

*This Agreement governs your use of Choco App if your organisation signed an order form or otherwise agreed with Choco for making use of paid services. If your organisation makes use of free version of Choco App, [these terms](#) will govern your use.*

## **Main Services Agreement**

Choco operates a cloud-based order management and communication platform (software-as-a-service) for suppliers and their commercial customers in the food industry (buyers) (the "**Choco App**"). Choco may further offers professional services in connection with the use of the Choco App, such as onboarding, implementation and integration services (the "**Professional Services**"). Choco App and the Professional Services are collectively referred to as the "**Services**".

This Main Services Agreement (the "**MSA**") is 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 MSA ("**Buyer**"). The MSA, and the Order Form, all materials referred or linked to in here and any special provisions which govern the Services provided by Choco constitute the complete understanding between the parties on the subject matter (collectively, the "**Agreement**"). By entering into an Order Form, Buyer agrees to be bound by the Agreement. Capitalised terms not otherwise defined in the MSA will have the respective meanings assigned to them elsewhere in the Agreement.

THEREFORE, in consideration of the foregoing, Choco and Buyer (hereinafter each a "**Party**" and collectively the "**Parties**") agree as follows:

### **1. Scope of the Services**

**1.1 Access to Choco App.** During the Subscription Term (as defined below) Choco hereby grants Buyer a non-exclusive, non-transferable, non- sublicensable right to access and use the Choco App with the features and for the number of Buyer's brances (Locations) agreed in the Order Form, solely for its own business operations and in accordance with the terms and conditions of the Agreement. Buyer is responsible for arranging the necessary equipment and the Internet connection to be able to use the Choco App. Buyer will have no right to any specific design or specific functionalities beyond the scope of the Choco App agreed in the Order Form. This MSA will apply to all additional features and/or additional Locations that may be added to the Buyer's license upon Parties' mutual agreement in writing.

**1.2 Professional Services.** Parties may agree on the provision of Professional Services such as implementation services in the Order Form or elsewhere in writing, which shall be governed by this Agreement. While providing Professional Services, Choco may create deliverables for Buyer (the "**Choco Deliverables**"). Choco hereby grants Buyer a non-exclusive, non-transferable, non sublicensable right to use the Choco Deliverables during the term of the Agreement and in accordance with the terms and conditions thereof. Buyer shall not make any modifications or use the Choco Deliverables for any other purposes than achieving the purpose of the Agreement without prior written approval of Choco.

**1.3 Free Services.** Choco may offer certain Professional Services or certain features of the Choco App on unpaid trial or free basis ("**Free Services**"). In case of a free trial, Buyer will retain its free access until the end of the free trial period or the Subscription Start Date. Buyer acknowledges that Choco reserves the right to

modify or terminate Buyer's access to the Free Services or any part thereof, at any time and for any reason in its sole discretion without any notice or liability to Buyer. Free Services are provided as is and to the maximum extent permitted by applicable law, Choco shall not be liable for any damages, costs, expenses resulting from the use of the Free Services. To the extent such full exclusion of liability is not enforceable, Choco's (including its legal representatives', employees', agents' and Vicarious Agents') aggregate liability shall be limited to one hundred (100) USD). In the event of a conflict between this clause and the rest of the Agreement, this section shall take precedence.

**1.4 Service Specific Terms.** Some Services may be subject to additional terms specific to that Service. Buyer agrees to be bound by the applicable Service Specific Terms by signing the Order Form or by accessing or using the Services covered by Service Specific Terms.

**1.5 Availability.** Choco will make commercially reasonable efforts to make the Choco App available 98% of the time, based on a monthly average. Excluded therefrom are necessary planned maintenance work as well as disruptions that are not within Choco's sphere of influence (such as force majeure events, downtime that results from a third party's equipment, software or technology or internet connectivity issues). If possible, Choco shall in a timely manner notify Buyer about planned maintenance work. Nevertheless, Choco expressly reserves the right to carry out unannounced maintenance work, if necessary, particularly where this is required for data and operational security.

