General Terms and Conditions for Vendors

These Software-as-a-Service Terms and Conditions (the "**SaaS-GTC**") are entered into between Atlantic Food Waste Partners LLC dba Choco ("**Choco**") and the entity that has executed an order form (together with any annexes, the "**Order Form**") that references the SaaS-GTC or the entity that accesses and uses the Software as a supplier user ("**Supplier**"). The SaaS-GTC, and the order form among the parties that references the SaaS-GTC (together with any annexes thereto, the "**Order Form**"), any special provisions which govern any services provided by Choco under the respective agreed packages in the Order Form (the "**Special Provisions**") constitute the complete understanding between the parties on the subject matter (collectively, the "**Contract**") and is effective on the earlier of: (a) the date that the Order Form is fully executed by the parties, whether in the form of a document, or an online application page or form, or (b) Supplier's initial access to and use of the Software ("**Effective Date**"). By entering into an Order Form and/or otherwise accessing or using the Software, Supplier agrees to be bound by the SaaS-GTC and the other terms and conditions of the Contract. If Supplier does not accept the SaaS-GTC, Supplier is not authorized to access or use the Software.

Preamble

Choco operates the Choco cloud solution (Software-as-a-Service, or "SaaS"), which, amongst others, enables suppliers in the food industry to receive orders digitally, simplify order processing for restaurant businesses ("**Customers**") and to communicate efficiently with them ("**Software**") and offers services. Customers are afforded an opportunity to conveniently place and manage orders with all their suppliers using the Software. The Supplier wishes to use the Software and/or benefit from the services to simplify order processing for its customers and to be able to solicit new customers.

NOW THEREFORE, in consideration of the foregoing, Choco and the Supplier (hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**") hereby enter into the following agreement:

1 Subject Matter and Order of Priority

1.1 The Software is intended only for business enterprises. The Supplier represents and warrants that it uses the Software as a business enterprise and is an entity that is duly incorporated, validly existing and in good standing under the laws of its state of incorporation. Choco reserves the right to verify the Supplier's enterprise status at any time, particularly on the basis of the information and documents that were provided during the formation of the Contract. Upon request, the Supplier shall without undue delay provide Choco with any additional evidence required for this purpose.

1.2 If there are any inconsistencies between the Order Form, the SaaS-GTC and the Special Provisions, then the relevant provisions shall apply in the order of priority prescribed below:

- Order Form

- Annexes to the Order Form

- Special Provisions

- SaaS-GTC, retrievable at https://legal.choco.com/uspremium#saas

2 Choco's Services

2.1 Access to the Software and services

2.1.1 For the limited term of the Contract, Choco shall provide the Supplier with access to the Software *via* the Internet. The use requirements and scope of the Software and the services that Choco will provide can be found in the Order Form. Beyond the agreed scope, the Supplier will have no right to any specific design or specific functionalities of the Software and of the services performed by Choco. Supplier acknowledges and agrees that Choco may update the Software at its own discretion, provided that if any such update materially diminishes any of the features and functionality previously made available through the Software, the Supplier may object to the changes. In case of an objection by the Supplier, Choco may terminate the Contract or offer the Supplier a reasonable remedy at its own discretion.

2.1.2 Operation and maintenance of the Software shall be the responsibility of Choco. Choco shall not be responsible for any issues related to or arising from internet connectivity issues and any internet or telecommunications network disruptions which are beyond Choco's control. The Supplier has no right to access the source codes of the Software.

2.1.3 Unless otherwise agreed, Choco will make commercially reasonable efforts to make the Software available 98% based on a monthly average, i.e., the Software could be unavailable for up to 15 hours per month. Excluded therefrom are necessary planned maintenance work as well as disruptions that are not within Choco's sphere of influence (including, for example, force majeure events or failures caused by the Supplier's incorrect operation). If possible, Choco shall in a timely manner notify Supplier in text form about planned maintenance work. Nevertheless, Choco expressly reserves the right to carry out unannounced maintenance work, if necessary, particular where this is required for data and operational security.

2.1.4 Choco shall provide the Supplier with documentation concerning the Software as well as instructions regarding its use and shall do so in English by posting them electronically online for retrieval. The Supplier shall not be entitled to edit, distribute or post publicly the documentation or instructions for use. No printed documentation will be due.

2.1.5 If Choco is obligated to provide support services under a particular package agreed to between the Parties in an Order Form, then Choco shall provide such support services in the scale, at the times and within the response times as agreed in the Order Form or as described in the Special Provisions.

