, Services and/or Additional Professional Services as provided in the Agreement.

(l) *GDPR.* 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.

(m) *Multi-Tenant.* A single instance of the software and its supporting infrastructure serves multiple customers. Each customer shares the software application and also shares a single database. Each tenant's data is isolated and remains invisible to other tenants.

(n) *Support Hours.* From 09:00 until 18:00 CE(s)T on Business Days.

(o) *Offer.* The 'CHILI GraFx' order form as accepted by the Customer.

(p) *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. In the course of providing the Services, Provider may process the following types of Personal Data:

(i) the personal information placed by the Customer on Customer's Environment. Access to an Environment is only granted by the Customer.

(ii) Possible Personal Data provided by the Customer in a support ticket placed on Provider support platform.

(q) *Platform Data.* User account and subscription data (incl. contract details, credentials, permissions, etc.).

(r) *Provider IP.* The Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services, but] does not include Customer Data.

(s) *Render.* A "Render" happens every time you output a certain type of file. A Render is never counted on testing environments regardless of the type of action. Renders are only applicable on production environments. The limit or Renders is the total of Renders across all Customer environments and regions.

	Yes	No
PDF Output		
Pdf output	x	
Pdf output with text watermark		x
Pdf output with asset as a watermark	x	
Image output		
Previews generated using default profiles (highest-high-medium-thumbnail)		
Previews generated using a custom profile		x



Animation/ Video (coming soon)	x	
Per second of output		
Animation with watermark		
IDML output	x	
HTML output	x	
ODF output		
Batch output	x	
When executing a batch output (variable data print pdf or image export) the first 50 records are counted as individual renders. The amount of records exceeding the first 50 are counted as 1 render per 50 records.	x	
Barcodes		
Barcodes used in a template/document	x	
Barcodes rendered via API (coming soon)		
General		x
Font previews	x	
Snippets		
Client-side 3D		
Template package		x
Plugins import (Illustrator/InDesign/Switch)		x
Client side document canvas operations (like f.e. taking a snapshot)		x

(t) *Resolution Time.* The targeted maximum time between the point at which a Support request was received by Provider during normal Provider Support Hours and Provider’s permanent solution to the problem.

(u) *Response Time.* The maximum time between the point a Support request was received by Provider during normal Provider Support Hours and Provider’s response.

(v) *Services.* The software-as-a-service offering described in **Order Form**.

(w) *Service Data.* Any information, including personal data, which is stored in Provider services, by, or on behalf of, our customers and their end-users.

(x) *Single Tenant.* Single Tenant of the software and supporting infrastructure serve a single customer. With single tenancy, each customer has his or her own independent database and instance of the software.

(y) *Software.* The CHILI GraFx software program for smart artwork and marketing material creation.

(z) *Support.* The technical support for the use of the Software, provided by Provider to Customer.



- (aa) *Support Availability.* The numbers of hours that are covered in your time zone. Nine to five entails 8 hours during Business Days.
- (bb) *Support Data.* The data Customer provides to CHILI publish on the support platform.
- (cc) *Support Request.* Support request needs to be logged via the Provider support platform.
- (dd) *Template Designer Seat.* A template designer is 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.
- (ee) *Third-Party Products.* Any third-party products provided with or incorporated into the Services.

2. Access and Use.

- (a) Provision of Access. Subject to terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 12(g)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services
- (b) Documentation License. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(g)) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.
- (c) Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; (v) perform any action which could circumvent, undermine or endanger the operation, security or integrity of the Services (e.g. by performing a stress test); (vi) impersonate another person or misrepresent authorization to act on behalf of others or Provider; or (vii) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
- (d) Reservation of Rights. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.
- (e) Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of



creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Services; or (iii) in accordance with Section 5(a)(iii) (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f) **Aggregated Statistics.** Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

3. Customer Responsibilities.

(a) **General.** Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

4. Service Levels and Support.

(a) **Service Levels.** Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Services available in accordance with the service levels set out in **Exhibit B**.

(b) Notwithstanding anything to the contrary in this agreement, **Exhibit B** in particular, by virtue of the Agreement, Provider 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 Provider. The Customer is prohibited to perform any action which could circumvent or endanger the operation or security of the Services (e.g. by performing a stress test). Provider has the right (but not an obligation) to remove at any moment and without prior warning any data from the Customer which, in Provider's 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. Provider will, to the best of its ability, manage the Services in a professional manner and with due care.

(c) **Location of Data Storage.** If applicable, the Customer can select a data center out of the list offered by Provider.



(d) Protection of Customer's or, as the case may be, Customer End-User's data stored by Provider (which may include Personal Data). Provider 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.

(e) Data Processing. To the extent that any Personal Data is processed by Provider, said processing shall take place in accordance with the data processing agreement concluded between Provider and the Customer. Provider shall take all appropriate and adequate technical and organizational measures to ensure an adequate degree of protection of any collected Personal Data.