**1.6 Modifications.** Buyer acknowledges and agrees that Choco may update the Choco App at its own discretion, provided that if any such update materially diminishes any of the features and functionality previously made available through the Choco App, the Buyer may object to the changes. In case of an objection by the Buyer, Choco may terminate the Agreement or offer the Buyer a reasonable remedy at its own discretion.

**1.7 Third Party Components.** Certain components of the Choco App may be provided through third party services. Any such components that Buyer could recognize as being subject to third-party rights, including open-source licences, will be subject to applicable third party and open-source software licences. Above all, any components that Choco discloses as third-party content in the Agreement, in the Choco App or in any Choco policies will be deemed recognizable within the meaning of the previous sentence. Buyer agrees that availability of the Choco App 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 Choco App caused by the third-party components.

**1.8 AI-powered Services.** The Choco App may encompass functionalities that are powered by artificial intelligence (the "AI"). Buyer will retain ownership over the input it provides and the output generated by AI based on the input, both of which shall constitute Buyer Data (as defined below). Choco does not guarantee the accuracy, completeness and reliability of the output generated by AI and, to the extent permitted by law, disclaims all warranties and liability for such output. To the extent such full exclusion of liability is not enforceable, Choco's (including its legal representatives', employees', agents' and Vicarious Agents')

aggregate liability shall be limited to one-hundred (100) USD Output generated by AI may not be unique to Buyer and it does not represent Choco's views. Buyer undertakes to comply with the fair use policies of Choco's third party service providers when using AI-powered functionalities. In the event of a conflict between this section and the rest of the Agreement, this section shall take precedence.

## **2. Access and Use of Choco App**

**2.1 Authorised Users.** The licence granted to Buyer is limited to its employees, agents or contractors who are authorised by Buyer to use the Services (the "**Authorised Users**"). Buyer is responsible for its Authorised Users' compliance with the Agreement, including Choco's policies on the use of the Choco App and for all of their acts and omissions. Buyer shall ensure that its Authorised Users keep the access data of their accounts confidential and shall inform Choco without undue delay if there is any suspicion that the access data may have become known to unauthorised persons. Buyer is solely responsible for all activities that occur under the accounts of its Authorised Users.

**2.2 Use Restrictions.** Buyer shall comply with all laws applicable to its access and use of the Choco App. Buyer shall not (a) reproduce, copy, modify, adapt, or create derivative works, reverse engineer, decompile or engage in any action with the attempt to obtain the source code of the Choco App (except as permitted by mandatory law); (b) sublicense, sell, rent, distribute, transfer or provide a third party access to the Choco App or otherwise allow the use of the Choco App for the benefit of any third party; (c) engage in any conduct that interferes with or threatens the security, integrity or performance of the Choco App including any related systems; (d) send any malicious code (e.g., viruses, worms, Trojan horses or other malware) through Choco App; (e) attempt to interfere with or otherwise circumvent any security measures, authentication mechanisms or any functional restrictions on the Choco App intended to limit its use; (f) use the Choco App in order to build a product or service which competes with the Choco App; (g) use any software, devices, robots or any other means to scrape data from the Choco App; (h) use the Choco App for fraudulent purposes; (i) make unfair use of the Choco App or (j) use the Choco App to send unsolicited commercial communications.

**2.3 The relationship with the Suppliers.** Buyer is solely responsible for its use of the Choco App, such as for the contact it establishes with other companies, all communications sent via or in connection with the Choco App, the content and availability of the products and for the proper management of orders. By making the Choco App available, Choco merely provides the infrastructure for placing and managing orders and for communication. Choco itself will not directly or indirectly become a party to the relationship between Buyer and its suppliers. Each order (individual sale and purchase of products) shall be concluded solely between Buyer and the relevant supplier. Choco will have no liability whatsoever with regard to the performance of those orders and shall not be a party to disputes of any kind between Buyer and its suppliers (such as disputes relating to incorrect deliveries or late payments).

**2.4 Cooperation.** Buyer shall cooperate with Choco in good faith and provide all necessary information as reasonably required by Choco for the proper performance of the Services in a timely manner. All information

provided by Buyer shall be up-to-date, complete, and accurate, and Buyer shall notify Choco in writing in case of any changes. Choco will not be liable for any delays in the provision of the Services caused by Buyer's failure to provide Choco with the required information or cooperation.