2.1.6 Choco will be entitled in its own discretion to engage subcontractors, including its affiliates, ("**Vicarious Agents**") for the performance of services.

2.2 Offer of Products; Orders; Placement of Product Contracts; Choco's role.

2.2.1 In connection with using the Software, the Supplier will be able to offer its Customers the opportunity to purchase goods and products ("**Products**"), to digitally receive corresponding orders for Products placed by the Customers *via* the Software or other communication channels specified by the Supplier ("**Orders**"), and to communicate with the Customers.

2.2.2 The Supplier may enter into contracts with Customers for the purchase and delivery of Products ("**Product Contracts**") by using the Software and on the basis of purchase orders.

2.2.3 The Supplier is solely responsible for its use of the Software, such as for the contact it establishes with other companies, all communications sent via or in connection with the Software, the content and availability of the Products, for all communications sent via or in connection with the Software, for all information or other content uploaded, submitted or otherwise made available by or on behalf of Supplier through or in connection with the Software and for the proper management of orders. Choco merely provides the infrastructure for offering Products, communication and managing orders and shall have no liability to Customers.

2.2.4 In general, regarding the communication between the Supplier and the Customers and especially if the Supplier concludes Product Contracts with Customers *via* the Software, then Choco will be merely acting as a messenger in transmitting the declarations of intent that are made by the Supplier and the relevant Customer and are aimed at concluding Product Contracts and will itself not become a party to the Product Contracts. Each Product Contract shall be concluded solely between Supplier and the relevant Customer. Neither the Supplier nor the relevant Customer will have any rights *vis-à-vis* Choco under a Product Contract; Choco shall not be responsible for the proper performance of the respective Product Contract, and instead the Supplier and the relevant Customer will

have that responsibility. Choco will have no liability whatsoever with regard to the performance of the Product Contracts, and above all not with regard to its proper performance or with regard to any defects to, the Products sold. Choco shall not be a party to disputes of any kind between the Supplier and its Customers, including any disputes that may arise during the conclusion or execution of Product Contracts nor for relationship or communications between the Supplier and the Customers.

2.2.5 The Supplier has no right against Choco to compel the conclusion of Product Contracts.

3 Ownership; License; Open-Source Software.

3.1 The Software, together with any related technology any intellectual property rights related thereto or embodied therein and with any improvements or modifications to the foregoing (collectively, the "**Choco IP**"), are the exclusive property of Choco or its licensors, or the foregoing have the necessary intellectual property rights in the Software. Supplier will not (a) allow any third party to access the Choco IP, except as expressly allowed in an Order Form; (b) modify, adapt, alter or translate the Choco IP; (c) sublicense, sell, transfer or otherwise allow the use of the Choco IP for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code of the Choco IP; (e) interfere in any manner with the operation of the Software or the hardware and network used to operate the Software; (f) modify, copy or make derivative works based on any part of the Choco IP or documentation; (g) access or use the Choco IP to build a similar or competitive product or service; (h) attempt to access the Choco IP through any unapproved interface; or (i) otherwise use the Software in any manner inconsistent with applicable law.

3.2 Upon commencement of the Contract, Choco grants the Supplier for the term of the Contract a non-exclusive, revocable, non-sublicensable, non-transferrable license to use the Software in accordance with the Contract, solely in connection with the Supplier's internal business operations. The license granted to the Supplier is limited to use of the Software by its authorized users.

3.3 Certain components of the Software and services may be provided through third party services. Any such components that the Supplier could recognize as being subject to third-party rights, including open-source licenses, will be excluded from the grant of rights and will be subject to applicable third party and open-source software licenses. Above all, any components that Choco discloses as third-party content in the Order Form, in the Software or in accompanying text files will be deemed recognizable within the meaning of the previous sentence. The Supplier agrees that availability of the Software or certain features may be dependent on the corresponding availability of the third-party services. Choco is not responsible for any interruptions or issues with the Software caused by the third-party services.

4 Supplier Obligations

4.1 Access and data security; Cooperation; Contact information.

4.1.1 The Supplier shall independently ensure that it is able to accept Choco's services. In particular, Choco's delivery of the hardware and software required for those services is not a component of the Contract. The Supplier is responsible for the operation and availability of its own company software.