(f) Proprietary Rights. Customer nor any Customer End-User does not acquire any right, title or interest in the Software, including, without limitation all rights, title and interest (whether legal, equitable or otherwise) on databases, technology and source code used in relation thereto, as well as all rights to modification, 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 Provider.

(g) Support. Subject to the terms and conditions of the Agreement, Provider agrees to provide to Customer Support of the Software for the term of the Agreement. The access rights granted hereunder entitle Customer to the support services described on **Exhibit B**. Support requests need to be logged via Provider's support platform.

5. Fees and Payment.

(a) Fees. Customer shall pay Provider the fees ("Fees") as set forth in **Order Form** without offset or deduction. Payments shall be due net thirty (30) days from date of the invoice. Customer shall make all payments hereunder in US dollars on or before the due date set forth in **Order Form**. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Customer shall pay Provider 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; (ii) Customer shall reimburse Provider for all reasonable costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

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

(c) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

(d) Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis



from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. 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.

6. Intellectual Property Ownership.

(a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

7. Limited Warranty and Warranty Disclaimer.

(a) Provider warrants that the Services will conform in all material respects to the service levels set forth in **Exhibit B** when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of the Services unless specifically identified in **Exhibit B**. The remedies set forth in **Exhibit B** are Customer's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 7(a).

(b) Customer Warranty. Notwithstanding anything to the contrary in this Agreement, Customer represents and warrants to Provider 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; and (c) the undersigned representative of Customer is authorized to execute the Agreement on behalf of Customer.

(c) Provider Warranties. Provider 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.

(d) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7, THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.



8. Indemnification.

(a) Provider Indemnification.

(i) Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including [reasonable] attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of such Third-Party Claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such Third-Party Claim.

(ii) If a Third Party-Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(iii) This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Services not made by Provider; (C) Customer Data; or (D) Third-Party Products.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; or (iv) modifications to the Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 8 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. [IN NO EVENT WILL PROVIDER'S LIABILITY UNDER THIS SECTION 8 EXCEED THE TOTAL FEES, PAID BY CUSTOMER TO PROVIDER UNDER THE AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE SUCH CLAIM AROSE.

9. Limitations of Liability. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE



EXCEED THE TOTAL FEES, PAID BY CUSTOMER TO PROVIDER UNDER THE AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE SUCH CLAIM AROSE.

10. Term and Termination.

(a) Term. The initial term of this Agreement as mentioned in the **Order Form**.

(b) Termination. In addition to any other express termination right set forth in this Agreement, the Agreement may be terminated by written notice in the following circumstances:

(i) Provider may terminate immediately upon written notice to Customer upon the occurrence of any Default; and/or

(ii) 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;

(iii) Provider 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.

(c) 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.

(d) Remedies Upon Default. In addition to any other remedies of Provider, upon the occurrence of any Default, Provider 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 Provider's 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.

(e) 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.

(f) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

(g) Survival. This Section 11(d) and Sections 1, 5, 5(d), 6, 7(c), 8, 9, and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.



11. Data protection

(a) In the course of providing the Services to Customer, Provider may process Personal Data (e.g. when the Customer uploads Customer Information, which contains Personal Data, into its user account or if a support ticket (containing Personal Data) was submitted by Customer through Provider's support platform). Customer must obtain all necessary consents from the relevant individual to enable the Provider to process the Personal Data.

(b) Where and to the extent that Provider processes any Personal Data under this Agreement, each Party shall comply with its respective obligations set out in **Exhibit C**.

12. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

(b) 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.

(c) 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.

(d) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid) or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(e) 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.

(f) Subcontracting. The Customer hereby agrees that Provider may subcontract any part of the Services under the Agreement to a subcontractor. Provider 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 the GDPR. Provider 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 Provider as the entity contracting to provide



the Services and Provider remains fully responsible to the Customer for all of the Services under the Agreement, including the services performed by its subcontractors.

(g) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, sonic boom, EMP (electromagnetic pulse), cyber-attack, epidemic, pandemic or intervention, order or action by any government authority, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(h) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(i) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(j) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Illinois. Any legal suit, action, or proceeding arising out of this Agreement or the licenses granted hereunder will be instituted in the federal courts of the United States or the courts of the State of Illinois in each case located in the city of Chicago, and each Party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding.

(k) 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.

(l) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns. Provider may assign, transfer or convey its rights and obligations under the Agreement with notice to Customer, but without Customer's consent.

(m) Publicity & Testimonials. Customer consents to the use of its trading name within any promotional material to be published by Provider in the future. Such promotional material will not



contain any Confidential Information. If Provider wishes to use the Customer's business cases or a testimonial for promotional purposes, it will ask Customer's permission to do so

(n) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 5(d) or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(o) Counterparts. This Agreement may be executed in digital counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.