### **3. Buyer Data**

**3.1 Buyer Data.** Buyer shall retain all right, title and interest in and to information, images, texts, data, files, Buyer Deliverables and other materials that is transmitted, submitted or otherwise made available by or on behalf of Buyer to Choco in the course of Buyer's access and use the Services (the "**Buyer Data**"). Buyer grants Choco a non-exclusive, royalty-free and worldwide licence to collect, process, reproduce, modify, host, store, disclose, display and perform all necessary acts on the Buyer Data for the purposes of operating the Choco App and providing the Services to Buyer. In particular, Choco shall be entitled to collect and use the Buyer Data about Buyer's use of the Choco App for internal research, security, analytics and reporting purposes and for developing and improving its Services. Choco shall retain all rights in the aggregated or deidentified information and may use it at its own discretion during and after the term of this Agreement without being subject to any limitations (such as for distributing insights and reports), to the extent it does not identify Buyer, its suppliers or any person. Choco may sublicense or transfer the rights granted herein to its Vicarious Agents for the purposes of this Agreement.

**3.2 Limitations on the Buyer Data.** Buyer represents, warrants and covenants that it will not upload, submit or otherwise make available to Choco through or in connection with the Choco App (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 (ix) 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")).

**3.3 Buyer Warranties.** Buyer warrants that (i) it owns or will obtain the necessary rights and permissions to share the Buyer Data with Choco and to authorise the use of the Buyer Data by Choco as contemplated in this Agreement; (ii) it will provide the required information notices and obtain necessary consents under data protection laws from the persons whose personal data may be included in the Buyer Data for sharing their data with Choco; (iii) the Buyer Data and its use by Choco as contemplated in this Agreement do not violate any third-party rights or applicable laws; (iv) the Buyer Data will not include any illegal, defamatory, inappropriate, offensive, hateful or violent content. Buyer shall solely be responsible for the Buyer Data and shall ensure its accuracy, integrity and reliability throughout the term of the Agreement.

**3.4 Removal.** Choco is not obliged to monitor the Buyer Data but reserves the right to do so at its own

discretion. Choco may, without prior notice, remove or disable access to any Buyer Data (i) if it violates the Agreement including Choco policies made available to Buyer, (ii) if it constitutes illegal content such as illegal hate speech, terrorist content, unlawful discriminatory content, or any content that the applicable laws render illegal or (iii) if it is likely to give rise to complaints by third parties or other Choco customers. Due account of the fundamental rights and freedoms and legitimate interests of all parties involved will be taken when making decisions about removal of the Buyer Data. Choco will comply with binding orders of courts and supervisory authorities to remove any illegal Buyer Data from the Choco App.

**3.5 Backup.** Choco will use commercially reasonable efforts to ensure integrity and availability of the Buyer Data. Notwithstanding the foregoing Buyer shall be solely responsible for the Buyer Data and shall take backups on a regular basis and commensurately with the risk.

**3.6 Buyer Indemnity.** Buyer shall indemnify and hold Choco, its employees, representatives, Vicarious Agents harmless from and against any claims, losses, liabilities, damages and expenses (including reasonable attorneys' fees) asserted against them by a third party arising out of (i) Buyer's (including its Authorised Users') use of the Services, (ii) the Buyer Data, (iii) payment of orders submitted to the Supplier, or (iv) Buyer's (including its Authorised Users') violation of applicable laws. Choco shall notify Buyer without undue delay about any claims asserted by third parties and shall, upon request, provide the information and documents required for the defence. Moreover, Choco at its own discretion will either surrender the right of defence to Buyer or undertake such defence in consultation with Buyer. In particular, Choco shall neither acknowledge nor dispute any claims asserted by third parties without consulting with Buyer, except where Buyer 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 Buyer is responsible for them.