4.1.2 The Supplier shall be responsible for the security of all passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Supplier to access the Software ("**Access Mechanisms**") and may make such information or procedures accessible to authorized users, who are the Supplier's employees or contractors, only. Supplier's authorized users are subject to all of the terms and conditions of the Contract applicable to Supplier and the Supplier is responsible for all acts or omissions of its authorized employees and also for all acts performed by unauthorized persons who accessed the Software by using the Supplier's Access Mechanisms. The Supplier will obligate authorized employees to keep Access Mechanisms confidential and secure. The Supplier shall inform Choco without undue delay if there is any suspicion that such Access Mechanisms may have become known to unauthorized persons or that the Software may otherwise contain or be subject to security issues, vulnerabilities or other compromises.

4.1.3 The Supplier represents, warrants and covenants that it will not upload, submit or otherwise make available to Choco through or in connection with the Software (i) Social Security numbers or other government-issued identification numbers; (ii) protected health information subject to the Health Insurance Portability and Accountability Act (HIPAA) or other information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; (iii) health insurance

information; (iv) biometric information; (v) passwords to any online accounts; (vi) tax return data; (vii) information subject to the Gramm-Leach-Bliley Act, Fair Credit Reporting Act or the regulations promulgated under either such law; (viii) information subject to restrictions under applicable privacy or data protection laws governing personal data of children, including, without limitation, all information about children under 16 years of age; or (xi) any information that falls within any special categories of data (as defined in the General Data Protection Regulation (Regulation (EU) 2016/679) and its UK analogue (collectively, "**GDPR**")).

4.1.4 The Supplier shall refrain from any conduct that jeopardizes or interferes with the functioning of the Software or intrudes into or damages Choco's systems and shall not access or process any content or data that the Supplier is not authorized to access or process. The Supplier shall comply with all security measures and protections and the functional and other restrictions of the Software and shall, in particular, not remove, override, disable or otherwise circumvent any protection or authentication mechanisms. The Supplier shall ensure that its transmitted information and content posted *via* the Software is not infected with harmful computer programs (e.g., viruses, worms, Trojan horses or other malware) and that it does not upload or send any content intended to induce third parties - including other suppliers or customers - to disclose confidential information (e.g., passwords), to harass third parties, to automatically redirect third parties to other Internet offers outside the Software, to violate the rights of third parties. The Supplier shall refrain from any other conduct that will impair the intended operation of the Software or the IT infrastructure of Choco or to otherwise violate applicable law.

4.1.5 The Supplier shall solely be responsible for its data and content, which are stored, processed and otherwise transmitted to Choco in connection with the Software (defined as "Supplier Content" in section 4.3.1), and shall make back-ups of Supplier Content on a regular basis and commensurately with the risk, insofar as this is technically feasible for it to do. The foregoing shall apply both to the Supplier's data and content on the local systems and to that data and content which Supplier stores on the IT infrastructure hosted by Choco. The Supplier shall specifically back-up such data and content, which is described in this subsection and which the Supplier is obligated to store by law or regulation.

4.1.6 The operation and configuration of the Software is the Supplier's responsibility. Insofar as Choco provides the Supplier with guidance, recommendations, tips or advice within the Software or offers information or analysis results generated by the Software, this information will be automatically generated and shall serve as non-binding information intended to support the Supplier in its business decision-making. Such support services do not release the Supplier from checking the accuracy of the respective information and from taking into account all other circumstances relevant in the context of the decision-making process.

4.1.7 The Supplier shall designate a contact person in its company who will be authorized to receive and issue declarations of intent in connection with the Contract dealings with Choco.

4.1.8 The Supplier warrants that the information provided in the context of concluding the Contract is accurate and complete. The Supplier shall be obligated to keep such information up-to-date and to notify Choco about any changes without undue delay. This information includes, above all, data on the Supplier's contact and business information.

4.1.9 Upon request, the Supplier shall provide Choco with all further information that Choco, in its sole discretion, requires for the proper performance of the service and Software. This information includes, above all, information which is marked as required within the Software (e.g., information regarding the Supplier's order preferences, including delivery territory, minimum order value, delivery dates).

4.1.10 The Supplier shall ensure that it will process all orders received *via* the Software or *via* the delivery methods specified to Choco within a reasonable period of time and in a manner customary in the market.

