ANNEX IV – TERMS AND CONDITIONS

Version: 01 April 2023

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

1.1 *Agreement*. The Agreement and its Annexes.

1.2 *Additional Professional Services*. Following the Customer's request or following CHILI publish's 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.

1.3 Support Availability. The numbers of hours that are covered in your time zone. Nine to five entails 8 hours during Business Days.

1.4 Business Days. 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 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 CHILI publish can never assist with the separation of data combined in one Environment.

1.7 Support request: Support request needs to be logged via the CHILI publish support platform.

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

1.9 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.

1.10 Offer. The 'CHILI GraFx' order form as accepted by the Customer.

1.11 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, CHILI publish may process the following types of Personal Data: Personal data at CHILI means
- 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.

1.12 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.

1.13 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		x
Previews generated using a custom profile	x	
Animation/ Video (coming soon)		
Per second of output	x	
Animation with watermark		x
IDML output	x	
HTML output	x	
ODF output	x	
Batch output		
When executing a batch output (variable data print pdf or image export) the first 50 records are	x	

counted as individual renders. The amount of records exceeding the first 50 are counted as 1 render per 50 records.		
Barcodes		
Barcodes used in a template/document		x
Barcodes rendered via API (coming soon)	x	
General		
Font previews		x
Snippets		x
Client-side 3D		x
Template package		x
Plugins import (Illustrator/InDesign/Switch)		x
Client side document canvas operations (like f.e. taking a snapshot)		x

1.14   Resolution time. 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's permanent solution to the problem.

1.15   Response time. The maximum time between the point a Support request was received by CHILI publish during normal CHILI publish Support Hours and CHILI publish's response.

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

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

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

1.19   Support. Means technical support for the use of the Software, provided by CHILI publish to Customer in accordance with Section 3 hereof.

1.20   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%).

1.21   Multi-Tenant means that 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.

1.22   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.

1.23   Normal Support Hours. from 09:00 until 17:00 CE(s)T on Business Days.

1.24   Service Data is any information, including personal data, which is stored in or transmitted via the CHILI publish services, by, or on behalf of, our customers and their end-users.

1.25   Support Data means the data Customer provides to CHILI publish on the support platform.

1.26   Platform Data covers user account and subscription data (incl. contract details, credentials, permissions, …).

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 to perform 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 data from the Customer which, in CHILI publish'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. CHILI publish will, to the best of its ability, manage the Services in a professional manner and with due care.

2.2   Location of data storage. The Customer can select an data center out of the list offered by CHIILI publish. (see Annex V – Data Centers)

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2.3 Protection of Customer's or, as the case may be, 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 II). 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 article as described in Annex III (Security).

2.4 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 CHILI publish.

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.

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

4. PAYMENT AND TAXES.

4.1 CHILI publish shall submit an invoice for all Fees due to Customer. Payments shall be 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.

4.2 Customer shall be 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 shall 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 5% per annum. A price increase shall be communicated to the Customer in writing at least 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; and (c) the undersigned representative of Customer is authorized to execute the Agreement on behalf of Customer.

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.

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:

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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.

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's 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 possible so that CHILI publish is in a position 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'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.

7.4   Rights and Obligations upon Termination. Customer acknowledges and agrees that CHILI publish will archive the Service data processed through the Software for a period of two (2) years after the termination or cessation of the Agreement. Data which is necessary for the purpose of self-defense in a potential legal procedure will be archived for a period of ten (10) years after the termination/expiration of the Agreement. The data will be destroyed after the two/ ten-year period, unless there would be a penalty or threatened legal procedure, in which case the necessary data 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 exercise the level of care it would exercise to safeguard its own Confidential Information with regard to Confidential Information received from another Party.

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 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 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 the 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, 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

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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

10.1 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.

10.2 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.