#### **4. Fees and Commissions, Reporting, Payment**

**4.1 Fees.** Buyer shall pay Choco the fees agreed to in the Order Form or elsewhere in writing for the provision of the Services (the "**Fees**"). Unless expressly indicated in the Order Form, the Fees consist of recurring monthly fees for the use of the Choco App (the "**Monthly Fee**") and a one-time fee for implementation services ("Implementation Fee"). The Fees are calculated based on the number of Locations agreed upon between the Parties in the Order Form or elsewhere in writing. The Buyer will be charged based on the number of agreed Locations irrespective of whether a Location makes use of the Choco App or not. Choco will charge the Buyer for additional Locations. Parties may agree on a minimum monthly fee in the Order Form (the "**Minimum Monthly Fee**"). If the amount of Monthly Fee in a calendar month falls below the amount of the Minimum Monthly Fee, then Buyer shall pay Choco the Minimum Monthly Fee.

**4.2 Payment of Monthly Fees.** Unless expressly agreed otherwise in the Order Form, the Fees shall be due from the Subscription Start Date (as defined below), invoiced monthly in arrears and all invoiced amounts shall be due within two weeks of the date on the invoice and paid by direct debit. 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 collection costs, upon presentation of supporting documentation. If such delay continues for more than two (2) weeks, Choco may block Buyer's access to the Services until the outstanding amount is paid in full. If the implementation is delayed due to the Buyer (such as due to late payment of Implementation Fee), the Buyer shall still pay the Monthly Fees from the subscription start date, meaning the date that the implementation shall be finalized and the agreed-upon features will be ready for use (Subscription Start Date). If the implementation is delayed due to any other reason, Choco may adjust the Subscription Start Date without changing the length of the Subscription Term.

**4.3 Taxes.** Unless expressly agreed otherwise in the Order Form, all amounts are net amounts in US Dollars. The Fees 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 Buyer 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 Choco App to Buyer. Buyer 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 Buyer's sole responsibility, and Buyer 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.

**4.4 Audit.** Choco is entitled to monitor the use of the Choco App by the Buyer to implement usage limits and adjust the Fees if the limits are exceeded.

**4.5 Price Adjustments.** Choco reserves the right to modify the Fees by providing the Buyer with a written notice at least 30 days in advance. In the event that the Buyer disagrees with the updated Fees, they retain the option to terminate the Contract within the specified 30-day notice period.

## **5. Intellectual Property**

**5.1 Reservation of Rights.** Buyer acknowledges and agrees that Choco and/or its licensors own or otherwise have all the necessary intellectual property rights in the Choco Deliverables and the Choco App, together with any related technology any intellectual property rights related thereto or embodied therein such as any systems, application programming interfaces or Integrations developed by or on behalf of Choco together with any improvements or modifications to the foregoing. Buyer does not have any rights in or to the Choco App and the Choco Deliverables, except for the limited express rights granted in this Agreement.

**5.2 Feedback.** Both during and after the Term, Buyer allows Choco to use, copy, disclose and exploit any suggestions and other feedback provided by Buyer and its Authorized Users freely in order to improve and enhance the Services and for development of other services in any manner without any obligation, royalty, attribution or restriction based on intellectual property rights or otherwise.

**5.3 Trademark License.** Buyer grants Choco a non-exclusive, worldwide licence to use Buyer's trademarks for operating the Choco App and for the performance of the Agreement. Choco shall be specifically entitled to display the trademark on Buyer's Buyer profile and to grant sublicenses to its Vicarious Agents to the extent

necessary for the performance of the Agreement. Otherwise, the right of use may not be transferred or assigned.

**5.4 Customer Reference.** Choco may use Buyer's name and logo in its marketing materials, presentations and similar communications to refer to Buyer as a customer. Buyer may revoke this consent any time by giving prior written notice.

## **6. Confidentiality**

**6.1 Duty of Confidentiality.** The Parties undertake to keep confidential any information and documents of the disclosing 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 allowed under this Agreement. The technical components, documentation and the source code of the Choco App and the terms of the Order Form shall be considered as Confidential Information of Choco. The receiving party shall undertake reasonable technical and organisational measures to protect Confidential Information.