4.1.11 In order to enable Choco to import the order lists of Supplier's Customers into the Software, the Supplier shall in a timely manner provide Choco with the names, Customer numbers and individual order lists of such Customers who have already registered for the use of the Software or who already order from Supplier *via* the Software. If the Supplier's Customers register for the use of the Software for the first time during the term of the Contract, then the Supplier shall provide Choco with the individual order lists of such Customers without undue delay (but no later than within twenty-four (24) hours). The Supplier will be free to provide Choco - instead of the individual order lists of relevant Customers - with the order history of the Products ordered from the Supplier in the last thirty (30) days. Supplier shall ensure that the Products reported in the order lists are also listed in the Product catalog and that the Products in the order list and in the Product catalog can be assigned to each other by means of a clear, identical Product number.

4.1.12 If the Parties have agreed on the "Premium" package in the Order Form, then the Supplier shall without undue delay provide Choco with a Product catalog covering all Products and Product groups of Supplier's total product range. The Product catalog shall contain items with the following minimum requirements: designation, Product number, availability, order unit, list price.

4.2 Products; Required information

4.2.1 Unless expressly agreed otherwise, the Supplier may offer and sell *via* the Software only Products that address food and hotel industry needs.

4.2.2 It is the Supplier's responsibility to ensure that it offers and sells *via* the Software only those Products that it is lawfully authorized to offer and sell. The Supplier shall provide any and all information as required by law about the Supplier and its company and about the Products offered and sold.

4.3 Supplier Content; Use of the Software; Blocking

4.3.1 The Supplier shall retain any and all rights to information, images, texts, documents, data, files and other contents which are uploaded or submitted to Choco by or on behalf of Supplier in the course of Supplier's use of the Software and services ("**Supplier Content**"). The Supplier warrants that it has obtained all licenses and permissions needed for Choco to use the Supplier Content in accordance with the Contract and is solely responsible for the accuracy, quality and legality of the Supplier Content.

4.3.2 The Supplier grants Choco a non-exclusive, perpetual and geographically unrestricted right to use, host, store, display, reproduce, modify and distribute such Supplier Content (i) for the performance and purposes of the Contract including for purposes of operating the Software and providing services, (ii) for security and fraud prevention purposes, (iii) research and analytics purposes, and (iv) to grant sublicenses to its Vicarious Agents to the extent necessary for the performance of the Contract. Otherwise, the right of use may not be transferred or assigned. Choco shall retain all rights in the aggregated or deidentified information and may use it at its own discretion, to the extent it does not identify the Supplier, its Customers or any other person.

4.3.3 Furthermore, the Supplier grants Choco a non-exclusive and geographically unrestricted right to use the Supplier's trademarks for the performance of the Contract. Choco shall be specifically entitled to use the trademarks for purposes of operating the Software, including displaying them on the Supplier's supplier profile, and to grant sublicenses to its Vicarious Agents to the extent necessary for the performance of the Contract. Otherwise, the right of use may not be transferred or assigned. Choco shall use Supplier's trademarks in accordance with Supplier's applicable branding guidelines. The Supplier may withdraw this license any time after the termination of the Contract upon at least 30 days' prior written notification to Choco.

4.3.4 The Supplier warrants that the Supplier Content does not infringe any third-party rights (for example, privacy and self-determination rights, rights to one's own image, copyrights, trademark rights, etc.) and does not otherwise violate applicable law (for example, data protection rules) (such content, "**Prohibited Content**") and that Supplier has obtained all licenses or permissions needed for Choco to use the Supplier Content to use the Services. Supplier is solely responsible for any and all obligations with respect to the accuracy, quality and legality of Supplier Content.

4.3.5 Choco is entitled to block or remove Prohibited Content and the offer of impermissible Products under subsection 4.2, upon weighing the interests of both parties; the same rule will apply if Choco is obligated by law to do so, based on a complaint by a Customer or a third party, a court judgment or regulatory order.

4.3.6 The Supplier warrants that in connection with its use of the Software, it will comply with all applicable laws, regulations and legal rules, including those imposed by copyright, fair dealing, youth protection, food and data protection laws. In particular, the Supplier shall use the Software exclusively as permitted by the Contract and in compliance with all laws, rules, statutory provisions, court judgments, regulatory directives, including the legal requirements related to telecommunications or to advertising or promotional communications (including, without limitation, laws, rules and requirements prohibiting or otherwise regulating the sending of unsolicited advertising emails). Supplier may not use the Software to order to build a product or service which competes with the Software.

4.3.7 Choco will also be entitled to block individual Products, upon weighing the interests of both parties, if Choco has reasonable indications that the Supplier's Product offering is unlawful, misleading or for other reasons likely to give rise to complaints by third parties or to unreasonably high user complaints. Choco will be entitled to block the Supplier's access to the Software, terminate this Contract or take any other remedial actions that are reasonably necessary, if

a. there are indications that the Supplier's Access Mechanisms have been or are being misused or that the Access Mechanisms have been or are being provided to an unauthorized third party or that such Access Mechanisms are being used by more than one natural person;

b. there are other indications of compromise or threats to security, including any actual or reasonably suspected data breach or security incident or indications that unauthorized third parties have otherwise gained access to the Software provided to the Supplier;

c. the blocking is necessary for technical reasons;

d. Choco is legally, judicially or officially obligated to block;

e. the Supplier places Prohibited Content on the Software;

f. the Supplier offers impermissible Products as described in subsection 5.2;

g. the Supplier is more than two (2) weeks in arrears on the payment of the agreed fees or commissions in accordance with Section 6 of the Contract; or

h. the Supplier has stored incorrect or invalid contact data, and communication between Choco and the Supplier is no longer possible; or

i. the blocking is necessary to avert imminent damage to Choco, the Supplier or third parties or to mitigate damage that has occurred.

Unless prohibited by applicable law, Choco shall notify the Supplier if it blocks the Supplier's access to the Software, including the reasons for it, in text or written form and shall allow the Supplier to comment on the blocking, provided that the announcement and/or waiting for the comment is reasonable (upon weighing the interests of both parties) and is compatible with the purpose of the blocking. Choco shall unblock the use of the Software for the Supplier if the reason for the blocking no longer exists.

4.4 Indemnification

4.4.1 The Supplier shall defend, indemnify and hold Choco, its employees, representatives and Vicarious Agents (the "Choco Indemnified Parties") harmless from and against any and all claims, losses, liabilities, damages or expenses (including reasonable attorneys' fees) asserted against the Choco Indemnified Parties by third parties and triggered by the Supplier's use of the Software (including in connection with Supplier's offer of Products, Product orders, Supplier Content, Prohibited Content and the conclusion, performance or proper fulfillment of Product Contracts).

4.4.2 Choco shall notify Supplier without undue delay about any claims asserted by third parties and shall, upon request, provide the information and documents required for the defense. Moreover, Choco at its own discretion will either surrender the right of defense to the Supplier or undertake such defense in consultation with the Supplier. In particular, Choco shall neither acknowledge nor dispute any claims asserted by third parties without consulting with the Supplier, except where the Supplier has not responded to Choco's notification of the claim within a reasonable time period. The provisions of this provision shall apply to contractual penalties as well as to fines and administrative penalties imposed by courts or regulators insofar as the Supplier is responsible for them.

5 Fees and Commissions, Reporting, Payment

5.1 If the Parties have agreed in the Order Form on a package, the use of which requires the Supplier to pay fees and/or commissions, then the following provisions shall apply.

5.2 As consideration for the use of the Software and services provided under agreed package(s), the Supplier shall pay Choco the fees and commissions agreed to in the Order Form

5.3 Unless expressly agreed otherwise in the Order Form, the Software shall transmit to Choco on a monthly basis (per calendar month) an evaluation of the orders transmitted to the Supplier *via* the Software (excluding personal data) ("**Order Evaluation**") for the purpose of calculating the commission. In this case, Choco shall calculate the respective commission due on the basis of a calculated total value of goods ("**Estimated Gross Merchandise Value**"). The Estimated Gross Merchandise Value shall be calculated by Choco

multiplying the number of Products ordered according to the Order Evaluation by the price of the Products on the Supplier's standard price list. The Supplier shall in a timely manner provide Choco with the standard price list valid at the time of the transmitted orders. If the Parties agree in the Order Form that fees and/or commissions will be calculated based on the actual Gross Merchandise Value generated by the Supplier through Choco in a calendar month ("**Precise Gross Merchandise Value**"), then the Supplier shall provide Choco with the monthly Precise Gross Merchandise Value no later than the 10th day of the next month (or by such other date as may be agreed in the Order Form); upon request, the Supplier shall without undue delay provide Choco with any evidence necessary to verify the Precise Gross Merchandise Value.