**6.2 Disclosure of Confidential Information.** The receiving party is entitled to disclose Confidential Information of the disclosing party solely (i) to its employees, contractors, Vicarious Agents or consultants on a need to know basis for the performance of this Agreement, provided that they are bound by the confidentiality obligations at least as protective as those contained herein, (ii) in a legal proceeding, (iii) where required by law, (iv) to third parties upon prior written approval of the disclosing party. Affiliated companies of the receiving party will not be considered third parties if the receiving party holds a majority of capital and voting rights. When requests are made by judicial or administrative authorities relating to the disclosure of Confidential Information, the receiving party shall without undue delay notify the disclosing party thereof in writing, to the extent permitted by law.

**6.3 Exclusions from Confidentiality.** Confidential Information does not include information that (i) was already known to the receiving party prior to disclosure, (ii) is generally known or becomes known to public through no fault of the receiving party, (iii) is independently developed by the receiving party itself without access to the Confidential Information of the disclosing party or (iv) was brought to the attention of or shared with the receiving party by a bona fide third party authorised to do so.

**6.4 Duration of Confidentiality.** The duty of confidentiality shall commence upon gaining knowledge of the Confidential Information and will continue for the entire term of this Agreement. In addition, the duty of confidentiality shall remain in place for a period of three (3) years after cessation of the Agreement, unless statutory provisions provide for a longer confidentiality obligation. In particular, any business secrets shall be treated confidentially for as long as they are business secrets.

## **7. Suspension**

**7.1 Suspension.** Choco is entitled, but not obliged, to monitor Buyer's and its Authorized Users' use of the

Services and may suspend Buyer's or its any of its Authorized Users' access to the Choco App (i) if Choco reasonably believes a violation of the Agreement has occurred, (ii) if the suspension is necessary for technical or security reasons or to avert imminent damage to Choco, Buyer or third parties or (iii) if Choco is obliged to suspend access by law. Choco will use commercially reasonable efforts to provide advance notice of suspension, unless prohibited by law. Choco shall lift the suspension if the reason for the suspension no longer exists. Choco will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Buyer may incur as a result of a suspension triggered by its Authorized Users' own acts or omissions.

## **8. Term and Termination**

**8.1 Term.** The Agreement shall commence on the date of the last signature of the Order Form ("Effective Date") and unless terminated earlier in accordance with the Agreement, it shall continue in force until the end of the initial subscription term indicated on the Order Form (Subscription Term).

**8.2 Auto-Renewal.** The Agreement shall automatically renew for further terms of twelve (12) months unless terminated in writing by either Party upon three (3) months' notice to the end of the respective Agreement period.

**8.3 Termination for Cause.** Either Party may terminate the Agreement if the other Party materially breaches this Agreement, and such breach remains uncured for 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 8 and the exclusive remedies of Buyer are listed therein.

**8.4 Termination by Choco.** Choco may terminate this Agreement immediately upon written notice; if (i) Buyer has repeatedly placed Buyer Data or products that is not permissible under the Agreement; (ii) Buyer is in default of its payment obligations for more than two (2) weeks; (iii) Buyer becomes insolvent, files for or has filed against it, a petition of bankruptcy or (iv) if Buyer acts against use restrictions set out in section 2.2. Choco may terminate the Agreement for convenience without having to give any reasons any time with a notice period of one (1) month.

**8.5 Effects of Termination.** When the Agreement for the Services offered against remuneration is terminated Buyer shall lose its access to the Services, with the exception of the Free Services which may be still provided to the Buyer at Choco's sole discretion. After termination, Choco will have no obligation to Buyer to continue storing Buyer Data and will delete the Buyer Data in its systems upon Buyer's request or in line with its retention policy, whichever is earlier. Notwithstanding the foregoing, Choco will be entitled to retain the Buyer Data if Choco is obliged to do so by law or to the extent that the Buyer Data is required for accounting and documentation purposes or for the operation of the Choco App.

**8.6 Survival.** The sections 1.3 (Free Services), 3.6 (Indemnification), 4 (Fees and Commissions, Reporting, Payment), 6 (Confidentiality), 8.4 (Effects of Termination) and 10 (Limitation of Liability) and others which by their nature are intended to survive, shall survive after termination or expiration of this Agreement.