5.4 Choco is entitled to have the Precise Gross Merchandise Value and the correctness of the information provided by the Supplier in this respect verified by an independent auditor, who is bound to secrecy and is not a competitor of the Supplier, and to do so once each calendar quarter at the Supplier's premises during the Supplier's normal business hours. Choco shall give the Supplier in writing at least two (2) weeks' prior notice of any such review. Choco shall contractually obligate the auditor to ensure that (i) the reviews do not unreasonably interfere with the Supplier's ordinary business operations and (ii) the auditor will disclose to Choco information on the Precise Gross Merchandise Value to the extent that the Precise Gross Merchandise Value deviates from the information provided by the Supplier; otherwise, the auditor may confirm to Choco only the accuracy of the information provided by the Supplier. The Supplier shall be obligated to provide the auditor with all information and disclose all documents that are necessary for the performance of the reviews. If a review by the auditor reveals a deviation of more than 5% to the detriment of Choco between the Precise Gross Merchandise Value and the information provided by Supplier, then the Supplier shall bear the costs of the respective review; otherwise, Choco shall bear the costs of the respective review and the commission shall be calculated based on the Precise Gross Merchandise Value identified by the auditor.

5.5 Unless expressly agreed otherwise in the Order Form, fees and commissions shall be invoiced monthly in arrears and all invoiced amounts shall be due within two weeks of invoicing. In case of late payment, Choco reserves the right to charge interest at the maximum rate permitted by law as well as an appropriate penalty fee and any actual reasonable costs incurred by Choco for collecting late payments.

5.6 Unless expressly agreed otherwise in the Order Form, all amounts are net amounts in US Dollars.

5.7 The fees and commissions are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Supplier will be responsible for payment of all such taxes (other than taxes based on Choco's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the provision of the services, or the license of the Software to Supplier. Supplier will make all payments of fees and commissions to Choco free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees and commissions to Choco will be Supplier's sole responsibility, and Supplier will provide Choco with official receipts issued by the appropriate taxing authority, or such other evidence as the Choco may reasonably request, to establish that such taxes have been paid.

6 Warranties; Disclaimers.

6.1 EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND SOFTWARE ARE PROVIDED "AS IS," AND CHOCO MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. CHOCO DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES CHOCO GUARANTEE ANY SPECIFIC RESULTS IN CONNECTION WITH USE OF THE SERVICES.

6.2 Except with respect to its services and Software offered free of charge, Choco provides a warranty against defects in the delivered Software and services. In case of a breach of the warranty against defect, the Supplier's sole and exclusive remedies and Choco's sole liability are set out below. Such warranty will not apply to the extent such defects arise, in whole or in part, from (a) any use of the services or Software not in accordance with this Contract; (b) any use of the services or Software in combination with other products, equipment, software or data not supplied by Choco; or (c) any modification of the Software by any person other than Choco or its authorized agents.

6.3 Defects are defined as any material deviations from the functional scope of the Software and services as agreed in the Order Form.

6.4 If the services and the Software provided by Choco under this Contract are defective, then Choco shall, at its choice and within a reasonable period of time following receipt of the notice of defect communicated by the Supplier in written or text form, either remedy the defects or deliver the services once again, subject to Section 6.5. When using third-party software which Choco has licensed for the Supplier's use, the remedying of defects shall consist of the procurement and installation of generally available upgrades, updates or patches. The provision of instructions for use, with which the Supplier can reasonably workaround defects that have occurred in order to use the Software in accordance with the Contract, will also be deemed to be a remedy of defects.

6.5 If Choco is unable to reasonably implement the remedies in Section 6.4, then unless Choco and Supplier agree on a reasonable alternative remedy (such as giving the Supplier a reasonable discount on the affected services), then Supplier's sole and exclusive remedy shall be to terminate the Contract.

6.6 The Supplier shall without undue delay, and in any case within thirty (30) days following the performance of the defective services, notify Choco in written or text form about any defect that occurs. The notice of defects must contain all information that is available to the Supplier and is necessary for Choco to identify, reproduce, analyze and remedy the defect. Furthermore, the Supplier shall assist Choco in remedying defects free of charge and in a reasonable manner.

6.7 The prescription (limitation) period for warranty claims is one year, unless they are based on intentional acts or omissions or gross negligence or relate to losses resulting from death, physical injury or impairment of health.

7 Limitation of Liability

7.1 With respect to its services and Software offered free of charge, the full and aggregated liability of Choco (together with its legal representatives, employees, agents and Vicarious Agents, the "**Choco Parties**") for any damages arising under this Contract shall be limited to one-hundred (100) USD.

7.2 EXCEPT AS OTHERWISE SET FORTH IN SECTION 7.1, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF THE CHOCO PARTIES ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS CONTRACT WILL NOT EXCEED THE FEES PAID TO CHOCO IN CONNECTION WITH THE SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL CHOCO HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY RELATED TO THE ACTS OR OMISSIONS OF ANY THIRD PARTY.

7.3 TO THE FULLEST EXTEND PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL THE CHOCO PARTIES BE LIABLE TO SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY OR PROCUREMENT OF SUBSTITUTE SERVICES, ANY BUSINESS INTERRUPTION, IMPACT OF LOST OR DAMAGED DATA OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF CHOCO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS CONTRACT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

7.4 The limitations on liability shall apply *mutatis mutandis* in favor of the Choco Parties.

7.5 NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY.

8 Confidentiality; Feedback

8.1 The Parties undertake to keep confidential confidential any information and documents of the respective other party, which are either to be regarded as confidential due to the nature of the information or the circumstances of their disclosure or have been designated or marked as confidential by the disclosing party, such as business and/or trade secrets ("**Confidential Information**") and to use them exclusively for the purposes of this Contract and not to make them accessible to third parties other than as permitted hereunder. The receiving party shall undertake reasonable technical and organizational measures to prevent unauthorized access or disclosure of Confidential Information. Third parties within the meaning of this Contract shall also include companies affiliated with the respective receiving party and in which the receiving party does not hold a majority of capital and voting rights. The employees of the receiving party as well as other third parties engaged by it (including subcontractors and freelancers) shall be obligated accordingly.

8.2 Choco's Confidential Information shall include, without limitation, the technical components and the source codes of the Software as well as all technologies of Choco, information provided by Choco about the Software or in the context of support requests or cooperation for the purpose of troubleshooting, as well as this Contract including the annexes thereto, the Order Form and the agreed terms and conditions.

8.3 The receiving party is entitled to disclose the Confidential Information of the disclosing party, (i) to its employees, trainees, representatives, Vicarious Agents or consultants on a need to know basis if and to the extent such disclosure is necessary for the performance of this Contract and if they are bound by the confidentiality obligations at least as protective as those contained herein, (ii) in a legal proceeding, (iii) if the disclosure is mandatory by law or (iv) upon prior written approval of the disclosing party. When requests are made by judicial or administrative authorities relating to the disclosure of Confidential Information, to the extent legally permissible, the receiving party shall without undue delay notify the disclosing party thereof in writing or in text form. The receiving party shall further reasonably support the disclosing party in its efforts to prevent the disclosure of the Confidential Information.

8.4 The duty of confidentiality shall not apply to the extent that the Confidential Information was already known to the receiving party prior to disclosure (except with respect to personal data), is generally known or becomes known to the public through no fault of the receiving party or with respect to Confidential Information that was independently developed by the receiving party itself without access to the Confidential Information of the disclosing party or was brought to the attention of the receiving party by a bona fide third party authorized to do so. The parties reserve the right to make disclosures if mandated by law. If the receiving party invokes one or more of the aforementioned reasons, then it must substantiate them by submitting suitable evidence.

8.5 The duty of confidentiality shall commence upon gaining knowledge of the Confidential Information and will continue for the entire term of this Contract. In addition, the duty of confidentiality shall remain in place for a period of three (3) years from termination or the end of the Contract term, unless statutory provisions provide for a longer confidentiality obligation. In particular, any trade secrets shall be treated confidentially for as long as they are trade secrets.

8.6 During the period in which this duty of confidentiality remains binding, Confidential Information shall be returned without undue delay, undamaged and in full upon the first request made by Choco. Choco may also mandate that certain Confidential Information be destroyed, deleted or placed in safekeeping and that the execution thereof be confirmed in writing by the Supplier. The above provisions in this section shall apply only to the extent that it does not significantly impair the contractually conforming use of the contractually-defined service.

8.7 The foregoing provisions do not establish any rights of use under intellectual property law. All rights of use granted under this Contract shall remain unaffected by the above provisions.

8.8 Both during and after the Term, Choco may (a) use any suggestions, enhancement requests, recommendations or other feedback obtained in the course of providing the Services or otherwise provided by Supplier, including Authorized Users, in order to improve and enhance the Software and the Services and for other development, diagnostic and corrective purposes for those or other offerings of Choco.

9 Term and Termination

9.1 Unless otherwise expressly agreed in the Order Form, the Contract shall commence on the Effective Date and shall have a term of twelve (12) months from the commencement of the Contract (the "**Term**").