## **9. Warranty**

**9.1 Limited Warranty.** Choco provides a limited warranty against defects in the Services. A defect is deemed to exist in case of any significant deviations from the functional scope of the Services as described in the Agreement that render the use of the Service impossible or greatly restricted. Buyer shall without undue delay notify Choco in writing of any defect and provide all information that is available to Buyer and is necessary for Choco to identify, reproduce, analyze and remedy the defect. Furthermore, Buyer shall assist Choco in remedying defects free of charge and in a reasonable manner. Choco will either rectify the defect or deliver the impacted Service once again at its discretion and within a reasonable period of time upon receiving written notification of the defect. The provision of instructions for use, with which Buyer can reasonably workaround the defects, will also be deemed to be a remedy of defects. If Choco is unable to reasonably implement the remedies, then unless Choco and Buyer agree on a reasonable alternative remedy (such as giving the Buyer a reasonable discount on the affected services), then Buyer's sole and exclusive remedy shall be to terminate the Agreement. Choco's sole responsibility and Buyer's sole exclusive remedies against defects are set out in this section.

**9.2 Exclusion from Warranty.** This limited warranty does not apply (i) to any defects caused by unauthorized use, abuse, negligence or equipment of Buyer, (ii) to any defects not notified by Buyer within 30 days upon noticing the defect.

**9.3 Limitation period.** The 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.

**9.4 DISCLAIMER OF WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES 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.

## **10. Limitation of Liability**

**10.1 LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF CHOCO (INCLUDING ITS LEGAL REPRESENTATIVES, EMPLOYEES, AGENTS AND VICARIOUS AGENTS) ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT 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.

**10.2 DISCLAIMER OF CONSEQUENTIAL AND RELATED DAMAGES.** TO THE FULLEST EXTEND PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL CHOCO (AND ITS LEGAL REPRESENTATIVES, EMPLOYEES, AGENTS AND VICARIOUS AGENTS) BE LIABLE TO BUYER 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 AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

**10.3 EXCLUSIONS FROM LIMITATION OF LIABILITY.** NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY.

## **11. Final Provisions**

**11.1 Amendments.** Choco may amend this Agreement with effect for the future. Any amendments and side agreements to this Agreement must be made in writing. In case of minor or cosmetic amendments that do not affect Buyer, the amendments shall be posted on Choco's website. In other cases, Choco will provide Buyer with notice before the changes enter into force and allow Buyer a reasonable time to review. Amendments shall be deemed as agreed by Buyer if Buyer 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. Notwithstanding the foregoing, Choco may amend its policies from time to time to make necessary adjustments due to changes in its Services or laws without prior notice.

**11.2 Assignment and Subcontracting.** Buyer shall not, without the prior written consent of Choco, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement. Choco may at any time assign, transfer or deal in any other manner with all or any of its rights or obligations under this Agreement without Buyer's consent. If Choco subcontracts any of its obligations to its subcontractors or affiliates ("**Vicarious Agents**"), Choco will remain responsible for their acts and omissions.

**11.3 Entire Agreement and Order of Precedence.** This Agreement includes the Order Form, MSA, applicable Service Specific Terms and Choco's policies that are made available to the Buyer. It shall constitute the entire agreement between the Parties regarding the provision and use of the Services. The Agreement shall supersede any previous agreements, communications, representations and understandings between them, whether written or oral, relating to this subject matter. The Terms and Conditions that are accepted by the Buyer's Authorized Users for making use of the free version of Choco App (Free Service) are superseded and replaced by this Agreement. In case of any inconsistency or conflict between the provisions of this Agreement, the following order of precedence shall apply: Order Form, Service Specific Terms and the MSA.

**11.4 Headings.** Headings or titles used in this agreement are for convenience and reference purposes only and shall not be considered in the interpretation or construction of any provision of this Agreement.

**11.5 Waiver and Severability.** No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver, nor shall it prevent or restrict the further exercise of any right or remedy. If any part of this Agreement is determined to be invalid or unenforceable by a competent court, that part shall be deemed deleted, but this shall not affect the validity and enforceability of the rest of the Agreement.

**11.6 Force Majeure.** 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 Agreement 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.

**11.7 Governing Laws and venue.** This Agreement 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 Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.