9.2 Unless otherwise expressly agreed in the Order Form, the Contract shall be extended for successive contract periods of twelve (12) months each, if it is not terminated in writing by one of the Parties upon three (3) months' notice to the end of the respective contract period. Choco may update the terms of the Contract, including the fees and commissions, at each renewal, which will be communicated to the Supplier three (3) months before the end of each respective contract period.

9.3 Choco may terminate the Contract for convenience without having to give any reasons any time with a notice period of one (1) month. The Parties reserve their respective rights to terminate for good cause immediately upon notice to the other party if the other party materially breaches this Contract, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach. This clause shall not apply to breach of limited warranty provided by Choco as per section 6 and the exclusive remedies of the Supplier are listed therein.

9.4 Choco may terminate this Contract immediately upon written notice if:

    a. the Supplier has repeatedly - and despite previous warning from Choco - placed Prohibited Content on the Software;

    b. the Supplier offers impermissible Products as defined in subsection 4.2;

    c. the Supplier breaches its duty of confidentiality under Section 8 or a breach of provisions related to Choco IP under Section 3; or

    d. the Supplier is more than four (4) weeks in arrears on the payment of the fees pursuant to Section 6, and Choco has sent the Supplier a notice of termination in text form or in written form that threatens termination to take effect in two (2) weeks.

9.5 Unless prohibited by applicable law, within a reasonable period of time following termination or expiration of the Contract, for any reason whatsoever, Choco shall delete the Supplier Content to the extent technically possible upon Supplier's request. Choco is entitled, but not obliged, to retain and store the Supplier Content for security or back-up reasons for a period of two (2) weeks after the termination or expiration of the contractual relationship. The Supplier is directly responsible for any download of the Supplier Content during the period of time which the back-up copies are stored. Choco will also be entitled to retain Supplier Content beyond the termination of the contractual relationship if Choco is obliged to do so by law, court order or regulatory order (including reasons based on commercial and tax law) or to the extent that the Content is required for accounting, documentation and billing purposes or for security or fraud prevention purposes or for the operation of the Software.

9.6 The sections 3 (Ownership), 5.4 (Supplier indemnification), 6 (Fees and Commissions, Reporting, Payment), 8 (Limitation of Liability), 9 (Confidentiality) and others which by their nature are intended to survive, shall survive after termination or expiration of this Contract.

10 Amendments to this Contract

Choco may amend this Contract with effect for the future. In case of minor or cosmetic amendments that do not negatively affect the Supplier, the amendments shall not be directly notified but posted in Choco's website, indicating the date of entry into force thereof. If there are material changes to the Contract, Choco will provide the Supplier with notice before the changes enter into force and allow the Supplier a reasonable time to review. Amendments shall be deemed as agreed by the Supplier if the Company has not expressly objected to them by the time they take effect. In case of objection, unless the parties mutually agree upon another resolution, either party may terminate this Agreement as its sole and exclusive remedy in connection with such amendment and/or objection.

11 Final Provisions

11.1 Choco may use the Supplier's name and logo in its lists of customers on its public website and promotional materials. Supplier may revoke this consent any time without giving any reasons.

11.2 This Contract is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. Except with respect amendments under Section 10, any amendments, modifications, and side agreements to this Contract must be made in writing signed by a duly authorized representative of each Party. This requirement also applies to this written form clause itself.Choco is an independent contractor, and nothing in this Contract will be construed to create a partnership, joint venture, or agency relationship between the Parties. Supplier will not have and will not represent to any third party that it has, any authority to act on behalf of Choco.

11.3 If any provision of this Contract is, for any reason, held to be invalid or unenforceable, the other provisions of this Contract will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

11.4 Any delay in the performance of any duties or obligations of either party (except the payment of Fees owed) will not be considered a breach of this Contract if such delay is caused by a labor dispute, shortage of materials, telecommunication or internet delays or failures, fire, earthquake, flood, pandemic or epidemic, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

11.5 Neither party will assign or otherwise transfer this Contract without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that Choco may assign this Contract in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of Supplier. The terms of this Contract will be binding upon the parties and their respective successors and permitted assigns.

11.6 This Contract and any action related thereto will be governed and interpreted by and under the laws of the State of New York, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The Parties hereby expressly consent to the exclusive personal jurisdiction and venue in the state and federal courts for New York, New York for any lawsuit arising from or related to this Contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

11.7 This Contract may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.